
Handbook of the Philosophical Foundations of Business Ethics

Christoph Luetge
Editor

Handbook of the Philosophical Foundations of Business Ethics

With 29 Figures and 10 Tables

 Springer

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To Herbert and Irma

Preface

This handbook aims to give a broad overview of the philosophical traditions, concepts, and ideas which business ethics is rooted in.

As a research field, business ethics is not always regarded as being part of philosophy, but can be located within different institutional and disciplinary contexts, like economics, management, theology, psychology, social sciences, and – philosophy. This is not an accidental phenomenon, but rather reflects the complex history many ideas in business ethics have undergone – before the separation of disciplines from philosophy. Originally, most of the relevant philosophical ideas and concepts (like justice or virtues) were inseparably intertwined with considerations of – what would later be called – economic, psychological, or business nature. Many of the great thinkers in philosophy have contributed to the philosophical foundations of business ethics in this manner, such as Aristotle, Confucius, David Hume, Adam Smith, or Amartya Sen, to name but a few. All of them are covered extensively in the *Handbook of the Philosophical Foundations of Business Ethics*, which, therefore, can also be seen as an attempt to revive the old connections between philosophy and its neighbors.

The historical dimension is complemented here with a systematic one, which focuses on issues like human rights, property rights, gender, or free markets. In many cases, the contributions aim at not only presenting a concept but also reinterpreting it. This makes it inevitable for the authors to take sides. For a handbook which covers a strongly normative discipline, this is not a bad thing; in fact, this is what pluralistic discourse is all about: Controversy ensures the discipline stays alive.

And controversy is to be found here in many respects. In fact, it will be almost impossible for anyone to subscribe to all views presented here at the same time – or only at the high risk of contradicting oneself internally. This handbook is not just a collection of “objective” facts, but first and foremost – as I hope – *thought-provoking*.

Provoking thoughts is, however, not something seen as a *l'art pour l'art* enterprise: Rather, the challenge lies in bringing together ethical intuitions and functional requirements of modern market economies. This requires the cooperation of all the disciplines mentioned above.

Throughout the course of this handbook, it should become clear that controversy in business ethics exhibits qualities quite similar to controversy in other disciplines. And what is shown in particular: Normative questions can be taken on in a systematic, methodological, and, indeed, scientific way.

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Part 1

Aristotelian Foundations of Business Ethics

Aristotelian Business Ethics: Core Concepts and Theoretical Foundations

1

George Bragues

Abstract

This chapter offers an introductory overview of the key ideas and concerns of an Aristotelian business ethics. Based on a close reading of the Greek philosopher's writings, we point out that an Aristotelian business ethics is fundamentally oriented around the quest for happiness or human flourishing. Behaving morally in business is about acting in ways that conduce to one's authentic well-being. Using a dialectical mode of analysis involving the examination of prevailing opinions, Aristotle concludes that happiness consists of activity in accord with reason, a life devoted to the practice of the moral and intellectual virtues. As such, the pursuit of wealth characteristic of business life is properly limited to what is necessary to materially support those virtues. Aristotle suggests, too, that the virtues relevant to commerce require a supportive political framework. The peak expression of virtue attainable in business involves the undertaking of leadership roles.

Introduction

Proponents of virtue theory often preface their discussions by noting, if not lamenting, the dominance of utilitarianism and Kantian deontology in contemporary moral philosophy. Though there is an almost ritual-like quality to this observation, it does not make it any less true. Yet it is surely the case as well that the field of moral philosophy has witnessed a revival of what is, after all, the oldest tradition of ethical thinking. Philippa Foot [1], G.E.M. Anscombe [2], Bernard Mayo [3], and Alasdair Macintyre [4] are among the best-known figures of this movement. A corroboration of its success can be obtained by typing in the phrase,

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“virtue theory” at Google’s Ngrams, a database referencing the more than 15 million published books that have been digitized so far by the search engine firm [5]. After being virtually absent for most of the twentieth century, the percentage of instances that “virtue theory” has been written began to steadily rise in the 1980s, a trend that accelerated in the 1990s (Google Ngrams is only searchable until 2000). Simply inputting the term, “virtue,” shows an analogous and more revealing pattern. After declining in use throughout the entirety of the nineteenth and most of the twentieth centuries, the occurrence of “virtue” stabilized in the 1980s and started to recover in the 1990s.

Within the branch of moral philosophy known as business ethics, the return of virtue theory has certainly made itself felt. The leading light of this cause has definitely been Robert Solomon [6]. Other contributions have included Edwin Hartman [7], James O’Toole [8], George Bragues [9], Geoff Moore [10], and Deirdre McCloskey [11], in addition to Samuel Gregg and James Stoner [12]. Beneath the diversity of purposes and methods in these efforts to bring the language of virtue into business, a common thread is at work. All parties agree, whether implicitly or explicitly, that Aristotle somehow still matters more than just being a seminal figure in intellectual history, that despite approximately two-and-a-half millennia having passed since he wrote, during which the martial and agricultural societies of his time have given way to an industrial and commercial civilization, his thinking continues to be relevant in grappling with the moral challenges posed by modern business life. After all, the idea that figuring out what one ought to do is primarily a matter of determining what kind of person one should strive to be – the fundamental claim of virtue theory – ultimately goes back to the fourth century BC Greek philosopher. It is true that Plato and Socrates before him discussed ethics in terms of the virtues, as did the ancient Greek poets and dramatists. In the *Nicomachean Ethics*, however, Aristotle took something that had been somewhat loosely, if pleasingly, addressed within narratives and dialogues and gave it systematic expression. To rephrase Alfred North Whitehead’s famous statement about Plato and subsequent philosophy, all virtue theory is a series of footnotes to Aristotle.

In this, the introductory chapter to the Aristotle section of the handbook, we will focus closely on the *Nicomachean Ethics* [13] with a view to articulating the theoretical foundations and core concepts of the Aristotelian approach to business ethics. Other works in Aristotle’s corpus, *The Politics* [14, 15] chief among them, will also be consulted when necessary to shed light upon issues arising in his major ethical work. Our account will start by describing the primacy of personal happiness, or human flourishing, as the goal by which proper conduct in the business world should be defined. Afterward, Aristotle’s epistemological method of ascertaining the ways to reach this goal, namely the dialectical method, is outlined. Then, we summarize Aristotle’s conception of the virtues and the good life as well as the institutions necessary to support these in the political-economic framework. All the while, we will preview a number of the key topics and controversies explored in the proceeding chapters of this section.

The Telos of Happiness

It is well known that Aristotle is a teleological thinker in that he believes all beings in the universe, the human species included, act for a purpose. This feature of Aristotle's thought manifests itself right from the start of the *Nicomachean Ethics* where he raises the question of humanity's end or *telos*. How does Aristotle manage to answer this seemingly inscrutable question? He notes the elementary fact that all human activities aim at some good (1094a1-25) [13]. A sick person goes to the doctor to seek health; a general planning a battle aims to secure victory over the enemy. Every action, in other words, involves the deployment of means calculated to attain a certain end. Since the means are only valued to the extent that it potentially realizes the end desired, it follows that the latter is a higher good than the former. We only appreciate heart surgery insofar as it holds out the prospect of saving our life. Were we able to restore the well-being of our hearts without having to resort to such an invasive procedure, the prospect of having our chests cut open would strike us as crazy. At the same time, for almost every end an individual may happen to go after, the question can legitimately be raised to them as to why they are pursuing it. Asked why they are pursuing victory, a general will answer that it is for the good of the nation. In this way, the end of a given action comes to sight as the means to another end. And given the relative valuation of means versus ends, this newly disclosed goal must be higher than the more proximate one.

Now one may continue with this interrogation of action objectives, thereby revealing each end to be a means to a yet higher end, but this cannot go on *ad infinitum*. Otherwise, as Aristotle points out, human conduct would ultimately be purposeless and ineffectual, as life would turn into an unrelenting execution of means toward a goal that is always just around the corner. Eventually, the point is reached where a purpose is apprehended that is desirable for its own sake. This is the highest good. Insofar as ethics concerns that which rightfully claims the greatest allegiance of the will, the *summum bonum*, as the Latin writers would subsequently call the highest good, must ground all our reasoning about the nature of a morally commendable life. According to Aristotle, this basis is nothing other than happiness (1095a5-20) [13]. If, for example, a person seeking medical assistance is asked why they desire health, the response might well be that they want to function optimally in their everyday affairs. Asked again why they want to do that, they might say they want to be able to go to work and earn money. Pressed yet again why they want money, the reply is apt to be that it conduces to their happiness. Once this is stated, it is pointless to probe further because happiness is intrinsically desirable. Nobody can long wonder why they want to be happy. We just do. From the Aristotelian standpoint, business ethics must be oriented around this basic fact.

Such a position invites a number of criticisms. One is that Aristotle seems to take a monist stance about human fulfillment, not recognizing that a plurality of incommensurable goods exist that people value [16]. A second objection is that Aristotle commits the naturalistic fallacy in deriving ought from is. That people ought to aim for happiness is inferred from the fact that they do ultimately seek it. So too, an

existentialist, convinced of the meaninglessness of the universe, is apt to reject the notion that the logic of human action points to a *telos* serving as an objective guide for our decision making. How can one be so serene in failing to comprehend that human striving is vain and absurd, that our predicament is equivalent to that of the mythical Sisyphus repeatedly trying to lift a huge rock up a hill only to see it roll back down just before reaching the top? [17] Then there is the charge that Aristotle's moral teaching is egoistic in establishing happiness as the lodestar, for, after all, that is a mental state belonging to individuals. On this view, Aristotle misses the point that morality is not so much about the condition of the self as it is about that self's regard for others, such as family, friends, neighbors, colleagues, and, more importantly, the larger society, if not humanity as a whole. For business ethicists, this is a potentially damning judgment, since their field of study is very much dedicated to challenging the thesis, often advanced in popular defenses of capitalism, according to which self-interest can be relied upon in the economic sphere to further the public interest.

Let's begin addressing these points with Aristotle's apparent monism about the good. It must be remembered that he is using that term, the good, as a general concept that is admittedly in need of concretization. Evidencing this is Aristotle's subsequent evaluation of the relative merits of pleasure, wealth, honor, friendship, moral conduct, and intellectual contemplation as potential constituents of a truly fulfilled life (1095a20-1096a11) [13]. Aristotle's vision of such a life, as we shall see, comprehends each and every one of these as goods worth possessing and cultivating. While acknowledging the potential tensions between them, particularly between the acquisition of wealth and the practice of virtue, he insists that each of the specific goods can be accorded its due place and proportion so as to be harmoniously manifested in the character of a morally estimable person. There is a diversity of objects worth valuing, but they can be rendered commensurable by delineating their respective contributions to human happiness.

Regarding the accusation of a naturalistic fallacy, it would be to misconstrue Aristotle's position to say he is endeavoring to infer ought from is. Ought, after all, implies can. Declaring a person ought to engage in a particular behavior supposes the possibility of having two or more alternative courses of action about which one can deliberate and be held accountable for the decision ultimately taken. As Aristotle says, deliberation is limited to those matters within a person's capacity to influence. It is, "about the things which he can do by himself" (1112a35) [13]. No one, for instance, considers whether or not to obey the laws of gravity. Since that is dictated by natural necessity, the notion that one ought to respect those laws makes no sense. The same reasoning applies to the quest for happiness. It structures human activity such that all our deliberations are willy-nilly directed toward it. Aristotle's greatest student, St. Thomas Aquinas, nicely clarified this point in designating the imperative to seek the good as a foundational premise of practical reasoning, just as the logical laws of identity and noncontradiction ground theoretical reasoning [18]. Similar to the logical laws, the validity of the proposition that humans pursue their well-being does not depend on another premise. One can know it to be true by merely intuiting it (1140b31-1141a8) [13], in this case by reflecting

upon the nature of human choice. The upshot of all this is that whether an individual ought to do X, rather than Y or Z, properly applies to the means of realizing human fulfillment as opposed to that end itself. Instead of being derived from is, the ought is found to be imbedded in the decision-making context of human affairs.

Given the individualist tenor of our age, and the postmodernist tendencies in our culture, Aristotle's contention that a discoverable purpose exists that is relevant to all human beings irrespective of time and place will strike many people today as the most questionable part of his ethics. Even before the existentialists came along to voice this criticism in angst-ridden tones, leading Enlightenment thinkers sought to displace the kind of teleological ethic that Aristotle champions with a moral system that dispensed with the supposition of a human telos. In the *Leviathan*, Thomas Hobbes insisted, "there is no such *Finis Ultimus* (ultimate aim) . . . nor *Summum Bonum* (greatest good) as is spoken of in the Books of the old Moral Philosophers" [19]. Opposing Aristotle's argument that the series of ends identifiable in human action cannot extend to infinity, Hobbes maintains that happiness is actually more like riding a treadmill, "a continual progress of the desires, from one object to another; the attaining of the former, being still but the way to the latter" [19]. Not long afterward, John Locke added to this anti-Aristotelian case by observing that people's conceptions of happiness are irreducibly different. "The Mind has a different relish, as well as the Palate," the seventeenth-century English philosopher says, "and you will as fruitlessly endeavor to delight all Men with Riches or Glory, (which yet some Men place their Happiness in) as you would to satisfy all Men's Hunger with Cheese or Lobsters." Locke continues: "Hence it was, I think that the Philosophers of old did in vain enquire, whether *Summum bonum* consisted in Riches, bodily Delights, or Virtue, or Contemplation" [20].

With no ultimate aim to strive for, moral deliberation is left to consider only the means to each person's idiosyncratic ends. Ethics becomes the regulation of those means, the latter constituted by those capabilities and scarce resources that give individuals the power to get what they happen to want whenever they want it. Money is obviously an important component of such power. Once Aristotle's *telos* is subjectivized, then, constraining the use and accumulation of money by individuals and firms engaged in the buying and selling of goods and services comes to form the essence of business ethics. Most virtue ethicists nowadays have opted to follow this route. The result is that the virtues are understood, not in terms of the purpose of human life, but as a set of qualities fitting individuals toward the actualization of any goals they might have in a commercial society, an approach which Eugene Heath (see also ► [Chap. 6, "Virtue as a Model of Business Ethics"](#) of this handbook) describes later in this section by following the evolution of virtue theory from Aristotle toward a more bourgeois variant that began to develop in the eighteenth century. Another option is to define the virtues as those traits that meet the expectations of one's role in a larger community, which is Robert Solomon's position [6]. A combination of these two possibilities is also possible, which Edwin Hartman (see also ► [Chap. 4, "Aristotle on Character Formation"](#) of this handbook) points to as well in a subsequent article in this section.

We shall leave it to the reader to decide whether Aristotle was originally right in thinking that happiness is an objective condition. To help make that decision,

we shall outline the key arguments he makes in favor of that claim. In the meantime, the implications of viewing happiness in a relativist fashion need to be acknowledged and, chief among them, is that greater significance is lent to the egoism charge that one might level against Aristotle. To someone that asks why a businessperson should refrain from defrauding their customers, Aristotle can respond that doing otherwise would be self-defeating. By committing fraud, one would be undermining the health of one's soul. For most of the ends that people typically pursue, an analogous answer can be given, although the happiness at issue would not refer to the real condition of one's psyche, but rather one's personal sense of contentment. The usual way of going about this is to argue that the fraudster will suffer a bad conscience or, barring that, by noting that the odds are such that he or she will eventually be held to account and incur punishment. Still, if we conceive of a businessperson who seeks to amass wealth above all else, and is willing to assume the risks of detection, the dilemma posed by what David Hume called the sensible knave rears its disturbing head [21]. With no *summum bonum* to invoke, an Aristotle inspired theory of the virtues thus comes to require a compelling account that morally equates personal merit with how an individual tends to the concerns of others.

In avoiding the sensible knave dilemma, Aristotle distinguishes between two kinds of self-regarding. One kind refers to individuals who seek more than their fair share of pleasure, status, and money. This is what most people have in mind when they speak of selfishness as immoral. Yet the person who takes proper care of themselves by limiting their pursuit of worldly goods to a measure that is consistent with the cultivation of their highest intellectual and moral capacities is also being selfish. If anything, as Aristotle notes, they are more so than the type of person typically deemed as self-centered in that they are satisfying their needs in a more clear-sighted way (1168b10-35) [13]. On the original Aristotelian view, then, businesspersons are not so much summoned to constrain their selfishness as they are to manifest it in an elevated form. This implies a relegation of the material concerns that contemporary economists typically sanction as legitimate forms of self-interest, placing those concerns instead into the category of ignoble selfishness.

As this suggests, Aristotle does not define happiness as we are commonly apt to do as consisting of a pleasant or unperturbed state of mind. Happiness is not a feeling, but an activity. If it were simply about feelings, Aristotle observes, then it follows that a person who is constantly asleep or spends their days lying on a couch watching television is fulfilled (1098b30-1099a7) [13]. No one really believes that. Instead, in everyday life, those who are considered to be thriving are those who are doing something valuable with their lives. For this reason, and given its hedonic connotations in the English language, Aristotle's conception of the good life is often not described as happiness, but rather as self-realization, self-completion, self-perfection, or human flourishing. The virtues, according to this view, are precisely those activities that embody that flourishing. Among them is friendship – a rarely, if ever, discussed topic in business ethics – whose highest perfection is reached when the individuals concerned are both virtuous and desire the good of their friends as their own (1166a30-32; 1168b1-5) [13]. It is not merely

with friends, however, that the virtues socially manifest themselves, but also in our relations with greater communities, including firms as well as the states in which these operate. For as Aristotle famously states, human beings are social and political animals (1253a1-3) [14]. As we cannot rely entirely upon ourselves for the satisfaction of our needs and seek company for its own sake, we cannot live well except in living with others.

Dialectics

Being a first principle of ethical inquiry, the identification of happiness as the goal of proper conduct does not require much discussion of methodological questions. With respect to the *telos*, all one needs to grasp it is a bit of uncomplicated reflection on our own behavior. The situation changes, though, once the effort is made to figure out what exactly happiness consists in and how all this applies to commercial life. At this point, one is forced to confront the towering influence of the scientific method, the empirical-mathematical epistemology whose enormous success in the natural sciences has led it to progressively dominate the various social science disciplines that focus on the human things. The subjects that business students are required to learn – whether it be marketing, economics, accounting, finance, organizational behavior, operations, management – all reflect this positivist approach. Writing well before Francis Bacon invented the experimental method, Aristotle did not run controlled tests of hypotheses using human subjects, or construct surveys and mathematically analyze the results, or formulate regression models on available data sets. In quite a few eyes, this makes Aristotelian business ethics a hopelessly unscientific enterprise, nothing but a vessel by which its proponents can claim the intellectual authority of a historically renowned figure to advance their personal moral preferences. This objection, however, ignores the fact that an Aristotelian approach is, in many respects, open to social scientific techniques. More importantly, it assumes that the reigning positivism is the only legitimate way to comprehend human affairs. Aristotle reminds us that the sheer complexity of those affairs, as well as their inescapably ethical dimension, necessitates the adoption of complementary epistemologies.

The one that Aristotle puts forth for our consideration in business ethics is dialectics. Aristotle took this method from Socrates, who sought truth about the essence of justice, courage, piety, friendship, and the like by going to reputable authorities and asking them to state and defend their views [22]. Never satisfied with the initial definitions he heard, always uncovering some lacuna or contradiction, Socrates would scrutinize his interlocutors, eliciting them to restate their positions about the topic at hand in a more defensible manner, doing so repeatedly with the aim of eventually reaching an understanding beyond any reasonable objection. Stated more formally, as Aristotle does, dialectics starts its investigation of *X* by canvassing the prominent opinions people hold concerning *X*, whether by experts or significant parts of the public (1095a29-1095b14) [13] (104b1-7) [15]. In starting with opinions, Aristotle presumes that the human mind, in forming its

judgments about debatable issues, is able to glimpse at least a portion of the truth. Unlike the scientific method, whose pursuit of regularities is conducted on data acquired from the senses requiring minimal interpretation by the intellectual faculties, dialectics embraces people's attempts to make sense of their experience and tries to eliminate the inevitable biases by pitting their beliefs against other views. The point of engaging in this clash is to separate the elements of validity in each of the rival opinions and arrive at a statement of the matter that synthesizes the partial truths espied within the diversity of perspectives. At the end, the degree of certainty reached depends on what the nature of the subject matter permits. In ethical inquiries, according to Aristotle, we can only capture general tendencies by offering counsel that applies to most cases as opposed to every single one (1094b12-30) [13]. Circumstances play a decisive role in determining what is right and wrong. As these are always distinct from one business situation to the next, what is deemed as liberality and justice in one instance may well, even where the differences in circumstances are slight, be seen as profligacy and injustice in another. An Aristotelian business ethics can only offer probable judgments about the types of conduct associated with a flourishing existence.

How exactly are we supposed to go from opinions to probable knowledge? Noting strong parallels between Aristotelian dialectics and John Rawls' reflective equilibrium, Edwin Hartman (see also ► [Chap. 4, "Aristotle on Character Formation"](#) of this handbook) makes the interesting proposal, again later in this section of the handbook, of adopting the method of wide reflective equilibrium to appraise the divergent notions about how a person ought to act in a given business context. As Hartman explains, wide reflective equilibrium is an amplification of John Rawls' well-known technique articulated by Norman Daniels [23]. Whereas reflective equilibrium asks us to weigh and adjust our moral principles against our judgments in particular cases, the wider variant advocated by Daniels allows us to bring a third factor into the equation relating to scientific theories and other factual observations that bear on the ethical issue under consideration. Hartman provides a number of illustrations of the way Aristotle's ethical analysis accords with the wide reflective equilibrium approach in contending, for example, that the latter's teleological view of morality relies on his theories of the physical universe.

Going simply by what Aristotle wrote, the move from opinion to probable knowledge is a more traditional process, involving the time-honored methods of deduction and induction that he first clarified (105a10-19) [15]. Of the two, Aristotle prefers deduction, inferring particular statements from general premises, because the conclusions generated are certain. By contrast, there is less certainty to be gained via the inductive mode of forming generalizations from particular facts. Though not as much as the originators and present-day champions of the scientific method would like, Aristotle nevertheless recognizes the value of induction and, indeed, concedes that its empirical procedure renders it more convincing to most people. Inasmuch as what the prevailing positivist epistemology urges is a form of induction, this means that the Aristotelian approach is, in principle, open to the insights offered by modern social science. One way that immediately suggests itself involves the happiness studies literature that has grown dramatically in the past two

decades [24, 25]. To be sure, this literature must be approached keeping in mind that it tends to define happiness in subjectivist terms by asking people in surveys how they are feeling about their lives. These responses are then typically analyzed against variables, such as level of income, employment condition, marital status, country of residence, to gauge the factors that lead to happiness. Interestingly enough, despite the opposite conception of happiness, studies have leaned in Aristotle's direction in finding that, beyond a certain amount, money does little to add to happiness and that a key driver of life satisfaction is the quality of one's relationships.

In fact, we can go further with the opening offered to the social sciences by the acceptance of induction and challenge some of Aristotle's own notorious conclusions. An example is his claim that women are inferior to men, from which he deduces gender-distinctive expectations of virtuous behavior (1259b2-4 & 1260a9-15) [14]. Aristotle tries to back this by asserting that females are less intelligent than males. But data from IQ tests reveal similar scores across both genders [26]. Even more revolting to contemporary moral sensibilities is Aristotle's defense of slavery as a naturally supportable practice (1254a18-1255a3) [14]. In thus arguing for human inequality as a morally relevant fact, he is challenging the belief in equality that underlies all contemporary moral thought. The whole edifice of business ethics depends upon this egalitarian presupposition – without it, all the concern about protecting workers, women, minorities, consumers, and local communities from rich, powerful shareholders and corporate executives would make no logical sense. Aristotle's inegalitarianism is based on the idea that human beings can be put into one of two categories, the wise and the not-wise. The wise, he argues, ought to rule the not-wise because the former know better what is truly good than the latter do. As a result, while the wise will obviously make the right choices in benefiting themselves, even the not-wise will be better off in having the wise make decisions on their behalf. Once again, the social sciences, though admittedly common sense and historical experience would do just as well if not better, can be invoked against Aristotle here in pointing out that human selfishness is such that we cannot expect the wise not to take advantage of their authority to exploit the not-wise. Moreover, the same IQ studies that reveal no difference between genders demonstrate that humans cannot be neatly sorted into binary categories. Human intelligence being distributed in a bell curve, most people have similar levels of intelligence, with relatively fewer spread out along a continuum toward the two opposing extremes. Not to mention that even the most hard-line advocates of the thesis that intelligence is genetically influenced concede that social factors, and not just natural ones, help explain the tabulated variances in IQ scores [27].

Yet it should be remembered that induction is not simply equivalent to scientific empiricism. Traditions, customs, and consensus of public opinions also represent, though developed in a less systematic and rigorous fashion, generalized inferences from a multitude of events over time from numerous local standpoints. These, too, must be brought into the dialectical conversation of Aristotelian business ethics. Another important source of inductive understanding that Aristotle highlights is the prudent individual, someone whose good judgment, honed by life experience,

enables them consistently to take all the relevant circumstances into account in framing the alternatives correctly and making the appropriate choices (1140a25-b11) [13]. This is basically to say that the moral dilemmas of commerce are not to be reserved to academics engaged in dialectical discussion. Especially when the issue is very circumstantial and context specific, the inquiry must also integrate the considered views of morally respectable and experienced businesspersons – and not those who have simply managed to project an ethical image through public relations in championing fashionable causes.

The Virtues and the Good Life

It has already been pointed that Aristotle defines happiness as an activity and, more specifically, as a series of deeds and accomplishments expressive of virtue. But how exactly is Aristotle sure that the good life consists in virtuous action? In what does virtue consist? In line with the dialectical method, Aristotle launches his investigation into these questions by assessing prevalent opinions about the nature of happiness. He identifies three: pleasure, honor, and contemplation (1095b15-1096a6) [13]. If the decisions between these three alternatives were to be dealt with democratically by majority vote, what would surely emerge victorious is the thesis that living well is to enjoy a steady stream of sensual delights, bodily comforts, and cognitively undemanding diversions and entertainments. Inasmuch as firms must satisfy consumer preferences in order to survive and prosper, contemporary commercial societies attend to this conception of personal well-being through all the savory foods, tasty drinks, labor saving devices, luxury cars, and spacious homes that are made available in the marketplace. Not only that, but most people that work in business do so to obtain the means of acquiring such pleasures. It would be a smaller group that would opt for honor, being recognized as someone great, as defining the good life. True enough, many people seek a modest version of this in trying to signal their success through the brand names of the clothes they wear, the kinds of cars they drive, and the neighborhoods in which they choose to reside. In the realm of business, however, the quest for honor reaches its highest pitch among CEO's and entrepreneurs striving to make a name for themselves as product innovators, industry transformers, or visionary risk-takers. The contemplative life, the pursuit of truth for its own sake, would hardly receive any votes in the business world, except perhaps among people working there unable to find a place for themselves in academia. Nevertheless, something resembling the life of the mind can be discerned among company scientists engaged in product research and development along with financial market analysts and management consultants offering advice to investors and corporate executives.

In view of its popularity, and its hold over human nature, pleasure takes up the bulk of Aristotle's analysis. That hold means that pleasure cannot be excised from a credible account of human flourishing. Any moral theory that depicts it as evil is guaranteed to evoke hypocrisy among its exponents and contempt among its onlookers, since nobody can persistently resist the lure of pleasure (1172a34-b9) [13].

Ascetic and puritan critiques of capitalist consumerism have no place in an Aristotelian business ethics. But the acknowledgment of pleasure as an ineluctable motive of individual action does not mean that it should define self-fulfillment. Spending our days merely gratifying our senses and amusing ourselves with mind candy would reduce us to the level of the irrational animals (1095b20-21) [13]. If pleasure is the good, it would follow that the pleasures of the adulterer or the rapist are equivalent to those of the loyal partner or consensual lover (1173b20-1174a1) [13]. But this contradicts the widely held opinion that there is a difference between these two sets of experiences, that the pleasures of the first are, respectively, shameful and unjust, while those of the second are befitting and just. This means that pleasures can be distinguished as either good or bad, which in turn implies a higher criterion by which their respective contribution to individual fulfillment can be assessed. Aristotle observes, too, that no adult would choose to restrict themselves to the pleasures that children enjoy (1174a2-4) [13]. No matter how simple and worry-free such an existence might appear, our preference is always for the greater challenges of an emotionally and intellectually mature condition. Reinforcing this conclusion, Aristotle says, is that people will generally not give up their capacities for memory and knowledge, even though the exercise of these is not always pleasant (1174a4-12) [13].

It is by parsing the view equating happiness to honor that Aristotle is brought to the essence of the good life. Where the quest for renown and distinction goes awry is the dependence it entails upon other people's judgments. Complete self-sufficiency may be impossible, yet a significant component of it is surely a prerequisite of a felicitous situation, for it is hard to believe that a person can be deemed to be living well while entirely subject to the vagaries of public opinion. Aristotle also points out that the individual who is authentically committed to attaining honors wants to actually deserve them, instead of merely receiving the acclaim (1095b24-31) [13]. What people like Steve Jobs and Warren Buffett want is for other people to corroborate, rather than define, their estimable qualities and accomplishments. From this, Aristotle deduces that what really matters is that one act well – which is to say, virtuously. The good life thus comes to sight as conduct in accord with virtue. If we add to this what has already been concluded about the desire for pleasure being part of the constitution of human nature, a properly ordered individual will take enjoyment from doing virtue and feel pain at the thought of committing vice (1099a14-31) [13].

This still leaves the term virtue in need of specification and, to this end, Aristotle once again seeks guidance from common opinion. Keeping in mind that virtue is coterminous with acting properly, he reminds us that whenever people say that a thing or person is operating as it should, what they mean is that it is performing its function (1097b22-1098a21) [13]. A lawn mower is said to be in good condition if, upon turning it on, it cuts the grass. The queen bee is considered to be thriving if she is reproducing for her hive. With respect to a person, we tend to evaluate them in terms of their role. Thus, the head of the IT department is thought to be doing well if the company's servers and computers are running smoothly and helping employees to be productive in meeting customer needs. But human happiness,

the goal of ethics, is not simply reducible to the performance of one's assigned role within a firm, much less whatever parts beyond it that one has inherited or consented to play in the greater socioeconomic fabric. It is not unusual to hear such statements as, "Jim is a great advertising executive but his life is incomplete" or, "Anne has been a wonderful secretary, but she still has so much unrealized potential." These statements point to roles that we should be exercising as human beings, given a certain structure and set of needs, and not just what our place in society happens to demand of us. Now just as within the social division of labor, the most appropriate role for each of us is that which suits our unique abilities, so it is in trying to figure out what character human beings should assume within the natural order. What makes humans distinctive from all the other living forms in nature is that we are able to generate enormous benefits for our species due to the possession and use of reason. Hence, to function appropriately as human beings, to act virtuously, is nothing else than to exercise our rational capacities (1097b24-1098a18) [13].

Few concepts are fraught with more controversy than the meaning of rationality. Part of its character has already been sketched in the account of dialectics wherein reason is essentially portrayed as the inferring of new propositions from other already established claims. Befitting a teleological mindset, Aristotle does not leave it at this, but seeks to fully understand the nature of reason by identifying the purposes for which inferences are made. Primary among them is the desire for truth. "All men," Aristotle opens the *Metaphysics*, "by nature desire understanding" (980a). While recognizing that people often seek knowledge to attain a separate aim, he also maintains that they do so for no ulterior motive. This is evidenced by the fact, Aristotle says, that sciences like mathematics, less tied to the provision of necessities and conveniences, developed only after societies generated enough wealth to enable the existence of a leisure class with no pressure to produce applied learning (981b15-25) [15]. Aristotle refers to the pursuit of truth for its own sake as theoretical reason and its goal is to identify the fundamental causes of phenomena through general ideas that capture the necessary and universal aspects of reality (1139b18-36 & 1140b31-1141b10) [13]. Where truth is sought for the sake of something else, it is called productive knowledge, or a technical skill, wherein reasoning is used to bring an object, such as a chair, into being (1140a1-24) [13]. On the other hand, it is called practical knowledge when reasoning is used to guide our appetites in our actions (1140a25-b30) [13]. The first is related to business insofar as it covers the manufacture of products, but it is not connected to ethics since the question as to whether or not a certain good ought to be made cannot be answered by a description of how to make it. Business and ethics come together in practical reason which, unlike its theoretical counterpart, focuses on particulars, applying the universal imperative to seek the human good while attentive to the circumstances, nuances, and complications inherent to everyday commercial life.

By reason, though, Aristotle does not simply mean the apprehension and application of truths. He well recognizes that people are not Spocks capable of acting toward their real advantage by simply putting their minds to it. Human reason operates alongside the passions (1102b13-1103a4) [13]. These must be restrained

and well disposed in order for us to think clearly and execute what our minds determine. Rejecting the Socratic thesis equating virtue with knowledge, Aristotle does not go the Platonic or Cartesian route of depicting reason as a despotic ruler of the passions. In acknowledging, for example, that people are able to know what is good and still not do it, Aristotle sees the intellect and the emotions as mutually influencing each other. Still, in this interplay, reason remains the higher principle since it defines who we are as a species. Not only that, reason is able to substantiate this priority and guide the passions, though not (to use an apt analogy put forward by St. Thomas Aquinas) in the manner that an autocrat can secure obedience to his orders, but more like a democratic politician can persuade the public to accept her proposals. According to Aristotle, the moral virtues consist of those personal characteristics that exemplify this rational control of emotion. On the other hand, the mental qualities by which a person effectively apprehends and applies knowledge make up the intellectual virtues (1103a3-10) [13].

One might be wondering at this juncture how the desire for wealth, the ruling passion of most people involved in business, fits into this moral teaching. The notion that happiness involves being rich, or at least affluent, is a prevalent opinion, if not expressed in what people say, certainly deducible from the way they act. Does Aristotle not consider this view in his dialectical analysis of ethics? He does address it, though he does not include it among the three main candidates for happiness – pleasure, honor, and contemplation – because wealth is not something, whether viewed logically or factually, that is intrinsically desirable (1096a6-11) [13]. Asked to explain their behavior about money, most people will concede that their wish to earn an income is not based on value of money in itself, but to afford other goods. Despite this admission, many behave as if money is an end in itself, being always open to the opportunity of getting more. But the problem with this is that, on its own terms, money can only be measured as a quantity, which can be increased without limit. There is nothing about the nature of money that tells us when to stop accumulating it (1257b-1258a19) [14]. Consequently, positing wealth as the overarching goal of human action is inconsistent with proper understanding of happiness, according to which it is the terminus of desire. Being a means instead of an end, wealth is viewed by the Aristotelian business ethicist as merely providing the resources for the exercise of the moral and intellectual virtues, its acquisition and use being limited to what will optimally express those personal traits. This obviously creates a tension between Aristotle’s moral teaching and the mores of the present-day commercial order, a tension that Colin D. Pearce (see also ► [Chap. 2, “Aristotle and Business: An Inescapable Tension”](#) of this handbook) explores in this section of the handbook.

Ever consistent with his methodology, Aristotle builds his catalog of the specific intellectual and moral virtues by reference to frequently stated moral opinions. Thus, he notices that some people are praised for being courageous, others for being generous and amicable, and yet others for being prudent and just. By refining these judgments, separating their common and distinctive elements, Aristotle spells out thirteen moral, and two intellectual, virtues. In the process, Aristotle is led to adopt the popular view that each person has a character and that what matters most in

evaluating the morality of that person is not so much what they do, but the kind of character they have. A person's character, in turn, is constituted by the set of ingrained tendencies toward certain behaviors. These tendencies, if good, are virtues; if bad, they are vices. When he develops this everyday notion, Aristotle makes it a point to observe that the virtues are not impressed into our characters by nature or, as we would nowadays say, by genetic inheritance. Instead, he maintains that the virtues are instilled by continual practice until they become habitual or second nature to us (1103a14-1103b6) [13].

Does the scientific evidence, though, bear these views out? In his contribution to the handbook, Miguel Alzola (see also ► [Chap. 5, "The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?"](#) of this handbook) alerts us to social science findings that appear to run against Aristotle's emphasis on character. A number of studies in social psychology point to situational factors determining people's moral choices, rather than their traits. The best-known study in this literature is the set of experiments conducted by Stanley Milgram in which a majority agreed to obey an authority figure in delivering huge electrical shocks to individuals that committed mistakes on a word memory exercise [28]. Arguing that such experiments do not truly test the character hypothesis, Alzola's article offers an illustration of our earlier contention that modern science can be brought to play within Aristotle's dialectical approach to morals.

Not all the virtues that Aristotle claims go toward defining a model character pertaining to business. Out of the thirteen moral virtues, seven are relevant to business. Between the two intellectual virtues, only one is directly applicable, namely prudence. The other one, wisdom, is not directly germane and so is left out of [Table 1.1](#) (see below) listing the eight virtues comprising an Aristotelian system of business ethics based closely on the original texts. Reflecting Aristotle's famous doctrine of the mean, according to which acting rightly involves behavior that avoids opposite extremes, the table below cites these two vices, alongside the relevant virtues. Moreover, for each of the virtues, we summarize the behavior it entails for business.

The Institutional Framework for Virtue

In Aristotle's view, then, economic considerations are properly subordinate to moral demands – more precisely, whereas the logic of economics tells us to prefer the lowest cost means in a given action, morality directs us to consider the ultimate end of all our actions, in addition to simple pecuniary factors, in determining the means we are supposed to choose. Yet it will be recalled that Aristotle also claims that human beings are by nature political, and, from this, he additionally infers that ethics is subordinate to politics (1094a30-b12) [13]. Not only is this because the peace and stability that justice brings would be impossible without government but also because politics opens up the possibility for the display of estimable virtues involved in leading a community, by say running the country's foreign policy or its economy, that comprises the highest pitch of prudence. For it is no mean thing to intelligently make decisions for one's self, but it is far more challenging and publicly spirited, and

Table 1.1 Table of the Aristotelian business virtues

Virtue	Defining feature	Opposing vices	Business implications
Courage	Managing fear	Rashness and cowardice	Willingness to take reasonable investment and entrepreneurial risks
Self-restraint	Managing desire for pleasure	Self-indulgence and insensibility	Healthy diet and moderate alcohol consumption for workers/managers; regulation of sexual behavior among employees; discouragement of excess consumption in product offerings
Generosity	Regulating love of money	Stinginess and prodigality	Avoid greed, especially through sordid activities; be more willing to give or spend money than to save it
Magnificence	Regulating love of money where personal wealth is substantial	Vulgarity and pettiness	Donate to the arts and other worthy causes; be tasteful in one's large expenditures
Magnanimity	Pride management	Pusillanimity and vanity	Confidently seek the highest honors by undertaking rare and challenging deeds
Sociability	Regulation affection for others	Obsequiousness and flattery	Be courteous, engaging, amenable with colleagues and customers
Justice	Allocation of goods amongst individuals	Only one opposing vice: injustice	Rectificatory justice regulates transactions and demands reciprocity and fairness; distributive justice considers what people deserve and so requires that companies assign their employees rewards and penalties in line with merit
Prudence	Deliberation about choices	Only one opposing vice: imprudence	Thoughtfully consider alternatives before deciding while being attentive to circumstances; individual approaches peak levels of prudence by assuming leadership roles

Source: Bragues [9]

hence more ethically admirable, to assume successfully the responsibility of steering the well-being of a large group (1094b8-11) [13]. So too, governments have the power to educate its citizens, both through the laws it enforces and the subjects it mandates for youth to learn (1094a30-b3) [13]. Insofar as people are not born virtuous, but can only become so through practice and habituation, education has a significant role to play in the formation of character (1179a34-1180a19) [13]. In order to be fully operational in the business arena, the virtues must be nurtured and supported by the institutional framework established by the government. Reinforcing this point is that, as Edwin Hartman (see also ► [Chap. 4, “Aristotle on Character Formation”](#) of this handbook) points out in his chapter, the student who enters a business ethics class, whether at the undergraduate or graduate levels, already arrives morally formed, in part by their experiences at home and with their friends, but also by the earlier stages of their education, which the government, to this day, heavily regulates. On the original Aristotelian view, as Colin D. Pearce (see also

► Chap. 2, “Aristotle and Business: An Inescapable Tension” of this handbook) goes on to suggest in this handbook, business ethics will only be authentically practiced if the state gets into the morality business.

For Plato on through to Karl Marx and his followers, the fundamental issue which the state had to confront in grappling with the self-interested behavior encouraged by commercial activity was that of property. Both Plato and Marx, of course, contend that the moral dilemmas posed by the desire to accumulate wealth could only be resolved with the elimination of private property in favor of the common ownership of resources. In the *Republic*, a dialogue in which Plato articulates his vision of the ideal polity, the ancient Greek philosopher seems to restrict the prohibition of private property to the guardian class of his hierarchical utopia, whereas Marx unequivocally called for the complete socialization of the means of production. In his analysis of Plato’s *Republic*, Aristotle opposes this tradition of political economy, arguing that communally held property generates quarrels as people dispute whether what they receive out of the common pool is proportionate to their productive contributions. Raising the prospect of conflict as well is that decisions over resources involve a greater number of people. Given the self-love imbedded in human nature, private property gives individuals better incentives to better manage available resources. Very interestingly, too, Aristotle maintains that socialism removes the ground for generosity, inasmuch as that virtue presupposes one has something of one’s own to give to others (1262b37-1264b25).

None of this means, however, that Aristotle sides with the laissez-faire view that resources should be entirely under individual control with minimal limitations. While he maintains that property should be owned privately, he does insist that individuals ought to make their possessions available for common use. Indeed, Aristotle states that it “is indeed a particular duty of a lawgiver to see that citizens are disposed to do this” (1263a38-39) [14]. This suggests that Aristotle’s thought offers a basis for a redistributionist state, though it would not be for the sake of social justice, the most oft-cited rationale today for government intervention in the economy. With Aristotle, a person’s character is defined more by how high-minded they are in making themselves the best person they can be than it is by what they do for the poor and disadvantaged. To the extent that Aristotle would be concerned about the divide between the rich and the poor, it would be for the government to ensure that it adopt measures to avoid the political instability that sharp inequalities tend to bring about by instead fostering a large middle class (1295b1-1296a23) [14]. But the full exploration of this issue belongs to what one might call Aristotelian political economy as opposed to Aristotelian business ethics. Nevertheless, it is worth noting that the imperative to make one’s property available for use by others points to the idea of corporate social responsibility. It does not perfectly point in that way as the question remains open whether the managers of the corporation, on behalf of the shareholders, are supposed to factor in wider social interests in the deployment of the firm’s resources or whether that is to be done by shareholders themselves with the dividends they receive. The first possibility fits corporate social responsibility, the second is compatible with Milton Friedman’s [29] view that corporations should focus on earning profits for its shareholders.

Besides exploring the corporation's relationship to the larger community Alejo Jose G. Sison (see also ► [Chap. 3, "Aristotle and the Corporation"](#) of this hand-book) also takes up the question whether Aristotle's political science might be helpful in illuminating how the corporation should be governed internally. Focusing on Aristotle's discussion of citizenship in *The Politics*, Sison distinguishes between two kinds of political participation: liberal-minimalist versus civic republican-communitarian. The liberal conception, emphasizing as it does the protection of various individual rights to be left alone by the state, demands relatively little of citizens, except the requirement to respect the freedom of others. The civic republican view, by contrast, envisions freedom as the capacity to influence the rules and policies of the community under which one lives. Sison maintains that Aristotle endorses the civic-republican alternative and that, therefore, the kind of corporation that aligns with his political theory is one in which the various stakeholders – shareholders, customers, suppliers, and, particularly, employees – all actively participate in the company's activities as the business equivalent of Athenian citizens. In support of this view, we can refer to Aristotle's teaching concerning how the virtues come to perfection. Between the moral and intellectual virtues, the highest are the latter because their exercise of reason cultivates the faculty that distinguishes us as human beings (1178a9-11) [13]. Aristotle also holds that intellectual virtue reaches its apex with the virtue of wisdom practiced by the philosopher, the individual dedicated to the search for truth about the fundamental principles and causes of the divine, natural and human orders (1177a11-1178b32) [13]. As there is limited space for philosophical contemplation in commerce, the most relevant intellectual virtue for businesspersons becomes prudence, which, as we have seen, shines brightest in the ruling of a state or, to put it more broadly, the leadership of sizable associations. Instituting the civic republican ideal of citizenship within the corporation opens the practice of prudence up to more individuals.

Conclusion

Contrasting the prevalent utilitarian and deontological streams in ethics, the return to Aristotle for ethical guidance concerning business leads us to a virtue theory of morals. Aristotle's version of this theory takes its cues from our quest for happiness. Unlike most contemporary proponents of virtue theory, Aristotle believes that happiness is not a subjective matter but rather can be objectively defined. He maintains that personal fulfillment lies in the full realization of our rational capacities through action that brings the intellectual and moral virtues to fruition. An Aristotelian business ethics consists of the subset of these virtues applicable to commercial life that serve to advance human flourishing. In gauging what leads to this goal, as well as explicating the specific features of the virtues, Aristotle proposes the dialectical method. This involves the examination of widely held and expert opinions on the subject under consideration with a view to reaching a noncontradictory understanding. Using this method, Aristotle argues that the money-making art characteristic of business should be subservient to the requirements of courage, self-restraint, generosity, magnificence, sociability, justice, prudence, and wisdom. The likelihood,

according to Aristotle, of these being authentically practiced in business life will depend on the government's assumption of an educative role in the character formation of its citizens. The highest expression of virtue that is feasible in business involves prudence, which can be encouraged by fostering a civic-republican mode of citizenship within the corporation.

Cross-References

- ▶ [Aristotle and Business: An Inescapable Tension](#)
- ▶ [Aristotle and the Corporation](#)
- ▶ [Aristotle on Character Formation](#)
- ▶ [Purpose](#)
- ▶ [The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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Aristotle and Business: An Inescapable Tension

2

Colin D. Pearce

Abstract

This chapter attempts to assess the availability of Aristotle to the field of business ethics. It does so by reviewing some of the scholarly work which has dealt with this possibility against the backdrop of certain key themes in Aristotle's thought. The chapter begins by first outlining the controversial nature of the claim that Aristotle is integral to the business ethics field. It then explains how such controversy is only natural given what Aristotle has to say about the relationship of wealth acquisition to the natural ends of man. The chapter goes through the arguments made by various scholars, some of whom seek to bring Aristotle to the business ethics table, and others who do not feel he deserves an invitation, while attempting to place the debate in the context of Aristotle's radical "communitarianism" on the one hand and his radical "individualism" on the other. This is the obvious procedure because Aristotle maintains at one and the same time that the individual both belongs "body and soul" to the civic community and yet is able with the aid of philosophy to transcend the horizon of that community completely. Hence, it is that Aristotle is difficult to adjust to any moral context where the individual is in a middle state of being both in possession of certain rights against the community, and yet under certain social obligations to that community as part of an exchange for the sake of individual freedom. Aristotle's paradoxical communitarian-individualism or individualist-communitarianism is difficult to "privatize" to the level of an independent, profit-seeking commercial organization and also to "socialize" to the level of simple concern with the general welfare as distinguished from the individual pursuit of transcendence made possible by philosophic contemplation.

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Introduction

Q: What does it take to be an entrepreneur in 2010?

A: (Kevin O’Leary) You have to cast out the concept of balance in life. You should have no doubt that as an entrepreneur you will be a slave to the business until you sell it. You spend 25 h a day working on the business. Every ounce of energy has to be focused on that. There is no other distraction. That is the only way to be competitive and win in today’s environment. If you want balance, that’s what you get after you’re rich [1].¹

However, I don’t detect much progress from “wisdom” literature in Administrative Theory during the past 50 years. Aristotle and the Hoover Commission sound much alike, except that the former was good deal more sophisticated than the latter about the relation of politics to administration. (Herbert A. Simon).²

This chapter proceeds on the assumption that a serious consideration of the way in which Aristotelian ethics relate to the discipline of business ethics is a valid exercise. In the sections which follow, I will pursue such questions as the following: How in the context of business should Aristotle’s notion of man’s being a political animal be understood? How does acquisition relate to the life of civic virtue? What is the status of the social scientific approach in the business ethics field? What is the relation of the *vita contemplativa* as the ultimate goal or telos of human life to the practical economic activity of business and economics? What is the difference between Aristotelian “individualism” and the modern variety? What are the comparative merits of Aristotelian and Kantian ethics in the context of the modern business? What is the ethically wise individual’s situation in a business environment? These will be the guiding questions in the discussion which follows which seeks to explore the ways in which the teachings of Aristotle relate to, and more importantly, come into tension with, the world of business and commerce.

In the process of doing so, I shall be considering various arguments made in articles by John R. Boatright, Robert C. Solomon, Thomas J. Lewis, Allen Buchanan, Denis Collins, Claus Dierksmeier and Michael Pirson, Tomas Kavaliauaskas, and Christine Hoff Summers.

“Capitalist Acts Between Consenting Adults”

The notion of applying Aristotelian ethics to modern business has been frequently recognized as a problematic exercise. Consider the remarks of John R. Boatright:

Business, for Aristotle, is a perversion. Trading goods for money with a view to profit – which Robert Nozick has called “capitalist acts between consenting adults” – was regarded by Aristotle as an unnatural activity, since goods are not being used for their intended purpose. And since goods should be exchanged only for their “real value,” profit is a kind of theft, a charge which led to centuries of aversion to business. With some justification, therefore, Aristotle might be described as the Krafft-Ebbing of economic theory [4].

Thus, critiquing Robert C. Solomon's *Ethics and Excellence*, Boatright takes up the latter's claim that business ethics can appeal to "the egalitarian sensibility and the sense of fairness shared by the business community itself" [4]. Boatright quotes Solomon as saying that "The Aristotelian view presupposes a larger framework that meets with our general approval. . . . And that larger framework has everything to do with the actual function and aim of business".³

Boatright's brief regarding Solomon is that even if we should grant that specific normative conclusions can be arrived at within a framework of an agreed upon conception of the nature of business, the task of elucidating this framework in a noncontroversial way still remains. As Boatright observes, Solomon allows that there "is little to be said in defense of business to one who rejects the very idea of a business society" [4]. And here, Boatright has pointed to the whole debate in a nutshell. To be serious, the discussion of Aristotelian ethics in connection with business has to somehow proceed after acknowledging at the outset that Aristotle is actually not a proponent of the kind of society in which business plays a dominating or even central role.⁴ We have to approach the question of Aristotelian business ethics knowing full well that such a phrase might be as oxymoronic as the phrase "business ethics" is frequently suggested to be by those just informed that one is a teacher of the subject.

To his credit, Solomon is fully aware of the problem addressed by Boatright and frankly poses the question of whether it is "inappropriate if not perverse to couple Aristotle and business ethics".⁵ Solomon readily allows that Aristotle does indeed discuss the ethics of exchange and may even be entitled to be called the first business ethicist in history. Still, the Greek philosopher described "*chrematistike*," or trade for profit as "wholly devoid of virtue and called those who engaged in such purely selfish practices 'parasites'" ([15], p. 322). Solomon further acknowledges that Aristotle's attack on the practice of usury and the personal vice of avarice was an influential ethical stance until the seventeenth century. As Solomon concedes, Aristotle would have thoroughly approved of the fate of a "*chrematistike*" like Shylock in Shakespeare's *The Merchant of Venice*.

Solomon identifies hostility to business or commerce with the aristocratic class of which he considers Aristotle a spokesman. As such, Aristotle reminds us that aristocrats are not the natural allies of capitalism.⁶ Solomon wishes to identify capitalism or business with democracy, and in so doing, he wishes to identify Aristotle with plutocracy or elitism. This is the Aristotelian contempt for business, a contempt expressed from a standpoint of privilege which underlies much contemporary criticism of business. Indeed, for Solomon, the disdain of finance that preoccupies so much of Christian ethics even to this day might be traced back to Aristotle ([15], p. 323). Solomon would even go so far as to say that the defenders of business themselves have been unconsciously infected by these Aristotelian prejudices. This is evident when they describe the life of the business person as somehow a less than truly moral or noble sphere of activity. Alfred Carr, for instance, draws an analogy between poker and business while for his part, Milton Friedman famously said that "the [only] social responsibility of business is to increase its

profits” ([15], p. 323). Both men are seeking to remind their readers that commerce is a practical and therefore merely necessary part of social existence. As liberal thinkers, they view all the other possibly higher activities as private matters that are of no concern to the state.

As Solomon presents the case, commentators like Carr and Friedman are in ultimate agreement with Aristotle that business is not a highly moral or admirable activity, but unlike the Greek philosopher, they are prepared to make a vigorous apologia for it. The activities of business are required in contributing to the overall well-being of society. What more can be asked of a system of production, distribution, and exchange? Stated another way, Carr and Friedman have accepted Aristotle’s separation of business from high moral standards as practically valid and have sided as a matter of economic philosophy at least, with the lower pursuits of commerce, if not against the noble things. The noble things may or may not have their role in the culture, but their status and standing are of no concern to business.⁷ Solomon, by contrast, would say that both the high-minded antibusiness view, such as we see reflected in Aristotle, and the practically minded probusiness views we see in Carr and Friedman are equally wrong in portraying business as little more than gambling and unreconstructed selfishness.⁸

Dual Citizenship?

Breathes there the man with soul so dead/Who never to himself hath said/This is my own,
my native land! . . . The wretch, concentred all in self/. . . doubly dying, shall go down/To
the vile dust from whence he sprung, Unwept, unhonour’d, and unsung. (Sir Walter Scott –
Lay of the Last Minstrel. Canto VI, Stanza i)

Solomon suggests that the schism between business and the rest of life is something which Aristotle could not accept because he thought life was supposed to fit together in a coherent whole. As it happens the “same holistic idea” is in fact at the root of business ethics. Today, it is understood that business people and corporations are first of all part of a larger community ([15], p. 323). He explains that what is best in us, our virtues, are in turn defined by that larger community, and there is therefore “no ultimate split of antagonism between individual self-interest and the greater public good.”⁹ Solomon readily allows that there were no corporations, as we would understand them, in Aristotle’s time. He also acknowledges that modern corporations differ from ancient *poleis* in that they are not isolated city-states. This dissimilarity holds even with respect to the biggest and most powerful multinational enterprises of our time. Indeed, large companies such as Exxon, Wal-Mart, and Microsoft, though they might dwarf the classical *polis* in terms of population and economic output, are in fact part of a “larger community,” rather than being free-standing and sovereign entities like the Greek *poleis*. Solomon explains that the people who work for corporations are in fact “citizens of two communities at once” ([15], p. 323). He makes the perplexing observation in this context that “one might think of business ethics as getting straight about that dual citizenship” ([15], p. 323). But what is the identity of the second community to which Solomon thinks the people who work

for corporations belong that roughly corresponds to the Greek *polis*? Solomon's answer is that they are "part and parcel of a larger *global* community" (my emphasis) ([15], p. 323). The meaning is unmistakable here: Solomon defines the citizenship of the corporate employee as dual in the sense of holding a passport from the company and a passport from the globe. Solomon's "neo-polis" that transcends the business corporation is not a municipality, state or province, or even the country of which the corporate employee is citizen either by birth or naturalization. Rather, the "neo-polis" is the "larger global community."

Yet Solomon is talking about something that does not in truth exist. The global order is divided up into roughly 200 sovereign states. Of one or another of these units, virtually, every human being on the planet is a citizen. If there are dual citizens, it is usually because some individuals have been born in one country and live and work in another. What Solomon has left out completely from his discussion is the fundamental unit of citizenship since the Enlightenment, American Independence, and the French Revolution, that is, the nation-state.¹⁰ If there is any sense in which the corporate employee is "civic" above and beyond his or her place of work, it is in their role as a citizen of a particular state as distinguished from other states. Beyond this, in other jurisdictions, such an individual would be classified as a foreigner. If there is anything that might remotely be classified as Aristotelian and as calling forth more than private concerns, it is the modern nation-state, an epochal phenomenon Solomon leaves entirely out of account.

Corporate employees, then, may indeed be part of a "larger community," but on the practical plane, it is manifestly not the role posited by Solomon. They may be called away from their jobs but not by the "larger global community" but by, say, an emergency in their own country. Or they might be summoned to serve in their country's armed services because of the outbreak of war. Perhaps, incidentally, they might serve the U.N. should their country have made a commitment of troops for peace-keeping duties. In general, though, if a corporate employee is going to be "civic" – vote, run for office, join a political party, etc. – it will be on the municipal, regional, or national level and not the international. This accords with Aristotle's view insofar as he focuses on local attachment and rootedness in a particular community as the essence of civic virtue. By contrast, Solomon's virtuous business person is *heimatlosen* (homeless) in Martin Heidegger's terms. He is without *Bodenständigkeit* – "rootedness."¹¹

But Solomon is forced to erase the nation-state from the picture and substitute corporate communities within a globalized order. For to the extent one allows that it is the nation-state that is the proxy of the classical *polis*, Aristotle becomes exceedingly problematic as a proponent of business ethics. Thomas J. Lewis has made this evident in his discussion of the problem of the *polis* and private institutions [22].

Polis Life Versus the State Within a State

Discussing the question of acquisition, Thomas J. Lewis acknowledges "the process of retail trade, the buying and selling of commodities – the middleman

function – including the lending of money at interest, is condemned (by Aristotle) as an entirely unnatural mode of acquisition” ([22], p. 76). According to Lewis, this is because acquisition should be sufficient to allow the household to sustain the political life of its head. The pursuit of wealth should minimize the anxiety of the head of the household, while enabling a path of transition from the household to politics. Aristotle stands opposed to market exchange because the market cannot satisfy the need to be free of worry about one’s finances ([22], p. 76).

Lewis explains that, for Aristotle, the necessity of continuously increasing acquisition is a “perversion” which obliterates the proper end of acquisition and converts the means into a pseudo end. This could lead to the subversion of the state by private interests who might be tempted to persuade fellow citizens to commit their resources to commercial and military enterprises designed to further their personal agendas. Indeed, there is a potential for a number of households to corrupt the *polis* itself, by rendering it into an essentially economic and military institution devoted to acquisition and the maintenance of livelihood.¹² The private household or collection of households cannot be allowed to be a state within a state pursuing its own goals unsanctioned by the community. Such is Aristotle’s version of Corporate Social Responsibility, Lewis might say.¹³ The corporation’s responsibility is not to exist. Aristotelian citizenship automatically implies that the individual could never think of themselves as being free or independent enough to identify their interests with those of an employer or private economic organization against those of the state. From an Aristotelian point of view, the choice between the state and a private corporation would be no choice at all.

Lewis notes that Aristotle’s economics involves the participants in the life of the *polis* having the opportunity to reject market acquisition, “both in the relatively private sphere of household concerns and in the public sphere” ([22], p. 86). The latter decisions need to be made regarding the acquisition and management of the material resources of the *polis* as a whole. But with respect to those such as craftsmen who may not be in a position to freely reject market exchange, Aristotle favors the establishment of an environment distinguished by customary rights and obligations within which prices would be generally settled.¹⁴

Lewis’s analysis of Aristotelian economics reminds us that whatever else might be said about Aristotle’s amenability to the world of business, he is not a “capitalist” or free market thinker *tout court*. Thus, the tension between Aristotle’s ethics and today’s world of business and finance has always to be kept in mind. Lewis’s analysis helps us to see that Aristotle’s economic writing was an attempt to bring the exchange process under political control. Aristotle wished to make use of the exchange process rather than allow the community to be dominated by it. For Aristotle, business ethics is about the political rule of economic activity. For many business ethicists today, however, it is more about self-imposed ethical guidelines operating within a sphere which expects to be free of political control as long as it operates within the parameters of settled law ([22], pp. 89–90).

Social Science Versus the Natural Approach

If Lewis takes Aristotle very seriously with respect to the Greek philosopher's influence on our understanding of the relationship between economics and politics, for Allen Buchanan, it is in fact Robert C. Solomon who has taken Aristotle too much to heart. Buchanan claims that Solomon is looking in the direction of Aristotle for guidance on such vital questions as "mindless conformity and careerism" and "nurturing creativity and a commitment to general prosperity" and in so doing is making a mistake [26]. This is because these questions can all be better posed and pursued beyond the moral architecture of Aristotelian metaphysics [26].

Thus, Buchanan criticizes Solomon for invoking a teleological view of morality. In other words – ethics, business, or otherwise – have no natural footing and are a matter of pure convention, habit, feeling, or taste. The root of Buchanan's stance is evident when he criticizes Solomon for failing to provide support from the social sciences for his main claims about the role of the virtues in facilitating cooperation within organizations. Without such support from the social sciences, Buchanan argues that Solomon's project must lack credibility, especially among business faculty who, for the most part, tend to be trained in mathematical and empirical methods. By not providing a remedy for this oversight, according to Buchanan, it is inevitable that the virtue approach to business ethics will be marginalized in the very environment in which it could have the most impact.¹⁵

Accordingly, Buchanan's solution is to resort to the social sciences, the basis of which is the famous fact/value distinction or the inability of scientific reason to make claims to moral or ethical knowledge. For Buchanan, no concept of natural purpose should be allowed to broaden the environment within which to pursue ethical instruction. Buchanan's business ethics is about the *is* of empirical social science and not the *ought* of anything like Aristotelian teleology. We have no space here to go into the libraries full of discussion of the *is/ought* and *fact/value* distinction led most famously by David Hume and Max Weber. Suffice it to say that to exclude value judgments from business ethics is to assume that the matter is closed when this is far from being the case.¹⁶

For his part, Denis Collins sides with Buchanan over against Aristotle's naturalism. Aristotle's three major social premises – the naturalness of the state/polis, the political nature of man, and the state/polis's practical encompassing of the individual – have issued in premises the fallaciousness of which has been diligently demonstrated by various philosophers. Collins is sure that "Aristotle would have been on more solid ground if he opted for arguing that the state exists by convention." Unfortunately, however, Aristotle appears intent on demonstrating that his *telos* is grounded in nature. For this reason, Collins says we may choose either to toss these theories aside as examples of what happens when personal prejudices infuse the construction of a theory of nature, or we could see these three concepts from the perspective of convention. Collins opts for the convention approach and then tries to reconstruct an Aristotelian argument defending the existence and legitimacy of modern corporations [28]. In other words, Aristotle may be used for business ethics provided he is uprooted from the very soil in which he planted all his

arguments, that is, the natural ends of man. As such, “community” is a central term in Buchanan’s discussion but not so “natural purpose” ([26], p. 94). Buchanan’s community makes no claim to natural purpose, or, stated in another way, his community is somehow meaningful precisely because it is a purely conventional creation having no *raison d’être* intrinsic to itself beyond the passing whims and preferences of its members who may or may not be community minded.

Even though Buchanan leans in a communitarian direction, he nevertheless praises Solomon for refraining from “indulging in abstract speculations about the virtues of fifth-century Athens or pining for highly idealized nineteenth-century American town meetings.” Thus, it is that “we can concentrate on understanding actual communities about which we know or can know, a great deal, and which are truly relevant to our lives.”¹⁷ But was not fifth-century Athens a real community? And do we not know a great deal, indeed a very great deal, about the life and thought of fifth-century Athens via the works of Aeschylus, Euripides, Aristophanes, Thucydides, Plato, Aristotle, and others? And was not the nineteenth-century American town meeting an actual event which was observed and highly praised in Alexis de Tocqueville’s classic study of American democracy?¹⁸ Moreover, Buchanan fails to explain why the particular communities which he feels to be more authentic than classical Athens or the New England township are more relevant to our times. Is it imaginable that the life and events of a modern business enterprise could have more to teach us than the works of the Greek authors or an observer of American democracy like Tocqueville? There seems to be a certain hint of parochialism in Buchanan’s approach.

For their part, Claus Dierksmeier and Michael Pirson appear more sanguine about what Aristotle can say about business ethics ([23], p. 421). According to these authors, the distinction Aristotle makes between *oikonomia* and *chrematistike* “makes or breaks individual well-being, the wealth of households, and the welfare of the state” ([23], p. 421). Such a distinction is a helpful tool for thinking through such questions as business ethics, Corporate Social Responsibility, management theory, social entrepreneurship, self-regulation, and corporate governance. Dierksmeier and Pirson emphasize Aristotle’s overall condemnation of the idea that economic life could be severed from moral or political concerns. Aristotle teaches us that households and organizations are not atomistic entities first and then later related to their social, cultural, and political contexts ([23], p. 421). Aristotle in fact immediately casts the individual as a political being before he is anything else. For Aristotle, then, the household is integrated into the life of the *polis*. By extension, it is a mistake to view corporations as “profit machines” first and then to pose the question of whether they have social obligations. On the contrary, Dierksmeier and Pirson say that firms should be seen from the outset as in fact corporate citizens and thus naturally invested with certain social responsibilities.

Dierksmeier and Pirson seem to have Milton Friedman in mind when they say that “Longstanding management wisdom holds that fiduciary duty all but precludes environmental, social, or governance considerations in institutional investment decisions” ([23], p. 424). But for them, it is clear that Aristotle makes no such separation, because for him, business is an embedded part of society, and this status

needs to be reflected in its strategic decision-making. They say that goal setting in business is an “oikonomic” process, and as such, it encompasses ecological, social, financial, and intergenerational concerns. “Oikonomic” businesses (good) as opposed to “chrematistical” businesses (bad) are concerned with overall well-being rather than responding to the demands of any particular interest group. To aim at profit maximization alone is a flawed strategy according to Dierksmeier and Pirson because it goes beyond the “oikonomic” level in the direction of “excess.” By contrast, strategies based on an “oikonomic” foundation will be “virtue-based and moderation-oriented” ([23], p. 425). So Dierksmeier and Pirson enlist Aristotle in the cause of Corporate Social Responsibility on the grounds that for Aristotle man is a “political being” for whom household life is integral to *polis* life. Dierksmeier and Pirson basically state that the business corporation is a kind of enlarged household and therefore also political in the sense that it encompasses ecological, social, financial, and intergenerational concerns.

Living Blessedly in Business

Dierksmeier and Pirson do not hesitate to make a value judgment about the moral superiority of the *oikonomic* over the *chrematistical* approaches in business. Opposed to them stand such commentators as Buchanan and Collins who seek a “value-free” business ethics. Dierksmeier and Pirson’s “moralism” situates them outside the scope of Buchanan’s empirical social sciences which by definition are forbidden to make any judgments of value such as would privilege Corporate Social Responsibility over corporate rapaciousness and irresponsibility let alone “teleological” judgments as to the noble and base such as we are likely to see in Aristotle. And what is of the essence for Dierksmeier and Pirson is a misguided exercise for Collins who proceeds by simply asking “Why all the hassle with trying to mesh the function of business (making a profit) with the goal of society (a virtuous life)?” ([28], p. 571). In Collins’ view, the main issue from Aristotle’s point of view is “stability” because this question is at bottom the question of the most desirable life. “For stability to arise,” Collins explains, Aristotle requires that “we must first decide what is the most desirable life, for if we do not know that, the best constitution is also bound to elude us” [31]. From here, Collins proceeds to the claim that for a corporation to maintain stability, it must be part of a community in which everyone is able to prosper and live blessedly. This community would include the CEOs, workers, and society at large. In this way, it could define its purpose (as) not merely to provide a living but to “make a life that is good” ([28], p. 571).

But in making his case, Collins does not attend to the very words of Aristotle that he cites. While he does indeed quote Aristotle’s point about identifying the good life, he does not take us through the stages of discussion that lead us to his ultimate conclusion that philosophy or the *bios theoretikos* is indeed the most desirable life. This progression leads to the inevitable question as to the relation of the business corporation to the life of philosophy or “science” (*episteme*). Without confronting this question, it seems premature for Collins to state that “I have demonstrated that

it would be improper to use Aristotle's thought as a blanket disapproval of business and profits" ([28], p. 571). Collins is sure that "There are no valid reasons for philosophers to simply assume that Aristotle would be anti-business and anti-profit today based on conclusions he reached 2,000 years ago."¹⁹ This claim of Collins will meet with resistance from other commentators on the nature of Aristotle's "commercial" thought.

Tomas Kavaliauskas, for example, says that the attempt to apply Aristotle's virtue ethics, alongside the drawing of an analogy between the corporation and *polis*, is "artificial" [33]. Kavaliauskas explains that for Aristotle, the divine element in life consists in contemplation, the defining activity of a wise person. A life of *theōria* is available to us because we possess mind (*nous*), and this is the element of our existence which transcends the concerns of "earthly life." Kavaliauskas argues that by definition, the corporate community is not inclined to encourage its members to transcend an intense concern with the daily events of this world, for such a concern is at the heart of economic life ([33], p. 16).

Kavaliauskas's point is that the end or purpose of a business enterprise is not a virtuous life but economic efficiency and profit. As such, it can only see virtue as "a means to good business" ([33], p. 16). But in the ethics of Aristotle, the end is not economic efficiency and profit but a virtuous life. In the contemporary corporation, the ethical locus has shifted from the autonomous individual as pursuing a virtuous life to the larger unit of the corporation, taking on the role of a moral institution. As Kavaliauskas sees it, this shift contradicts the original intent of the *Nicomachean Ethics* in which eudaimonistic happiness is reserved for the highest moral institution, namely, "the singular individual, who discovers virtue on his own" ([33], p. 16).

If Kavaliauskas is correct, then Messrs. Solomon, Buchanan, Collins, Dierksmeier, and Pirson could be accused of some startling distortions of Aristotle's arguments. But perhaps, such a confusion is only to be expected given Aristotle's paradoxical stance that, on the one hand, the individual belongs completely to the city while, on the other hand, that the highest reaches of human intellectual, and therefore ethical, consciousness are only accessible at the individual level.²⁰

The Vita Contemplativa Versus the Vita Activa

From Kavaliauskas's point of view, therefore, Solomon, Buchanan et al. have failed to recognize that Aristotle's conception of the good life is not identical to a life lived in a corporation, which is of the sort where, as Denis Collins suggests, everyone is able to prosper and "live blessedly."²¹ [28]. But to talk of living well, in Aristotelian terms, is to refer to a condition of such transcendence that it takes the individual beyond even the all encompassing questions of political life such as justice, equality, law, and government. Obviously, the narrower concerns of the business world such as profit, efficiency, productivity, operating costs, sales statistics, and so on would be at an even greater distance beneath the blessed condition of Aristotelian *eudaimonia*.

This blessed condition is contemplation. Man has *nous*, and this allows him to utterly transcend the realm of his practical circumstances. In this sense, the modern corporation, while obviously not unconnected to certain necessary activities in modern life, diverges from Aristotle's vision of human excellence. This is because the telos of a business enterprise is not to find a CEO for the top floor office who is distinguished by his or her ability to contemplate the swirling current of human activities on the streets below or to meditate on the orbits of the heavenly bodies above. It is rather to find an individual that will most likely enforce financial discipline, raise workplace productivity, and thereby enhance profits. For Aristotle, such activity is meant only to be a means to the *eudaimonia* that comes from the highest form of intellection or contemplation. The very name "corporation" or "company" is indicative of the gap between Aristotelian and business ethics in that for Aristotle, the crown of the whole process of ethical education and human development is a unique individual condition and the person in this unique condition has no "company" so to speak.

Aristotle's ethics is ultimately about the autonomous individual who emerges only at the end a long and arduous process of intellectual and philosophical training. Business ethics on the other hand tends to be very much a "corporate" enterprise, a set of behavioral principles to be internalized by all members of the firm from the mail room to the board room. Business ethics is likely to invoke the ethical solidarity of the group. An ethical consensus is needed among the personnel within the corporation as part of building the particular esprit de corps which informs its daily activities. Yet ethical "team spirit" in a profit-seeking entity is one thing; individual philosophical contemplation is another. The modern corporation might well rival, if not surpass the Aristotelian *polis* in terms of population and economic output many times over, but by definition, it is excluded from attaining the goal posited by Aristotle for the *polis* and therewith the human race, that is, thinking about thought "thinking itself" (*noesis noeseos*) [35]. Aristotle says:

Happiness (*eudaimonia*) extends, then, just so far as contemplation (*theoria*) does and those to whom contemplation belongs (*uparkei ta theorein*) are more truly happy, not as a mere concomitant but in virtue of the contemplation; for this is in itself precious (*aute gar kath autein timia*). Happiness therefore must be some form of contemplation . . . in this way too the philosopher (*sophos*) will more than any other be happy.²²

In saying that happiness is contemplation, Aristotle also insists that although man is not self-sufficient like the gods, he must have "bodily health and a supply of food and other requirements" [36]. But he immediately adds that it must not be supposed for this reason "that happiness will demand many or great possessions." "One can pursue noble virtue (*prattein ta kala aretein*) with moderate resources" (*metrion dunait*) [36]. Aristotle teaches us that we need sufficiency of equipment (*loipei therapian uparkein*) to lead the best life possible for human beings. We cannot all be philosophers, but neither do we all need to be rulers of land and sea. Indeed, private citizens "do not seem to be less but more given to doing virtuous actions than princes and potentates" ([36], p. 1279a7-8). Business ethics on the Aristotelian view would require that individuals and corporations not see business

activity and economic enterprise as a means of becoming “princes and potentates” but to becoming *philosophoi* and *sophoi*. To be sure, such a change in orientation would lead to a serious slackening of the economy. But Aristotle would hasten to remind us that the economy is not coterminous with the political community but a means to the continued existence of that community which only truly comes into being if we are seeking to share in a flourishing existence.

But is it not a fair thing to say there is no such thing as seeking “moderate profit” in the business world? Profit maximization is the key term in modern economics. Why should this be so? It is because the life of contemplation is not the goal (*telos*) of modern business. In short, as we have seen in his distinction between *oikonomike* and *chrematistike*, Aristotle’s ethics above all rest on a notion of “limit” (*peras*). Given this fact, Aristotle’s key question would be: Are we in a position to get by with what we have? For to seek more would be to take on encumbrance that interferes with the time needed to bring us closer to the good life. Bring *theoria* and *philosophia* into the picture and the endless pursuit of profit maximization comes to sight as a diversion from the best things of life. Conversely, if we remove *theoria* or the life of philosophy from the picture, then unlimited acquisition admittedly appears more reasonable and, with it, the minimal ethics of “injustice avoidance” and formal contractual honesty.

Varieties of Individualism

The above observations from the field permit us to return to Robert C. Solomon and his suggestion that Aristotelian ethics involves the cultivation and encouragement of individual virtue and integrity. But here is the critical point: Solomon defines individual virtue and integrity as not being “anti-individualistic in any sense of ‘individualism’ that is worth defending” ([15], pp. 320–323). Solomon’s version of individual virtue and integrity is compatible with his own specific and carefully defined version of individualism but not with other versions of individualism that are, as he puts it, “not worth defending.” Presumably, the form of individualism which he sees as unworthy of defense is the egoistic individualism such as is sometimes associated with names like Bernard Mandeville, Max Stirner, Ayn Rand, or Milton Friedman.²³

But Solomon’s “individualism” would not comport with that of Aristotle. While Aristotle insists on individual transcendence via contemplation, his starting point is to place the individual fundamentally in a context of collective solidarity. Is it possible that business ethics could be built on the premise that all citizens belong to the state (*polis*) or civic community if not in some ultimate sense then at least to all practical intents and purposes? Aristotelian virtue would in effect mean the annihilation of the kind of individualism here intended by Solomon even if it is an individualism which attenuates the egoism of the likes of Mandeville,²⁴ Stirner, Rand, and Friedman. Aristotle is famous for having said that “one ought not even consider that a citizen belongs to himself.” This is because all citizens “belong to the city (*pantas tes poleos*) for each individual is a part of the city” and each part

“naturally looks to the superintendence of the whole (*to olou epimelian*).” The upshot is that the training that each citizen receives should be made common (*tauten koinen poieteon*) ([31], p. 1337a21–32). The citizen should be educated “for the character that is proper to each sort (of regime). For the character that is proper to each sort of regime both customarily safeguards the regime and establishes it in the beginning” ([31], p. 1337a11–12). Hence, “the best character is always the cause of the best regime.” While Aristotle is indeed an individualist believing that the individual philosopher can rise above the human condition in the direction of the divine, he is not an individualist in the sense that this term tends to be taken today.²⁵ The individualism of Aristotle’s philosophy consists in a higher individual condition represented by the life of philosophy. This higher individual condition, obviously enough, emerges temporally speaking after the political and legal structure of the *polis* is completed. This kind of transcendental individualism which is more or less unconnected to political rights individualism goes undiscussed by Solomon, presumably because it has no place for the business world even if it does form an object of emulation with some scholars in the modern university, research institute, or think tank.²⁶

Solomon denies the fundamental difference between Aristotelian or ancient political philosophy on the one hand and modern liberalism on the other. This difference is rooted in the fact that for the ancients, there was no seamless transition from individual self-interest to the good of the whole. The individual had to be molded to consider the public interest in defiance of his very own selfish concerns and desires. This transformative process is most usually symbolized by the name of “Sparta” which name is synonymous with the idea of turning natural man into civic man through a rigorous training from the earliest age.²⁷ It is Solomon’s passing over the “Spartanism” of classical thought which allows him to come to the very strange conclusion that in fact it is not the “modern” Immanuel Kant who is most suitable for training in business ethics but the “ancient” Aristotle.

“A Dozen or So Bright, Restless Corporate Managers”

Solomon suggests that Aristotelian ethics is more relevant in our modern culture than that of Kant, the German thinker whose very intention was to address the moral condition of modern liberal society. Solomon describes Kant as taking “everything of significance to be a matter of *rational principles*.” Kantian morality, he says, implies “a sense of duty to the moral law.” For Aristotelian ethics, however, the practice of reasoning about our actions and of formulating general moral principles is subsequent to the cultivation of character ([15], pp. 317–319). Furthermore, Solomon explains, Aristotle defines duties not in terms of any abstract ratiocination, principle of contradiction, or a priori formulations of the categorical imperative, but rather in terms of the particular roles we might play in any community to which we might belong, for example, a corporation. For this reason, Solomon claims, Kant has proved to be a kind of “disease in ethics.”

Kant's ethics may very well be elegant and even brilliant, but when one is faced with "a dozen or so bright, restless corporate managers" waiting in the seminar room for someone to teach them about the ways in which the latest developments in business ethics are relevant to their concerns, then Kant fails to meet the occasion ([15], pp. 317–319).

And then we tell them: don't lie, don't steal, don't cheat – elaborated and supported by the most gothic non-econometric construction ever allowed in a company training center. But it's not just its impracticality and the fact that we don't actually do ethics that way; the problem is that the Kantian approach shifts our attention away from just what I would call the "inspirational" matters of business ethics (its "incentives") and the emphasis on "excellence" (a buzz-word for Aristotle as well as Tom Peters and his millions of readers). It shifts the critical focus from oneself as a full-blooded person occupying a significant role in a productive organization to an abstract role-transcendent morality that necessarily finds itself empty-handed when it comes to most of the matters and many of the motives that we hear so much about in any corporate setting.²⁸

Amazingly, Solomon distances Kantian ethics from the business sphere and attempts to bring Aristotle closer to it. Yet it is precisely Kant's transcendent system of morality that is designed specifically for the mentality represented by "bright, restless, corporate managers." One can make this claim because it is evident that this kind of individual is not an obvious candidate for an attitude of Olympian contempt for money-making, utility, efficiency, and work. If anything it is Kantianism that might impress "bright, restless corporate managers" as an ethical doctrine attuned to the highly complex, technological, and science-based world of modern business and modern individualism. Kant very obviously developed his ethical system for the modern, enlightened society which he knew would very much be populated by people who have been taught to reason and calculate in precise and technical ways and so will appreciate the precision and elegance of his ethical solutions.²⁹ Kant's categorical imperative is available at any time and at any stage of adult life and in any practical situation. Perform the mental exercise involved and the moral answer will potentially emerge.

Solomon's problem is that Aristotle as a philosopher is more alien to the commercial and business environment than Kant. The latter challenges modern "consequentialism" in the name of moral intentionality and a good will. Kant insists that the maximization of pleasure and happiness and the minimization of pain and suffering can conflict with the doing of one's duty to others. In such a situation, he says, the rational and enlightened citizen will choose to focus on his or her duty. Surely, such a clear response to the "utilitarian" tendencies of modern commercial morality will be reasonably comprehensible to modern students highly trained in subject areas under the influence of modern social science methodology. This is not to say that Aristotle's placement of the "*to kalon*" at the center of all moral reflection would have no potential to appeal to the modern ethics student in general, if not the "bright, restless, corporate managers." Certainly, this is the view of Christian Hoff Summers. But her reflections on the teaching of ethics suggest a radically different approach to that of Solomon whatever their agreement on the centrality of Aristotle.

Approaching Ethical Education

Hoff Summers agrees with Solomon that in respect of ethical education, “Aristotle is the best place to begin” and even goes so far as to say that he should be “the *locus classicus*” for the teaching of the subject [47]. Unlike Solomon, though, she does not for this reason even remotely suggest that Kant is “a kind of disease in ethics” ([15], p. 318). Rather, she says that on matters of virtue and vice, Kant should be studied along with Augustine and even Mill. Hoff Summers is not interested in the matter of a simple choice between Aristotle and Kant or any other philosopher because she is more focused on the potential of literary classics for the effective teaching of ethics. In this respect, works such as *King Lear*, *Oliver Twist*, *Huckleberry Finn*, or *Middlemarch* should be at the core of ethical education in Hoff Summers’ view. Such books require that the reader have some understanding of, and sympathy with, what the author is saying about the moral ties that bind the characters together. He or she needs “to gain a sense of the bonds which hold the social fabric in place and in which people play their roles.” *King Lear*, for instance, shows us “that society cannot survive when filial contempt becomes the norm.” In this way, literary figures can “provide students with the moral paradigms that Aristotle thought were essential to moral education.”³⁰

Whatever the emphasis placed on literature by Hoff Summers as vital to ethical education, it remains true that literary insight cannot simply replace philosophic analysis. Still, literary input can be helpful to a very large degree. Just as no philosopher would simply say that studying the work of Ludwig Wittgenstein, Alfred North Whitehead, Bertrand Russell, or William James could relieve one of the duty to consider the literary explorations of D.H. Lawrence, James Joyce, T.S. Eliot, or Ernest Hemingway, so no *litterateur* could seriously argue that having read D. H. Lawrence’s discussions of the man-woman relationship or F. Scott Fitzgerald’s thoughts on human failure necessarily relieves one of the duty to read Kant on the limits of reason or Spinoza on the nature of “substance.” Yet a knowledge of the literary approach to the human condition in all its triumph and tragedy, as may be found in the works Charles Dickens, Gustave Flaubert, Fyodor Dostoevsky, Anthony Trollope, and any number of others, can only serve to enhance the meaning of the more technical and abstract discussions of the “pure” philosophers. The educated person needs to read Kant alongside Goethe, Mill side by side with Dickens, and Lawrence together with Heidegger. The promise of a mutual illumination of the two dimensions of mind represented by literature and philosophy makes the combined approach well worthwhile.

For all that no one will deny that there is a gap or distinction between the literary mode of philosophizing and the philosophical literary style. The first, of course, aims to reproduce the immediacy of concrete experience while the second deploys concepts that are often at a certain remove from the direct experience of life. At the same time, though, literary productions can put some human flesh on the hard abstractions of the philosophers, while the tools available to the philosophers can be of great use in analyzing the insights of the literary imagination. The most sensitive and perceptive observations of the literary eye can be conjoined to the most

advanced and sophisticated concepts known to speculative reason for enhanced results in both philosophy and literature.

Allowing all this, Hoff Summers is certain that with respect to the teaching of ethics “casuistry” is not the place to start. Such an approach tends to involve “an exclusive diet of dilemma ethics.” Such a diet has a tendency to give the student the impression that ethical thinking is “a lawyer’s game,” and at the end of the day and taken by itself, dilemma ethics provides little or no “moral sustenance.” Hoff Summers is quick to add that she would not go so far as to say that puzzles and dilemmas can play no role in the effective teaching of ethics. She would be the first to allow that students of ethics should be exposed to rigorous logic and precise reasoning as essential to any discourse designed to deal effectively with questions of moral principle. But she also acknowledges that if moral edification is indeed a vital part of ethics education, then the questions “What sort of course in ethics is effective?” and “Which ethical teachings do the most to edify the students?” must be asked. In her own experience, Hoff Summers has found a course on the philosophy of virtue is the right path to take in response to these questions.³¹ Her point is that ethics is about virtue and virtue is about philosophy classically understood.

The question posed by Hoff Summers’s pitting the philosophy of virtue approach, which she ties to the tradition of great literature, against the dilemma ethics approach and by implication the social science approach along with it, is whether effective ethical consciousness raising can take place without the educationally hovering presence of the highest happiness as understood by Aristotle. The issue might be stated as asking whether effective coaching and training in cycling and hockey can take place without the heroes of the *Tour de France* and the Stanley Cup as role models for aspiring participants in the sport. This means that if commentators such as Robert C. Solomon seriously wish to connect Aristotelian ethics to the world of business, they will be forced to explain where in the business organization, be it at the managerial or at the employee level, the insistence on the priority of the contemplative life is to be made.

If a Solomon should say that this is an unreasonable consideration because business is manifestly a practical and instrumental pursuit, then is he not obliged to concede that actual business activity is “Aristotelian” in roughly the same sense as someone writing a symphony who never listens to Beethoven or Mozart is engaging in classical music composition? Without the “summit” or “crowning glory” in view, it cannot properly be said that the art is being practiced.

The problem then with the promotion of the virtues in the business realm is that however they might be denominated – either using classical words like “wisdom,” “justice,” “moderation,” and “courage” – or in the more “updated” parlance such as “trust,” “self-control,” “empathy,” “fairness,” “truthfulness,” (and) “cooperation,”³² they are interpreted ultimately as virtues *for* business, that is, for the sake of efficiency, utility, and profit. But for Aristotle, the relationship is reversed – if any efforts are made in the direction of efficiency, utility, and profit, they should be for the sake of virtue defined as an end in itself, however far down the road this virtue might be. Given the inversion in the meaning of Aristotelian virtue involved

in praising various human qualities that are acknowledged by all to be admirable as means to commercial success, the most that can be said is that business ethicists wish to enlist the authority of Aristotle in the service of an ethical culture in the commercial sphere. But in order to make this program plausible, they are forced to produce a version of Aristotle that has been chopped down on a Procrustean bed constituted by the general psychology of business and commerce, a version that might recall the quip that “the operation was a success but the patient died” ([16], p. 13).

Conclusion

“The Man Who Knows”

If the goal of virtue ethics is to mold and cultivate human beings as a gardener does a rosebush in order that they develop into a hoped for perfect specimen, then the principal-agent relationship such as usually exists in a business enterprise will have little potential to complete the task. The deepest moral formation of individuals is a task that only the political community can undertake. Thus, it is that when asked by a father how his son could be brought up in virtue, the philosopher is said to have answered: “Ensure he grows up in a city with good laws.” Going by what Aristotle says, these laws would sooner or later have to entail the opportunity for the individual to be placed in front of “the man who knows” (*all eiper tinos, tou eidotos*). This is because he is clear that in order to get any one “into the right condition” (*protethenta diathenai kalos*), it is not simply a matter of putting the person in the care of “the first chance comer” (*esti tou tuchontos*). If it is possible at all to get a human being “into the right condition,” it has to be in connection with “the man who knows” (*eidotos*). If the ill person must be placed in front of a physician to improve his health, then the individual who is to be trained in “matters which give scope for care and prudence” (*epimelia kai phronesis*) must be placed under the influence of the virtuous teacher [36]. But is this person likely to be in the HR Office at a corporation or on the company staff as a consulting industrial psychologist? It is of course a possibility that “the man who knows” could be found in a business environment. After all, the poets Wallace Stevens and T.S. Eliot worked in *Hartford Accident and Indemnity Company* and *Lloyd’s Bank*, respectively.³³

But even allowing this possibility, we have to ask ourselves how often is it that a poetical soul such as Wallace Stevens or T.S. Eliot is found in general society let alone in a business context. We would also have to ask ourselves about the odds of a twenty-first-century Stevens significantly influencing today’s *Hartford Accident and Indemnity Company* which has an annual revenue of roughly \$3.4 billion and employs a staff of approximately 26,000, or a twenty-first-century T.S. Eliot shaping the ethical culture of what is now known as *Lloyd’s Banking Group* whose profit before tax in 2010 was 2.2 billion pounds and which counts among its 3,000 branches in the United Kingdom alone.

But education at the workplace is an idea that goes back to the great reformers of the nineteenth century who saw clearly how the working populations in the new factories were in need of exposure to both virtue ethics and basic knowledge. In this tradition, it would be perfectly sensible and wise for the Director of the Ethics Office at any company to attempt to establish a lunch time or after work routine of readings of literary and philosophic works suitable to the situation of both management and employees. Such a company officer might also recommend that for the sake of both pleasure and instruction, all employees should attend a monthly screening of video productions of works by, say, George Bernard Shaw and Anthony Trollope, to name just two authors who would relate well to the field of business ethics training.

To be sure, the pace of modern commercial life is rapid so such measures seem problematic on the face of it, and of course, there can be no penalties in the modern workplace for nonattendance at these kinds of events because coercion with respect to cultural preferences is outside the bounds of company authority. But Aristotle himself said “All human beings by nature desire to know,”³⁴ and those who inhabit the corporate or business environment are human beings just as much as were the Athenians walking by Aristotle’s *Lyceum* two and a half millennia ago. To encourage ethics in the business workplace then should involve increasing the opportunities for management and employees to grow in all kinds of knowledge which, while perhaps only indirectly related to their workplace functions, is definitely related to their self-improvement as human beings. And what business does not want better human beings to be found in its offices, hallways, and boardrooms?

Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Aristotle and the Corporation](#)
- ▶ [Aristotle on Character Formation](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Kant’s Categorical Imperative and the Moral Worth of Increasing Profits](#)
- ▶ [Purpose](#)

Notes

1. Financial Post, Sunday, Nov 14, 2010. <http://www.financialpost.com/Ready+compete/3828781/story.html>.
2. Simon [2]. Cited in [3].
3. Boatright [4]. The literature on virtue ethics in general and Aristotelian ethics in particular has been growing exponentially in recent years. Consider the following: [5–13].
4. See [14].
5. Solomon [15]. See [16].
6. Solomon ([15], p. 322). See [17].

7. See [18].
8. Edwin M. Hartman identifies Alasdair MacIntyre as the most formidable contemporary “Aristotelian.” See ([16], p. 7; p. 14).
9. Solomon ([15], p. 323). See [18].
10. Solomon ([15], p. 323). See [19].
11. For Heidegger *Bodenständigkeit* is a precondition for the development of *Eigentlichkeit* or virtue defined as “*authenticity*.” See [20]; See also [21].
12. Lewis ([22], p. 77). Compare [23].
13. Lewis ([22], p. 86). Compare [24].
14. Lewis ([22], p. 86). Compare [25].
15. Buchanan (26, p. 6). Edwin M. Hartman notes that the “Aristotelian” Alasdair MacIntyre “mocks the pretensions of social science and the pseudo-ethics that it encourages in business people” [16], p. 6.
16. See Salkever [27].
17. Buchanan ([26], p. 94). Compare [29].
18. See Alexis de Tocqueville [30].
19. Collins ([28], p. 571). See [32].
20. This is an unclear point in Kavaliauskas discussion. To say the least Aristotle’s “individual” who discovers philosophical virtue is the product of a great deal of luck and endless years of training and education perhaps commenced by some “Socrates” or other. See ([18], p. 265).
21. See Arendt [34].
22. McKeon [36]. “The activity of reason which is contemplative (*nous*)... will be the complete happiness (*eudaimonia*) of man.” “Nicomachean Ethics” 1177b24–25; The J.A.K. Thompson translation reads: “The activity of our intelligence (*nous*)...will be the perfect happiness (*eudaimonia*) for man.” (Harmondsworth: Penguin, 2004), p. 272.
23. See Bernard Mandeville [37], Stimer [38], Rand [39], Friedman [40].
24. See Bragues [41].
25. Compare ([31], p. 1337a22–23) and [42].
26. Lomax ([18], p. 265). See Lomax ([18], pp. 266–267).
27. Aristotle [31, 43]. See Strauss [44, 45].
28. Solomon ([15], pp. 317–319). See Wood [46].
29. Allen Buchanan observes that the Business School Faculty who teach the rising generation of business graduates “for the most part, are trained in the Social Sciences.” [26].
30. Christina Hoff Summers [47]. Edwin M. Hartman agrees here: “We learn through experience, and we may look to the insights of literature, including religious literature, to distill that experience and improve our moral imagination” ([16], p. 14).
31. Christina Hoff Summers [47]. See Bragues ([24], p. 355).
32. Dierksmeier and Pirson speak of business enterprises being “democratic, inclusive, open, transparent, accountable, effective, efficient, cooperative and holistic.” “Oikonomia Versus Chrematistike etc.,” p. 428.
33. Stevens (1879–1955) became Vice-President of the *Hartford Accident and Indemnity Company*. T.S. Eliot (1888–1965) held a position at *Lloyds Bank* in London from 1917 to 1925.
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Abstract

Despite the fact that, for historical reasons, Aristotle could not have known about the modern corporation, there is sufficient basis in his *Politics* to afford us a glimpse of his probable thoughts regarding its nature, place, and function in society with regard to human flourishing (*eudaimonia*). Corporations are, on the one hand, artificial and imperfect societies. On the other hand, they are intermediate bodies between the family and the state dedicated to the pursuit of economic ends, that is, the large-scale production of goods and services. A central concept in Aristotelian politics is that of citizenship. We explore two ways in which this can be applied to the corporation: (1) by viewing the corporation itself as a citizen of the polity and (2) by conceiving the different stakeholder groups as citizens of what one might call the corporate polity. These are analyzed in relation to currently dominant understandings of citizenship, both liberal-minimalist and civic republican-communitarian.

Introduction

To the extent that Aristotle is brought to bear on discussions of business ethics, it is the *Nicomachean Ethics* his analysis of morals, which is typically mined for insight. By contrast, *The Politics*, Aristotle's renowned inquiry into government, is mostly neglected, except for portions of Book I where the fourth-century-BC Greek philosopher examines trade and household economics. The truth is that *The Politics*

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offers valuable insights into current debates about the theory of the firm. This chapter applies these insights in setting forth an Aristotelian understanding of the corporation.

We embark on this task in [section “Governance and Government from an Aristotelian Perspective”](#) by drawing a parallel between politics and corporate governance. The basis for this parallel is that both states and corporations are social institutions composed of different kinds of people organized in particular ways to pursue common ends. It is by comparing and contrasting these ends with respect to states and corporations that we draw an analogy between the two in [section “What Is the Purpose of States? What Are Firms For?”](#). [Section “From Shareholders and Stakeholders to Citizens of the Corporate Polity”](#) explores the usefulness of applying the political concept of citizenship to corporations. This manner of proceeding highlights the social dimension of corporations as an institution, provides them with a source of identity, and offers a justification of the different rights and responsibilities that they possess as legal persons. There are at least two possible readings of the expression “corporate citizenship.” The more widespread, seeing the corporation as a citizen of the state in which operates, will be discussed in the first subsection, “Beyond the Metaphor of Corporate Citizenship.” In the proceeding subsection, “Citizens of the Corporate Polity,” we examine a second, less common, understanding of corporate citizenship, according to which different stakeholder groups are viewed as potential citizens of the corporation, with the latter in turn viewed as an analog of the state. Within the framework of the corporation as a polity, we then examine how well each stakeholder group fulfills the requirements of “corporate citizenship” from both a liberal-minimalist and civic-communitarian perspective. [Section “On Corporate Regimes: Despots and Constitutional Rulers”](#) delves into the analogy that could be drawn between states and corporations on the basis of their regimes or constitutions, as these are distinguished by Aristotle. As such, we can speak of corporate monarchies and tyrannies, corporate aristocracies and oligarchies, and corporate polities and democracies. [Section “Conclusion”](#) concludes.

Governance and Government from an Aristotelian Perspective

Whenever one hears the word “govern” and its cognates, such as “governance” and “government,” the notions of “authority” and the exercise of power and control immediately come to mind. Ordinarily, one also thinks of a political unit such as the state in its dual role as both the subject and the object of governing. The state governs those under its authority, although at the same time, and in the best of cases, those under the state’s authority are also the ones who control the state. Ideally, the state is an instrument through which people subject to its authority govern themselves.

Surprisingly, none of these associations come to mind upon reading the definition of a corporate governance system: the complex set of constraints that shape the ex-post bargaining over the quasi-rents in the course of a commercial relationship [1].

A corporate governance system specifies rules of bargaining over contingent future goods that escape contractual agreements. This distance between what it means to govern and the rules of a corporate governance system further increases in the market context. If the market is responsible for the allocation of resources, what need is there for authority and control, as governing implies [2]?

Any specific notion of corporate governance depends on the theory of the firm adopted [3]. Granted that among enterprises making up the so-called new economy, the importance of human capital relative to physical or inanimate assets has increased considerably, one model construes the firm as a “network of specific investments,” a combination of reciprocally specialized assets and people that cannot be reproduced by the market [4]. All mutually specialized parties such as workers, suppliers, and customers are considered as belonging to the firm. Apart from shareholders or owners of financial capital, other stakeholders are viewed as parties to corporate governance. From this wider perspective, corporate governance becomes the relationship among shareholders, management, and the board as it determines the direction and performance of corporations ([5], p. 1). In particular, it refers to the processes surrounding the election of board members, their compensation, and the evaluation of their task of supervising management. Although this explanation outlines the board’s major functions, it may, however, obscure other dimensions of governance. As Koehn observes, “corporate governance is better understood as the art of governing – in a principled fashion – so as to maximize the welfare of the company and of its relevant stakeholders” ([6], p. 1). Corporate governance problems would be better addressed not only with legal safeguards and economic incentives but also with trust-building institutional practices: “Governing well ultimately means acting in a trustworthy fashion. No company will ever succeed in the long run if it is not trusted by its customers, employees, suppliers, advisors, shareholders, and other important stakeholders” ([6], p. 13). At its core, corporate governance refers to how quasi-rents are *best* produced (in terms of efficiency) and *best* distributed (in terms of justice) among parties in a firm. Since these two tasks are contingent, it is impossible to devise fixed rules beforehand about how future quasi-rents are to be partitioned. Contingency and the absence of rules are essential conditions for corporate governance.

When it comes to defining politics, we often hear that it is, as Harold Lasswell famously put it, basically a matter of deciding “who gets what, when, and how.” This is the essence of the “social contract” on which most modern political theories are founded. Indeed, politics concerns itself with how certain “goods” are produced and how these “goods” are distributed among various claimants. Efficiency and justice thus play important roles. And these political decisions are necessarily made both in the absence of previously set rules and under conditions of uncertainty. They are not the mere execution of directives agreed upon beforehand, and prudence, the knack for making correct decisions taking all the peculiar circumstances into consideration, is utterly crucial. Aristotle’s *Politics* [7, 8] is generally recognized as an obligatory reference for the study of government, particularly, the running of states: “Government. . . is the subject of a single science, which has to

consider what government is best and what sort must it be, to be in accordance with our aspirations.” If corporate governance is essentially government, applied to the firm rather than the state, could we not find it illuminating to study Aristotle’s *Politics*?

While we believe the answer to this is yes, in pursuing the question, we will first have to develop the analogy between Greek city-states and modern business firms. Nowadays, corporations have evolved into economic entities characterized by limited investor liability, transferability of investor interests, legal personality, and professional management ([5], pp. 8–10). For historical reasons, Aristotle could not obviously have imagined such institutions. Since his time, too, governments have largely adopted the formula of Westphalian nation-states – that is, as entities controlling self-contained territories inhabited by people related to each other by blood, sharing the same birthplace and culture [9]. Given these fundamental differences, one might justifiably question whether it really is possible to find meaningful similarities between states and corporations.

Let us recall first that, at their root, both are social institutions with defined objectives. Both states and corporations are composed of a large number of people divided into multiple classes that are hierarchically ordered. Both states and corporations admit a variety of regimes, with particular structures of authority and power. And finally, in both states and corporations, groups of people are organized to pursue a common purpose or end: a political one, in the case of the state, and an economic one, in the case of the firm. We can therefore work out an analogy between states and corporations, marking their similarities and differences as social institutions, on the basis of three factors: the kinds of people who comprise them, the types of organizations or regimes they assume, and the particular ends they seek. Let us begin with this last category.

What Is the Purpose of States? What Are Firms For?

That the governance of corporations is inspired by the government of states is evidenced by the choice of similar terms, even beyond well-known examples such as “management,” “administration,” or even “leadership.” This parallelism has led certain authors to think that “theories of government offer a way of fully understanding the behavior of [...] large corporations” and that “management can only be properly studied as a branch of government” [10]. The problem, however, lies in the fact that “unfortunately, corporate governance is often misconstrued, and interpreted as if its task were not governing corporations but making them more like governments” [11]. Notwithstanding the similarities, corporate governance should not boil down to transforming corporations into the bureaucracies that characterize states.

On account of their end or purpose, states are considered by Aristotle in the *Politics* to be “natural” and “perfect” societies. The state, like the family and the village, is a “natural” society because it stems from an innate tendency in human beings. So too, the family, which arises from the union of man and woman,

is “natural” because it arises in response to a deeply felt need in all human beings to reproduce and have children. The village is also “natural” insofar as the human instinct for self-preservation requires one to look beyond daily needs and adopt a longer-term horizon. The village is, in this sense, like an extension of the nuclear family. Next down this line of “natural” institutions is the state, which results from the union of several villages. Among these three “natural” institutions, however, only the state is “perfect” because it alone is “self-sufficing” for the good life. Only in the state, transcending the family and the village, can human beings truly aspire to live a completely good life. The state thus represents the “end” or “final cause,” the fully developed stage of human existence [8, 12]. For this reason, although the state may be considered chronologically posterior to both the family and the village, it is in ontologically prior to them: “The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole” [8, 13]. Individuals, then, just like the families and the villages they form, are like parts with respect to the whole represented by the state. Only in the state can the social instinct in all human beings be fully developed and perfected through the institutions of law and justice. For outside the state, human beings become the most savage and worse of animals [8, 13].

What constitutes the good life? Aristotle offers several complementary accounts. In one, he lists the basic conditions for the preservation of life – food, skilled trades, arms, revenue, the power of deciding the public interest, and justice – while explaining that these can only be adequately fulfilled within the state [8, 14]. Elsewhere, he enumerates the necessary ingredients for a flourishing life: external and bodily goods as well as perfections of the soul, also known as the virtues [8, 15]. He also establishes the proper ranking of these items, noting that external and bodily goods are merely the conditions for the performance of excellent actions, expressed through the practice of the virtues: “the best life, both for individuals and states, is the life of excellence, when excellence has external goods enough for the performance of good actions” [8, 16]. Happiness, a good and flourishing life, comes to sight as characterizing more so individuals of a cultivated mind and character, possessing a moderate share of external goods, than among those who enjoy physical comfort and hold a large fortune but lack the goods of the soul. With the latter, not only do external goods bring their possessors no real benefit but may even cause them harm. In this way, Aristotle clarifies the true character of material goods as being nothing more than means or instruments – their possession and use should attend to a limit established by their purpose, which is the performance of the virtues: “it is for the sake of the soul that goods external and goods of the body are desirable at all” [8, 17].

How does the firm fit within this Aristotelian account? First of all, although Aristotle does not mention business firms and corporations in the *Politics*, we could find allusions to them in the “family connections, brotherhoods, common sacrifices and amusements” [8, 18] that draw human beings together. As opposed to the family, the village, and the state, the firm may be considered an “artificial” society as it arises neither directly nor organically from human nature. Rather, the firm is

based on voluntary bonds of a utilitarian mode of friendship, a foreshadowing of contracts, primarily among citizens of the same state. The firm must be viewed as an “imperfect” society in that it is not self-sufficing for the good life. A corporation is an example of an intermediate body or association [8, 18], situated between individuals and families, on the one hand, and the state, on the other. It is not meant to substitute the family in the provision of daily needs nor the state as the proper locus of complete flourishing. Like other intermediate bodies, its purpose is to furnish some of the means, in this case the goods and services that businesses produce, necessary as a foundation for the good life [8, 18].

Consider another difference between the state and other associations. For Aristotle, the mere fact that citizens of the same or different states band together to defend themselves against an internal aggressor or a common external does not, in and of itself, make a state. Such a union only constitutes a security or military alliance. Neither is it enough to constitute a state that human beings associate solely for the production and exchange of goods, by entering contracts, trade agreements, or commercial treaties. As Aristotle unequivocally affirms, “suppose that one man is a carpenter, another a farmer, another a shoemaker, and so on, and that their number is 10,000: nevertheless if they have nothing in common but exchange, alliance, and the like, that would not constitute a state” [8, 18]. Beyond security and wealth, a state is concerned with the good life, an existence whose essence is to be shared among all citizens. For this reason, the state has to take care that its citizens display political excellence or justice. Security and wealth are conditions with a view to this aim of a good life in the *polis*, “a community of families and aggregations of families in well-being, for the sake of a perfect and self-sufficing life” [8, 18].

How do intermediate groups such as corporations relate to the state? Although intermediate groups are voluntary and contingent, rather than naturally necessary, they are nevertheless vital to achieving the political end of advancing human flourishing. It is not any specific intermediate body that matters but the presence of intermediate bodies as a whole. The appropriate reciprocal relationship between the state and intermediate groups has been called, in certain traditions, one of “subsidiarity” [19]. Both the state and the intermediate groups have their own legitimate objectives and spheres of action. However, they owe each other respect, notwithstanding their respective positions in the social hierarchy. There is a double dimension to the state’s role with regard to intermediate associations. It is incumbent upon the state as the superior-order society to *positively* help, support, and assist lower-order intermediate bodies. Viewed *negatively*, the state should refrain from substituting or absorbing these intermediate associations. By encouraging the growth of these, the state contributes to a healthy pluralism and diversity in society. The state should delegate to these intermediate groups tasks that they are better able to execute, given their closer proximity to the needs and desires of the people. By fostering the legitimate initiatives of intermediate groups, the state makes a more rational and efficient use of resources, focusing on matters such as defense, foreign relations, or the administration of justice that come within its area of competence. Subsidiarity guards against statism in its

many forms: excessive centralization, bureaucratization, the shirking of personal responsibility, welfarism, and paternalism. Subsidiarity provides protection against a self-serving state.

Amid the miscellany of intermediate bodies, a special place is reserved for those that seek economic ends, including corporations. This economic focus distinguishes businesses from other intermediate groups such as churches, professional colleges, sports associations, neighborhood councils, cultural clubs, and the like. It is not that these bodies lack an economic dimension; it is just that such an economic dimension is not their main concern. Business firms, then, are intermediate bodies that pursue economic goals.

In Aristotle's *Politics*, such economic concerns are seen as originating within the family, as "household management" [8, 20]. His treatment of the economy in its original, etymological meaning of "household management" begins with a survey of the different parts of the household and their relationships: "the first and fewest possible parts of a family are master and slave, husband and wife, father and children. We have therefore to consider what each of these three relations is and ought to be: I mean the relation of master and servant, the marriage relation (the conjunction of man and wife has no name of its own), and thirdly, the paternal relation (this also has no proper name)" [8, 20]. From the state's point of view, the need for marriage is quite clear because that is how children, potential citizens, are born and educated toward responsible adulthood. Moreover, a stable and exclusive marriage assures mutual help to both husband and wife for life's daily necessities. The other two relations that Aristotle cites as being required for a complete household demand more elaboration. In Aristotle's time, it was an accepted legal and moral norm that the children were the property of the father, as opposed to the mother. Of course, no child can be born without the woman's cooperation, but she merely represents the passive principle, in Aristotle's reckoning. In a paternalistic and patriarchal society, of the kind in which Aristotle lived, the male's ownership of the children was grounded on his being seen as the active principle in the male-female relation. Equality was not recognized between male and female.

Then there is the matter of slavery. Why, in Aristotle's thinking, are slaves essential to the economy? The reason is that slaves are a form of property: "Property is a part of the household, and the art of acquiring property is a part of the art of managing the household; for no man can live well, or indeed live at all, unless he is provided with necessaries" [8, 20]. Aristotle understands property in a broad sense, encompassing all material things. Yet there are different kinds of property, some living, others lifeless. "And so, in the arrangement of the family, a slave is a living possession, [. . .] and the servant is himself an instrument for instruments" [8, 20]. Slaves, therefore, are like livestock, a form of living property no family could do without. But they are living property of a special kind, useful insofar as they obey the will of their masters. The work of a slave, its function, is to accomplish the will of its master. "Hence we see what is the nature and office of a slave; he who is by nature not his own but another's man, is by nature a slave; and he may be said to be another's man who, being a slave, is also a possession" [8, 21].

Aristotle, too, distinguishes between the art of household management in itself and the art of getting wealth or chrematistics [8, 20]. In both, Aristotle distinguishes between natural and nonnatural forms of pursuing those arts. Natural chrematistics refers to the provision of “such things necessary to life, and useful for the community of the family or state, as can be stored” [8, 22], whereas nonnatural chrematistics, of “riches and property [which] have no limit” [8, 23]. Natural wealth-getting is based on the premise that true riches, the property needed for a good life, have a limit. There is a level beyond which the mere accumulation of material things becomes a nuisance or a liability. Nowadays, one might think of having more cars than those that fit in the garage, or more foodstuffs than what the refrigerator could store. Nonnatural wealth-getting, on the other hand, is predicated on the idea that “more is always better.” Although the example may be somewhat dated, by nonnatural wealth-getting Aristotle referred primarily to retail trade and exchange, which allowed the accumulation of wealth without limit. And as he says, “coined money is a mere sham, a thing not natural, but conventional only, because, if users substitute another commodity for it, it is worthless, and because it is not useful as a means to any of the necessities of life, and, indeed, he who is rich in coin may often be in want of necessary food. But how can that be wealth of which a man may have great abundance and yet perish with hunger. . .?” [32].

At the same time, Aristotle implies that household management, or economy properly speaking, refers more to the use of property rather than to its acquisition. As was the case with its acquisition, with respect to the use of property, we are supposed to differentiate between the natural and the nonnatural modes. Take the case of a shoe: if worn, one makes a proper use, while if it is used for exchange, one makes an improper use, “for a shoe is not made to be an object of barter” [8, 25]. The proper use of any material possession acknowledges a limit or a further end that makes the activity honorable, whereas its improper use is void of limit and, hence, censurable. As an illustration of this unnatural use of wealth, Aristotle points to usury, then defined as lending on interest: “money was intended to be used in exchange, but not to increase at interest” [8, 26]. The difference between the natural and the nonnatural depends more on the dispositions of human beings, on their desires, than on the material things themselves [8, 27]. Unbridled desires, the want of wealth, pleasure, or enjoyment untutored by virtue, lead to nonnatural forms of getting and using material possessions. The fault lies in our vice, not in the material things themselves.

To summarize this section, from an Aristotelian perspective, firms constitute a class of artificial, intermediate bodies that belong to the realm of the economy. All economic activity, in turn, functions under the guidance of ethics, the “practical science” of virtue. The economy’s mission, properly understood, is to facilitate the cultivation and practice of virtue by establishing favorable material conditions. And virtue and ethics, in the final analysis, are sought insofar as they help us attain a flourishing life, a life that can only come into being within a political community regulated by the state.

From Shareholders and Stakeholders to Citizens of the Corporate Polity

The next step in developing the analogy between states and firms consists in examining the different kinds of people that comprise each of these institutions.

Beyond the Metaphor of Corporate Citizenship

Business theory has borrowed the notion of citizenship from politics for several reasons: above all, to highlight the social dimension of firms and, secondly, to analyze the role of power in resolving conflicts. Through the concept of citizenship, politics also imparts a sense of identity to firms, by way of membership in the community, and a justification for their rights and responsibilities as legal persons. Wood et al. even go as far to that business organizations, in comparison to individual persons, are “secondary citizens” ([28], pp. 35–36). Although we normally treat business organizations as independent legal entities carrying out their activities in pursuit of particular goals, they only exist thanks to the objectives and the resources furnished by their participants. Corporations are collective instruments created by individual citizens to achieve ends which they would not be able to attain individually. Such ends are likely to have a sociopolitical dimension and reflect values held in the community. But the notion of citizenship itself has a long history. To discover its potential in clarifying the status of corporations and the issues concerning how they ought to be governed, it would be convenient to have a look into the origins and evolution of this concept.

In the *Politics*, Aristotle delves into the question of citizenship by observing that the “state is composite, [and] like any other whole [is] made up of many parts – these are the citizens, who compose it” [8, 29]. He then proceeds to identify who the citizen is, along with the meaning of the term, by determining what the citizen does. Then, Aristotle differentiates citizens from other classes of people in the state, explaining the process by which one acquires citizenship. Finally, he distinguishes the various kinds of citizens depending on the form of government adopted by the state. Only within this context could the query – what makes a good citizen? – receive an appropriate response. According to Aristotle, “a citizen in the strictest sense, against whom no such exception can be taken” is he or she who “shares in the administration of justice, and in offices” [8, 30]. The essential task of the citizen is to participate in deciding what is good and just in the state. A citizen is a “juryman and member of the assembly,” to whom “is reserved the right of deliberating or judging about some things or about all things” [8, 31]. Although many people in a state may actually participate in deliberating about the public good, only citizens possess this right. What characterizes a citizen is “the power to take part in the deliberative or judicial administration of any state” [8, 31]. This does not mean that a citizen always has to hold office. It would suffice that he or she have the power to occupy such a post, “sharing in governing and being governed” [8, 32].

Aristotle was aware that the state needed other kinds of people besides citizens in order to be viable [8, 33]. Mere necessity for the state's survival or flourishing did not automatically qualify one for citizenship. Consider children who, not being mature, are incapable of deliberation and judgment. They may only be called citizens by qualification. Neither are members of the artisan class, composed of slaves and foreigners, citizens. The latter do not even refer to free men as such, in which case foreign workers would be citizens, but only to free men who are exempted from providing menial services. Citizenship requires distance from the tyranny of having to satisfy daily needs since political participation demands leisure. By implication, then, citizenship presupposes a certain level of affluence. It is reserved to those who can afford it.

Aristotle enumerates the different classes needed for the state's existence: farmers, artisans, traders, laborers, and the military [8, 34]. Even so, "as the soul may be said to be more truly part of an animal than the body, so the higher parts of the states, that is to say, the warrior class, the class engaged in the administration of justice, and that engaged in deliberation, which is the special business of political understanding – these are more essential to the state than the parts which minister to the necessities of life" [8, 34]. To the extent citizens are involved in deliberating the public good, they are like the soul, the most important part of the state, although by themselves, they do not suffice to constitute the state. One can also deduce from this that mere residency does not suffice either to make one a citizen. Resident aliens and slaves share the same living space with citizens but not the same rights [8, 35]. To be a citizen, it is also not enough to have the right to sue or be sued before a state's tribunals. After all, this right can also be held by resident aliens owing to international treaties. Insofar as resident aliens are normally obliged to have a citizen-patron, they could only participate in the community very imperfectly, never in their own name and always under the citizen-patron's tutelage. In this respect, they are much like children, the old and the feeble. How, finally, does one become a citizen? Excluding cases where one becomes a citizen accidentally, Aristotle says that "in practice a citizen is defined to be one of whom both the parents are citizens" [8, 31].

Having defined citizenship and established the process by which it is acquired, Aristotle insists that there are as many kinds of citizenship as states or forms of government: "he who is a citizen in democracy will often not be a citizen in an oligarchy" [8, 30]. In democracy, the people, the demes, are citizens insofar as they are able to influence public affairs. In aristocracies, citizenship is restricted to fewer people, based as it is there on excellence and merit. In oligarchies, it is based on wealth [8, 33]. Even allowing for variances in citizenship, Aristotle maintains that, ideally, the excellence of the good citizen coincides with the excellence of the good man. That occurs in the best of states, so long as the good man and citizen take part in public affairs [8, 36]. Twenty-four centuries later, several models and typologies of citizenship, still based on the distinctive forms of government, have been offered [28, 37, 38]. These categories could be collapsed into two, with their respective variants: liberal-minimalist citizenship, on the one hand, and civic republican-communitarian citizenship, on the other.

The liberal-minimalist ideal conceives citizenship fundamentally as freedom from oppression and protection against the arbitrary rule of absolutist government ([38], pp. 7–9). Citizens are vested with political rights to choose their rulers or be voted into public office. The duty of government is to secure such rights which form the core of citizenship. For some, this set of rights is composed of the rights to life, to liberty, and to property (Locke); for others, it encompasses the right to a just share of the social product or utility (Smith, Bentham); while for still others, the rights to equality before the law and to free rational agency or autonomy (Kant). Whichever set happens to be relevant, the important thing is that the rights and freedoms be guaranteed. With some latitude, we can include in this group the libertarians ([28], pp. 41–42, 44), who support a very limited state, along with those who uphold a deliberative democracy ([38], pp. 15–16), who want a more robust form of government to safeguard conditions of equality in political discourse. By contrast, civic republican or communitarian citizenship emphasizes participation in the public good by fostering communal ties and the practice of civic virtues ([28], pp. 42–43, [38], p. 9). While liberal-minimalist citizenship is marked by “negative freedoms,” or “freedom from” state oppression and interference, civic republican-communitarian citizenship is characterized by “positive freedoms,” or “freedom to” actively seek the common good. Liberal-minimalist citizenship stresses individual rights or state-guaranteed powers against collective pressure; civic republican-communitarian citizenship underscores belonging to the group as the factor constitutive of an individual identity and sense of personal purpose. It is the group with its hierarchically ordered set of goods, rules, and practices that makes virtue or human excellence possible. The role of government here is to strengthen institutions such as families, neighborhoods, schools, and churches. Only when these institutions fall short should government intervene, yet without losing sight of the principle of subsidiarity. There is greater insistence in the civic republic-communitarian vision on fulfilling obligations – to protect the family, obey the law, pay taxes, and comply with jury or military service, and so forth – than on demanding rights, which have the effect of separating the individual from the group. Insofar as Aristotle accentuates the embeddedness of citizenship within a sociocultural and historical context, and given his identification of the excellence of the citizen with that of the *polis*, he unequivocally sides with the civic republican-communitarian model.

How are these different views of citizenship reflected in the notion of the corporation as a citizen, or to be more precise, a “corporate citizen”? As a citizen in the liberal-minimalist model, a corporation would be expected, first and foremost, to protect its “right to exist,” based on the freedom of association of participants, as well as its “license to operate,” resting as that does on the freedom of enterprise. A corporation would very much prefer “to stick to its own business,” embarking on philanthropic activities with the utmost reluctance, only where it accorded with enlightened self-interest, that is, to the extent that it would ultimately improve the bottom line. Obviously, this notion of citizenship has great affinity with a shareholder view of the firm focused exclusively on increasing the value of its equity. On the other hand, if a corporation were to

follow the civic republican-communitarian type of citizenship, apart from exercising political, civil, and social rights, it would also strive to fulfill political, civil, and social obligations. Such a company would not hesitate to become involved, harnessing resources and expertise, whenever the government was failing to live up to its obligation to advance the common good. The firm could provide social rights (e.g., health care or housing), enable civil rights (e.g., be an “equal opportunity employer”), and serve as a channel for the exercise of political rights (e.g., host a forum for political debate on certain issues). Community involvement and political activism characterize the civic republican-communitarian corporate citizen. Responsibility is not only of an economic nature but sociopolitical as well, and it is owed not only to shareholders but also to other stakeholder groups.

Citizens of the Corporate Polity

There is another possible interpretation of corporate citizenship, distinct from the understanding of the corporation itself as a citizen of the state. It consists in the view of the corporation as an analog of the state and of the various stakeholder groups as potential citizens. The approach and intent is similar to that carried out by Manville and Ober [39] who tried to draw management lessons from classical Athenian democracy. Here, we shall examine the different stakeholder groups and decide which of them best fits into the general definition of citizenship. In the process, we will find uncover who among the different stakeholders should be entrusted with a governance role.

Drawing inspiration from Wood on the different approaches to corporate citizenship, we may link the liberal-minimalist perspective of citizenship to the idea of the corporation as a “civic association” and the civic republican-communitarian view to the vision of the firm as a corporate polity ([28], pp. 41–45). The liberal-minimalist theory of citizenship insists on individual freedom, expressed in the form of rights to pursue self-interest. But this pursuit, insofar as individual desires inevitably differ and clash, cannot constitute a corporate common good. The corporation is then reduced to a “civic association,” some sort of “clearing house” where minimum restraints are applied to keep an individual from infringing on the rights of others. The different groups of people dealing with the corporation do not really behave as “citizens” but mere residents of a common jurisdiction. They comply with the laws but only as a means to reach individual goals. Coercive laws are the only forces that keep them together. There is no attachment or loyalty among themselves nor between each of them and the corporation. Relationships are purely contractual, and the corporation is nothing more than a nexus of contracts. Shareholder-principals who provide capital are granted ownership rights, and manager-agents are on the understanding that they will endeavor to maximize the returns on the company’s stock. The corporation is effectively an empty shell wherein investment, employment, and sales contracts are negotiated and fulfilled: “The language of citizenship might even be used, but the motivation is not to

provide a collective good or to contribute to society's [or we may say in this case, the corporation's] well being, but only to achieve a private end" ([28], p. 42).

The demands of a civic republican-communitarian kind of citizenship on the stakeholders of the corporate polity will be altogether different. Since their personal flourishing is not independent from that of the corporate polity, they will actively participate in the deliberation and execution of the corporate good. This does not mean disregard for individual rights; it simply means that those rights are neither supreme nor absolute. The recognition, enforcement, and respect for those individual rights should always be done within the context of the corporate common good. This common good is not inimical to individual goods such as rights. What is needed is an order or hierarchy, such that "goods in respect of another" – for instance, rights – are subjected to "goods in themselves," and the various "goods in themselves" subjected in turn to the "common good" of the corporate polity. As an example of this, the right to free enterprise would not include the right to buy and sell body parts, if only to safeguard the physical integrity of prospective suppliers.

A misconstrual of the common good may be at the root of the conflict that Wood detects between communitarian and global citizenships ([28], pp. 42–46). Loyalty to the local community may be at odds with the demands of a multicultural global society. Yet global society and local community do not exist on the same level. Serious conflicts among these different levels of organization may arise. However, the strength and success of the superior levels in terms of human flourishing depend on that of the inferior levels, as the principles of subsidiarity and solidarity explain.

Consider a corporation that applies pollution control measures in its home community but neglects them in other communities where it is a mere guest. It need not follow a free-standing universalist standard of global citizenship to recognize its duty to reduce pollution wherever it holds operations. It would be sufficient to become aware of the interdependence between its home and host environments, between its efforts to curb pollution locally and globally. Only by identifying itself with the good of its home region – that is, by subscribing to the communitarian ideal of citizenship – can a corporation realistically contribute to the good of a wider global and multicultural society.

To our knowledge, the analysis of the different stakeholder groups as prospective citizens of the corporate polity has only been carried out from the viewpoint of liberal-minimalist citizenship [40]. We shall now proceed to draw a picture of the various stakeholders that comes closer to the civic republican-communitarian ideal: Who among the different stakeholders best fulfill the requirements of the civic republican-communitarian citizenship within the corporate polity? Who among them is most deserving to govern? If citizenship consists in participation in governance, who is best equipped to do so in the firm understood as a corporate polity?

Shareholders are the first to come to mind. Having provided financial capital, they are typically acknowledged as the "owners" of the company. In accordance, too, with the application of agency theory to firms, laws are generally designed to protect their interests as principals against possible abuse by their agents, that is, managers. Yet this account neglects a number of crucial facts. The shareholders' only real property is a piece of paper, the certificate that entitles them to a "share" of

the firm's residual equity [41]. Depending on whether the company has been profitable, they may receive dividends or sell their shares at a higher price. None of this is guaranteed. Other shareholder rights include choosing board members, participating in general meetings, and voting on proposed changes in the capital structure – nothing more. Shareholders cannot walk into the company premises, occupy a room, and, say, start selling the furniture. What is more, given the huge number of shareholders, their fragmented interests and dependence on management for information on the company's condition, it is quite understandable that they do not even consider themselves “owners” at all. It is easy to understand why a shareholder, with an infinitesimal holding, often does not bother to attend general shareholder meetings; his or her vote will not make much of a difference. Many shareholders do not hold their shares over a long period and often sell to take profits or cut losses short. Beyond this, the ordinary shareholder feels no commitment to the firm. Because of their rights to residual equity, shareholders may claim liberal-minimalist citizenship within the corporate polity. But that is not sufficient for a civic republican-communitarian kind of citizenship, which requires the exercise of rights with a view to the corporate common good.

Hence, we must broaden the field to include other stakeholders in our quest for civic republican-communitarian citizens of the corporate polity. “Stakeholders” are defined as all those who may have “legitimate interests” in the firm [42]. This does not mean, however, that each and every one of those interests warrants formal legal protection. The legitimacy of stakeholder interests could come, not merely from courts but from social recognition. As for the requirement of active involvement in governance, we should not interpret it in the sense that *all stakeholders* have to participate in *all corporate decisions*. It would be enough that those with legitimate interests intervene in the issues that concern them.

Accordingly, the next stakeholder group we need to consider is that of clients or consumers. In recent decades, corporate strategy has often been formulated from their point of view, to satisfy their needs and serve them better, coming up with the best “value proposition” [43]. This trend is evidenced in slogans like, “the customer is always right” or “the customer is king.” “Consumer sovereignty,” however, has been better known in the breach than in the observance. Until recently, the market mindset was based on the principle “*caveat emptor*” or “buyer beware” [44]. Responsibility for the consumer's interest lies almost exclusively with the consumer. The fundamental consumer right, on this view, has consisted in their ability to not buy a product, whenever he or she did not like the terms and conditions. Over the last several decades, especially in the developed world, we have witnessed a vast expansion of consumer rights. Aside from the right to free market choices, we also enjoy, in varying degrees, the right to fair market prices, to safe and efficacious products, to truthful advertising and honest communications, to privacy, and so forth. Moreover, tests have been designed to protect “consumer sovereignty” in its different dimensions: from consumer capability (freedom from limitations in rational decision-making) to information (availability of relevant data) and to choice (switching possibility) ([40], p. 270, 289). By virtue of the first aspect of consumer sovereignty, for example, neither tobacco nor alcohol can be sold to minors;

by virtue of the second, foodstuffs must be properly labeled for common allergens; and by virtue of the third, we have the right to change our telephone service providers while keeping our numbers. The guarantee of such rights in support of consumer sovereignty arguably corresponds to a liberal-minimalist corporate citizenship for consumers.

How might consumers make the transition, however, to a civic republican-communitarian model of citizenship? They would to the extent that they somehow participate in the governance of the corporation – as in when consumers decide to patronize and recommend, or boycott, a company, for ethical, social, and environmental reasons. Consumers might also flex their governance muscle by participating in product design and promotion by, for example, sharing travel preferences with the airlines whose frequent flier programs they have joined. Such consumers would potentially deserve the title of corporate citizen in line with the civic republican-communitarian ideal. Even so, the issue would be how effective they are in influencing corporate policy. This would be the ultimate test of civic republican-communitarian corporate citizenship for consumers.

Let us turn our attention now to competitors and suppliers. How do they qualify as citizens of the corporate polity? First, in market economies, the reciprocal rights of competitors and suppliers, the right to fair play, are laid down in competition law. These would include the freedom to enter and to leave the market, the right to set prices without coercion, the right to offer products to potential customers, and so forth ([40], p. 305). Upholding these rights may suffice for liberal-minimalist corporate citizenship. But corporate citizenship of a civic republican-communitarian type would, of course, demand a higher level of engagement. Suppliers could organize themselves around an ethical supply chain management initiative, with a view to eliminating unfair labor practices (e.g., child labor), unhealthy working conditions (e.g., sweatshops), and environmental degradation. They could do this even before Third World governments, often hampered by limited resources and corruption, introduce their own legislation to address those problems. In addition, suppliers and competitors could engage in “fair trade” agreements like those in coffee, tea, and cocoa; they could guarantee minimum prices and offer better conditions to small commodity growers in developing countries ([40], p. 333). These activities would move suppliers and competitors up toward the civic republican-communitarian standard. Unfortunately, these practices are still uncommon and their effects on corporate governance not fully known.

The government’s role as a stakeholder of the corporation is affected by significant uncertainty ([40], p. 391). On the one hand, it seems more proper to think of the corporation as a stakeholder of the state. In modern liberal democracies, governments are formed by representatives of the citizenry, and indirectly, of the different intermediate associations and civil society organizations. With their monopoly on the legitimate use of force, governments could choose either to restrict or enable corporate activity. States intervene in business by collecting taxes, which represent a not insignificant deduction to profits, but they also assist business by granting tax breaks and providing subsidies. At the same time, we can comprehend states as either depending upon, or competing with, corporations.

Governments compete with multinational companies in providing welfare and even security in developing countries. Yet were it not for independent, private businesses, born from the freedom of enterprise and association of citizens, states would be paralyzed or become terribly inefficient, as was the case in communist nations. The state could also constitute a stakeholder group – not just by owning a significant, if not a controlling tranche of shares, but in other ways as well. As corporate stakeholders, states undoubtedly hold important rights, enough to qualify them as a liberal-minimalist corporate citizen. Remember that corporations only exist thanks to a legal charter, that is, an explicit recognition by the state. There is no escaping government influence, whether for good or ill. The most we will venture to say about this debatable issue is to appeal to a golden mean: Neither statism, where private initiative, freedom of association, and freedom of enterprise have all been annihilated and the state has completely taken over the economy, nor absolute *laissez faire*, where markets would have usurped functions such as internal and external security or the administration of justice, effectively getting rid of the state. Government should not be in the business of developing and peddling software, for example, just as corporations should not be setting up private tribunals of justice or forming private armies. The state could behave as a good civic republican-communitarian corporate citizen if it proceeds in accordance with the principle of subsidiarity without renouncing to its areas of competence.

This leaves us with a company's workers or employees, among which we ought to include the managers. Among the different stakeholders, employees are the ones most closely integrated and identified with the corporation: "employees, in many cases even physically 'constitute' the corporation. They are perhaps the most important production factor or 'resource' of the corporation, they represent the company towards most other stakeholders, and act in the name of the corporation towards them" ([40], p. 224). A liberal-minimalist analysis of employees as citizens would limit itself to their rights and duties in the employment contract: a right to fair wages, a right to healthy and safe working conditions, a freedom from unjust discrimination, a duty to provide an acceptable level of work performance and quality, a duty to respect company property, and so forth ([40], p. 228). The civic republican-communitarian standard would take other areas into account, such as the economic externalities and the socioethical opportunities that escape employment contracts. The latter cannot fully capture the demands of employee loyalty, the breaches of which would hardly be actionable in the courts. Yet employee loyalty counts as an enormous positive externality for the company and furnishes an opportunity for employees to become more virtuous. Employee loyalty also makes demands on the company. A company should never consider the employee merely as an expendable resource, the first thing to jettison whenever difficulties and challenges arise. Instead, the corporation should try to reciprocate employee loyalty by provisioning adequate resources for them and encouraging their professional development. Loyalty is not so much the result of locking-in assets as a mutual concern for each other's flourishing and well-being.

Among employees, those who own shares in the company merit special consideration. That worker and shareholder, agent and principal, governor and governed

coincide is precisely the biggest advantage of shareholding workers over other stakeholder groups. Only here can the condition of actively taking part in corporate self-government be adequately fulfilled. Only here, too, can we find the objective dimension of work – the external goods and services produced – united to its subjective dimension – that is, the improvements in knowledge, skills, habits, and virtues that effort nurtures in the soul of the worker. Thus, avoided is alienation from the products of one's own labor. In this sense, cooperatives, or business organizations that are run and controlled by their owners, would fit the definition of a self-governing corporate polity to perfection. Its shareholding workers and managers would represent civic republican-communitarian corporate citizenship in the highest form.

For this reason, other nonshareholding employees must be formally recognized as a separate category within the firm. To be sure, the corporation cannot exist without them, yet they cannot be considered corporate citizens because their tasks are carried out for others, the shareholders, rather than themselves. The situation of nonshareholding employees is thus very similar to that of the artisan class composed of slaves and foreigners in the Greek city-states (1278a). Without them, the city-state could not stand, yet their integration was very limited and their participation in government practically nil. Similarly, the other stakeholder groups – shareholders, clients, consumers, competitors, suppliers, governments, states, and nonshareholding workers – through contracts and agreements hold a status comparable to those who enjoyed certain rights in the Greek city-states where they resided, whether due to trade treaties or military alliances, without at the same time being citizens (1274b). For as we hope we have made clear in this section, possessing certain rights is not enough to render one into a citizen of a civic republican-communitarian organization. One must take part in ruling.

On Corporate Regimes: Despots and Constitutional Rulers

The third element of our analogy between states and firms refers to their organization. Both states and firms require a governing body with a rule or constitution. The major difference between them is that while states are sovereign, corporations are not. Therefore, the governance of business organizations is always subject to the governments of the states, which represent the supreme authority in the places where they operate.

In the *Politics*, Aristotle explores a diversity of regimes. These are distinguished both by the number of people that govern as well whose good it is for which they govern. The main division is between “despotic” and “constitutional” regimes: “there is one rule which is for the sake of rulers and another rule which is for the sake of the ruled; the former is despotic, the latter a free [constitutional] government” (1333a) [45]. Despotic rule is exercised over subjects who are “by nature slaves,” and constitutional rule over those who are “by nature free” (1255b) [46]. With regard to a despotic regime, although both slave and master may have coincident interests, a slave is ruled primarily for the master and only accidentally

for himself or herself (1278b). Compare this with a father's government of the family as an example of a constitutional rule, where the common good of the household comes first (1278b). To the extent that a despotic regime regards only the interests of rulers, it is "perverted" and "defective"; a constitutional rule, to the extent that it looks after the common interest in accordance with the principles of justice, is a "true" one (1279a) [47].

Both true and perverted regimes are, in turn, subject to further subdivisions, depending on the number of rulers. Among the true forms, we have kingships or monarchies, when there is but one ruler; aristocracies, when the best of men rule, always comparatively few; and polity, when the many rule (1279a–b) [48]. In all of these, it is the good of the state and the citizens that prevails. Among defective forms of government, we find tyrannies, when the ruler is one; oligarchies, when the rulers are few; and democracies, when the rulers are many (1279a–b). In tyrannies, the whole state is ruled with the sole interest of the autocrat in mind; in oligarchies, in accordance with the interests of the wealthy; and in democracies, with the interests of the poor.

The division into despotic and constitutional rules is arguably applicable to corporate governance. After all, some firms have been known to be run for strictly private interests, while others have had the wider common good in view. As a result, some companies may be said to be governed justly, with every one of the constituents receiving their due, while others unjustly, with most of the parties feeling short-changed. In addition, some corporations can be said to be despotically run, whenever the governed are treated virtually as slaves. Other firms are managed constitutionally, whenever the governed are regarded as free and equals vis-à-vis the leadership. As for the distinctions depending on the number of rulers, an instance of a corporate kingship would be a firm whose shareholding CEO is, at the same time, chairman of the board, while running the company in a way that fits the description of what is nowadays known as the "imperial CEO." One might argue that such concentration of power is not by itself objectionable, for it could certainly bring heightened effectiveness to the CEO position. Even so, the danger that power will be abused, so as to render the imperial CEO the commercial equivalent of a political tyrant, is not insignificant.

As for corporate aristocracies, these may be considered to be made up of those businesses whose governance lies in the hands of a few people, at least if they happen to be the most qualified professionally. In corporate culture of the Anglo-Saxon world, that would transpire if, for example, a perfectly "balanced" unitary board were in place, in which different powers and functions are equitably shared among a handful of shareholding executive directors and nonexecutive directors. An equivalent of this in the Central European tradition is the dual supervisory and management boards, so long obviously as the members of both boards held shares and exercised their executive functions with a view to the common good of the corporation. No doubt, the issue of determining, from among the various corporate constituents, those who are the "best" equipped to govern is subject to great controversy. Despite the problems in gaining consensus on the relevant personal traits, of this much we can be sure: the qualifier "best" refers to a limited group of

people whose claim to corporate governance does not rest on mere wealth. That would correspond to what, from an Aristotelian point of view, would have to be termed as a corporate oligarchy. The “best” specifies those who have both a genuine concern for the good of all as well as the competence to achieve it.

Finally, we can think of corporations where some sort of “constitutional rule” holds. Such firms would have to fulfill the requirement that “the many” participating in governance seek the good of all within the ambit of the corporation, not just their own good. For examples of this, we can look to cooperatives, where workers own stakes in the corporation and share in the profits. These owner-workers, though, would also have to be owner-manager-workers to satisfy Aristotle’s criteria. The most difficult thing, however, would be to find a corporate equivalent for what in states is called a democracy. This is because, in the first place, Aristotle equates the “the many” with the relatively poor, with those lacking capital to set up a business. Secondly, as is typical in a democracy, the general run of employees, the closest analog to Aristotle’s many, would be apt to pursue their own good instead of the common interest, which is often a recipe for organizational disaster. Neither should we confuse corporate democracy with just any manifestation of “shareholder activism.” The latter simply refers to a situation wherein small shareholders come together to exercise their voting rights in challenging managers and majority shareholders. Democratic corporate governance goes beyond these incidental activist challenges and is both broader and deeper not only in scale but also in scope.

Conclusion

This chapter takes Aristotle’s political thought as a guide to proper corporate governance practices. According to Aristotle, states are natural and perfect societies that properly exist for the purpose of promoting individual human flourishing. Business organizations and firms, on the other hand, are examples of artificial and imperfect societies. They are a kind of intermediate body, between families and states. The proper relationship between the state and intermediate bodies such as corporations is one of subsidiarity. This means that the state has the positive duty of helping intermediate bodies to contribute to the good life (eudaimonia) and the negative duty of refraining from absorbing their functions. For Aristotle, politics represents the ruling science by virtue of its object, happiness (eudaimonia), which is the highest good. Subordinate to politics is ethics, the science of virtue, and subordinate, in turn, to ethics is the economy, the science concerning “external” or “material goods.” From this, we infer that business organizations, insofar as they belong to the realm of the economy, are subject to ethics and ultimately to politics.

A key Aristotelian theme relevant to the corporation is that of citizenship. Of the two models of citizenships – liberal-minimalist and civic republican-communitarian – Aristotle’s position undoubtedly comes closer to the latter. Whereas the liberal-minimalist conception emphasizes the individual rights against the group and conceives the corporation as a nexus of contracts, civic republican-communitarian citizenship focuses on active participation in the common good. The stress here lies on the duties and obligations toward the group.

Thus, the demands on the individual of civic republican-communitarian citizenship in the corporation are more stringent. Only shareholding managers are able to fully meet the standard of active participation in corporate governance. Only in their case are we able to avoid the different forms of alienation and separation between ownership and control, capital and labor, principals and agents, as well as between the objective dimension and the subjective dimension of work.

Aristotle's classification of political regimes is also helpful in understanding the corporation. Applied to the latter, Aristotle's typology of regimes is constructed on the basis of whether the rulers of the corporation whether they aim at the common good, in which case the regime is constitutional, or serve the interests of the rulers, in which case the regime is despotic. His typology is also based on the number of rulers. As a result, we can speak of corporate monarchies and tyrannies, corporate aristocracies and oligarchies, and corporate polities and democracies. From the Aristotelian standpoint, corporate polities offer the most appealing standard for modern-day corporate governance.

Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Philosophical Theories of Management and Corporations](#)

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Edwin Hartman

Abstract

Aristotle claims that character develops over time as one acquires habits from parents and community, first through reward and punishment. One acquires a good character much as one may learn to play a musical instrument: initially, one may be under some pressure to practice, but eventually, one enjoys playing with skill and understanding. Aristotle claims that one is partly responsible for one's character, but he thereby raises the question whether one freely chooses one's character. A person of good character does choose freely, however, and is able to frame complex situations accurately. The full development of character requires rational reflection: Aristotle argues that dialectic, to which Rawls's reflective equilibrium bears some resemblance, generates principles that can guide us, though they do not serve as unexceptionable rules. A business ethics course, and in particular the case study method, may increase students' understanding of ethical principles and of the ways in which environmental influences may undermine ethical thought and language.

Introduction

Virtue ethicists, often following Aristotle's *Nicomachean Ethics*, claim that ethics is primarily about the sort of person you are. Aristotle argues that habitually acting generously is an important part of the process of becoming generous. The notion that ethics is primarily about virtue, rather than principles, is a minority opinion among moral philosophers today. The same is true of Aristotle's claim that we become

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virtuous by getting into the habit of acting virtuously. I shall argue that Aristotle's views are more sophisticated and plausible than they may seem at first glance, and they have important implications for ethical development and education.

Virtues and Character

If you are a virtuous person, you will act virtuously. If you are not, you may sometimes act as a virtuous person does, but not for the right reason, as when someone important is watching. Principles are secondary: though being generous makes you act generously, you can act on the principles on which a generous person acts and yet not be generous.

One reason for embracing virtue ethics is that the moral principles on which we can reach a consensus are usually vague, often in conflict, seldom unexceptionable, hence not reliably action-guiding. Anyone who has tried to bring moral principles to bear to convince people, especially businesspeople, that a certain course of action is right or wrong will know how little use principles are in controversial cases. Suppose, for example, that you try to use Kant's categorical imperative to make a decision. The maxim of your act – the principle on which it is based – must be able to be a universal law. But it is often not clear what the maxim is, whether there is only one maxim, whether a maxim is impermissibly ad hoc, or even whether it might be better for you to act on some maxim if and only if other people act on a different one. If you undertake to act on some utilitarian principle, as many economists seem to advocate, you will find situations in which you can maximize happiness by doing something unjust, such as executing an innocent but undesirable person. Or you may increase contentment over time by lowering people's expectations or curtailing their autonomy. There is also a problem about the nature of happiness: surely, it cannot be identified with preference satisfaction. A preference can be based on a false belief or an irrational whim; in such a case, its satisfaction may do one little good. Aristotle rightly distinguishes between rational and irrational desires.

So we may prefer to focus on good character and its component virtues – that is, on what sort of person to be, rather than what principles to follow.

We may define character as one's typical pattern of thought, desire, and action with respect to one's own and others' well-being and other major concerns and commitments; so says Kupperman, approximately [1]. According to Aristotle, we have certain enduring desires that can serve as premises of so-called practical syllogisms – in effect, as good reasons to act. These desires do involve our well-being and reflect our most important concerns and commitments. So a person of generous character acts generously, wants to do so, and thinks he/she has good reason to do so. If you are generous, you are and want to be motivated by thoughts like this: "Jones needs help, so I'll help him." You not only help your friends and donate to the needy: you are happy to be generous, ashamed when you act selfishly, disinclined to respect people who are selfish, and offended by selfish acts. So to be a person of truly generous character is to have and to want to have a settled disposition to help a friend

in need, and emotions to match. It entails wanting to be consistently motivated by a friend's need. (This is an example of a desire to have a desire, what Frankfurt [2] calls a second-order desire.) Some of our enduring desires, especially those concerning the sort of person we want to be, we call values. To have a value entails wanting to be motivated by certain kinds of desire. If you value generosity, for example, you want to be the sort of person who genuinely wants to help a friend in need. A virtuous person differs from a vicious one in taking different and better considerations as reasons for action.

Allowing that a good act is the sort of act that a virtuous person characteristically likes to do and does, what makes a trait a virtue, a component of a good character? Surely, not just that it is the sort of thing that a virtuous person would do. And in any case, why should you care about what is virtuous and act accordingly? In brief, for the moment, a life of virtue is a life that is appropriate to human beings, who are born with the capacity to become highly rational and sociable creatures. To the extent that you fulfill that potential, you will be a person of good character. It is one of Aristotle's primary goals in the *Nicomachean Ethics* to explore what it means to live a good life, with which one can be justifiably satisfied. Since human beings are sociable as well as rational creatures, living a life of good character largely overlaps with living the life that is best for oneself. In fact, says Aristotle, one's very survival is a matter of having a consistent character over time [3]. It should be clear that Aristotle differs from those, such as Kant, who regard ethics as essentially a constraint on our natural selfishness. Of course, it can be a constraint in some cases, for there are some things that a virtuous person does not do.

This is not egoism. The virtuous person is immediately motivated by others' interests and respects their rationality. But the virtuous person enjoys being the sort of person who is motivated in that way and has a good life by being rational and sociable in that sense. So argues LeBar [4], who gives a compelling account of the nature and importance of being (in Aristotelian language) rational and sociable. He is one of many philosophers who have recently argued that acting on reasons that take others' reasonableness into account is a necessary condition of living well. Yet there may be some acts that are immoral primarily because they harm the agent in a certain way: telling a harmless lie, for example.

Virtue involves appropriate feelings as well as desires, as Aristotle suggests in claiming that character is not just a matter of what you do but a matter of what you enjoy doing [5]. When you give me a generous gift, I ought not only to thank you but also to be actually grateful. Ethicists who rely on principles have a hard time saying why one ever has an obligation to be grateful, or to be a caring, loyal, honest person.

Those who believe that one has such an obligation must defend the view that one is morally responsible for one's feelings, which are not typically voluntary. Aristotle does not claim that you can make yourself feel grateful on a particular occasion, but he does believe that over time, you can become the sort of person who is grateful on appropriate occasions and has the right feelings and desires generally [6].

Aristotle is taking a position that is clearly different from utilitarianism, particularly the kind, embraced by many economists, that equates the good with desire fulfillment. Aristotle holds that not all desires are equally worthy of fulfillment, that

one can desire the wrong sort of thing, have the wrong sort of disposition, and even have the wrong sort of interest. Getting what one wants, whatever one wants, is no guarantee of a fulfilling life. No less important, Aristotle holds that one can decide what one shall want. Character formation is a matter of developing certain interests, cultivating certain desires, and welcoming certain emotions. And how should you decide which interests, desires, and emotions they should be? What sort of person should you become? The short answer is that the desires – and dispositions and emotions – of a good person are consistent with the rational and sociable nature of human beings. It is clear that character formation – in particular, forming the right habits – is crucial for Aristotle.

Emphasizing character and virtue does not undermine principles. On the contrary, to understand a virtue is to know what principles it generates. Hursthouse [7] uses the term “v-principle” to designate a principle that is definitive of some virtue. Consider generosity, for example. To be generous is, among other things, to be prepared to act on the principle that one should happily lend money to needy friends even if they may not be able to pay it back. But if you are a generous person, your immediate thought in deciding to lend the money to a friend is not that one ought to be generous under certain conditions but that *Jones needs help*. That need is your motivation – a reason for action, from your point of view. V-principles are limited in scope in a way in which Kantian or utilitarian principles are not, but they may be more useful in complex situations and will more likely enter into your deliberation.

Virtue ethics seems a bit vague; indeed, Aristotle repeatedly acknowledges that ethics is not an exact science. V-principles help clarify what generosity and other virtues require of us and why, but they do not make ethics exact. There are no v-principles that tell us exactly how needy Jones should be to qualify for a loan or how much money you ought to lend him. Aristotle offers some help, but no precision, in saying [8] that we should be generous and avoid the extremes of wastefulness on one hand and taking more than one’s share on the other. There are no algorithms that show us how to prioritize competing principles. If we did have (let us call them) metaprinciples governing the application of principles, then we would need metametaprinciples governing the application of the metaprinciples, and so on to infinity.

Most people, including many philosophers, are confident that a normal person can determine the right thing to do in simple cases and act accordingly. But how does the normal person acquire this ability and more sophisticated ones, and how are ethical judgments justified?

How We Begin to Acquire Character

Aristotle gives his account of character development in the early chapters of *NE II*. One acquires character: a typical human being is born with the capacity to be courageous or cowardly or otherwise virtuous or vicious, but does not naturally possess any virtue or vice. One acquires (say) bravery by acting as a brave person acts until it becomes a habit, much as one becomes a harpist by playing the harp.

One's decisions create one's character [9]. In learning a virtue, you learn to avoid excess and deficiency – for example, recklessness and cowardice. You cannot become a good person by studying ethics as a purely philosophical subject: that would be like trying to achieve health by listening to what a physician has to say about health and not acting accordingly [10].

But you can practice badly over a period of time and thus become a bad harpist; so a teacher is required. Similarly, you can set out to practice acting courageously but fall into the habit of acting in a foolhardy way. To avoid this, you need moral guidance, which typically comes from your community – plausibly enough, since Aristotle believes that the virtues characteristically contribute to one's community – or from your parents. Both may provide important role models. You should start doing the right things early in life and, thus, develop good habits and in due course become a good person.

Rules can play a part in your early development. Telling a child not to lie, for example, and enforcing the rule against lying will help get the child into the habit of telling the truth. The enforcement mechanisms are pleasure and pain – reward and punishment, as we might now say. It follows that the development of character requires that we learn to enjoy right actions and find wrong ones painful. This is consistent with Aristotle's view that good character is a matter of enjoying the right sort of thing. But adult education is, as we shall see, more than habituation: for those who have moved beyond reaction to reflection, education is about reasoning [11]. Later in life, we learn that there may be circumstances in which lying is appropriate, as when the dictator's secret police come looking for your friend. But we are likely to tell even a necessary lie with some feelings of repugnance, thanks to the habit of truth-telling with which we have become comfortable.

I have claimed that Aristotle takes feelings to be an important part of virtue. It is a person of good character who, needing to act rightly in the face of danger, willingly braves the danger and acts. But Aristotle demands more: the truly courageous person does not have to push aside any serious temptation to cut and run. Whatever one's feelings of fear, one faces the foe or takes the risk with alacrity. But as Aristotle shows in his discussion of *akrasia* (usually translated weakness of will or incontinence) in *NE VII*, one may truly want to be courageous and sincerely believe that a courageous person will join in this attack, but run the other way nevertheless. Or one may join the attack by overcoming an almost paralyzing fear and running towards the enemy while wishing it were not necessary to do so and hating every second of it. Or one may foolishly believe that there is nothing to fear. In these cases, one falls short of true courage. Preparation in the form of repeated drilling can help soldiers face the enemy bravely.

In a workplace, a strong corporate culture may support good or bad values, in part by habituating people to certain ways of acting. Role modeling can be effective, as can talking openly about corporate values, and about a corporate mission with which employees can identify. Rules too, including ethics codes, may enforce good habits, particularly if people understand their rationale. Employees' attitudes are important, but punishing free riders for violating the rules will encourage those with positive attitudes [12]. In some cases, coordination

will require rules. How people talk will affect how they frame situations, but role modeling is more effective than rules for encouraging certain kinds of speech. We are usually happy to emulate those that are widely admired, but we do not like speech codes.

Developing Character

Becoming virtuous is a little like learning to play the piano: it is a matter of practice, practice, practice. When you start learning and your mother makes you practice an hour a day, you are not good at it and you do not enjoy it very much. As time goes by, though, and you keep at it, your playing improves and you begin to enjoy it. Gradually, you learn that playing well is not just a matter of hitting the right notes: expression counts. If all goes well, in the end, you play superbly and get extraordinary pleasure from it. You also learn some of the technical aspects of playing, and you can say why Glenn Gould sounds better than Liberace. You may become a virtuoso.

Character develops in a similar way. A virtue is a result of habituation, Aristotle says, but practical reasoning comes in as well. Little Philip begins to learn courage by doing as his parents say in taking or avoiding risks and by following the examples of others. If he follows bad examples, his parents and others correct him. In this way, Philip gets into the habit of performing brave acts, on the whole, but even then, he is not fully courageous. For one thing, he makes telling mistakes. He cannot quite distinguish between courage and machismo, for example; so he sometimes takes inappropriate risks because his peers are doing so or because Andrea is watching. He is fairly good at doing and avoiding the sort of thing his parents have taught him to do and avoid, but he does not extrapolate very well from the paradigm cases. Even when Philip gets it right and takes the right amount of risk, he does so without thinking about (or having thought about) why what he has done is courageous. This is because he has no basis for distinguishing between, say, courage and recklessness; so he accepts the right amount of risk by luck, for no particular reason.

If he comes to know what courage is and what it requires, Philip can distinguish the courageous from the macho and is more likely to follow the former rather than the latter. The knowledge of what courage is entails knowing why courage is a good thing and recklessness and cowardice are not. Philip might come to believe that courage is the sort of thing that good soldiers have and the rest of us do not. Then, cowardice is a matter of being unsoldierly in certain ways. If he were to learn from the words of Socrates and Plato, as Aristotle did, then Philip might broaden his view and come to believe that courage is a matter of fearing what is truly dangerous and acting accordingly. But Aristotle does not believe that one can acquire the kind of knowledge of courage that a mathematician has of a circle.

Courage entails understanding the value of things. Risking your life to recover a toy that your child has tossed into a lion's den is reckless, not courageous. Risking your life to repel an armed invasion is courageous if you have good reason to value

the security of your country very highly, as you almost certainly do. To be fully courageous requires Philip to have a clear idea of what his values are and to be concerned about them – to be concerned, that is, about the kind of person he is. Knowing what courage is and why it is important to act courageously enables Philip to be confident in his belief about what is the courageous thing to do in a particular situation. Clearly, all this demands a high level of rationality.

Socrates was wrong in thinking that knowing what courage is is a necessary and sufficient condition of being courageous. He was probably also wrong in thinking that we can give a neat, unitary definition of courage or anything else. But being able to give some sort of account of what courage is, perhaps by stating certain v-principles, is surely a contribution to one's ability to act courageously. If Philip is rational, he acts courageously because he values courage and knows what it looks like in practice. To value courage is to want to be a courageous sort of person. If Philip wants to be courageous but is overcome by stark terror in the presence of danger, then his desires are incoherent, and he is irrational in that sense. To value courage without knowing what it looks like in practice is to value something without knowing what it is. It is not clear that that is even possible, and it is surely irrational in some way. Not to value courage at all is also irrational since courage is a necessary component of a good life.

Rationality of this sort is necessary for courage, according to Aristotle, but not sufficient. Aristotle holds that one has to have the appropriate emotions in support of one's reason. If Philip is really scared and would much rather not do this courageous thing but does it anyway while wishing he were not called upon to act courageously, then he is not truly courageous. Recall that according to Aristotle, character is a matter of what one enjoys doing, and virtuous people enjoy doing good things [5]. We should not interpret him as saying that if you are truly courageous, you will find that risking your life is a lot of fun, but there is satisfaction in doing one's duty. True virtue engages our emotions. We ought to be angry when wronged, determined when going into battle, grateful when done a favor, and cheerful when giving. Grudging action is not enough; you must genuinely want to do the right thing. Having a virtue is a matter of having certain desires and wanting to have these desires. You want to want to act courageously; you do not want to have a desire to run at the first sign of danger.

Acting out of inordinate fear is irrational if, as is likely, one is acting against one's values. I may have good reason to believe that in the long run, an investment in a randomly selected portfolio of a dozen stocks is superior to an investment in bonds, but I may nevertheless choose the latter because short-term fluctuations make me very nervous. In this and many other ways, we are all sometimes irrational. Our values and some of our desires are inconsistent: we want what we wish we did not want, sometimes because emotion plays an inappropriate role, and we act on desires that are inconsistent with our values and not on those we know we should be acting on.

Although rationality and clarity about what one is doing are very important, even the most virtuous and rational person sometimes finds it impossible to say precisely what is the right thing to do and why. Even if over time Philip becomes able to

understand that courage is a matter of fearing what is really dangerous, it is often impossible to estimate danger accurately, particularly as there is always the possibility of rationalization, under emotional pressure or otherwise. That is one reason why it is important to have the right emotions. True courage does not require that Philip be able to say precisely why he decided to perform one act rather than another in this situation. There is no algorithm for determining what is truly courageous – at least none that is useful at the time of decision. So it is with many crafts. A good comedian – one of Aristotle’s examples – cannot reduce humor to a series of propositions about what makes people laugh and what does not.

This indefiniteness, reminiscent of intuitionism, may seem to undermine the rationality of virtue. The reasons that the agent can give for what he/she does do not always suffice to show why he/she should not have done something else. In the area that lies beyond rules like “fear what is truly fearsome,” wise and good people follow their intuitions and emotions and usually satisfy themselves and others. But many people, not least businesspeople, think themselves wiser and better than they are and have far too much confidence in their own intuitions. Virtue is hard because people are irrational.

Free Will

People of strong character can resist the pressures in the environment; they have more autonomy than those who succumb against their better judgment or just do not recognize the pressures that influence them. Autonomy in this sense – the ability to form and act on intentions that are based on one’s well-considered values – is virtually equivalent to practical wisdom (*phronesis*, sometimes translated “prudence”), which is a necessary and sufficient condition of good character. But we do not withhold blame from the weak-willed: their lack of self-mastery, as Adam Smith called it, is a fault in them. Character development aims at something better. We are ethically obligated to acquire the right traits and desires and the ability to act on them.

There is a possible problem in Aristotle’s account, however. He holds that one’s family and community strongly influence character development. If you are fortunate, your parents and fellow citizens will offer you good role models, rewards and punishments, and ethical education. But what if you are not so fortunate? Is it your fault if your family and your community are bad and raise you accordingly? Aristotle claims that you are jointly responsible for your character [13], but it is hard to see how you can be responsible for your character at all if you cannot choose your family or your community.

Aristotle is well aware of factors that do or do not make actions involuntary and, thus, beyond the reach of praise or blame. That is the topic of *NE* III, especially Chaps. 1 and 46. Acting under physical compulsion is an example of an involuntary action. But if you do something wrong because you are drunk, it is your fault because you voluntarily drank to excess [14]. Ignorance of a certain kind may also excuse you: you may know that trespassing is wrong while not knowing that you have strayed onto my property. In this case, you know the universal but not the

particular. (Whether your ignorance is a legal excuse is another matter.) But if you know that selfishness is wrong but fail to see that what you are doing is selfish, or if you wish you were not selfish, you are responsible. Nor does any other sort of weakness of the will excuse you. Aristotle says that your choices form your character [15]. If you are responsible for your character in that way, you are also responsible for what appears to be good because your character determines what seems to you to be good [16]. If demanding more than your share seems to you simply a case of standing up for yourself, or if you are insensitive to some ethically salient aspect of a situation, there is a problem about your character.

Aristotle does not contemplate the determinist objection, familiar in recent centuries, that the decisions we make as we develop a character are themselves the products of unknown preexisting conditions beyond our control and knowledge. One likely reason for Aristotle's apparent failure to face this problem is that he does not embrace causal determinism generally. According to his science, things happen always or for the most part, he often says. There is teleology in nature. Necessity does not govern all events. There are accidents.

Yet it is arguable that Aristotle's position on free will is not far off the mark. It makes sense to think of free will as the ability to form and act rationally on intentions that are in turn based on rational values and desires. *Akrasia* is a good example of the absence of free will since your will is weak rather than free and effective. In a state of *akrasia*, you are influenced by inappropriate factors in your environment or by your own psychological pathologies not to act rationally, and the reasons you offer for your actions are rationalizations at best. On this account, free will is a matter of degree. So, arguably, are praise and blame, because one may be more or less susceptible to them. (But the appropriateness of praise and blame does not track precisely with its effectiveness, or with freedom of the will.) Paradoxical as it may seem, one may not be able to decide whether to have freedom of the will. One's ability to act freely can be a matter of luck in upbringing or in some other respect.

Aristotle does not believe that one is a passive victim of one's desires, however, and he is surely right. Elster [17] advocates "self-management" to keep inappropriate desires and emotions from diverting us from our most rational intentions. This may involve staying away from situations in which we are vulnerable, as well as what Elster and others call "adaptive preference formation": we cultivate certain desires that support us in acting according to our values. This presumably includes getting into the habit of acting as if one had certain preferences and certain reasons for action and eventually coming to have them. So we develop habits of desire and of reasons for action and not just habits of action. "Assume a virtue if you have it not," Hamlet urges Gertrude. He suggests that she refrain from having sex with Claudius that night, and the next, and over time it will become easier to abstain. "For use can almost change the stamp of nature" (see further Audi [18]).

If this account of free will is correct, then at least some claims about free will are empirical claims. Social psychologists do research that tells us whether and under what circumstances people act on rational deliberation. For managers and management theorists, those findings will have practical implications. If one is to influence

the behavior of employees and others, it is useful to know to what extent they do act on their values, as opposed to social pressure of some kind. But there are ethical issues as well (not that ethical and psychological issues can be easily distinguished). To motivate employees in ways that ignore or undermine their values – managing by fear, for example, or lies – is a form of manipulation that undermines the character of agent and victim alike.

Framing

Aristotle claims that if you are a person of good character, you perceive a situation rightly. Getting it wrong – failing to grasp the ethically essential features of the situation – is a sign that you have a character flaw. A good person will perceive that a certain act is courageous rather than foolhardy, generous rather than vainglorious, and will act accordingly [19]. Aristotle also claims [20] that one can go wrong in apprehending a situation under the wrong universal – that is to say, under a description that is not the most salient one, even if it is true. For example, one sees a piece of food as delicious rather than fattening.

Aristotle is talking about something like framing, which is easy to get wrong. Tversky and Kahneman [21] did an experiment in which people strongly preferred a state of affairs in which 25% of some population would survive some event to one in which 75% would die. This indicates serious irrationality; in particular, it suggests that people may make judgments and take actions in large part on how they describe a complex situation to themselves – differently according to which of two logically equivalent descriptions they attend to. The same is true of situations in which one act admits of different but compatible descriptions. You can frame eating a doughnut as a pleasurable experience or a fattening act, as it is both, but a person concerned with health should take the second way of framing rather than the first as salient. In some cases, the problem is that the agent acts on a description that is misleading or false. So it was not difficult for those in financial services to mischaracterize the risk that they were taking for their customers, by focusing on the profits to be made so long as things went well (see further Werhane [22]).

Your environment will influence the way you frame a situation: you will likely do it as others do it, as is the custom in your profession, as the client wishes, etc. (see Bazerman and Tenbrunsel [23]). One way to interpret the Milgram [24] experiment, for example, is to say most of the participants did not see themselves as causing pain to an innocent subject but instead as following directions and helping Dr. Milgram in his important work. Your self-image will be influential as well: you are likely to describe your failure to confront the boss as a piece of thoughtful diplomacy, whereas others will see it as self-serving and cowardly. Your interests will influence the framing as well: you tend to argue for the moral rightness of actions that favor you. This is a form of rationalization, in which one begins with a conclusion and then attends to the features of the situation that support one's conclusion – the opposite of the way in which Aristotle claimed that ethical

reasoning should go. No doubt something like this afflicted the Arthur Andersen accountants working for Enron. A person of good character, on the other hand, perceives the situation correctly – notices and evaluates aspects of the situation that are lost on people of lesser character.

That is not easy and not as common as we might suppose. Doris [25] and others have claimed on the basis of evidence from Tversky and Kahneman, Milgram, and others that there really is no such thing as character as we understand it: there is only the immediate environment. Perhaps, a safer inference would be that the character of many people is weak. But that is not universally true: a significant number of the participants in the Milgram experiment refused to cooperate beyond a certain point, presumably because they did have enough character to understand and assess what was really going on.

The experiment supports some points made earlier. A strong corporate culture may cause one to act against one's values, but a culture may support good values, in part by habituating people to certain ways of acting. Role modeling can be effective, as can talking openly about corporate values. Rules too, including ethics codes, may enforce good habits, particularly if people understand their rationale. In some cases, coordination will require rules. How people talk will affect how they frame situations, but for encouraging certain kinds of speech, role modeling is better than rules.

A similar kind of framing is at work in developing strategy; so says Rosenzweig [26]. Skilled strategists are aware of the data that analysts gather; they know many techniques for using the numbers in assessing the prospects of strategic business units. A good strategist can see threats and opportunities behind the numbers. It is a matter of knowing which factors are salient in a particular market – product quality, manufacturing cost, logistics, image, market share, and even quality of management. What is salient will differ from one market/product to another, and the ability to analyze a market involves knowing what is salient. There may be a rule of thumb that market share matters more in the fast food business than elsewhere, but that rule can be overridden by factors like bad management, and it applies better in East Chicago than in East Vassalboro. It normally takes years of experience – habituation, we might say – to develop a reliable ability to see what is salient. This is similar to the way in which virtuous people see ethically salient features of situations that improperly habituated people do not see or do not consider reasons for action.

But Rosenzweig goes further and claims that character is as important as analytical skill: a manager must resist the pressure to do what is safe and standard, what worked last time, and what will not expose him or her to criticism if things do not work out. A weakness of character can affect one's ability to understand a strategic opportunity, as when one looks at a promising opportunity and sees it as unpromising because a failed attempt to exploit it might expose one to ridicule.

Appropriate emotions assist correct framing. Aristotle notes that an irascible person will take offense too readily, whereas a phlegmatic person will not be angry even when anger is appropriate [27]. You should be grateful for kindnesses, angry if and only if you are seriously wronged, sympathetic towards the wretched, and glad to help your fellow citizens. The person of good character has an enjoyable life

doing good things, unless misfortune intervenes. From Aristotle to Robert H. Frank [28], philosophers and others have argued for having the right emotions and intuitions, rather than none at all. Without them you may be no more than a clever rationalizer, and at worst a sociopath. With the wrong ones, you may be moved to act wrongly. As in the case of gratitude, however, you cannot simply choose to have a certain emotion in a particular situation. Yet as Hamlet implies in speaking to Gertrude, you can sometimes cultivate emotional reactions over time, by habitually acting as though you were grateful or brave or delighted with your friend's success.

Through habit, we can develop good ways to act, to analyze, and even to feel. But there is reason to doubt that the ability to frame correctly, and reflective ability generally can always be produced entirely by habitual action.

Rational Reflection

On the Aristotelian view, the great question of ethics is: "What sort of person do I want to be?" The sort of person you are determines what your interests are; so the Aristotelian question is in effect asking: *What do you want your interests to be?* This question ought to be part of anyone's education. Do you want to be the sort of person who can enjoy only overwhelming financial success? Or the sort of person who enjoys a life in which work plays an important but not dominant role and in which that work offers challenge, variety, growth, association with interesting people, and compensation that lets you live comfortably? The question is not which one you prefer. It is a higher-order question about which one you would choose to prefer if you could make that choice. It suggests that one ought to have desires that are rational at least in the sense of being consistent with one another and with one's values over time, and actions that are consistent with one's desires; so Aristotle says [29]. He is echoed by psychologists like Chaiken, Giner-Sorolla, and Chen [30] and Haidt [31]. It is not a straightforward question about self-interest, but according to Belk [32] and Kasser and Ryan [33], cited in Haidt [34], most people who have strong personal connections are happier in the end than those who give the first. Humans are, after all, sociable creatures, says Aristotle; it is not contrary to our nature to be virtuous. According to Aristotle, virtue is a matter of identifying and acting on reasons that take into account our nature and what it implies about the good life.

Becoming the right kind of person and acting accordingly is extraordinarily difficult. Mere habituation will not suffice; the process requires rationality in working out what one ought to be and do. Aristotle's model of rationality is the practical syllogism, which begins with a statement of what one wants and ends with an action. This seems straightforward: I figure out what is good for me and act accordingly. But as Aristotle himself acknowledges in his acute discussion of weakness of the will [35], it just does not always work that way. As a host of social psychologists have argued, most people are not very good at determining what is good for them or, even if they succeed in that, at acting accordingly.

Aristotle has high standards for rationality. It is not just a matter of the efficiency with which a means leads to the satisfaction of some desire, as Hume and many mainstream economists hold. It is not only irrational to value health while eating and drinking to excess, smoking, and avoiding exercise; it is irrational not to value health at all. It is also irrational to have inconsistent values and desires, or to be unclear about what one's values are.

In a book that has influenced a generation of business ethicists, MacIntyre [36] argues that one of the characteristic problems of modern liberalism is that it takes rationality to be about means rather than ends and is therefore neutral on the value of ends. MacIntyre suggests what Aristotle asserts: that the ultimate end for any person is to live well, hence to be virtuous. As noted earlier, Aristotle believes that premises of certain syllogisms can be known without being seen to follow from other premises. So certain truths about the nature of human beings are knowable even if they are not conclusions of sound syllogisms, and it would be unreasonable to reject them. The idea that ethics can be read off from human nature has limited appeal nowadays, particularly to those who are less certain than is Aristotle about what is natural and what is not. The opposite extreme, the idea that living well is just whatever an individual decides it is, seems equally implausible. But we can set some limits on what could count as a good life by trying to imagine, for example, how impoverished our lives would be if we cared so little about one another that no person's well-being provided any other person with a reason for action.

Consider Smith, a woman who gets on well with people of other ethnic groups. When she was a child, her parents told her that all races are equal, and they policed her language as well as her actions. They saw to it that she became accustomed to hanging out in diverse company, and she now enjoys doing so. When she says that she judges people by the content of their character, she means it. She is in a better position morally than a person who has acquired no such habits, and who reacts to human differences in a way that reflects our hard-wired tendency to favor our in-group. But there are some racial issues that are not amenable to habit-formed intuitions: think of affirmative action and racial profiling, for example. She is able to think about these issues fair-mindedly, and that is good. But the best intentions and attitudes are not enough. She needs to reason about the issues and to reflect on her own thoughts and emotions. She therefore needs to bring to bear some principles that support her intuitions or raise difficulties about them.

All this requires adult education in what Aristotle calls dialectic, and to that we now turn.

Principles and Dialectic

Beyond a good upbringing and maturity, what more might be needed to make one virtuous? Consider Jones, who is well brought up and has good habits, including the habit of candor. If he chops down a cherry tree, he will readily admit it. If he is asked his opinion, he offers it accurately. But a problem about candor as a habit is that it is not always appropriate. If Mrs. Jones asks Jones whether she looks fat in a certain dress (as she does), he ought to answer with care. It pains him to lie, but

telling the truth will bring a different sort of pain. Jones must understand when and why something less than candor is called for in situations like this as well as others that are more serious. The mere habit of candor does not suffice.

Another problem is that most people do not have virtues that carry over from one sort of situation to another. Social psychologists have discovered that people are often just or conscientious or courageous or even talkative in some situations but not in others. Developing the habit of being conscientious about feeding one's dog does not necessarily contribute to the habit of being conscientious about showing up for work on time. As I have noted, some philosophers have inferred from these discoveries that there is no point in talking about character. Others, including Alzola [37], are not convinced.

It is axiomatic in the military that courage is the product of preparation. Soldiers are endlessly drilled so that they will readily act in combat as they have in training – that is, they will act courageously. But this sort of training will not make it any easier for them to face the dentist's drill or save the boss from a serious mistake by offering a frank warning. It may even make it harder to summon up the courage to refuse to fire on innocent civilians when ordered to do so. Sometimes, psychological traits cross moral lines in disturbing ways. Asch [38] discovered that subjects who were able to ignore peer (i.e., confederate) pressure and give accurate estimates of the comparative lengths of lines tested poorly on cooperativeness and congeniality.

It will be helpful for people with some good habits to consider why these habits are virtuous – that is, for example, what is involved in being just and how it contributes to a good life. From this consideration will emerge some broad principles concerning the nature and application of justice. Simply knowing these principles will not make the agent just, as Aristotle often says, though it will help. There will still be some difficulties in applying the principles in certain cases. As the previous section indicates, the agent will need a certain kind of perception to decide and act justly. So, for example, a just person not only will espouse equal pay for equal work but also will see a female colleague as a colleague rather than as, say, the lady manager.

This is not as easy as it looks, according to Bazerman and Tenbrunsel [23] and many other social psychologists. We convince ourselves that we are fair-minded people and that our judgments on women and others are made on the basis of pertinent evidence, however prejudiced they may actually be. But one can avoid even the most obvious inferences from one's espoused principles. Think of our enlightened Founding Fathers, who in the Declaration of Independence declared it self-evident that all men are created equal but later in that document charged King George with having encouraged slaves in America to revolt.

Fully developed character entails making good judgments on the basis of good principles. Aristotle holds that one arrives at acceptable judgments and principles by the process of dialectic. This process usually starts with common opinions, or at least the opinions of those widely regarded as wise people. The objective is to find as premises of practical syllogisms principles that are consistent with those opinions and explain them and eliminate the opinions that are wrong [39].

Aristotle's view, laid out in NE I 4, is that a good upbringing that inculcates good habits prepares one for consideration of definitions of the virtues. A person who is well brought up and has good habits is capable of making correct judgments about individual cases of virtue and vice and capable too of making somewhat more general judgments. Aristotle undertakes to go further, however, and illustrate how we can justify these judgments by coming to understand justificatory principles (*archai*), which typically take the form of definitions of virtues, which presumably generate v-principles. We collect common opinions, giving preference to those of wise people, and then look for principles that show why they are true and thus justify them – most of them, that is, since some will be shown to be false. When Aristotle speaks of beginnings, he sometimes has in mind what we would consider moral principles, while at other times he is thinking of particular moral judgments. The ambiguity is confusing, but he explicitly claims that a starting point of an argument that leads to a principle is called a beginning while the principle itself is a beginning in a different sense: it is the starting point of the justification of a particular judgment [40]. He sometimes distinguishes the two kinds of beginning by saying that particular judgments are known to us whereas the broader principles known by nature. So the broader principles justify some of our particular judgments and rule others out.

Here, we may think of Rawls's [41] reflective equilibrium: one compares one's principles with one's judgments about particular cases and adjusts both in an effort to make them consistent. Neither the principles nor the judgments are prior; each is subject to adjustment by reference to the other. If our principles are nothing more than the result of rationalizing the intuitions on which we act, then our intuitions are prior in an impermissible way and likely not very good. If we embrace principles that have no connection to our intuitions, they will have little credibility.

It seems unlikely that we shall ever reach a consensus on how to apply the principles on which we agree and not only because unforeseen situations will forever arise. Aristotle does not believe that the knowledge of ethical principles is unassailable, or their application always straightforward. He takes them seriously as a carpenter or a navigator [42] or a physician or a comedian [43] must take seriously the principles of carpentry or navigation or medicine or comedy, but not as the geometer takes seriously the principles of geometry [44]. The difference is important: we know just how to apply the principles of geometry to a geometry problem, even a problem in actual space and time.

However much skill one acquires in developing principles, the possibility and the temptation to rationalize – in particular, to assess situations according to one's own interests or prejudices or by social pressure – will often arise. Becoming able not to rationalize is more than a matter of rational skill: it requires habituation, good principles to refer to, and rare self-knowledge. Aristotle sets a high bar in saying that in ethics as elsewhere *nous* (understanding that is not purely inferential) should be part of our perception and that the intuitions of an ethical person will incorporate the right principles into a particular judgment.

In the case of wide reflective equilibrium, so called by Daniels [45], we bring in pertinent science and other facts as background. Irwin [46] finds in Aristotle what

he calls strong dialectic, which resembles wide reflective equilibrium in that it too incorporates not only pertinent facts but also Aristotle's analysis of them. Aristotle's metaphysical works supply him with a conception of substance (it is the individual essence) that derives from common opinion but is superior to it because it makes sense of it. It explains our ability to say, for example, that this thing is the same one we saw yesterday though it has changed a bit, and it avoids certain puzzles to which unaided common sense may be subject (e.g., you cannot step into the same river twice). The notion that a substance has these characteristics and that a human being is a substance underlies Aristotle's arguments in *De Anima*, his primary work on psychology.

When he comes to the *Nicomachean Ethics*, Aristotle can build on views about persons reached in *De Anima* in part by dialectic. His *Physics*, too, is in the background. He begins his ethical work with a certain view of humankind: rational, social, ensouled, and endowed with capacities that reflect those features. Not least important, humans have ends, which help determine the nature of the excellent life. So when Aristotle undertakes dialectical inquiry in the *Nicomachean Ethics* he is dealing not only from common opinion but also from his own views about human nature and the good life. These views do not radically undermine commonly held opinions but usually sharpen them.

So, for example, Aristotle dismisses the preference fulfillment conception of human good by saying [47] that no one would choose to live a life with the intellect of a child and a child's idea of fun. Why not? Can Aristotle be sure that any reader would agree with him? But Aristotle has already argued, with his metaphysical views in the background, that the excellent life is about actualizing one's human capacities. We may be inclined to agree with him; if so, our assent will probably have something to do with our own consideration of what makes a life worth living, based in part on our own views of the nature of humankind. We do not envy the happy idiot.

Similarly, when we consider business ethics dialectically, we have as background some notions of the purposes of business and of what is likely to achieve those purposes. Most business ethicists accept the increasingly widespread view that capitalism is a source of prosperity but that it must be restrained in some areas. Most of us believe that work and autonomy can be mutually reinforcing but often are not and sometimes cannot be. Most of us oppose discrimination on the basis of irrelevant personal attributes. Most of us can identify instances of bad behavior in organizations and in markets. It is important to have some guidelines for thinking more thoroughly about those issues; so there is a place for dialectic in a business ethics class. But that is not all that can be done to contribute to our students' character formation.

Teaching Character

Most who teach business ethics do not claim to improve their students' character. Typically, a course in business ethics gives students tools – usually principles – for making ethical decisions. Students familiar with cost-benefit analysis will grasp utilitarian theories without difficulty. They will understand justice and negative rights pretty well. Yet all this may not convince them that they have

good reasons to be ethical. So one might concede that a course in business ethics does not make a student ethical any more than a course in finance makes a student greedy.

Skepticism may be a problem as well. Insofar as moral philosophers claim that ethics is primarily about principles, they may be setting their students up for disappointment and cynicism. Students will realize, with or without the instructor's help, that applying different and sometimes competing moral principles to complex situations in the real world is difficult; in fact, it seldom settles a disputed case. They may even doubt the principles themselves, particularly if they have been encouraged to question the facile pieties with which they grew up. Making ethics entirely about principles does not imply that there is no fact of the matter, but it may leave that impression.

Ethics taught from a virtue perspective, on the other hand, ought to recommend itself to students. However thoroughly business students may be steeped in the language of maximization, most of them want to think of themselves as trustworthy and courageous and would object to being called snakes or wimps. They sense that there is something undesirable about being that kind of person. Virtue ethics in the Aristotelian tradition takes the position that ethics is about the good life, a life which one has good reason to live. To take virtue ethics seriously is to have a sense of why one should be ethical. In that respect, a course in virtue ethics will be more ambitious than a course that just considers principles. But Aristotle holds that becoming ethical is a long process, which begins in childhood. How much can be accomplished in one semester?

One criticism often made of business ethics courses, and other ethics courses as well, is that students have already learned ethics, for better or worse, before they get to kindergarten and that therefore a course will do them no good. Here, Aristotle would agree in part. Youngsters learn virtues as habits; then, at a certain point – long after kindergarten – they may reason about them. But Aristotle sees dialectic as picking up where habituation leaves off and turning a critical eye on our principles and intuitions and criticizing each with an eye on the other. This process of advanced character development is far from the revaluation of all values, in Nietzsche's words.

Successful dialectic requires a certain attitude towards dialectic itself – a determination to be guided by its conclusions rather than by one's prejudices. To understate, that is difficult. Aristotle says again and again that mathematical certainty is not available in ethics. In dialectic, in particular, one has the option to adjust one's individual judgments or one's principles, and there are no clear rules on when to do which. (Something like this can happen in science as well.) No doubt that is a matter of good character.

The case study method suits business ethics as it suits strategy. In a typical strategy course, the students read a text and then consider case studies that invite them to apply the strategic principles stated in the text. This is the beginning of the process of developing and refining their habitual ways of thinking about strategy. In real-life corporate strategy, there is much to be said for trusting the intuitions of an intelligent and experienced person with a good track record. When a manager

makes decisions about the strategies for certain business units, there will be some easy cases. Where the market is growing and the unit is dominant, reinvesting for growth is the obvious strategy. But there are nonobvious cases, as when a group of weak units can together achieve economies of scale or use slack resources, or when one's competitors have serious weaknesses. There is seldom any algorithm for inferring the correct strategy from the available numbers, but some managers are consistently better than others at knowing which description of a strategic situation is the salient one. Their record of success is evidence of their skill.

Case studies do much the same work in ethics. They exercise students' judgment about particular instances of principles, including situations in which justice and economic efficiency conflict. In looking at a case and considering what its salient features are, students are developing framing ability and thus practical wisdom and thus good character. Simply understanding that there are many ways in which a situation can be framed will improve students' ability to frame. There is no substitute for actual experience, in strategic management or in ethics. We have noted that Aristotle says [48] that one cannot achieve virtue just by philosophical argument, but one can help students make the most of their experience, including the experiences that they had early in life.

Business students are not naturally rapacious, nor is there any good reason to believe that their parents and communities have made them ethical predators, though they may have heard that success in business requires that of them. Most of them probably share the common opinions that are the basis of dialectic. On the whole, they are willing to cooperate with others who are cooperative and to trust others who are trustworthy. Most students have fairly good values, but those values will be tested in the workplace. There is some encouraging evidence that students can learn to recognize the warning signs of rationalization and ethical anesthesia, so that when they join an organization that is an ongoing Milgram experiment, there will be a spark of recognition. Beaman et al. [49] show that people taught about social pressure will be better able to resist it thereafter. Bazerman and Tenbrunsel [23] argue that instruction in these matters, which they call behavioral ethics, must be an essential component of any business ethics course. Lieberman [50] offers evidence that continued discussion in an appropriate environment – something like dialectic in a good *polis* – can make a positive difference. It can at least encourage students to speak in a language that includes ethical terms.

Aristotle does not claim that those who go through the process of dialectic will find principles that apply perfectly to complex situations. Ethics still is not geometry; that is itself a lesson worth learning. But a dialectical conversation may make one's principles clearer, though possibly somewhat more complicated and tentative. Certain of one's values – for example, those that shape one's view of appropriate gender roles – may have to give way. One will have better and more trustworthy intuitions where principles compete or are hard to apply. If all goes well, one's intuitions will lead one to apprehend the situation under the right principle rather than on a principle that social pressure forces on one, or one that rationalizes one's preferred behavior. There is some evidence that such

a conversation can have good results. It is striking that Haidt, who makes much of the strength of emotion and the moral importance of intuition, claims [51] that those with philosophical training are more likely than others to reason through ethical problems, rather than rationalize, and to act on the conclusions.

A course in strategy teaches students how to choose appropriate long-term objectives for an organization and then to marshal the necessary resources and organize them to move in that direction. A course in ethics can help students think about their own lives in that way. It can raise questions about why someone would want to pursue a certain sort of career or join a certain sort of firm. So it may help expose the reasons given as incoherent or based on self-ignorance or peer pressure.

The objective is to help students learn to answer the question “What shall I do?” in part by asking them to address the question “What shall I be?” Choosing the long-term objectives of one’s life is no easy task under any circumstances. One cannot readily choose which desires to have: many people are perfectly happy to be tempted by doughnuts, some by dishonesty. Students can, however, do some strategic preference formation by reflecting on what is most important to them and how to protect it and, then, trying to form the habit of acting accordingly. They can surely come to understand how facile and misguided it is to say that ethics is opposed to their interests, and how they can have something to say about what their interests will be.

If a strong organizational culture can affect one’s character, then the choice of an employer will in effect be choosing which desires to cultivate – a form of adaptive preference formation – hence making a significant choice about one’s character. Aristotle would not accept that choosing the right community is a sufficient condition of developing a good character, but he does believe that it is a necessary condition. If you go to work for a rapacious Wall Street firm that demands your whole life and pays you lavishly, you may well turn out to want to be an overworked shark. If you go to work for Google, it probably will not be long before you want to be and are the sort of person who enjoys working in a Google-like culture.

Students can also learn ways to create organizations that are hospitable to ethics. Some, most famously MacIntyre [52], argue that the profit motive will undermine virtuous activities in organizations, and among organizations as well. The intrinsic satisfactions of cooperation, trust, and creativity will be eliminated in favor of making money, which will become an end in itself, and employees the means to it. That is exactly what Aristotle says is the characteristic vice of money-makers [53]. MacIntyre seems to assume that managers are Weberian bureaucrats who treat employees as cogs in the machine. That is not always the case. Some managers are aware of the benefits of engendering trust, of permitting employees to be creative, of convincing them that they all have a stake in the success of the company, and of persuading them to support its mission rather than be free riders.

Aristotle claims that politics is the culmination of ethics [54]. The politician is responsible for creating a community that encourages virtue, which is a matter of rationality as well as of sociability. Aristotle is more optimistic than we are about the ability of politicians to improve our lives, and in part for that reason he gives them, rather than the family, primary responsibility for character development. But good communities are at least necessary conditions of virtuous citizenship, and for

many of the same reasons, well-designed organizations are necessary to make working life more hospitable to those who want to be fair, cooperative, trustworthy, productive, and creative in their work. That is a lesson that all students should learn.

We should not be altogether pragmatic in assessing a course in business ethics. Aristotle holds that the best life of all is one that is dominated by abstract thought. That is what one might expect a philosopher to say. But we encourage the study of the humanities in part because we think there is something to be said for rationality, subtlety, and creativity of thought for their own sake. A course in business ethics should aim at these goods, which MacIntyre would probably call internal goods, as well as at preparing students for a successful and honorable career in business. Business school need not be only a trade school.

Conclusion

Habituation alone will not make one virtuous, but good habits over many years can lay the basis for a virtuous life. At a certain point one becomes capable of thinking rationally about ethical issues and about what influences our ability to grasp and analyze ethical situations. Ethical education can have an important role at that point, but it will likely be successful only with those whose good habits make them amenable to rational thought about right and wrong.

Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Aristotle and Business: An Inescapable Tension](#)
- ▶ [Aristotle and the Corporation](#)
- ▶ [Fundamentals of Discourse Ethics](#)
- ▶ [The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?

5

Miguel Alzola

Abstract

In this chapter, I submit that virtue theory offers the best framework to account for our moral experience in life and in the context of business decision-making. And I argue against an empirically grounded objection to virtue theory, which holds that character traits of the sort postulated by virtue theorists do not exist because differences in social circumstances explain people's behavior rather than any character trait. The objection does not succeed because virtue is rarer than we may expect, because the experimental evidence does not support the claim that character lacks any explanatory power, because virtues cannot be merely reduced to behavioral dispositions, and because virtue theory is concerned with the whole span of a human life rather than isolated behavior.

Introduction

A few years ago, my father found a wallet full of cash in the street. No one was around when he found it. He badly needed the money. He immediately returned the wallet – with the money inside – to its owner. In time, in the small town where he lives with my mother, his actions were highly praised. The immensely grateful owner of the wallet published a small letter in the local newspaper to thank him for the deed. My father's friends prepared a large poster with the newspaper article to congratulate him. His coworkers told him that he did something admirable.

I am pretty sure my father is proud of his behavior now, as is the rest of our family. But I knew how badly he needed the money at the time. At one point,

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I asked him, simply: “Why?” He did not say anything about ownership or property rights nor, in his response, did he appeal to universal principles that everyone could rationally choose or that no one could reasonably reject. He did not think about the maxims that would make things go best [1]. Instead, he said that he did not even think about keeping the wallet, that he was merely doing the right thing, and that he was raised that way. He went on to say that keeping the wallet is not the kind of thing he would ever do and that maybe in the back of his mind, he was trying to serve as a role model for my siblings and myself.

Folk psychology and virtue theory would explain my father’s behavior by reference to his character traits: “He is an honest man.” Situationist psychologists and philosophers demur. Trait attributions, they argue, tend to be wildly incorrect, and we lack scientific evidence that people differ in character traits.

In this chapter, I shall suggest that virtue theory offers the best framework to account for my father’s behavior. And I shall argue against the standard interpretation of the experimental evidence according to which character traits of the sort postulated by virtue theorists do not exist. Hence, I shall defend the claim that it makes sense to continue making character attributions such as, say, the character trait of honesty to my father. And I shall conclude that such traits merit consideration as virtues, even if they are fragmentary.

This chapter is organized into five sections. In section “[Virtue, Ethics, and Psychological Realism](#)”, I shall briefly introduce and assess virtue theory and explain why normative ethical theories must meet the demands of psychological realism. In section “[Skepticism About Trait-Concepts](#)”, I shall present a large body of experimental literature on behavioral inconsistencies that has been interpreted as a challenge to the existence or the explanatory power of character traits. In section “[Skepticism About Situationism](#)”, I shall make a case against the empirically based challenge to virtue theory. In section “[Probabilistic Traits, Modular Traits, and Local Traits](#)”, I shall discuss some lessons to be learned from the experimental results on behavioral inconsistencies. Section “[Conclusion](#)” concludes.

Virtue, Ethics, and Psychological Realism

Virtue theory is already established as one of the four mainstream theories in normative ethics and in business ethics, along with consequentialism, Kantian ethics, and contractualism [2, 3]. Roughly, what makes virtue theory unique is its commitment to the primacy of *aretaic* terms in normative ethics.¹

In essence, virtue theory holds that basic judgments in ethics are judgments about character [4]. As a character-based ethical theory, it embodies two main theses. First, at least some judgments about the value of character traits are independent of judgments about the rightness or wrongness of actions. Second, the notion of virtue justifies the notion of right conduct in a sense that is explanatorily prior to the notion of right conduct: the moral value of an act cannot be assessed independently from the moral value of the person performing such an act

[5]. What is morally permissible, required, and prohibited is explained by reference to the states of character of the person in the context of a community in which moral standards are developed and learned in the same way the language is developed and learned. Both theses oppose the view that the value of character traits depends on the value of the conduct that these traits tend to produce and that the concept of right behavior is theoretically prior to the concept of virtue.

The justification of the virtues lies in the essential role of these character traits in human flourishing. Virtues are deemed as necessary and as constitutive elements of well-being. According to virtue theory, human flourishing is the primary concept in ethics, from which we derive the virtues and then proceed to infer the criteria of rightness.² An action is obligatory, virtue theorists believe, if and only if it is what an agent with a virtuous character would do under the circumstances. And an action is wrong if it is not what the person of good character would do given the situation. By constituting his flourishing, the virtues benefit its possessor as a human being. He flourishes only if he is virtuous because human nature is such that flourishing for humans requires us to live in a virtuous way.

Virtue theory is said to fare better than rival ethical systems because it provides a better fit with our moral experience in life and in the context of business decision-making. We do not judge nor make decisions on the basis of the abstract rules or universal principles postulated by Kantian theory, consequentialism, or contractualism. Rather, we act on the basis of whether our behavior fits well with what a person of good character, a role model, would do under the circumstances. Another advantage of virtue theory is that it fits very well with folk psychological explanations of human behavior. Ordinary people assign causes to events, such as behaviors and mental states, by making trait attributions; that is, we explain morally relevant behavior by reference to causes that are located within the actor, namely, the character traits he possesses.

One of the questions a theory of virtue needs to address is whether, as a matter of fact, we can live a good life. In the ancient world, classical forms of virtue ethics appealed to the best science available [6]. An ethical theory is weakened, I have argued elsewhere, if the best contemporary science conflicts with its claims or if it makes it too hard to see how they could be true [7]. Likewise, contemporary virtue ethics must look at patterns of flourishing particular to the species from the best contemporary science. Without a psychologically plausible story of how it is possible for rationally bounded creatures like us to be virtuous, virtue theory runs into trouble, enough to raise the question whether it can remain a genuine alternative to contending moral frameworks.

Moral theories too often neglect facts about human nature and about society to the point that, as a result, they become inadequate for our real needs. Thus, normative theories must take seriously the kind of persons we are, what we can actually achieve, and the types of cognitive and motivational structures we have [8]. In short, psychological facts matter. They impinge on normative ethics by setting constraints of feasibility. Goldman puts it nicely:

A moral code that is psychologically unrealizable by human beings, or just too demanding or difficult for people to satisfy, might be rejected on metaethical grounds. [9, p. 358]

A moral theory that is not realizable in principle by the creatures for whom it is intended places us under serious moral quandaries. And being unrealistic does not count in favor of a moral theory. One may even say that there might be enough grounds for rejecting a normative theory if it depicts a way of life that is psychologically unrealizable.

There is a fundamental determinant of what standards a moral theory can put forward, namely, the requirement of psychological realism [10, 11]. As Griffin puts it:

One cannot, in the sense relevant to obligation, meet a demand if the demand is beyond the capacity of the sort of people that, on other especially important grounds, we should want there to be. [11]

The requirement of psychological realism sets a number of constraints for any normative theory, including, of course, virtue theory.

In order for any theory of virtue to be psychologically realistic, the following three claims must be true: First, there must be character traits of the sort postulated by virtue theorists as virtues and vices. Second, human beings must differ in the character traits they possess. Third, people must be able to develop the sort of traits that constitute the virtues. If any of these claims do not hold, charges of lack of psychological realism will hold substance.

What are character traits of the sort postulated by virtue theorists as virtues? Roughly, a virtue is a deep-seated state of character that provides (normative) reasons for action together with appropriate motivations for choosing, feeling, desiring, and reacting well across a range of situations. The traits of character traditionally postulated as virtues have at least two fundamental features. First, they have a tendency to influence conduct. The virtues characteristically yield appropriate behavior. If someone is, say, honest, we assume that he has a character of a certain sort that makes us expect that he habitually behaves honestly (when he acts *in character*). Second, character traits are global in the sense that someone who possesses the trait X is inclined to behave in an X-like manner across a broad range of circumstances. Thus, so-called global traits entail predictions of cross-situational and cross-temporal behavioral consistency. Traits are manifested in virtuous behavior across a range of trait-relevant eliciting conditions and over time. Virtues are thus robust and stable character traits.

Skepticism About Trait Concepts

Regardless of the normative relevance of moral character, some psychologists and philosophers have expressed skepticism about the existence as well as the explanatory and predictive power of character traits of the sort postulated by virtue theorists. An empirically grounded objection to virtue theory has been recently articulated, which holds that virtues and vices do not really exist or, if they do, they are irrelevant to explanations and predictions of human behavior [12, 13]. According to this view, known as situationism, differences in social circumstances explain people's morally relevant behavior rather than any character trait.

Situationists point to a host of fascinating experimental studies suggesting that prosocial as well as destructive behavior fundamentally varies with slight situational variations which are morally irrelevant, such as whether the actor is in a hurry or has plenty of time [14], is in a good or a bad mood [15], or is observing an emergency in a group or alone [16]. Psychologists Ross and Nisbett summarize these findings by saying that:

manipulations of the immediate social situation can overwhelm in importance the type of individual differences in personal traits or dispositions that people normally think of as being determinative of social behavior. [17]

The situationist literature in social psychology, philosophy, and management research is well known by now, so I shall briefly summarize the major findings as they pertain to two of the major virtues in the literature.

Honesty, Compassion, and Experimental Social Psychology

The most widely cited experiment in the situationist literature concerning honesty was conducted during the 1920s by Hartshorne and May [18]. The studies were administered over a 6-year period. More than 8,000 children, ages 8–16, were examined on dozens of tests, all designed to measure honesty and gauge whether children’s tendencies to engage in honest behavior are explained by personal characteristics, such as certain character traits, as opposed to being the result of situational variations. Schoolchildren were placed in somewhat tempting situations in which they had opportunities to cheat. Specifically, they could cheat at school on tests by copying from a key, by adding more answers after time was called, by peeping, and by faking a solution to a puzzle. They could also cheat on homework and fake a record in athletic contests. They were also tested while playing party games: they could fake, peep, and steal. Additionally, they could steal money from a box used in a test. And they could lie about their conduct in general or their behavior on the aforesaid tests.

Hartshorne and May reported very low correlations between honest behavior in test-taking, property-returning, and truth-telling situations. But they found high correlations between honest behavior in any one of these areas and further honest behaviors in that same area. They concluded that honesty was largely situationally determined. For example, copying from an answer key correlated strongly with copying from a key on a similar test at a later day (0.70), but not with continuing to work on a speed test after the time is called (0.29). Hartshorne and May’s results – as well as the study of introversion and extroversion conducted by Newcomb [19] at a summer camp for troubled boys – are still widely cited in support of the claim that trait-relevant behavior is inconsistent and, specifically, that honest behavior is highly situation-specific.

Similar findings have been documented in the situationist literature on compassion. The following is a brief summary of how seemingly insignificant situational variations have a considerable impact on helping and destructive behavior.

Studies on mood effects apparently indicate that people are more likely to help when they find a coin in the coin return slot of public phones [15] and when they are exposed to pleasant aromas [20]. People who feel incidental gratitude are more trusting and receptive to advice than people in a neutral emotional state [21]. Moreover, some seasonal anomalies in stock returns are said to be caused by mood changes of investors due to lack of daylight [22] and temperature variations [23]. In a thorough review of the literature, Schwarz consolidates a large body of evidence corroborating the impact of moods and feelings on judgment and decision-making [24].

The extensive literature on bystander effects suggests that when one is alone, one is more likely to help someone in need than when other people are around. For instance, bystanders hearing an epileptic seizure over earphones were less likely to seek assistance for the victim when they believed other witnesses were present than when they believed they were by themselves [25]. More recently, Bargh, Chen, and Burrows [26] reported that activating knowledge structures – priming the elderly stereotype – can affect social perception and people’s subsequent behavior (participants who were primed with an elderly stereotype walked out of the laboratory significantly slower than participants in the neutral condition). Likewise, recent research suggests that merely imagining the presence of others can lead to less helping behavior on a subsequent unrelated task [27].

Another classic work related to compassion is the Good Samaritan experiment originally conducted by Darley and Batson in 1973, which showed that reading the biblical parable of the Good Samaritan did not affect the helping behavior of seminary students. The degree of hurry the subject is in apparently offers the best explanation of the subjects’ behavior. The seminarians who were told they were not in a hurry were six times more likely to help the confederate who appeared to be in distress than those in the rushed condition [14]. More recently, a study conducted by Tang and collaborators [28] on employee helping behavior fully supported the Good Samaritan effect across four cultures (American, Taiwanese, Polish, and Egyptian). And in a laboratory experiment, Wright et al. [29] found that people displayed the lowest helping behavior when they were assigned difficult tasks and paid on the basis of goal attainment.

The most widely cited experiment in social psychology is arguably Milgram’s studies on obedience to authority. Subjects were instructed by an authority figure (the experimenter) to administer “painful but not dangerous” electrical shocks in 15-V increments to a coparticipant (unbeknownst to the subjects, a confederate of the experimenter who received no shocks) for incorrect answers to word-matching questions. Milgram was concerned with the question of obedience (and disobedience) to these orders – that is, identifying the highest level of electrical shocks the subjects would administer before refusing to continue, even as the coparticipant was complaining about the pain and banging on the wall. In the first set of experiments, 65% of the subjects administered the highest voltage to the coparticipant [30]. Situational variations in the design of the experiment provide additional evidence: when subjects were free to choose the shock levels to

administer, only 3% delivered the maximum shock; when the experimenter was physically absent and gave his orders by phone, there was a 21% level of obedience; in a touch-proximity condition with the learner, obedience was 30%; and when the shocks were administered by a confederate while the subject performed subsidiary tasks, obedience climbed to 93%.³ The Milgram effect was also explored in the business setting. Brief et al. [31] found that people in a simulated corporation would obey orders to employ racist criteria when making personnel decisions. And Brief et al. [32] found effects of prejudice and business justifications by authority figures in discrimination against minorities in hiring situations.

Eliminativism About Traits

The situationist data are seemingly at odds with virtue theory: helping behavior is not accounted for by character variables, but instead is a function of irrelevant features in the environment – such as whether the would-be helper is in a hurry or has plenty of time or whether he is standing alone or finds himself standing with other persons in an emergency. And destructive behavior is also situation-specific rather than governed by robust and global traits of the sort postulated by virtue theorists. The main lesson, then, is that the explanatory and predictive power of character attributions is much weaker than we normally think.

There are at least two ways to articulate the situationist threat to virtue theory.

The stronger version of situationism, which is defended by Harman [33], challenges the reality of character and, hence, of virtue. In his words:

...there is no evidence that people differ in character traits. They differ in their situations and in their perceptions of their situations. They differ in their goals, strategies, neuroses, optimism, etc. But character traits do not explain what differences there are. [34, p. 329]

If there are no character traits, it follows that there are no virtues, and if there are no virtues, there can be no theories of virtue to be about.

A second, more qualified, version of situationism does not defend the claim that virtues do not exist. Rather, it holds that character attributions do not have much explanatory and predictive power. Indeed, situational factors that would seem to have little moral significance have more explanatory power than any personal qualities. This is taken as evidence that these personal qualities, if they exist at all, are too weak to qualify as virtues. This nuanced view was first articulated by Flanagan [10] and has been recently defended by Doris [12]. To put it more simply:

1. If behavior is governed by virtues, observation will reveal behavioral consistency.
2. Observation does not reveal behavioral consistency.
3. Behavior is not governed by virtues.

Doris' argument is valid by *modus tollens*.⁴ But I do not think it is a sound argument, for the reasons I shall provide in the next section of this chapter, which challenge the two premises.

Skepticism About Situationism

Situationism has, to be sure, made an important contribution by calling the attention of virtue theorists to a body of experimental findings in social psychology that was absent in the philosophical discussion of the virtues until a decade ago. Still, I submit, the situationist thesis remains unconvincing.

There are at least three ways of dealing with the empirical evidence presented in the previous section so as to develop a conception of virtue that is not seriously undermined by the situationist data. First, one may argue that the standard conception of virtue is untouched by this data. Second, one may contest the situationist interpretation of the experiments by showing that the empirical evidence does not support the conclusion that character does not exist or lacks predictive/explanatory power.⁵ Third, one may resist the conceptualization of character traits and virtue that is implicit in the situationist thesis. These three strategies can be combined, but the first is incompatible with the second one. The second and third moves entail challenging the two premises of Doris' argument, as presented in section "[Virtues As Ideals](#)".

Virtues as Ideals

This view offers the least accommodation to the situationist critique. It simply holds that the empirical findings reviewed in section "[Skepticism About Situationism](#)" fail to threaten the most promising version of virtue theory, according to which virtues are moral ideals that we should aim to attain even if we are unsuccessful. Appiah, among others, defends such a view:

Philosophical accounts of the character ideal of compassion, the conception of it as a virtue, need make no special assumption about how easy or widespread this deep disposition is. Acquiring virtue, Aristotle already knew, is hard; it is something that takes many years, and most people don't make it. (. . .) But difficult is not the same as impossible; and perhaps we can ascend the gradient of these virtues through aspiring to the full-fledged ideal. [36]

The fact that virtue is rare – assuming for the moment that it is a fact – the finding that people are imperfect and not fully virtuous is not a serious threat to virtue theory. Normative ethical theories, the argument goes, are untouched by any experimental evidence, as they are not committed to any behavioral prediction. True virtue is rare enough to leave a statistically significant footprint in psychological studies [6, 37, 38]. Furthermore, the question of whether anyone has a virtue is heavily laden with evaluation, and thus, the evaluation is not likely to be convincingly operationalized by psychologists.

While this view fundamentally captures the ancient view on the nature of virtue, it faces an important objection. Situationists may say that such a normative theory fails to meet the requirement of psychological realism introduced in section "[Virtue, Ethics, and Psychological Realism](#)." Yet, I do not think the objection holds. What would really count as an argument against virtue theory would be to deny that it is

possible to become virtuous, that is, to acquire, retain, and exercise good character traits. But such an empirical claim is not supported by the available evidence. A fair number of subjects, even if they were a minority, behaved according to virtue in the social psychological experiments previously discussed.⁶

Empirically Unsupported Eliminativism

Elsewhere I have offered six methodological objections to the situationist thesis, which indicate that the empirical data provide no reason to doubt the existence of character traits of the sort postulated by virtue ethicists as virtues or the influence of such traits on human behavior whatsoever [39].

The studies cited by the situationist involve, at least, six methodological problems.

First, the ecological validity of these studies is controversial: situational factors are less powerful in natural contexts than they are in experimental contexts, and experimental conditions may weaken dispositional traits [40]. Psychologists can create situations in which the influences of personality are minimized (e.g., under strong norm constraints) and other situations in which personality influences are maximized (e.g., in unstructured interactions). In addition, the gold standard for measuring causal effects, namely, random assignment of individuals to treatment and comparison, is not the way real life works in the context of organizations. Rather, “people select themselves into and out of real organizations” [41].

Second, subsequent variants of some of the experiments listed above show divergent results from those obtained in the original experiments. For instance, keeping the same experimental conditions of the mood effects studies, Blevins and Murphy [42] found that 43% of the subjects helped in spite of failing to find any coin in the phone booth (and 40% of the subjects who did find a coin in the return slot did not help the confederate). Moreover, in a study conducted in Rio de Janeiro, 100% of Brazilians helped retrieve a pen when a stranger dropped it, but when the study was replicated in the USA, only 31% of New Yorkers helped [43]. And Wuthnow [44] found that knowledge of the Good Samaritan parable was a strong predictor of compassionate behavior and caring. Furthermore, a sizable body of literature on dispositional effects in psychology and organizational scholarship challenges the bold situationist thesis (e.g., [45–49]).

Third, new and strong experimental conditions may have prevented the manifestation of virtue: under extreme circumstances, situations usually rule behavior, especially in the lab [50]. The right thing to do under a theory of virtue is what a person of good character would do under the circumstances. But what a person of good character would do in a psychology lab may not be obvious for the subjects of these experiments. Moreover, the evidence presented by situationism is tilted toward novel situations, in which the agent may not be able to practice his ethical sensibilities [51].

Fourth, one-shot studies are not sufficient to assess the state of character of a person. The experiments did not track the behavior of particular individuals across

situations on multiple occasions. In the experiments summarized above, psychologists typically observed any given individual only on one occasion in a particular situation. We cannot say much about the consistency of the subjects' behavior on the basis of one single observation. Correlations between character and behavior look higher when we compare aggregates of behavior in situations of one kind or another than when we compare single instances of behavior [52]. As Funder puts it, "one problem is that a single behavior is not always or perhaps even usually very informative about personality" [53]. Observation of individuals over a period of many years in numerous and diverse situations is needed in order to support any thesis about the predictive power of traits.

Fifth, while some of the experiments mentioned above entailed multiple tests on the same subjects – e.g., Hartshorne and May's honesty studies – they did not track their behavior as individuals, but instead inferred the behavior of individuals from the behavior of groups. The problem is that not all individuals in a group behave like the group average. For example, a coefficient of consistency of, say, 0.1 between lying and stealing is an average of all children that does not exclude there being some individuals for whom the correlation between the stealing and lying situations is much higher. Therefore, what are presented as correlations of behavioral consistency are merely relationships between the distributions of a population's behavior in different situations, but they do not reflect different behaviors performed by particular persons.

Sixth, at least some of the studies make inappropriate inferences between child behavior and adult behavior. The subjects of the honesty studies conducted by Hartshorne and May were schoolchildren. But it is inappropriate to infer adult behavior from child behavior, especially in the context of virtue theory, where a virtuous child is a contradiction in terms. Aristotle describes a youth as someone who "lacks experience of the actions in life, which are the subject and premises of our arguments" [54]. One expects children to be more impressionable, less committed to particular ideals of conduct, more likely to be swayed by passions, and less integrated than adults.

There are surely possible replies to these claims. Still, as I argue elsewhere, taken together, the six objections make a good empirically based case against both the stronger and the more qualified versions of situationism [39].

Irreducible Virtue

The virtues as operationalized by situationism have little to do with the traditional conceptualization of virtue. Situationists reduce virtue to behavioral dispositions to act in accordance with certain principles or rules of conduct. As Doris claims, "to attribute a character or personality trait is to say, among other things, that someone is disposed to behave in a certain way in certain eliciting conditions." But he does not say much about "the other things." Then, ascribing the character trait of honesty to my father means, simply, that he is disposed to behave as required by a duty of honesty. That includes, presumably, a disposition to return a lost wallet.

In contrast, virtue theorists highlight the importance of the inner dimension of character in defining virtue as “an inner quality of an agent and of his acts” [55]. Virtue theory is concerned with the whole span of a human life rather than with a particular action or a single decision.

Situationism suggests that X-like behavior is necessary for attributing character trait X. But X-like behavior is neither a necessary nor sufficient condition to grant virtue ascription. It is not necessary because a virtuous person may fail to act in an X-like manner and still be X.⁷ And it is not sufficient because a behavioral disposition is only part of a virtue. At a minimum, the agent must have a good motive for his behavior if his disposition is to count as a virtue.

It is at least possible that my father has a disposition to behave honestly only out of fear of the social consequences of dishonest behavior without caring at all about the owner of the wallet for his own sake. Alternatively, my father may have a disposition to return lost wallets only for the sake of impressing my mother or his friends. Or he may regularly take a pill that impairs his capacity for successful deception and so behave in a consistently honest way. Such a behavior – provided that it makes sense to call it honest behavior – does not count as a manifestation of a virtue because the action does not stem from the virtue of honesty.

Conversely, an agent may possess the virtue of gratitude without saying the words “thank you.” Or, an agent may lack the virtue of gratitude and still perform an act of gratitude. Such a poorly motivated disposition may still be socially useful when compared with the alternative of lacking any disposition to honest or grateful behavior. But few – except, perhaps, situationists – will think that it is excellent enough to be regarded as a virtue.

Virtue theorists have good reasons to resist a dispositional analysis of virtue. For if virtue is merely shorthand for “being disposed to right action” and if virtues are reduced to “character traits which produce good effects” [57], then the most characteristic feature of virtue theory, the primacy of character in normative ethics, is lost.

Virtue theory is best understood along the lines of a nonreductive account of virtue, by which virtues are states of character. To have good character entails the possession of a capacity to entertain higher-order thoughts about thoughts (beliefs) that enables the agent to reflect upon, and to change, his own beliefs and patterns of reasoning. A virtuous person will consider what highest-order desires, values, and beliefs should govern his life. Within limits, he will cultivate certain higher-order desires, such as the desire to overcome his fear of being embarrassed, and free himself from other higher-order desires, such as the desire to be vindictive. These desires being not merely to have or to lack certain first-order desires but desires that one or another of his first-order desires should be effective, in the sense of ordering action. He will also develop values and cultivate adherence to certain principles through reflection and disciplined habituation. Possessing a value entails wanting to possess certain kinds of desire. If my father values “honesty,” for example, that entails that he wants to be the sort of person who really desires to return the wallet he found in the street to its owner, even if the wallet is full of money that he desperately needs. He does not want to be just someone who merely acknowledges

a duty to return the wallet. To have a strong character is also a matter of cultivating the appropriate emotions: he feels good rather than angry about giving the wallet back.

In sum, moral character consists of higher-order desires and values, beliefs, framing capacities, emotions, and enduring patterns of behavior that have any bearing on moral matters. Although they are interrelated, these elements of character cannot be described solely in terms of each other. For an action to be from a state of virtue – i.e., for an action to be expressive of virtue – it must be expressive of appropriate inner states.

Two other problems arise in connection with the reductive account of virtue defended by situationism, namely, the problems of *akrasia* and the observational equivalence of traits.

First, the experimental data invoked by situationists do not capture a key distinction in the virtue theory literature between incontinence and vice and continence and virtue. Virtue and vice do not constitute an exhaustive classification of states of character. Rather, they mark the end points of a spectrum of kinds of states of character, namely, heroic virtue, ordinary virtue, continence, incontinence, vice, and brutishness [54]. The two states of interest here are continence (*enkrateia*) and weakness of will (*akrasia*). A weak-willed person lacks the unity of reason and feeling that characterizes the person of true virtue. Although he does recognize and aspire to the good, he has emotions and appetites that tempt him away from the good. And unlike the continent person, the weak-willed agent gives in to temptation, and, perhaps with remorse, he does what he knows to be wrong [58, 59]. By focusing only on overt behavior, the situationist experiments fail to provide enough information about the person's character. In observing behavior, the experimenter might readily confuse the continent person with the virtuous person and the incontinent person with the vicious person.

Second, a dispositional account of virtue has weak explanatory power when dealing with traits that are observationally equivalent. It is a truism that people have more than one character trait. Two different traits, thought of as internal individual differences, may come into conflict in a situation, such that we are unable to establish through observation which one of the two traits is expressed in the agent's behavior. As an illustration of observational equivalence, consider the virtues of compassion and honesty. Construed as behavioral dispositions, these virtues have observationally equivalent manifestations when responding to the Nazi official's request for the whereabouts of the Jews who happen to have hidden in your basement [60]. Then, experimental findings of behavioral inconsistency may be the result not of the absence of any trait underlying behavior but rather the result of different traits that are manifested in a situation. When a disposition is present together with a countervailing disposition, manifested in identical circumstances, behavior may appear inconsistent only if it is assessed with reference to that one trait. But it is wrong to automatically conclude that if behavior is not guided by the trait under investigation, then it is controlled by situational factors. Multiple traits may be relevant in a situation, and different traits may motivate different behavior.

Probabilistic Traits, Modular Traits, and Local Traits

As far as I know, my father has found a wallet in the street only once in 66 years. He may return another lost wallet he encounters in the future. We do not know. But he may not always tell the truth in the workplace, say, while conducting negotiations with the union. He might have cheated once in his business' tax declaration even if he never cheated in his personal declaration. And, alas, he is not a courageous person when facing physical danger. He is terrified anytime he has an appointment with the urologist. He probably possesses the character trait of benevolence, broadly construed, as much as he lacks the virtue of fortitude. He could be defined overall as a generous person, but he is definitively more generous with his family members than with strangers.

Now, in spite of the situationist evidence and these anecdotal observations, I argue that it makes sense to attribute these character traits to my father. Unlike the experimenter, I am not ascribing virtue concepts on the basis of one-shot observation but over 65 years of interaction with him. And I am not assessing his character based only on overt behavior. Being an honest person is to have certain values, first-order and higher-order desires, beliefs, emotions, and so on. Suppose that these character attributions are quite accurate. The interesting question, then, is whether these character traits I ascribe to my father are sufficiently robust or "global" to warrant their classification as virtues.

Indeed, situationists could be quite sympathetic to the characterization of my father I just provided. They may say that it does not run against an accurate interpretation of the experimental evidence. Yet, they would claim that according to traditional virtue theory, it does not make any sense to describe my father as a virtuous person. Situationists would be willing to endorse character attributions such as "generous-around-friends-and-family" or "mountain-climbing-courage." But they would reject any attribution of the sort of global traits postulated as virtues under virtue theory, such as generosity or honesty.

I hope I have already offered a convincing case against the empirically based challenge to virtue theory. But perhaps, the main lesson to be drawn from the empirical evidence on social psychology about behavioral inconsistency is not that virtues and character do not exist (or, if they do exist, that they lack any explanatory or predictive power). Perhaps, the lesson is that these local traits do manifest probabilistic or modular traits of character, traits that indeed qualify as virtues. Let me briefly elaborate this point and refer to the appropriate literature.

I have disputed the reduction of moral character to behavioral dispositions. But the behavioral dispositions that are part of a virtue, say honesty, may still amount to significant probabilities of honest behavior even if they do not predict with certainty. Situationism holds that the effect of personality on behavior is minimal because a correlation of 0.30 [61] or 0.40 [17] represents the upper limit to which one can predict human behavior from personality variables. But a correlation of 0.40 means that a prediction of behavior based on a personality trait score is likely to be accurate 70% of the time [62]. That is not that bad after all. To illustrate this

claim, Sabini and Silver compare personality coefficients with baseball stats. The difference between the batting average of one of the greatest hitters, Ted Williams (.344), and one of the weakest, Bob Uecker (.200), accounts for 0.33% and 1% of the variance in whether these particular batters will get a hit on a particular occasion. A correlation of 0.3 is between 3 and 27 times as predictive of particular instances of honesty and dishonesty as batting averages are predictive of whether someone will get a hit on a particular turn at bat. Yet, baseball fans know that the difference between Williams and Uecker is highly significant in the long run [63]. While aggregations of observations may not make it possible to predict individual behavior on every single occasion, it can help make reliable predictions about the average response that each person will have over a large number of future observations. And, more importantly, when the experimental statistics used by social psychologists are algebraically converted into correlations of the sort used by personality psychologists, the effects of situations on behavior are not any bigger, statistically, than the documented size of character traits on behavior [64]. For instance, in the Good Samaritan studies, whether the subject was in a hurry had a correlation of -0.38 with helping behavior. And in the Milgram's investigation, the correlation that reflects the size of the effect of victim isolation is 0.42.

The second point concerns the "modularity of virtue," that is, the idea that some behavioral dispositions can be seen as modules of virtues. The hypothesis of the modularity of morals was first introduced by Flanagan [10], who suggests that virtues such as honesty and generosity have different emotional bases, domains, and learning histories and thus possess characteristics of other skills that have been modeled modularly, such as language and the basic emotions. Behavioral dispositions are, according to one version of this thesis, autonomous competences, in the sense that a person develops and exercises a disposition to behave in a certain way in certain domains – for example, in the workplace or while playing games, as in Hartshorne and May studies – without being disposed to behave in the same way in other domains – for example, at home or while completing a school assignment. The argument is an Aristotelian one. Insofar as behavioral dispositions are part – and only part – of what a virtue is, there is no reason to expect a firefighter who fearlessly races into a burning house to save a child to be equally fearless in contemplating a trip to the dentist's office. These domain-specific behavioral dispositions, the argument goes, can be aggregated together, thereby forming "a more inclusive composite disposition" [65].

Now, can these composite behavioral dispositions be worthy enough to merit their classification as virtues? The answer to this question is highly contentious. For the sake of space, I will not examine it in this article. Suffice it to say that some virtue theorists defend the unity of virtue thesis – according to which anyone who has one of the virtues must have all of them because there is really no set of distinct and separate virtuous character traits, but rather at the bottom, only a single, unitary virtue [66–68]. Other virtue theorists regard the unity thesis as a platitude [69], argue that there is no necessary connections among the virtues [70], acknowledge that certain virtues are incompatible [71], and even consider that a "local"

cross-situationally consistent disposition may have positive moral value and so be part of a virtue [65].

Before concluding, I would like to emphasize again that virtues should not be reduced to behavioral dispositions. But such dispositions are still part of the virtues. Instead of dismissing the situationist data, we can entertain the possibility that these narrow – as opposed to global – behavioral dispositions, whose existence situationists are willing to acknowledge, can support fairly reliable predictions and, under certain conditions, be considered modules of virtues.

Conclusion

Virtue theory is often praised because it allegedly offers a realistic account of moral motivation and decision-making. And, it is claimed, it fits very well with the way we humans explain behavior, namely, through trait attributions. In this chapter, I have outlined the most recent empirically based challenge to virtue theory. In the end, Situationism attacks virtue theory on grounds of psychological realism.

I hope I have provided enough reasons to persuade the reader that virtue theory offers a plausible account for why people like my father, who happen to find a wallet on a sidewalk, try to locate the owner, while other people simply pocket the contents and throw the wallet away. And I hope I have articulated a convincing case against the situationist thesis. To reprise, situationism does not hold because (a) virtue is rare, (b) the experimental evidence does not support the claim that character traits of the sort postulated by virtue theorists do not exist (or lack any explanatory/predictive powers), (c) virtues are much more than just behavioral dispositions, and (d) virtue theory is concerned with the whole span of a human life rather than with a particular action; it is concerned with character and human activity rather than isolated behavior. Thus, I conclude, it makes sense to continue making character attributions of the sort advocated by virtue theorists.

Even the dispositional content of a virtue may support quite reliable predictions of the average response of a person in the long run and about the distribution of his responses. Even if they do not provide enough material to make an unflinching prediction, they have as much predictive power as some of the situational variables that are seen as the real causes of ethically relevant behavior.

Even if it were proven, which has not happened so far, that character traits are only narrow and local – as opposed to global and integrated – such narrowly constructed traits may retain a number of features that merit their consideration as moral virtues and vices. Those features concern the very functions of trait attribution, namely, descriptive, explanatory, and evaluative functions. Traits may be used to summarize the agent's past behavior and predict the agent's future behavior, to explain the agent's behavior with reference to the individual's character, and to provide evaluations of the agent, her activities, and practices in a way that the value of the virtues – and the disvalue of the vices – attaches directly to their possessor rather than its products.

Cross-References

- ▶ [Aristotle and the Corporation](#)
- ▶ [Aristotle on Character Formation](#)
- ▶ [Confucian Virtues and Business Ethics](#)
- ▶ [The Classic Social Contract Tradition](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [Virtue as a Model of Business Ethics](#)
- ▶ [Utilitarianism](#)

Notes

1. *Areteic* is derived from the ancient Greek word *arete*, usually translated as “excellence” or “virtue.” *Areteic* thus means “of or pertaining to virtue or excellence.”
2. What I describe in this section is the standard, Aristotelian, eudaimonistic version of virtue ethics. There are indeed other varieties of virtue ethics. Noneudaimonist versions of virtue ethics reject a strong relationship between virtue and eudaimonia. They include character or motive consequentialism, intuitionist theories of virtue, Kierkegaardian existential virtue ethics, and Nietzschean theories [71, 57].
3. The replication of the experiment was presumptively unavailable – for ethical reasons – until recently, when Jerry Burger, a psychology professor at Santa Clara University, managed to replicate the Milgram’s experiment with slight variations. The results simply confirm the original findings.
4. Alternatively, Doris proposes that the situationist argument can be articulated as abductive: the variousness of human behavior is best explained by reference to the hypothesis that virtues are rarely substantiated in human beings [35, p. 633].
5. One may also make a distinction between the explanatory and the predictive power of virtue attribution. While the question about predictive power is primarily an empirical question that can only be answered through observation, one may contend that the explanatory power of traits does not depend entirely on their predictive power.
6. Notice that I wrote “*according to* virtue” rather than “*from* virtue.” I shall discuss this distinction in section “[Irreducible Virtue](#).”
7. Virtue theorists disagree on the question of the relation between virtue and imperfection. Whether the person of good character may ever respond – behaviorally or attitudinally – in deficient ways, that is, less than the wholly virtuous way, is a controversial subject. Annas seems to disagree. She advocates the strongest view: “a courageous person must behave courageously in roughly *every* situation”: “It is hard to see how any situation could be excluded” [6, p. 33]. Aristotle is sometimes interpreted as providing a more realistic portrait of virtue: “Aristotle’s virtuous person may act wrongly in seven different ways while remaining virtuous” [56].

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Eugene Heath

Abstract

A theory of virtue may be employed as an ethics of business. This chapter offers an account of the foundational theory of Aristotle, followed by illustrations of how some particular virtues are relevant to commerce. A discussion of the moral thought of modern thinkers – David Hume, Adam Smith, Samuel Smiles, Robert Solomon, and Deirdre McCloskey – illuminates further the application of virtue to commerce. Despite challenges, virtue theory provides a plausible model for considering how one may conduct business in an ethical and successful manner.

Introduction

A theory of virtue provides a plausible moral framework in which one may conduct business and exchange. Such a theory provides, therefore, a plausible model for developing an ethics of business. The ethicist who relies upon a theory of virtue has a rich history of philosophical thought from which to draw, though theories of virtue with specifically commercial applications are fairly recent. Nonetheless, if a theory of virtue is applicable to how one is to live, then such a theory should also bear upon how one ought to create, produce, and exchange. To address how virtue may serve the business ethicist, it is important to consider first the nature of virtue, turning in the second section to the foundational ethics of Aristotle. The next two sections illustrate how virtue may be applied in commercial settings, focusing in the third on the contributions of Robert Solomon and in the fourth on specific virtues. A fifth section, devoted to [Modern Virtue](#), sets forth significant modern and contemporary

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treatments of virtue (including those of Adam Smith and Deirdre McCloskey). The final section takes up two critical questions regarding virtue and business ethics and notes some of the positive features of the theory.

Virtue as a Theory

Virtues are traits of character. To speak of a person's character is to consider something fundamental about the person. Less individualized than personality, the idea of character suggests an aspect of the self that carries normative import. Subject to moral praise or blame, character provides reliable indications of how one might act (or feel) in various circumstances and how such action (or feelings) might flow out of a settled tendency or disposition. The traits of character that are good and morally praiseworthy are virtues. Virtue incorporates dispositional, affective, and cognitive elements. In the most general sense, a virtue is a disposition to act (or to feel the appropriate emotion) in the right circumstances, to have a settled desire to act (or to feel) in this way for its own sake, and to know that such action (or feeling) is appropriate in these circumstances. Being virtuous may have beneficial effects for the virtuous agent and for others – or society. For example, the businessman who is honest may also be a successful businessman: His honesty may bring him material wealth, and it may serve his customers too. However, the businessman's honesty has its own value, regardless of these good effects.

Competing Accounts of the Moral Life

A normative account of virtue should articulate a theory of virtue (its conceptual nature and its relation to human psychology) and describe specific virtues. Some treatments emphasize both the theoretical elements and specific virtues, but many accounts focus on the latter. A fully developed model of virtue [1–3] offers an alternative to other normative ethical theories as well as to specific approaches to business ethics. Virtue theory emphasizes being rather than doing: Right actions arise only from persons who have good qualities of character. Other normative ethical theories focus on principles, rules, and actions: Utilitarianism counsels that one ought to act so that one's action has the greatest probability of maximizing utility; Kantianism maintains that one's actions should be universalizable (or that one should uphold principles of human autonomy and dignity); contractarianism demands that one adhere to the norms of a social or political contract; intuitionism lays out *prima facie* duties that have their own self-evident truth. Theories such as these focus primarily on what one ought to *do*, but a theory of virtue emphasizes what one ought to *be*.

A theory of virtue need not eschew any appeal to rules or principles, a fact made plain in Adam Smith's account ([4], III.5–6) and in several contemporary accounts ([5], p. 324; [6]). Smith describes how rules may serve as summaries of and guides to good conduct. Nonetheless, one may argue that principles of justice require an

articulation and justification distinct from virtue. A principled theory of justice may, therefore, complement a theory of virtue. Similarly, a theory of rules may rely on an account of virtue to explain how individuals are motivated to follow rules, apply principles, and act morally. These complicating elements are noted, though they are not developed further in this chapter.

Virtue theory also competes with other leading models of business ethics such as theories of social responsibility [7], stakeholding [8], and social contract [9]. These competing theories, understood as normative rather than empirical, are invoked typically to show how the practices of commerce and the life of corporations can be rendered ethical. To assert that a theory of virtue offers an alternative to these theories is not to say that virtue is incompatible with or otherwise precludes these theories as complementary. However, virtue theory offers a perspective distinct from these and provides, thereby, a foundation for a normative business ethics [5, 6, 10–14].

Before turning to these discussions, it is important to respond to a major objection to virtue theory. This objection, more recently termed “the separation thesis” [15], comes in various guises, but its major claim is that business is distinct from other areas of life: Anyone engaged in market exchange must be pursuing self-interest. If self-interest is the motive of commercial interaction, then according to this view, there is no place for virtuous behavior for virtue is incompatible with self-interest. This egoistic challenge is sometimes given credence because of its employment, by economists, in theoretical economic models. Of course, the conception of self-interest utilized in these models ranges from pure self-interest to nothing more than rational consistency among one’s revealed preferences ([16], p. 29) Indeed, an economic model, especially one purporting to describe some state of “perfect competition,” is hardly meant to be descriptively true. Even if agents act merely to achieve their highest value or strongest interest, that would not imply that agents were acting merely out of *self-interest*. After all, an agent’s strongest interest might be social, religious, or political, or it might have something to do with caring for one’s family. As Philip Wicksteed argued [17], we should think of economic exchanges in terms of a variety of motives, some of which might be selfish, or just self-interested, and others of which might be benevolent and other-regarding. However, what occurs in the exchange – regardless of motive – is that each party is “non-tuistic,” thinking less about the good of the other trader than of what he or she wants to do with the results of the trade. Each party is seeking, in general, the best deal that he or she can get. Business exchange is not gift exchange (nor is it a coerced exchange), but there is nothing essentially egoistic in the trade itself. Therefore, the claim that commerce is necessarily self-interested does not hold true, and it cannot, therefore, be used as an objection to a theory of virtue in business ethics.

Aristotle on Virtue

The first systematic theory of morals [18], Aristotle’s *Nicomachean Ethics* offers an account of the conceptual and psychological components of virtue, as well as a specific list or catalog of virtues. Aristotle links virtue to an account of the good

life – what it is to live well. His understanding of a life lived well requires a knowledge of human nature and a theory of the human good. The particular virtues that Aristotle sets forth include traits important to any human being, such as generosity, courage, and self-control. However, Aristotle does not seem to think that all persons could attain full virtue. He also doubts whether those engaged in trade or in money lending could be virtuous individuals. So it remains to be considered whether Aristotle's theory is compatible with commerce or whether a variant of that theory can provide a moral foundation for business.

Virtue, the Good, and Happiness

Aristotle's theory is often characterized as teleological: The sort of person one should be – how one should live – is determined by the good (end, purpose) or *telos* of the human being. This *telos* is natural and objective, not conventional or social. The *Nicomachean Ethics* commences with a conception of human action: Our intentional acts aim at some end or good, but these may come in either of two varieties. The end of an action may be a product or outcome of the action. For example, the end of baking is the production of bread. Or the good may lie within the action itself, as when one takes a walk merely to enjoy the stroll, not to lose weight, deliver a letter, or clear a path.

Given that we engage in various activities, each with some end or purpose, there must be some overarching good desired for its own sake and toward which all other ends are directed. This ultimate end, says Aristotle, is *eudaimonia*, typically translated as happiness, but more literally "living well." Such an ultimate end is no temporary state, nor does it consist in pleasure, contentment, honor, or wealth. To provide a fuller understanding of the content of happiness, Aristotle turns to human nature – in particular, the special characteristic, or function, of the human being. The characteristic of the human being is reason, an active life of reason. And the qualities that render possible the excellent performance of reason are the virtues. These virtues enable one to live a life characteristic of the human.

The virtues divide into two classes, virtues of character and virtues of intellect. Complete virtue involves the virtues of character, such as generosity, temperance, courage, as well as practical wisdom, an intellectual virtue concerned with moral decision-making. Whereas intellectual virtue requires teaching and the honing of one's deliberative capacities, the acquisition of virtues of character demands habituation. One must be habituated to feel, respond, and act in certain ways and at certain times. The properly habituated person, having acquired moral virtue, comes to see that what he or she is to do is precisely what must be done, even if its performance is not subsumable under a formula or description. In his account of the two species of virtue, Aristotle is drawing on two aspects of the moral life: habit and reflection. Habit, arising through example, suggestion, and precept, is embedded within the community, just as reflection, in the form of practical wisdom, also draws from the particulars of experience. Although one can distinguish these, they are not so much separable as complementary.

The Nature of Virtuous Action

The virtues give rise to virtuous conduct. But under what conditions is an act virtuous? Genuine virtue has cognitive, intentional, dispositional, and affective components. For an action to be genuinely virtuous, the agent must (1) *know* that the act is of a certain kind. For example, the temperate person refuses a drink because, even though he recognizes that the drink would be pleasurable, the circumstances are not appropriate for drinking. Nonetheless, to know that an act is of a certain kind does not entail that one chooses the act because it is of that kind. Therefore, the virtuous agent must (2) choose virtuous acts “for their own sake” ([18], 1105a33). For example, one should give generously because generosity is what is called for, not because it will be applauded. The businessperson should speak honestly to a customer, not because “honesty is the best policy,” but because honesty is the right course of action. Aristotle also revisits the dispositional element of virtue, asserting that a virtuous act must (3) “proceed from a firm and unchangeable character” ([18], 1105a34). The act must express or manifest a deep feature of the self with which one identifies. Indeed, the relation of the act to character suggests a fourth, affective condition: (4) The virtuous act must involve pleasure. The virtuous person finds pleasure in being virtuous. The act itself need not be pleasant or enjoyable, but the fact that the act is virtuous entails that one desires to do it and its omission would be painful. For example, even though the circumstances that call for courage are not, typically, pleasant, the courageous person finds it painful not to demonstrate courage at the right time and place.

As a state of character Aristotle describes virtue as a *mean*, an appropriate state in relation to one’s emotions or actions. The mean, typically falling between an excess and deficiency of emotion or action, is relative to the agent and the agent’s circumstances. The appeal to relativity does not imply ethical relativism, for Aristotle maintains that there is an objectively right (or wrong) response. But the mean response is necessarily concerned with one’s affective or behavioral response to a particular situation. Aristotle offers this summary definition of virtue:

Virtue, then is a state of character concerned with choice, lying in a mean, i.e., the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it. ([18], 1107a)

Moral choice requires knowledge or wisdom. As a mean state, virtue involves the agent having the right emotion or performing the right action: at the right moment, for the right length of time, in the right circumstances, to or for the right persons, in the right manner, to the right degree, and for the right purpose. These seven elements of virtuous action reveal the particulars of moral decision-making. The virtuous person must see, attend, discriminate, and judge the particulars of moral choice. It cannot be assumed that there is a formula, principle, or rule by which one can specify what one must do in a particular situation. Reason must guide and control both affect and appetite so that one hits the mean. In difficult cases, this may require deliberation and reflection. One must perceive the particulars, weigh the various goods that are at stake, and react in the right manner and

degree. Aristotle's appeal to practical wisdom does not mean that the virtuous are constantly engaged in reasoning. In many instances, the virtuous person will know what to do almost instantly. But if asked, the practically wise person could provide a reasoned explanation for his or her response.

Aristotle's Catalog of Virtues

Aristotle delineates a set of virtues that includes such universal traits as generosity, self-control, justice, and courage, along with magnificence (giving to public purposes), honor, good temper, friendliness, honesty, and wit, as well as qualities such as magnanimity (or high-mindedness) that are not universally accepted. For each virtue, there are specific objects and circumstances – the “concern” and the “context” ([14], pp. 96–97). For example, courage is focused on one's relation to fear; generosity is concerned with the giving and taking of material wealth. These virtues are praiseworthy precisely because they are concerned with the right sort of things – each is a part of living well. So the courageous person is not fearful of just anything (a mouse, say, or distant thunder) but is, for Aristotle, concerned with the possibility of death on the battlefield in fighting for a good cause. The courageous person will fear death but not in excess, and this fear will be endured in the right manner and for the right end. The virtue of generosity is concerned with material goods, with the appropriate use of wealth. An excess of giving is extravagance, a deficiency stinginess. The virtue of self-control is concerned with physical pleasures of touch and taste such as those of sex, food, and drink. Self-control is a pivotal virtue for Aristotle because unless one can control one's pleasures then one will not be able to act and feel in the appropriate ways. Instead of finding pleasure in virtue, one will be distracted by the pleasures of the palate or body. The person who cannot control pleasure is morally weak: This person knows what ought to be done but fails to do it because another pleasure beckons.

Courage, generosity, and self-control are three traditional and universal virtues. But Aristotle describes other virtues, not all of which we may find as easy to accept. Some of these other virtues manifest an aristocratic context and concern. For example, the virtue of magnificence is a trait that only some portion of society might have, for only a few have the wherewithal to give large amounts to public purposes. High-mindedness, or greatness of soul, is another virtue that may apply only to some. The high-minded person is concerned with and demands proper honor, but “honour from casual people and on trifling grounds he will utterly despise” ([18], 1124a11–12). A virtue that Aristotle regards as a crowning quality would, centuries later, come to be seen as improper. High-mindedness is hardly compatible with humility, which would emerge as one of the Christian virtues and an antidote to natural pride and selfishness. Indeed, some have argued that humility is foundational for good conduct precisely because its presence ensures an effacement of self that allows one to see the world as it is: “The humble man, because he sees himself as nothing, can see other things as they are” ([19], p. 101).

Aristotle's list suggests that virtues not only apply to distinct spheres of activities but may be conditioned by social circumstances. Alasdair MacIntyre suggests that Aristotle has provided "a theory whose subject-matter is that pre-philosophical theory already implicit in and pre-supposed by the best contemporary practice of the virtues" ([20], p. 148). Differing circumstances and beliefs may call forth distinct virtues (or distinct instantiations of virtues), so Aristotle's virtues may reflect some of the economic and social conditions of his day. Nonetheless, Aristotle's catalog includes virtues of comprehensive and universal appeal: justice, courage, generosity, honesty, and practical wisdom. Such universal virtues may have distinct particular instantiations or tokens across ages or societies. Living well in one type of society may require particular manifestations of generosity distinct from the examples of generosity found in other places or ages. Courage in a warrior society may differ from that in a commercial society. The relative priority of one virtue over another may be distinct, depending on social conditions or beliefs.

The distinction between general and socially conditioned virtues suggests another demarcation. Some virtues will have role-specific instantiations. Within any society, organization, or institution, there will be positions with specific responsibilities. The manager of a small business has distinct obligations from those of the clerk. The manager must make prudent decisions for the firm, the clerk no. The chief executive officer of a corporation must interact with a variety of persons, exhibiting friendliness and honesty, as well as courage and generosity. A manager, owner, or executive may be required to display leadership, which, though itself not a virtue, may demand particular virtues (e.g., courage, justice, practical wisdom) without which leadership would be impossible.

Taking Stock

Aristotle's account of the virtues yields significant insights. That virtue is a disposition of character with both affective and cognitive components is a central tenet of almost any theory of virtue. That virtues involve an application of reason that is more perceptive than purely calculative reminds us of the importance of moral vision. That the moral life contains elements of the traditional and habitual is a thesis that is too easily dismissed in an age, such as ours, that clamors after abstract ideals.

Any appeal to virtue must take into account Aristotle's theory. Yet his theory has distinct elements, and these may be logically separable: One may accept some elements and reject others. Aristotle holds, as noted above, that virtues, in general, are mean states between excess and defect. This characterization offers a helpful portrait of virtue, but it does not, as Aristotle himself recognizes, cover all of the virtues. Moreover, although the ideas of excess and deficiency may prove to be helpful criteria in making a choice, neither excess, defect, nor mean may reveal a reason that one particular state is appropriate.

Second, Aristotle's moral psychology of virtue – as a disposition of affect and reason, connected with an ultimate good – does not *entail* the particular set of virtues that Aristotle recounts. The chief virtues – justice, courage, self-control, honesty, and generosity – may be accepted as universal traits. Other virtues, such as high-mindedness, honor, or wit do not share the same universality, even as they have their interest. If one rejects one of these virtues, then one is also rejecting Aristotle's doctrine of the unity of virtue: To have one virtue is to have all the virtues ([18], 1144b33–35). It is not unreasonable to set this doctrine aside, if only by counterexample: Some genuinely honest persons also lack courage.

For Aristotle, the moral life is to be understood in terms of a single end or purpose, with each intentional action contributing to that purpose. The end is understood in terms of human nature, a biological basis for an objective good. However, as a third consideration, one may accept the teleological element but reject any biological basis in human nature. If one does this, then one must find some other basis on which to ground the objectivity of virtue. On the other hand, one may challenge the idea that there is single good toward which all things aim. In contrast, there may be plural and incommensurable goods. Or the traits of virtue may be good in themselves and not otherwise related to a single *telos*. Virtuous persons may remain virtuous even as they are acting without a specific goal or purpose but merely responding to circumstances ([21], p. 758).

Finally, it is not clear how one should interpret Aristotle's *telos*. The claim that our moral lives have an end must be considered in light of Aristotle's distinction between ends intrinsic to an activity and ends that exist apart from the activity. The end of virtue is happiness, but happiness is itself a manner of being, not some state, goal, or terminating point. It is not so much that one sets about each morning to be generous, courageous, and just, as it is that one seeks to do other things – to walk the dog, interview an employee, issue a contract to a new supplier, speak with an unhappy client, enjoy a dinner with the neighbors, and so on. The virtuous person has many aims, but his conduct is informed and conditioned by his humanity. On this interpretation, the presence of virtue will preclude some activities and engagements, suggest others, and more generally influence and modify one's actions. If this schematic interpretation is plausible, then the teleological element in Aristotle's ethics may prove less strong than often thought.

Aristotelian Virtue and Commerce

One need not accept the Aristotelian theory in its totality in order to appreciate its insight, value, and influence. Can Aristotle's theory function as a basis for business ethics? Is the theory compatible with commerce? It is well known that Aristotle expressed theoretical misgivings about some aspects of exchange, even as he recognized (contrary to Plato) the significance of property for leading a good life. The economy of ancient Greece did not incorporate the sort of widespread markets that we have today. Aristotle's own treatment of value and exchange, in both the *Nicomachean Ethics* and the *Politics*, suggests that some kinds of trade (including charging interest

on loans), in which the parties seek less to acquire genuine wealth than to make money, are not fully virtuous. Aristotle's thoughts on exchange do not, however, settle the question of whether his theory of virtue is compatible with commerce as we understand it today. Neither Aristotle's psychological account of virtue nor its conceptual bases seem to render his theory incompatible with a market social order in which there is private property and the voluntary exchange of goods and services.

Solomon's Aristotelian Virtue

Within business ethics, the most prominent application of Aristotelian virtue to business has been in the work of Robert C. Solomon. Solomon regrets that so much of business ethics focuses on policy, thereby omitting "an adequate sense of personal values and integrity" ([13], p. 111; see also, [22], p. xi). For Solomon, an Aristotelian understanding of business ethics commences with the idea that virtues of character are embedded within both the social community and the smaller community of a business. Pointing out a list of qualities or virtues – moral and nonmoral – relevant to business ([14], pp. 96–141), Solomon identifies honesty, fairness, and trustworthiness as basic business virtues. He treats fairness, for example, as related to mutual agreement, "a willingness to exchange value for value" ([14], p. 114). Within a firm, fairness demands that all receive their due, whether it comes via salary, promotion, or commendation. Honesty, he writes, is "the first virtue of business life," adding that honesty need not entail "full disclosure" and that the differences between honesty and dishonesty are "two extremes in a rich colorful spectrum" ([14], p. 118). For Solomon, there are also particular business virtues, including "toughness" and "friendliness," each particularly suitable to commerce.

According to Solomon, the communities of society and of business have their own purposes. Drawing a distinction between the goals and purpose of business, Solomon asserts that one, but not the only, goal for business could be profit making. However, the *purpose* of business, the "reason for engaging in the practice" ([13], pp. 119–20), is more fundamental than a particular goal. He characterizes the purpose as, "the satisfaction of public demand, the introduction of innovative, more efficient, more cost-effective products to fill a need and the optimal on-going relation between producer and consumer" ([13], p. 20).

Solomon's energetic and insightful defense of virtue is valuable. The purpose(s) he sets forth, an overarching *telos* for business as a general practice, seeks to identify what business *really* is. However, the justification for stipulating this general purpose is unclear. It is true that business must be distinguished from other forms of organization – the nonprofit, the governmental, and so on. However, the very purposes that Solomon attributes to business are not unique to it. Such purposes – which are not *single* but plural ends – could pertain to an individual, an artisan, or even an artist. Any number of organizations might have the purposes that Solomon invokes, including a socialist cooperative enterprise, or a planning agency of a socialist state. These organizations too might seek to satisfy public demand, to innovate, and to achieve an optimal relation between producer and consumer.

A socialist enterprise might maintain these purposes even if it does not fulfill them with the same success enjoyed by the business enterprise.

Solomon's proposal also fails to distinguish a purpose for business as general practice from the purpose of a particular business. Yet we work in particular businesses not business in general ([23], pp. 836–837). One may undertake a business enterprise for all sorts of reasons. As an activity, business involves exchange with each trader expecting some value in return. Alexei Marcoux discerns that business is an activity, not an organization, and the engagement in business requires no specific organization at all ([24], p. 58). To engage in the activity of business is not only to perform certain kinds of transactions, but to *seek* those transactions. Moreover, these are intentional activities that seek to be self-sustaining: “Business, then, is a(n intentionally) self-sustaining transaction-seeking and transaction-executing practice” ([24], p. 60).

This characterization recognizes the essential identifying element of business, exchange, but it does not require an appeal to a substantive purpose, as Solomon demands. In this revised sense of business, exchange takes place against certain assumptions, a framework of property relations – mine and thine – as well as certain beliefs and values, habits, and customs. When the activity of business becomes self-sustaining, then one is “in business” in the sense that one intends one's activity to sustain future transactions over time. To be in business is to be seeking trades and exchanges of a certain sort – namely, business exchanges.

Illustrations of Virtue in Commerce

Even without setting forth a substantive end for business, the virtues may be applied to commercial activity. Business exchanges can be embedded within a core of universal virtues, as Solomon and others contend [5, 11, 12]. Given that virtues have their contexts and concerns, a core set of virtues – self-control, courage, justice, generosity, and honesty – translates easily into commercial society, even as their particular tokens or instantiations depend on the particulars of history and circumstance.

Self-Control

Self-control concerns physical pleasures, but it may extend to other temptations as well. The person of self-control does not pile up debt or spend beyond his means, saves funds for the unexpected, and otherwise demonstrates a “low time preference” for the present (placing thereby a higher value on the future). Thus, the person of self-control may forswear immediate satisfaction, save for the future, and practice the virtue of thrift [25]. The person of self-control, able to allocate time and effort and to prioritize, works well under pressure despite distractions. Moreover, the person of self-control is able to master emotions when dealing with obstreperous colleagues. These are some of the ways that self-control is essential to the roles and responsibilities of commerce.

Courage

Courage is a virtue that might seem appropriate for a warrior society, but danger need not be bodily. An individual may rightfully fear many things, including a loss of well-earned reputation, embarrassment, financial loss, or another person's anger. A manager may muster courage to fire an employee, adjudicate a dispute, or state an opinion that runs counter to what is expected. An entrepreneur who perceives profit-making opportunities, however risky and uncertain, must act with decisiveness and courage: "Whenever you see a successful business, someone once made a courageous decision" ([26], p. 233). To start a new venture – a new advertising strategy, a new product, or a new method of production – is to take a calculated risk. As in the case of scientific discovery, a commercial hypothesis may not survive testing [27]. Of course, decisive and strategic conduct may conform to courageous conduct without manifesting genuine courage. Nonetheless, courage is needed precisely when a person is unsure of a strategy or assumes significant risk. Even the strategically minded person may require courage to see a project to completion.

Justice

Aristotle understood justice in its most general form to involve treating equals equally and unequals unequally ([18], 1131a23–25). The virtue of justice enters commercial society in various ways. The basis of exchange is voluntary and informed agreement: The just person does not seek to coerce, threaten, or mislead. Adam Smith offers this portrait of the just businessman:

In the race for wealth, and honours, and preferments, he may run as hard as he can, and strain every nerve and every muscle, in order to outstrip all his competitors. But if he should juggle, or throw down any of them, the indulgence of the spectators is entirely at an end. It is a violation of fair play, which they cannot admit of. ([4], II.ii.2.1)

For Aristotle, justice also involved fairness. And there is a sense in which his basic dictum of justice, expressive of rational consistency, involves a procedural fairness: One is not to play favorites, allowing one person to do or to receive something not available for others. As a virtue of decision-making, justice often takes the form of fairness. Employees must be evaluated fairly, rewards must be allocated by fair criteria, and employees hired, evaluated, and promoted according to public criteria. An employee must be just in relation to his colleagues and his company, endeavoring to put in a good day's work and to execute conscientiously his responsibilities.

Justice may also come into play in how a firm or corporation seeks to use the power of government. In the *Wealth of Nations*, Adam Smith criticizes businessmen who use the power of the government to forge monopolies, as in the case of "merchants and manufacturers" who seek exclusive privilege [28], IV.ii.21; see also I.x.c.25, I.xi.g.10, IV.vii.c.43) or otherwise engage in a "conspiracy against the publick" ([28], I.x.c.27). A businessman who via recourse to the state, "raises in any

country the ordinary rate of profit higher than it otherwise would be” ([28], IV.vii.c.26) is subject to Smith’s scorn. If one adopts an ideal view of a market, in which rules of justice allow free and open competition, in which no laws or regulations grant special privileges, monopolies, or favors to particular industries or firms, then any attempt to use the political process to gain advantages over a competitor – what the economists refer to as “rent seeking” – may not only be deleterious to the body politic ([28], IV.vii.c.43) but unfair, if not unjust. Operating in these ideal conditions, the just businessperson – essentially no different from any other party or firm engaged in exchange – does not seek special favors, legal privileges, or regulatory protections. The persons who lobby for such favors are among an “order of men, whose interest is never exactly the same with that of the publick, who have generally an interest to deceive and even to oppress the publick” ([28], I.xi.p.10). Yet within contemporary democracies, under political conditions that sanction and do not discourage rent seeking, it is not so obvious that the rent-seeking businessperson is regarded as an unfair or unjust person ([29], pp. 6–7), though at a minimum the businessperson who advocates a free market but nonetheless seeks legal or regulatory protection is guilty of hypocrisy.

Generosity

The virtue of generosity might seem, at first glance, to be incompatible with business exchange: Generosity involves giving, but business involves reciprocal trade. However, within the individual firm or in the midst of reiterated exchanges (between two traders, owner and employee, manager and supplier), there is room for the virtue of generosity. For Aristotle, generosity is concerned with the giving of material goods, more generally with the appropriate use of wealth. Its excess is extravagance; the defect, stinginess. The generous person finds pleasure in giving to the right people in the right amount and for the right reason. Thus, one is not generous if one provides cigarettes to a 10-year-old child. Generosity also concerns what one takes: “Nor will the liberal [generous] man take from wrong sources” [18], 1120a32). For example, one who is well-off should not take from those in need. We might consider generosity to include nonmaterial goods. One could be generous with one’s time: A physician takes extra time to calm a nervous patient; the experienced employee pauses to help a new employee. One could also be generous-minded when considering the merits or shortcomings of others. Just as the person who gives material goods wishes well to another, so does the person who is generous-minded wish well of another in that he puts the other person in a favorable light.

One kind of social generosity is discussed by Aristotle and that is magnificence, but there is room for generous giving of other sorts, including time, money, and labor. Numerous voluntary social groups, mutual-aid societies, charitable associations, and business, labor, and professional organizations encourage and rely on generosity and benevolence (as well as friendship, responsibility, civility, honesty, and trust). These institutions and societies – intermediary between state and citizen, neither governmental nor commercial – serve as avenues by which individuals

come to relate to others in ways other than through commercial exchange, thereby creating networks of friendship and acquaintance which complement, if not counterbalance, any tendencies of the market to valorize efficiency and prudence over the bonds of neighborhood, community, and society.

Honesty

Honest communication is a condition of any society. In commerce, honesty has special significance. An honest person is trustworthy, and trust is necessary for cooperation, contracts, promises, and agreements. The honest person avoids deceit but also avoids deceitful persons, as well as situations that present one with options that demand deceit. The honest person desires to relate to others in truthful rather than deceptive ways, even as telling the truth is not equivalent to telling the *whole* truth. Indeed, honesty may be compatible with emphasizing one element of the truth over others, embellishing some matters, or playing up certain features. On the other hand, the intentional effort to deceive is wrongful precisely because the dishonest person seeks to take advantage of trust or otherwise ignores another person's justified desire to be told the truth. There are many avenues for dishonesty besides lying, including manipulation, scheming, trickery, and dissembling. Honesty is also a matter of deed: For example, the honest person adheres to the agreed contract, performs what was reasonably expected, and applies professional knowledge appropriately. A supplier conforms to the contract and refrains from shortcuts, never substituting a cheaper version for the agreed model. An honest accountant applies her expertise in conformity to expected rules of accountancy; an honest employee credits correctly the hours worked.

Modern Virtue

Some of the first modern appeals to virtue occurred in the eighteenth century in the midst of debates concerning the moral and ethical consequences of commerce [30, 31]. The debates took on sharpness with the publication of the doggerel poem of Bernard Mandeville [32] in which he argued that self-interest (vice), not virtue, is the fount of a bustling commercial society. The productivity and complexity of commercial societies – circumscribed by justice and governed by the rule of law – are the result of our self-interested appetites: private vices and public benefits. Norms of conduct and virtue emerge in such a society, but these are strategic devices that allow us to cooperate. According to Mandeville, the widespread practice of genuine virtue would render a bustling commercial society impossible.

David Hume

Many argued against Mandeville, including David Hume. Commercial societies are the happiest and the progress of commerce advances moral refinement. “[I]ndustry,

knowledge and *humanity* are linked together by an indissoluble chain” ([33], p. 271). Yet Hume’s account of the moral life [34, 35], and his appeals to virtue, reject teleology or any overarching social purpose. We praise, he says, those qualities of character that are either agreeable or useful to the self or to others. He draws a distinction between two kinds of virtue, the natural and the artificial. The natural virtues draw from sentiments or passions original to human nature, but qualities (such as justice) approved as artificial virtues require the establishment of a general convention if they are to be useful or agreeable. Among the catalog of virtues that Hume discusses are traits of “common life” – the everyday life of family, work, and society. These include benevolence, generosity, courage, honesty, and loyalty, all useful to the wider public; industry, frugality, honesty, and fidelity, as well as discretion, caution, enterprise, and industry, useful primarily to the individual agent. Hume distinguishes these virtues from the “monkish virtues,” which are “everywhere rejected by men of sense, but because they serve to no manner of purpose; neither advance a man’s fortune in the world, nor render him a more valuable member of society” ([35], p. 270).

Hume believes that commerce diminishes partialities and brutishness. However, it is not Hume’s concern to suggest that the sort of benevolence operating in small groups can be found in larger groups in which our interactions are neither reiterated frequently nor otherwise enhanced by relations of acquaintance, friendship, or family. Moreover, in considering the matter of foreign trade, for example, Hume explicitly describes commerce as occurring with “strangers” ([36], p. 264).

Adam Smith

In both of his great works [4, 28], Adam Smith also maintains that commerce involves interaction with strangers, though his theory of virtue is distinct from Hume’s. Recognized for his elaboration of a system of natural liberty in which the interactions of individuals – motivated by desires to better their condition and to achieve acclaim – generate a division of labor and a commercial market, Adam Smith also delineates an important account of the moral life. His theory of the virtues does not set forth an overarching good, such as happiness. He maintains that the virtues, developed through social interaction, in combination with human nature, are part of a benevolent system of nature – a universe with its own laws. Smith recognizes that human beings tend to be self-interested and self-centered, but, he believes, they are not destined to be such. Through our ability to imaginatively place ourselves in the circumstances of others, we come to understand the concerns and passions of other persons. The correspondence of sentiments between spectator and agent is what Smith refers to as “sympathy.” Sympathy generates moral approval. Each of us has a desire for this sympathy or harmony, and each employs the imagination to understand how another feels in his given circumstances. Smith describes how the human imagination, via social interaction, develops a general standard of propriety encapsulated by the perspective of the impartial spectator,

the proper outlook from which to assess the character and actions of others. In addition, each agent must come to be an impartial spectator of his own self and character. In so doing, one must exert self-command so that one adjusts one's own passions and desires to what the impartial spectator would approve. The basic virtues that are approved are benevolence, justice, prudence, and self-command.

Adam Smith believed that virtue played a crucial role in the good life of all persons, including those in commerce. Nonetheless, it is this same Adam Smith who famously remarked:

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages. ([28], I.ii.2)

Smith is contending not that self-interest is the only motivation in business, but that our interactions with others do not (and should not) depend solely upon benevolent motives, special requests, or "servile and fawning attention" ([28], I.ii.2). To engage in commerce, the just person refrains from threats or harms. However, Smith (like Hume) does not perceive our interactions with strangers, commercial or not, to be defined by relations of benevolence.

In part VI of *The Theory of Moral Sentiments*, Smith introduces benevolence in terms of differing orders of society: family, friends, nation, and universe. His discussion, which commences with the statement of "our very limited powers of beneficence" ([4], VI.ii.intro.2), raises the question of why beneficence is so limited. In the next chapter, devoted to the "Order in which Individuals are recommended by Nature to our Care and Attention," Smith stipulates that each individual is most fit to take care of himself; from there, Smith proceeds to consider the caring concern exhibited within the family, subsequently noting how similar affinities among friends and close associates can produce analogous sentiments of benevolence. Of an agent's relations to family, Smith writes:

He is more habituated to sympathize with them. He knows better how every thing is likely to affect them, and his sympathy with them is more precise and determinate, than it can be with the greater part of other people. ([4], VI.ii.I.2)

Smith *cannot* expect that persons of commerce will be exercised by the kind of benevolence that we more commonly expect within such small groups: He cannot have such an expectation simply because Smith's invocation of the sympathetic imagination – that operation of thought by which we represent the circumstances and values of others and by which we generate norms of benevolence and prudence – presupposes, as a necessary condition, a degree and kind of knowledge that is not typically available in market exchanges. The impartial spectator, in other words, serves as a standard for market as well as nonmarket interactions. Yet unlike familial groupings, the market is an arena of relative anonymity, and distance in which one must utilize self-command in order to get along. As we interact with strangers and endeavor to see ourselves as others see us, we exert self-command – the capacity to adjust our passions and desires – so that our interactions with others are polite, gentle, and amiable.

Amiability need not entail benevolence, but it does not exclude prudence either. Just as Smith criticizes Mandeville's system as "licentious" and "destructive" ([4], VII.4), so does his account of prudence demonstrate a place for attention to self. Security of wealth, health, rank, and reputation are the objects of prudence, a virtue which though "respectable and even, in some degree...amiable and agreeable" is distinct from Aristotle's practical wisdom, which is "directed to greater and nobler purposes" ([4], VI.i.14–15). The virtue of prudence is cautious and earnest, industrious and frugal, and sincere and inoffensive – it is the primary virtue of commerce. In the midst of what Smith recognizes as the corrupting appeals of vanity, there is room within commercial society for the person of sober-minded and unostentatious productivity.

Samuel Smiles

Unduly neglected by business ethicists, Samuel Smiles offered, in the nineteenth century, an account of business virtue in a chapter of his book, *Self-Help* [37]. Smiles delineates an optimistic yet sensitive account of the power of character, both for the individual and the nation. Often aphoristic rather than philosophical – "The poor man with a rich spirit is in all ways superior to the rich man with a poor spirit" ([37], p. 245) – Smiles' work is important and worthy of consideration. He contends that it is incorrect to characterize the businessman as "mean" – uncreative, plodding, or pedestrian ([37], p. 208). The path of success in business is no different from the path of success in life. Among the qualities that Smiles illuminates are self-reliance, prudence, perseverance, honesty, and integrity. But Smiles also defends such qualities as "Attention, application, accuracy, method, punctuality, and dispatch" ([37], p. 213) – all essential for success. "They are little things, it is true; but human life is made up of comparative trifles" ([37], p. 213). Along with these traits, he notes the importance of "sound discretion, quick perception, and firmness in the execution of [the businessman's] plans" ([37], p. 219).

For Smiles, character has intrinsic value, commanding authority regardless of wealth or status. Yet he also maintains that character offers the "road to prosperity and wealth" ([37], p. 236), even as he admits that "the scrupulously honest man may not grow rich so fast as the unscrupulous and dishonest one; but the success will be of a truer kind, earned without fraud or injustice" ([37], pp. 230–1). The person of character shows consideration for those "subordinate to him," including employees, and has a sense for the feelings of others – "respect for their self-respect" ([37], p. 249). As Smiles puts it, "morals and manners" are of greater importance than laws ([37], p. 240), and it is "better to lose all and save character" ([37], p. 231).

Deirdre McCloskey

The most recent and ambitious account of virtue and business comes from Deirdre McCloskey [38, 39]. Indebted to Aristotle, among others, she characterizes virtue as a "durable, educated characteristic of someone to exercise her will to be

good” ([38], p. 64). Yet McCloskey is wary of relating the idea of goodness to some social or public good. McCloskey defends virtue as part of a larger defense of liberty: Liberty is valuable because it is a condition for realizing a moral and virtuous life.

She undertakes a wide-ranging and spirited elucidation of seven virtues, the four classical virtues of justice, prudence, courage, and temperance, as well as three theological virtues, faith, hope, and love. These are the basic virtues around which other qualities are built, including commercial or, as she puts it, “bourgeois” versions. One may live virtuously as peasant, artist, or aristocrat, but one may also do so as a bourgeois. Prudence is the most significant of the bourgeois virtues, but commercial conduct does not rest on prudence alone. Faith or “a willed steadfastness” ([38], p. 153) rests on integrity. Love entails “trust, good humor, neighborliness, respectfulness, cooperativeness, decent intentions” ([38], p. 127). The virtues not only sustain commercial practices but are encouraged and required by capitalism: “they have been the causes *and consequences* of modern economic growth and of modern political freedom” ([38], p. 22). She seeks to counter the widespread view of markets and business as, somehow, antithetical to virtue, community, friendship, and a life lived well. In so doing, she refocuses the ethics of business away from its dominating concerns with public policy (and topics more political than moral) and toward the commonplace acts and decisions inherent in the conduct of business.

Central Issues

As is true of all philosophical theories, a theory of virtue faces challenges, two of which are noted here. One challenge is that virtue offers few explicit guidelines for conduct. It is suggested that the alternative to virtue, an appeal to rights, rules, or principles, provides clear lines of action. Yet, the objection continues, it is not so easy to draw a clear course from virtue to a specific act. True enough, a theory of virtue does not offer a mechanical application of a principle or standard. Of course, the virtue theorist may appeal to exemplary narratives to assist in our deliberations and decision-making ([5], p. 324; [6], p. 287). However, it is also worth recounting that Aristotle held that a theory should have the precision appropriate for its subject ([18], 1094b12–28). The particulars of the moral realm may manifest a complexity not reducible to principles (even if principles are necessary). Moreover, as Aristotle also remarked, those who study ethics should already have a sense of right and wrong, developed within the community ([18], 1095a2–11). So the virtue theorist might argue that if we are born into communities, then the search for fresh principles is misplaced: In a good community, the ethical world is present already in anyone who inquires. (As Adam Ferguson remarks, “Mankind are to be taken in groupes, as they have always subsisted” ([40], p. 10).) When the virtue theorist articulates the dispositional structures and basic goods of this world, a traditional moral know-how is presupposed [41]. This resolution may leave the theory of virtue without a set of algorithmic principles. However, according to the virtue theorist, such principles

misrepresent what the moral life is about. Nonetheless, the study of virtue will help the individual to hit the moral mark ([18], 1106b31–32).

An underlying question remains at stake in this debate: What is it that an ethics of business is to do or to provide ([42], p. 358)? If business ethics is to settle philosophical queries regarding the nature of the corporation and other public policy issues, then virtue ethics makes no pretense of responding to these questions. Alternatively, if business ethics is to provide a moral and philosophical justification of the market, then virtue ethics may not be the place to start, but neither are the major theories of business ethics such as stakeholding or social responsibility. However, if business ethics is to guide individuals in their everyday business lives, and if these individuals have a sense of right and wrong, and good and bad, then the appeal to virtue may inspire the motivation, hone the perception, and sharpen the moral cognition of the businessperson.

A second challenge suggests that virtue is appropriate only for small, organically unified societies, not large commercial societies with divergent ends and purposes. One version of this challenge may be found in the work of a defender of virtue, Alasdair MacIntyre. He contends that virtues are always situated within practices, a vision that does not rest easily with commerce, at least of the sort that is liberal and individualist. As MacIntyre puts it, “For liberal individualism a community is simply an arena in which individuals each pursue their own self-chosen conception of the good life, and political institutions exist to provide that degree of order which makes self-determined activity possible” ([20], p. 195).

This objection assumes not only that the practice of virtue requires a substantive and common end across society but that the forces of economic liberalism – with its embrace of free and equal spheres of action – have weakened, if not swept away, any substantive agreement on ends. On this account, the very societies in which business flourishes lack the agreement necessary for virtue, so it will prove difficult to embed the practices of business within the traditional moral virtues. Such an objection assumes that theories of virtue demand a strong notion of a communal end, or *telos*. However, it is important to understand how the *end* of our lives is found in a manner or mode of activity and not in some goal extraneous to the activity. Moreover, it is not so obvious that commercial societies must be as atomistic as this sort of objection suggests. Under some descriptions, commercial societies incorporate intermediary social groups and organizations, as well as regional and local traditions. No doubt, commerce produces innovation and changes, but it is unclear whether the changes that have occurred in commercial societies are the result of exchange rather the outcome of centralizing tendencies in modern democracies that have shorn the individual from nonpolitical and local affiliations [43].

Conclusion

The first systematic theory of morals, that of Aristotle, offers a rich foundation for exploring and understanding virtue and character. Although Aristotle’s account of virtue does not include specifically commercial virtues, neither is its moral psychology inherently incompatible with exchange. Even as contemporary theorists often challenge particular elements of Aristotle’s moral

thought [2, 3, 44], some of the basic and universal virtues of Aristotle may be brought to bear in commercial conditions, yielding thereby *Aristotelian* virtues applicable to conditions of exchange. Other virtues, such as those delineated by Adam Smith, Samuel Smiles, or Deirdre McCloskey, testify to how the commercial life may be a virtuous life. In sum, the virtuous person lives well in a commercial society, even as that person is not self-consciously pursuing an end of happiness that is either distinct from or caused by the virtues themselves.

As a theory of business ethics, virtue may also possess an advantage over theories of social responsibility or stakeholding. Each of these theories seeks to render business ethical by essentially altering the nature of business ([45], pp. 72–76). A theory of social responsibility asks a manager to make decisions with an eye to social or political endeavor, not with an eye to exchange or consumer demand. To spend funds on socially responsible endeavors is to deploy one's effort for something other than production for exchange. Genuine social responsibility, as typically construed, asks the business person to engage in something other than business. The stakeholder theory, conceptually distinct from a theory of social responsibility, suggests that the businessperson should attend to the interests of stakeholders, not to the signals of the market, such as prices. The advantage of virtue theory is that it allows business activity to proceed as embedded within the lives of virtuous individuals.

To be virtuous is to be a person whose perceptions, dispositions, responses, and actions possess a quality and manner of goodness. The virtues influence our range of options, as well as our inventory of desires and our basic commitments. These moral qualities affect how we see a world beyond self. For these reasons, the ideals of virtue have a transformative appeal, connecting a person's character and model of life to a specific set of traits. In this sense, virtue serves as inspiration and aspiration ([6], p. 286). A recognition of and search for virtue also assists us in identifying morally good persons ([6], p. 280) whose character has a steadfast reliability. Indeed, within the business realm, one may easily ask this question: With whom would one prefer to work – the virtuous individual or the person devoted to abstract principle? One person perceives the world and its particulars; the other adheres to a proposition. Both may do good deeds, but only one carries goodness within. A theory of virtue is also comprehensive, bearing relevance to individuals working at all levels of business activity, proprietorial and managerial certainly, but also at the level of wage earner and customer. A theory of business virtue is not simply for policymakers, executives, or regulators but for all individuals in the everyday working world. The importance of virtue resides in its influence on choice, desire, and action. Virtue is a manner of living and in this simplicity of perspective resides its power and appeal.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)

- ▶ Aristotle and Business: An Inescapable Tension
- ▶ Aristotle on Character Formation
- ▶ Business and Liberty: An Ethical Union
- ▶ Capabilities, Human Rights and Business
- ▶ Christian Metaphysics and Business Ethics: A Systematic Approach
- ▶ Confucian Virtues and Business Ethics
- ▶ Entrepreneurship and Ethics
- ▶ The Empirics of Virtue Theory: What can Psychology Tell us About Moral Character?
- ▶ The Idea of a Contractarian Business Ethics
- ▶ The Philosophical Foundations of the Capabilities Approach
- ▶ Utilitarianism

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Part 2

Scholastic Thought and Business Ethics

Scholastic Thought and Business Ethics: An Overview

7

Domènec Melé

Abstract

The generic name “Scholasticism” covers a number of thinkers who lived and wrote between the eleventh and mid-seventeenth centuries in western Europe, with its Golden Age being the thirteenth century. What is termed “Later Scholastic” was another brilliant period, especially for economic and business ethics. Scholastic thought, however, is not only a historical matter. At certain points from the late nineteenth century there were revivals, and we are seeing another now, which may have potential. This chapter reviews the main stages of development in Scholastic thought, paying special attention to its origins, its mainstream schools of thought, its method, and its philosophical grounds. It also discusses how Scholastic thought, especially that of Thomas Aquinas, can take on some current key issues in business ethics. This includes integration of economics and ethics, universal ethics and ethical relativism, ethical decision-making, shareholder versus stakeholder approaches to corporate governance, human rights in a global world, and the role of philosophy and religion/theology in business ethics.

Introduction

Since the 1970s, we have seen a remarkable development of business ethics [22]. However, interest in business ethics is not new. In the Middle Ages and, above all, in the fifteenth, sixteenth, and early seventeenth centuries, a number of significant ethical issues were already being confronted by Scholastic thought.

The generic name “Scholasticism” covers a number of thinkers who lived and wrote between the eleventh and mid-seventeenth centuries in western Europe.

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As a rough classification, two great periods can be distinguished; the First or Medieval Scholasticism [17, 38], which lasted until the fourteenth century, and the Second or Late Scholasticism, including authors from the fifteenth to the mid-seventeenth centuries [2, 14, 61, 77].

“Scholastic” derives from the Latin word *scholasticus*, a name given to the head of Christian schools in the Middle Ages, and who generally taught dialectics – one of the seven liberal arts adopted at that time in academic curricula. This was the only branch of philosophy then studied systematically. Later the term “scholastic” was used at the early universities to designate both a method and a system. This makes sense inasmuch as the deep roots of Scholasticism are to be found in the medieval schools established in cathedrals and monasteries from the eighth century onward, which became very relevant centers of learning in western Europe. They were the seedbed of the early universities created from the eleventh century onward.

This chapter firstly reviews the origins of Scholasticism, its mainstream schools of thought, the Scholastic method, and its philosophical grounds. The rest of the chapter discusses some possible approaches from Scholastic thought, especially that of Thomas Aquinas (probably the most important Scholastic author), to some current key issues in business ethics. Namely, how Scholastic thought, especially that of Aquinas, can take on some current key issues in business ethics. This includes integration of economics and ethics, universal ethics and ethical relativism, ethical decision-making, shareholder versus stakeholder approaches to corporate governance, human rights in a global world, and the role of philosophy and religion/theology in business ethics.

The overview on Scholastic thought presented in this chapter is followed by another four chapters, in which different authors analyze and discuss in a certain depth some aspects or periods of Scholastic thought. Dierksmeier explores business ethics in Thomas Aquinas and the alternative and critical view of William of Ockham. Schlag studies Italian Scholastics, Alves and Moreira present the School of Salamanca, and Alford focuses on the influence of Thomistic thought in contemporaneous economic and business ethics. She also discusses the relationship between Thomistic thought and the modern Catholic social teaching.

Origins and Historical Development of Scholastic Thought

With Boethius (480–524/525) as a precedent, it is John Scotus Eriugena (815–877) who is frequently considered the oldest Scholastic because he, who knew Greek very well, introduced some ideas from Neo-Platonism to the intellectual community in western Europe. However, the real development of Scholasticism began in the eleventh century with Peter Abelard (1079–1142) and the Archbishops of Canterbury Lanfranc (1005–1089) and Anselm (1033–1109). In this period of Early Scholasticism, there was strong debate, which continued until the thirteenth century, regarding the relationship between philosophy – understood as love and pursuit of wisdom by intellectual means – and theology, which regards the study of

God, defined by Augustine of Hippo (354–430) as “reasoning or discussion concerning the Deity” ([8], VIII, 1). For Christian theologians, theology tries to develop the Christian Revelation accepted by faith through rational discussion.

Meanwhile, from the ninth to twelfth centuries, Arabs contributed to the introduction to western Europe of Greek philosophy, including that of Plato and Aristotle, many of whose original writings had been discovered. This was accompanied by valuable commentaries on Aristotle’s works in late antiquity and by Muslim and Jewish philosophers in medieval times. Schools of translation grew up in Spain, Italy, and other European countries, and in the early thirteenth century most of the recovery of Greek philosophy was complete and the texts were made available to scholars.

The introduction of these materials provided a great impulse to intellectual life at the existing universities (Bologna, Paris, Oxford, Cambridge, Salamanca, Montpellier, and others) created by kings or municipal administrations from preexisting Christian schools or as new higher study centers, as sites of higher education. In this context, in the thirteenth century and early fourteenth century became what is generally considered as the high period or the Golden Age of Scholasticism.

The Golden Age of Scholasticism, in both teaching and writing, was in the thirteenth century. Albertus Magnus (1193/1206–1280), and, above all, his disciple Thomas Aquinas (1225–1274) were outstanding authors. Aquinas, who taught at the University of Paris, presented interesting insights on moral aspects of business in the world as it then was, but his main contribution – as with Aristotle – is probably not to business ethics per se, but in providing philosophical bases for its development [15, 16, 50]. Another important figure of this period was John Duns Scotus (1265–1308), who proposed different perspectives within Scholasticism [19, 90]. Alexander of Hales (1185–1245) and Peter Auriol (1280–1322) were also notable thinkers of this period. Most authors of this period were members of two religious orders: Dominican and Franciscan.

The Middle Age Scholastics was in the second half of the fourteenth century. On the Dominican side, successors of Thomas Aquinas taught mere repetitions of their master, presenting innumerable classifications and forgetting the deep richness of the genuine Thomas. On the Franciscan side, some thinkers presented proposals quite critical of conventional Scholastics and, in particular, of Thomas Aquinas. One of these proposals came from the Franciscan friar Roger Bacon (1214–1294), who emphasized empirical knowledge, becoming a pioneer of the modern scientific experimental method, but in opposition to Scholastic thought. Another Franciscan, William of Ockham (1288–1348), opened new directions far distant from Aquinas, with important implications for metaphysics and ethics.

In the late fourteenth and fifteenth centuries, however, one can find a number of significant developments in business ethics, which were led by a number of Italian Scholastics and occasionally by authors from other European countries; among them, Peter John Olivi (1248–1298), Astesanus de Ast (died ca. 1330), Bernardino of Siena (1380–1444), and Antonino of Florence (1389–1459), all of them mentioned by Schlag in this book, and Johannes Nider (1380–1438) [93]. At this

time, remarkable economic development took place in some cities in northern Italy favored by trade with East Asia, relatively large shipyards, banking, and some new financial tools – an early form of capitalism, we might say. These Scholastics dealt with topics such as the right to private property and its limits, the role of profits, proper conduct in commerce and the work of merchants, value and utility, just price, and exchanges and fraud, along with the question of the illegitimacy of usury – a very controversial topic at that time – and its difference from lending at moderate interest rates.

Another brilliant period of Scholastic thought was what is known as the Late or Second Scholasticism, and also as the School of Salamanca, in the sixteenth century and the first half of the following century, with authors such as Francisco de Vitoria (1483/1486–1546), Domingo de Soto (1493–1563), Diego de Covarrubias (1512–1577), Martín de Azpilcueta (Navarrus) (1492–1586), Tomás de Mercado (1523/1530–1575), Luis de Molina (1535–1600), and Juan de Mariana (1536–1624), among others. These developed interesting approaches on ethics in economics, business, and finance, and also on international law. New issues were raised on these matters and some existing topics were extended. Their thought on justice in contracts, value theory and just price, banking and interest, taxation and regulation, and human rights are worth mentioning [2, 14, 40, 61, 88].

After a long period of decadence, in the late nineteenth century a revival of Thomistic thought emerged and, with different approaches, it is still present today. The origin was in a number of Catholic thinkers who, facing several philosophical theories such as Kantianism, Hegelian Idealism, and Empirism – mainstreams in their time – turned their interest toward Thomas Aquinas. A definitive impulse to recover Thomism was given by Pope Leo XIII through the encyclical letter *Aeterni Patris* [51], published in 1879. This document proposed restoring the renowned teaching of Thomas Aquinas (n. 25), adding that “all studies ought to find hope of advancement and promise of assistance in this restoration of philosophic discipline. . .” (n. 29). The recommendation of Thomas Aquinas’s writings as a solid basis for sound philosophical and theological training in ecclesiastical institutions of the Roman Catholic Church has been reiterated by several successors of Leo XIII to the Papacy and the Second Vatican Council ([85], n. 16). This does not mean that other philosophies are not allowed within the Catholic Church, but Aquinas is proposed as a critical reference work.

The revival of Thomism brought about a number of significant philosophers, including Étienne Gilson (1884–1978) and Jacques Maritain (1882–1973). Gilson tried to recover the genuine Thomas from some of the accretions and distortions of the commentators. In this respect, Gilson [37] considers the distinction made by Aquinas between *being* and *essence*, and highlights the originality of Aquinas’s doctrine of being, as against that of Aristotle and some of the commentators on Aquinas, who put excess emphasis on essence (*essentialism*). Maritain [58, 59, 60] introduced some innovations into Thomistic metaphysics, ethics, and social philosophy with the end of harmonizing Thomism with *personalism* within a pluralistic and democratic society. A Thomistic personalism has been developed by the Lublin School, the best-known proponent of which is Karol Wojtyła [91, 92], who became

Pope John Paul II. He presented a phenomenological realistic approach which tries to articulate the Thomistic conception of the human person. Other authors have developed general aspects of Thomistic ethics and Aquinas's theory of the action [54, 55], or specific aspects of such theory regarding virtues [34, 35, 75], or natural law [52, 79, 83]. Utz [86] and Messner [66] have made an outstanding contribution to social and economic ethics from a Thomistic approach. There are also philosophical initiatives connecting Thomism with analytical philosophy by focusing on the "analytical" side of Thomism.

Nowadays, a significant influence of Thomas Aquinas can be found in a number of key concepts adopted by Catholic social teaching, although with certain differences, as Alford notes in this book. This teaching was introduced in its modern version by Leo XIII himself and was continued and enriched by subsequent popes, including John Paul II and Benedict XVI, mainly through encyclical letters addressed not only to Catholics but also to all people of good will.

Scholastic Schools of Thought

Scholastic thought was not by all means homogeneous. We can make the rough approximation that two main schools can be distinguished, both led by friars of two religious orders, the Franciscan and Dominican. These two great religious orders were founded in the early thirteenth century within the Church. They were born in the context of a commerce-based dramatic growth of economic activity from the twelfth to the early fourteenth centuries [53]. Their members – friars and nuns – resided no longer in isolated monasteries but in convents built in the new commercial towns, trying to understand the new commercial way of life, and to preach and minister to the merchants. They were termed "mendicant orders" because they lived from the alms given to them.

Franciscan and Dominican schools of thought, although with some differences, shared many common points, including the Scholastic method. The first Franciscan intellectual leader was Bonaventure, who followed the theology of Augustine and the philosophy of Plato and with only a minor influence of Aristotle and including some Neoplatonist elements [36]. Another important Franciscan Scholastic thinker of this early period was Alexander of Hales. In a second stage, John Duns Scotus, Peter Auriol, and William of Ockham were the most relevant authors. The latter two were intellectually quite different from one another, and from Bonaventure. Actually, there was not a single Franciscan school of thought, there were several. This may have been favored by a number of dissensions within the Franciscan order, some of these even during the lifetime of St. Francis of Assisi (1181/1182–1226), the founder. Olivi, Astesanus, and Bernardino of Siena were also Franciscan.

In contrast, the Dominican order, founded by St Dominic de Guzmán (1170–1221) and also known as the "Order of Preachers," had a good organization and a solid intellectual consistency. It made extensive use of Aristotle's works, newly available at that time, as noted above, and emphasized speculative reason and intellectual contemplation rather than practical leaning as the Franciscans did.

Albertus Magnus and Thomas Aquinas were the most significant Dominican figures. Aquinas has become the point of reference for most Dominicans down the centuries, and for the Roman Catholic Church, at least from the late nineteenth century, as noted above. Antonino of Florence and Nider were also Dominicans.

Among the Late Scholastics, especially in the School of Salamanca, the Franciscan followers of Duns Scotus (“Scotists”) were a small minority ([25], pp. 312–314). Initially Dominicans chaired the universities of Salamanca and Alcalá, along with other places within the School of Salamanca and applied Thomistic thought to the new realities, as Alves and Moreira note in this book. Later, the Society of Jesus (Jesuits), a religious order of the Roman Catholic Church founded in 1534, also became very influential within the School of Salamanca (Molina and Mariana were Jesuits). Like the Dominicans, Jesuits initially took Thomas Aquinas, and to a minor degree Duns Scotus, as their intellectual guides. However, over time, especially from the seventeenth century, Jesuits tended to follow the Jesuit Francisco Suárez (1548–1617), who challenged traditional Scholastic views on metaphysics, and was a significant influence in the following periods, the study of which falls outside our scope here.

Dialectical Reasoning, the Scholastic Method

The Scholastic method is based on dialectical reasoning. Dialectical reasoning is based on a rigorous conceptual analysis of different positions and a careful drawing of distinctions for a better understanding of questions under consideration. This method, whose roots can be found in the Socratic dialogues, tries to resolve contradictions or disagreements and to extend knowledge by inference. The first Scholastics attempted to harmonize different authoritative sources, including those of their own Christian tradition and classical philosophers, whose writings, as noted, were becoming available in western Europe.

In both teaching and writing, the dialectic method starts with a question formulated about a relevant topic (*videtur quod...*, “it seems that...”). Along with the question, all possible objections are presented, including both old and new ones, which may have been proposed by the scholar or students. The next stage involves presenting a strong argument in favor of the question (*sed contra*, “on the contrary...”). There follows a rational discussion which should lead to the determination of the question after weighing the evidence (*respondeo dicendum*, “I answer that...”). This is the “body” of the argument. It concludes by providing replies to each objection.

An important background for formulating questions was provided by the *Four Books of Sentences (Libri Quattuor Sententiarum)* written by Peter Lombard in the twelfth century. They contain a collection of authoritative statements – or “sentences” – on biblical passages or taken from the Patristic sources (writings of the Fathers of the Church, primitive Christian writers with recognized authority).

A typology of Scholastic writings would include *comments* on previous outstanding works (e.g., the *Comments on the Nicomachean Ethics* by

Thomas Aquinas); *questiones disputatae* (“questions for discussion”), dealing with difficult or important topics (e.g., *De Veritate* by Aquinas, about how to know the truth); and *treatises* – quite common in the Late Scholastics regarding contracts and other matters – which provide in-depth commentary and analysis of specific subjects. They often use concise, tightly reasoned chains of argument applied to the matters studied. Great masters wrote *summae*, which was an attempt to give a comprehensive view of the whole of attainable knowledge. The *Summa Theologiae* or *Summa Theologica* (“Sum of Theology”) by Thomas Aquinas is an illustrative example. Written between 1267 and 1273, it contains three parts. The first deals with the existence and nature of God and the universe he created, the second – divided in two further parts – deals with human activity and ethics, and the third deals with Christ and the sacraments. Following the Scholastic method, each part is made up of a number of questions, extended over several articles, each accompanied by some enumerated objections; then comes a reasoned discussion of the article, and answers to the objections.¹

Philosophical Grounds of Scholastic Thought

Rational speculation on the Christian faith dates back to the Patristic period, which covered writers from the end of the Apostolic Age (early second century) to the middle of the fifth century, or even up to the eighth century for some. They were prompted to employ Neoplatonism for their reflections, along with some elements of stoicism, another philosophical stream in fashion at the time, to accompany their faith with rational developments. The influence of Neoplatonism appears in Augustine of Hippo, one of the most brilliant thinkers in the Patristic period on the rational approach to the Christian faith.

Augustine realized the importance of reflecting on the relationship between philosophy – understood as love and pursuit of wisdom by intellectual means – and theology, which regards the study of God, defined by Augustine as “reasoning or discussion concerning the Deity” ([8], VIII, 1). For Christian theologians, theology tries to develop Christian Revelation accepted by faith through rational discussion.

In the Middle Ages, the Patristics, and particularly Augustine, were highly considered. This may explain why an Augustinian and Neoplatonist influence is clear in Early Scholasticism, including some of the scholars mentioned above, such as Boetius, John Scotus Eriugena, and Bonaventure. This Neoplatonic–Augustinian approach, although dominant in Early Scholasticism, declined in the Golden Age of Scholasticism, during which Aristotle became highly esteemed.

A few early Scholastics were alienated by Plato’s philosophy, which is a genuinely outspoken exaggerated realism because he believed that the material world can seem to us the real world, but it is only an image or copy of the real world made up by universal forms or abstract representations of things and properties that we feel around us. In other words, what we see is an apparent world, in constant change, whereas reason knows an unchanging world of forms, which is the cause of the apparent world.

In quite stark contrast to Plato, Aristotle followed a moderate realism. Moderate realism holds that there are universal concepts which faithfully represent particular realities. Universal concepts are mind representations but founded in existing things (*cum fundamento in re*). Thus, the idea of “human” is not a mere name but a universal concept which in reality is found in singular individuals. These can be called “human individuals” because they are a particular existence of “human.”

A moderate realism in line with Aristotle was openly professed by Aquinas, Bonaventure, and Duns Scotus. These authors and most of the others in the Golden Age of Scholasticism accepted Aristotle in his epistemology, logics, and metaphysics.

Nominalism is another philosophical position within Scholasticism in opposition to any realism. The first representative of Scholastic nominalism was Roscelin of Compiègne (1050–1125) but it had scarcely any importance in Scholastic thought before Ockham in the late fourteenth century. In accordance with nominalism, there are no universal concepts, such as “human” or “human nature,” which are nothing other than a mere name. Aquinas would have said that universal concepts are real, although it is only in individuals or actions that they become tangible. In other words, if you consider the universal “human nature” as what humans have in common, this is much more than a name, it is a reality, and we can talk of individuals with human nature. Obviously, however, to know what human nature is, we need to know the human individual in which the human nature is tangible. In contrast, for Aquinas, every concrete individual is made up of an *essence* (common to many) which becomes a *being* in “this” concrete individual. With this denial that universals are real – strongly defended by Ockham – the focus was moved toward individuals, and concepts such as human nature, person, society, justice, and government became without content; a complete vacuum. This also had significant consequences for ethics, a point to which we will return below.

The celebrated writer Chesterton, praising Thomas Aquinas for his philosophy of “common sense” and, in contrast with other philosophies descending from nominalism, he said, “Since the modern world began in the sixteenth century, nobody’s system of philosophy has really corresponded to everybody’s sense of reality; to what, if left to themselves, common men would call common sense. Each started with a paradox; a peculiar point of view demanding the sacrifice of what they would call a sane point of view” [15].

A question which arose from the very beginning was about the relationship between reason and faith. It is easy to understand this since all Scholastic thinkers shared Christian faith, and all were both philosophers and theologians.

In the Early Scholasticism, Peter Abelard and others adopted a strong intellectual approach to theology, up to the point of holding that reason can prove even the supernatural mysteries of faith. Thus, philosophy and theology became two aspects of a rationalistic system. This position provoked great controversy since it openly opposed the teachings of outstanding early Christian writers, such as St. Basil of Caesarea (330–379), Origen of Alexandria (185–254), and St. Augustine of Hippo (354–430), and practically the whole Christian tradition. The latter held that there are two orders of truth, a natural truth accessible by reason and another, supernatural,

which requires faith; both orders of truth are different but not contradictory. However, the limits of these two realms of truth were not completely clear.

Bonaventure held that a true philosophy separate from theology was impossible. He believed that Christian wisdom was a unity of the truth revealed by God and the truth known by human reason. In contrast, Albertus and Thomas Aquinas defended the independence between philosophy and theology, and the latter showed how to deal with this relationship appropriately. This approach has prevailed in most of the Catholic thinkers. According to Aquinas, philosophy and theology are two distinct sciences. Philosophy relies on reason only, whereas theology uses the truth derived from divine revelation ([39], Chap. 2). They converge in the knowledge of certain truths – e.g., the human condition and some basic norms of morality – but other truths – namely, the mysteries of faith – lie completely outside the domain of philosophy.

The distinction between philosophy and theology and the Scholastic philosophical contributions of Thomas Aquinas are not a derivation from faith but neither are they contradictory to it. They use philosophy to develop data about faith and thus they make theology; and in this sense philosophy serves theology. However, it would be unfair to affirm that the Scholastics made reason subservient to authority. On the contrary, they strongly advocated the use of reason. It is true that in the Middle Ages people shared one faith – the Christian faith which was undivided – and the authority of the Church was to be obeyed in matters regarding faith and morals, but scholars had full freedom to think about and use their intelligence to answer numerous disputed questions, some of which regarded theology and, of course, philosophy. In practice, Scholasticism shows a variety of opinions in matters that are not incompatible with Christian faith. As Schumpeter emphasized, obedience in questions of faith was compatible with great freedom of opinion in all other matters. In nonreligious matters, arguments from authority were even regarded with disdain ([84], p. 76s).

As regards ethics, Thomas Aquinas and many other Scholastics followed Aristotle, but with some originality to their approach. In Thomistic ethics [54] virtues are central and natural moral law is too. Actually virtues and natural law are interrelated (see below). Similarly to Aristotle [5], pp. 1, 13), Aquinas related the Aristotelian *eudemonia* (*beatitudo*, in Aquinas) as happiness associated with human flourishing: “happiness is a virtue-oriented activity proper to man in a complete life” [4], which requires virtues in high degree: “happiness is an operation according to perfect virtue” ([3], I-II, 3, 2).

Natural law – according to Aquinas – is discovered by practical reason looking for what is best for us in order to achieve the end to which our nature inclines. Natural law is seen as the participation of humans in the Eternal Law of God, through their reason. It is a rational apprehension of divine wisdom expressed through the Creation, which includes the rational nature of the human being. Thus, natural law cannot be contrary to the divine precepts we find in the Bible.

Faith and reason converge in many moral matters. Thus, the moral precepts of the Decalogue (the Ten Commandments of the Bible), accepted from the divine authority, are also a matter of reason, although evidence to support them is diverse ([3], I-II, 100, 1).

Two kinds of precepts are not reckoned among the precepts of the Decalogue: viz. first general principles, for they need no further promulgation after being once imprinted on the natural reason to which they are self-evident; as, for instance, that one should do evil to no man, and other similar principles: and again those which the careful reflection of wise men shows to be in accord with reason; since the people receive these principles from God, through being taught by wise men. Nevertheless both kinds of precepts are contained in the precepts of the Decalogue; yet in different ways ([3], I-II, 100, 3).

Duns Scotus partially agreed with Aquinas, whereas Ockham went further by assuming that ethics comes from the fully arbitrary will of God, and rejecting the idea of an immutable natural law grounded in God's Reason. Whereas for Aquinas God necessarily legislates in a way that harmonizes with right reason, for Ockham ethics derives from the arbitrary will of God and we only know what is good from divine commandments. Thus, saying that "love your neighbor is good" means exactly the same as affirming "God commands that you love your neighbor." Aquinas would have said "loving your neighbor is good" (we can understand this rationally) and that is why God commands that you love your neighbor. Ockham was consequent with his position suggesting that if hating God, stealing, or committing adultery were not forbidden but were ordered by God, these actions would not be bad but good. Obviously, Ockham did not try to deny the immorality of such actions, but tried to stress that hating God, stealing, or committing adultery are evil only because God forbids them. Following this premise, in a secularized world, the authority of God in determining moral norms may be easily substituted by the "authority" of those who have power, or by social norms or democratic norms (laws), without any rational foundation, nor any reference to human good.

Ockham's rejection of a natural law is one of the few exceptions within Scholastic thought. Actually, Scholastics made a relevant contribution to the natural law theory based on a moderate realism – different from the rationalistic natural law defended by John Locke and other thinkers. According to Aquinas ([3], I-II, 94, 2) humans have "practical reason," which provides the capacity for discovering what ought to be done in every situation; and "'good' is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good." Thus, practical reason finds a natural moral law, the first principle of which is "good is to be done and pursued, and evil is to be avoided." He adds that "all other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided."

The end of human inclinations in order to flourish as a human being allows practical reason to apprehend what human good is. Thus, life is apprehended as a human good by considering the end of the inclination to preserve human life. Aquinas mentioned this, and additionally provides some other basic inclinations from which human reason can apprehend human goods that should be "done and pursued". According to Aquinas ([3] I-II, 94, 2) firstly, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, natural law entails a proper sexual intercourse and education of offspring

and so forth. Thirdly, there is a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law. An elemental consequence is “to avoid offending those among whom one has to live” ([3], I-II, 94, 2). The most relevant aspect for business ethics such as justice and truthfulness derives from this “to live in society” in a proper way, that is, generating trust and fostering harmony and peace. Some Neo-Thomists have proposed a more detailed list of “human goods”, such as life, knowledge of the truth, and friendship [69, 70]. This is a quite common sense morality, since “human beings exhibit a tendency to pursue life, and knowledge, and friendship, and so forth; and reflection on this tendency occasions an immediate grasp of the truth that life, and knowledge, and friendship, and so forth are goods. The affirmation of the claims ‘life is good,’ ‘knowledge is good,’ ‘friendship is good,’ etc. makes intelligible the persistent pursuit of these ends by rational beings like us” [70].

Some misinterpretations of Aquinas’s natural law can lead to a certain “physicism” (mere description of human inclinations) or even naturalism (duty to one’s own inclinations). These positions have been the object of criticism accused of “naturalistic fallacy” [67]. Related to this, we have the so-called “Hume’s law,” which states that it is impossible to derive an “ought” from an “is,” that is, any prescription (normative truth) from any description (nonnormative truths). However, these criticisms should not be applied to Aquinas ([52], Chap. 8; [79], Chap. 1). Thomists hold that it is reason, and not simply a description of inclinations, that determines the moral obligation, although from these natural inclinations practical reason is able to discover the existential ends of human life or “human goods.” Some defend the claim that the first principle of the practical reason (“good is to be done and pursued, and evil is to be avoided”) entails the fundamental moral difference between good and evil and an immediate inference from the evidential character of good ([83], p. 160).

Integration of Economics and Ethics

Since the late eighteenth century, there has been a profound separation between economics and ethics. The self-interest argument as the exclusive driver of economics and business ignores ethics, maybe except for a few principles such as justice in exchanges and respect for private property. The *homo oeconomicus* made ethics irrelevant and positivism reduced ethics to the realm of subjective values.

Libertarians see business as an autonomous sphere, as an economic institution under pressure from the strengths of the market and governmental regulations, and with the exclusive goal of creating wealth for stockholders. “Business is business,” expressing the amoral character of business, has long been a motto for many business people. However, things changed for a number of reasons, including business scandals and an increasing societal concern about social and environmental issues, along with a strong public opinion demanding business responsibility. This, in addition to some business people who have acted for a “conscious capitalism,” has brought about a wide movement around business responsibility and business ethics.

Over the decades, since the late 1970s, spurred or aided by a favorable atmosphere, business ethicists have made important advances in analyzing business issues and behaviors, and in developing theories and normative criteria, and also in providing judgments on particular situations and recommendations. They have tried to understand business, and to avoid generic moral norms without connection with the real business world. Even now, the challenge is a deeper understanding of businesses, as Brenkert and Beauchamp ([10], p. 709) have reminded us, adding “even if we are certain we know what they should be doing, unless we can relate this to how businesses can come to operate in those ways, the normative arguments will lack power, persuasiveness, and effectiveness. Only if we are able to provide this analysis will our normative ethics fulfill the practical task it has taken upon itself.” This is what Scholastics, especially from the fifteenth century, and especially in the School of Salamanca, tried to do.

Late Scholasticism was not made up of a set of moralistic exhortations without a connection with the real business world. Quite the contrary in fact, Scholastics of that period made a sufficiently serious effort to understand economics up to the point that they were able to contribute to the history of economic thought with some remarkable ideas [80].

Although the influence of Late Scholastic thought on modern economics was dismissed for a long time, it is now firmly recognized, especially in the Austrian School of Economic Thought. Rothbard [82] and De Roover [24] qualified Bernardino of Siena and Antonino of Florence as “the Two Great Economic Thinkers of the Middle Ages.” In this and other works, De Roover [23, 25] is one of the authors who do justice to Late Scholasticism by recognizing its contribution to economic thought.

Joseph Schumpeter in its monumental *History of Economic Analysis* [84] demonstrated that some Spanish and Italian Scholastics developed a system very close to the Austrian and subjective-utility approach. Marjorie Grice-Hutchinson [41] discovered in the late sixteenth century Spanish Scholastics a pre-Austrian subjective-value-and-utility view, one quite distinct from earlier Scholastics approaches and also from that of Aristotle.

Based on Duns Scotus, Scholastics were accused of being hostile to trade and considered that the just price is the cost of production plus a reasonable profit ([42], pp. 106–108, cited by [82]), which is quite close to Karl Marx’s position. However, De Roover ([25], pp. 312–314) noted that both De Soto and Molina denounced as “fallacious” the Duns Scotus notion of just price; instead these held that the just price is the common estimation, the interaction of supply and demand, on the market. In addition, Molina pointed out that competition among buyers will drive prices up, whereas a scarcity of purchasers will pull them down.

What is most remarkable for our purpose is that the aim of all these Scholastics was not to develop economic theories, but to understand how business and the market work to provide moral criteria for good behavior. This is, no doubt, a valuable lesson which can be learned for business ethics from the Late Scholastics.

Universal Ethics and Ethical Relativism

In the twentieth century two radical positions can be found regarding ethics and business ethics: on one hand, those who defend the position that there are universal ethical principles and/or human values which apply to all human beings and, on the other hand, ethical relativism, which can be individual (subjectivism) and sociocultural (cultural relativism).

Subjectivism means that every individual determines what is good and bad, right or wrong, without any foundation beyond his or her own feelings or mindset. Two philosophical streams had a strong influence among those for whom ethics is purely subjective and without any universal principles: existentialism and pragmatism.

Existentialism includes a number of philosophers (Kierkegaard, Heidegger, Sartre, among others) with important differences between their positions but, in one way or another, all of them emphasize the condition of human existence, and a radical individual freedom with responsibility in its use strongly depending on one's own choice. There are no principles or rules before the existence of each individual, who makes the rules for himself or herself. Pragmatism (James, Dewey) also rejects any form of absolutism and universality of thought, including any universal ethical principle or universal value. For the pragmatists, reality is identified with human constructs and ethical principles are seen as social constructs to be evaluated in terms of their usefulness.

Cultural relativism takes a different perspective. The starting point comes from cultural anthropology, whose findings show that a number of differences in making moral judgments exist among different cultures. This also deals with social acceptance of some behaviors which are not accepted in other cultures (e.g., eating beef in Europe and India; female genital mutilation, which is accepted in some African countries; and tolerance of bribery in certain countries as normal). Cultural relativism concludes that ethical norms come from each culture and no moral norm can be accepted as superior to another, since all cultures are equally respectable.

Ethical relativism, both subjectivist and cultural, has been very influential since the last century and continues to have both proponents and opponents [9, 45, 49]. However, since the late 1940s, many people have often made explicit demands for universal standards at least in some basic aspects. A number of blatant crimes against humanity may have contributed to this (Nazism and Stalinism some time before the mid-twentieth century in Europe, and the Rwandan and Bosnia genocides, in the mid-1990s), as might the increasing concern about universal human rights, and the lack of respect for these in some countries, and a fear of the destruction of the natural environment is also increasingly evident. Financial and business scandals and some terrible industrial "accidents" associated in some way with negligence have also brought about a greater esteem for universal standards of morality.

The existence of some universal values and transcultural ethical principles is already recognized by many. The Golden Rule and the dignity and innate rights of every human being are examples of transcultural ethical principles.

Aquinas supported the view that humans can know natural law in its very generic principles, whereas other laws would require a more elaborate reflection and the assistance of wise people ([3], I-II, q. 94; see also [52, 79]).

Natural law does not exclude, however, what is unique in each situation. For Aquinas, as for Aristotle, practical reason deals with practical situations with all their particularities. Thus, good moral reasoning requires practical wisdom, the virtue which reinforces practical reason [64]. This makes the reconciliation of universal principles with the uniqueness of each particular situation possible, including in those aspects derived from cultural diversity.

To sum up, accepting that all of humanity shares a common human nature, the natural law provides a rational approach for a universal ethics, which seems extremely important especially in the age of globalization. However, natural law is far from being either rigid moral absolutism or cultural relativism. It includes a few types of actions ethically unacceptable in every circumstance, but most moral evaluations need to be carefully analyzed with practical wisdom.

Ethical Decision-Making

Decision-making is a crucial aspect of business and, as a consequence, considering the ethical dimension of a decision is essential in business ethics. For this purpose, several ethical theories have been proposed for making moral judgments ([18], p. 85ff; [71], p. 50ff; [63], p. 89ff). Some of these theories are centered on rationalist principles, which can be based on duties (deontologism), on evaluation and weighting of consequences (consequentialism, and mainly utilitarianism), or can be taken as a basic principle that ethical obligations derive from a social contract or agreement among parties involved in a certain issue or activity (contractualism). Virtue ethics is a second approach, which considers the agent's moral character (virtues) as the main foundation for moral judgments. All of these groups of theories focus on specific aspects of the human action (duties or norms, consequences, and virtues). Some other approaches are based on emotions or on a sense of responsibility in dealing with particular situations. When faced with so many approaches, one wonders what ethical theory should be applied. Crame and Matten ([18], p. 120) argue that the views provided by the diverse theories pave the way to an intelligent and considered response to the problem. However, this is highly questionable since each theory has its own philosophical premises.

In contrast with this fragmentation, Thomas Aquinas considers the agent's moral character – virtues and especially practical wisdom – duties, and consequences in a consistent way in ethical decision-making. Aquinas's natural law theory is not separate from virtues. Virtues are not contextual and therefore relativistic, depending on what each social environment understands by excellence, but are rooted in human nature through the natural law. Literally, Aquinas affirms that “all virtuous acts belong to the natural law” ([3], I-II, 94, 3) and “precepts are given about acts of virtue” ([3], II-II, 44, 2, 1). Thus, principles and goods (natural law)

and virtues are fully interrelated. Duties derive from principles and norms (“precepts,” in Scholastic terminology).

Aquinas’s ethics does not derive from formal aprioristic principles, but from practical reason, as noted. His ethical approach is closely related to his theory of the human act (Aquinas [3], I-II, 6-21). It is a first person ethics, not a third person ethics. This means that the moral judgment is made by the decision-maker and not by “experts,” as occurs in the utilitarian principle which requires the evaluation of consequences and determining through an arithmetic calculation whether or not the course of an action brings about “the greater happiness for the greater number.” Intentionality is crucial since the moral evaluation of a decision, which includes the selection of an end (intention) and the election of a means for this end (“object,” in Aquinas’s terminology). The circumstances of the action which the decision-maker should reasonably have known, including foreseeable consequences, are also part of the Aquinas theory, which is sometimes termed the “triple font of morality theory” ([6, 65], p. 57ff).

In Aquinas, we can also find some insights on the responsibility for secondary effects of human actions. What nowadays is known as the “principle of double effect” has its roots in Aquinas’s discussion on the permissibility of self-defense ([3], II-II, 64, 7). Killing one’s assailant in self-defense is physically the same as murder, but the apprehension of the right reason of these actions is radically different. Aquinas observes that “nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention [...] Accordingly, the act of self-defense may have two effects: one, the saving of one’s life; the other, the slaying of the aggressor. Therefore this act, since one’s intention is to save one’s own life, is not unlawful, seeing that it is natural to everything to keep itself in ‘being,’ as far as possible” ([3], II-II, 64, 7). However, good intention is not sufficient. The justification for secondary effects, such as killing in self-defense, requires proportionality and minimization of the undesirable effects: “And yet,” Aquinas adds, “though proceeding from a good intention, an act may be rendered unlawful if it be out of proportion to the end. Wherefore, if a man in self-defense uses more than necessary violence, it will be unlawful, whereas, if he repel force with moderation, his defense will be lawful.” The principle of double effects, applied with practical wisdom, provides criteria for solving ethical dilemmas in decision-making when secondary effects are significant ([63], p. 117ff.)

Shareholder Versus Stakeholder Approaches to Corporate Governance

Good practices of corporate governance have come under increasing attention, especially since 1992, when the committee chaired by Sir Adrian Cadbury published a celebrated report setting out recommendations on the arrangement of company boards and accounting systems to mitigate risks and failures due to a deficient or incorrect corporate governance. The Cadbury Report has been

adopted or has been taken as a reference for other recommendations and even legislation regarding the foundations, processes, policies, laws, and institutions whereby the supreme organs of a corporation, basically the board of directors, wield power and authority over the organization and direct and control management. Good practices of corporate governance contain many ethical elements, including a careful selection of directors, loyalty, diligence, justice, truthfulness, and transparency ([63], p. 192ff). Our focus here is on the philosophical foundations of a crucial question. In favor of whom should a corporation be governed and managed?

The answer to this question is closely related to the purpose of the firm in society and this to the question of property rights. The right of ownership entitles one to dispose of the property, to use it or not, to prevent others from using it, or to transfer ownership. The latter includes the right to delegate, rent, or sell any portion of the rights by exchange or gift at whatever price the owner determines. The latter may be the most controversial in some cases for the social and human impact which certain decisions based on this right can have, especially if you consider the corporation merely as property. This is the case of massive layoffs or introduction of outsourcing in which people are considered as no more than a simple instrument for profits.

When property rights are interpreted as absolute, or with no constraints other than those imposed by law, the stockholders bearing property rights of a company have a right to decide how to use their property. The company owners hire managers to work for them, and to act in their best interest. Thus, managers appear with fiduciary duties to shareholders, and no other obligation except compliance with the law. From this premise, it is assumed that shareholders want the corporation to maximize its profits, and consequently corporate governance and managers should seek to do so.

This shareholder approach is usually assumed by economic and finance theories. It is a “property conception” of the corporation, which considers that a business corporation is organized and run primarily for the profit of the stockholders, and the powers of directors are to be employed for that end. Little by little, this narrow view of the firm is being replaced by a more social view.

A well-known alternative approach to the shareholder approach to corporate governance and management is the stakeholder approach, which considers that corporate governance and management should act in the interest not only of shareholder but of all relevant stakeholders, including employees, shareholders, suppliers, costumers, and consumers. This alternative has been the subject of much debate and of much work trying to clarify it and to respond to objections published to it [73, 74].

The stakeholder approach needs a sound justification ([26], p. 73ff), and a critical point is that absolute property rights are questioned. Although the idea of property as almost an absolute right persists, the right to private property as an unrestricted right is seriously questioned. Property rights include restrictions against harmful uses of property [44] and other intrinsic limitations [27]. There are also scholars who hold that property rights are embedded in human rights ([72], pp. 27–28).

Aquinas, in *Summa Theologica* ([3], II-II, 66, 1–2), defended private property, and so did Duns Scotus, although with different arguments, and the Late Scholastics. But, at the same time, Aquinas defended property rights not as an absolute entitlement ([3], II-II, 66, 1–2). On the contrary, he emphasized that this right is limited by the common right of all human beings to possess what is necessary for life ([3], II-II, 66, 2 and 7) (we can also say for the right to live). He argued that although there is a generic right to possess things, “the possession of external things is natural to man” ([3], II-II, 66, 1), the division and appropriation of things are based on human law, and “according to the natural order established by Divine Providence, inferior things are ordained for the purpose of succoring man’s needs by their means. Wherefore, the division and appropriation of things which are based on human law do not preclude the fact that man’s needs have to be remedied by means of these very things” ([3], II-II, 66, 7). In other words, economic means and their possession are instrumental for human needs. In current terms, we can say that property rights are not independent of and superior to human rights, and private property has a social function. This view is very close to the above-mentioned modern views of private property. Although it would require further development, it seems justifiable, from a Thomistic view point, that corporate governance bear certain responsibilities toward all relevant stakeholders, and not only toward shareholders. However, Aquinas would add that stakeholder interests should be related and, in the case of conflict, subordinate to the common good, since “the good of a part can be directed to the good of the whole” ([3], 58, 5) and “the common good transcends the individual good of one person” ([3], II-II, 58, 12). However, this is within the same level of goods. As Aquinas himself states, “The common precedes the proper, when both are of the same genus; but when they are of divergent, there is nothing to prevent the proper being prior to the common” ([3], III, 7, 13 ad 3). Thus, economic results for the company (instrumental common good) should not permit disrespectful treatment of people (human common good), such as deceiving clients. Neither does it justify pressuring employees into unethical behavior for the sake of a supposed “common good.”

Human Rights in a Global World

Respect for human rights is an important aspect of modern business ethics. Acceptance of human rights entails that these are innate rights whose existence and validity is previous to and independent of their legal codification. Human rights are an important component of recognized international standards for corporate responsibility, such as the UN Global Compact, the Global Reporting Initiative guidelines for corporate auditing and reporting, and ISO 26000. They are often cited, for example, in the context of poor working conditions, unfair discrimination, manipulation of people, and lack of respect for free speech and free association, and as a reference for multinational corporations [7, 68], including their complicity in chain supply [89], and a basis for their code of conduct [13]. Human rights are

particularly apparent when considering what are termed “sweatshops,” in which the lack of respect for human rights is striking [78].

As we will discuss below, in Thomas Aquinas there is a seminal notion of human rights, and Late Scholastics were real pioneers of human rights. However this fact has been largely ignored. Instead relation is often drawn between human rights and politics and post-Scholastic political philosophy. In Europe, the first stage of the notion of human rights is generally accepted as being in the proclamation of the *Twelve Articles* (1525) adopted by Swabian peasants as part of their demands raised toward the Swabian League in the German Peasants’ War. Then the English Bill of Rights was promulgated (1683), followed by the Scottish Claim of Rights (1689), and the French Declaration of the Rights of Man and of the Citizen (1789). In America, human rights are first recorded in the Virginia Declaration of Rights (1776) and, in the same year, the United States Declaration of Independence, which encoded in law a number of fundamental civil rights and freedoms. The US declaration stated: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” The French and American declarations show the influence of two philosophers: John Locke (1632–1704) and Jean-Jacques Rousseau (1712–1778). The former stressed that the constitution of a country should be based on natural law, which includes a natural right to self-preservation, individual freedom, and private property, which are seen as self-evident. The latter assumed that all individuals in a society had entered into a contract to form a civilized society in exchange for the government giving them equality.

A wider enumeration of human rights than these ancient declarations is the UN Declaration of Human Rights (1948), which has become quite popular. This has a political dimension, but its tune is rather a set of socioethical standards which stress respect for human dignity and innate rights, seeing these as essential for living together in a respectful and peaceful way.

If human rights are to have such importance, they require a solid philosophical foundation. However, they are frequently taken for granted, and accepted as self-evidently true and universally valid moral principles. Others, however, argue that human rights are a matter of mutual interest or that they are empirical facts in the contemporary world [32]. But these arguments are more sociological than ethical.

Thomas Aquinas provides an embryonic theory of human rights and their foundation [33, 57], although he did not use the expression “human rights.” Instead, he talks of “natural rights.” These rights are deduced from human nature. In essence, the Aquinas position is that basic human needs require fundamental human rights.

The Late Scholastics, in the Thomistic tradition, stressed objective rights [11]. In the context of the School of Salamanca, an important intellectual debate took place motivated by the discovery of America by Christopher Columbus and other explorers and the subsequent Spanish and Portuguese colonization. A first question was whether the Indians should be treated as humans or could be reduced to slavery.

At that time, some stated that these indigenous peoples were savages, without soul, and were born to be slaves. Francisco de Vitoria, a pioneer in the foundation of international law, reacted energetically in defense of the rights of the Indians [43], and so did his disciples Domingo de Soto and Fernando Vázquez de Menchaca [11]. Aligned with these theologians, and to avoid any doubt, in 1545, Pope Paul III put an end to the question through the papal bull *Sublimus Dei*, declaring the indigenous people of the Americas to be rational beings with souls, and condemning their reduction to slaves in the very strongest terms.

From a practical perspective, Bartolomé de Las Casas (1474–1566) is also remarkable. He was a Dominican friar, trained at the School of Salamanca, who became the first bishop of Chiapas, Mexico. An indefatigable champion of native Americans who fought against the abuses of the colonialists and demanded freedom from slavery for all humans regardless of their race or religion, he is considered one of the first advocates of universal rights.

Philosophical and Theological Approaches to Business Ethics

At the beginning of the business ethics movement in the 1970s and early 1980s, philosophers played an important role in its development. The bibliography on business ethics in the 1970s included philosophical, but also theological and business entries ([46, 47], cited by [21], p. 431). However, according to De George [21], the theological writings showed more concern for social ethics than business ethics. Although this may be a partially correct description of historical reality, this does not mean that religions, and specifically Christian moral theology, should be excluded from the domain of business ethics.

The first textbooks on business ethics presented no religious or theological approaches to this discipline (see, e.g., [20, 87]) nor did the first issues of currently recognized journals in this field such as *Business Ethics Quarterly*, which started in 1980, and the *Journal of Business Ethics*, which first appeared in 1982. However, the situation has changed and now these journals include articles from the viewpoint of religions or wisdom traditions. Calkins [12] held that business ethics might become more integrated, interesting, and autonomous as an academic discipline by incorporating key religious traditions. Enderle suggested that there are common grounds between philosophy and theology [28] and argued that religion in business is highly relevant [29]. Epstein [31] supported the idea that religious traditions merit a critical role in management education.

In spite of this, the exclusion of religion from the business ethics field was still evident late in the first decade of the twenty-first century. Even in certain comprehensive handbooks and encyclopedias on business ethics, religious approaches are quite marginal. This is the case with *The Oxford Handbook of Business Ethics* [10]. According to Enderle [30], for the editors of this handbook the field of business ethics consists of the (Western) philosophical analysis of moral problems and case studies of business, including internal and external issues. Second, it is a “practical” matter viewed from “a business orientation,” dealing

with “various relationships that obtain largely within business.” With this double-pronged definition and 26 contributors from the USA and one from Canada, this handbook – concludes Enderle ([30], p. 731) – represents the typical “American” approach to business ethics. Another case mentioned by Enderle is the *Encyclopedia of Business Ethics and Society* [48], the biggest encyclopedia of “business ethics” and “business and society”; at the end of the first decade of the twenty-first century, only eight of almost 900 entries deal with religious matters in business and economic ethics.

However, wisdom traditions and religions, including Christianity, Judaism, Islam, Confucianism, Buddhism, Hinduism, and Shintoism, along with moral theology, provide abundant ethical guidelines for business [62]. In Asia and the Middle East, religions have a strong influence on the conduct of businesses and on the adoption of business values. Nevertheless the historical and global importance of religious views on business ethics is sometimes underestimated in standard introductions to business ethics [1].

The narrow vision of business ethics, which focuses only on Western moral philosophy and excludes religion, is not shared by many scholars. Rossouw [81] argued that postmodern culture offers theology an opportunity to become more involved in the world of business, and especially in business ethics. But what is the relationship between philosophy and religion and theology?

In practice, philosophical and religious approaches seem like two incommunicable realms, and some business ethicists, such as De George [21] in the first years of the business ethics movement, argued that business ethics, with its fine distinctions, is a matter for philosophers, and maybe also for theologians, but not as theologians but in the role of philosophers. According to De George, theologians only speak to believers, whereas philosophers speak to everybody and provide rational arguments. Since theology is based on faith, “it seems appropriate to the philosopher that theologians address members of their own religion. If a theologian addresses non-believers, he presumably attempts to influence them by the strength of his feelings, by the intuitive appeal of his value judgments, or by his persuasive skill rather than by strictly theological arguments. If the appeal is only in terms of reason with no recourse to theology, the theologian assumes the approach, if not the role, of the philosopher” ([21], p. 424). As a conclusion, it seems that a business ethic acceptable by everybody is the exclusive competence of philosophers. At first glance this might seem reasonable to many, but on closer examination problems appear. Philosophers propose a vast number of theories, and each assumes certain epistemological and anthropological premises along with fundamental ethical principles, such as the categorical imperative, the utilitarian principle, and the existence of virtues. One wonders which ethical theory is the right one, and how Western theories of ethics could be acceptable worldwide. Religious people may also ask whether or not a certain theory is compatible with one’s own faith. There is still a deeper question in the field of business ethics. Is it enough to accept philosophical proposals to develop a business ethic which provides a full sense of life in business activity, rather than being merely a tool for solving ethical dilemmas?

Another question which arises is: Might nonbelievers learn something from religion and theology (rational development of religious faith)? Many Catholic social encyclicals are addressed to believers but also to “all people of good will,” probably with the hope that they can be useful as inspirational thought or as an aid to reflection. Business is a part of human life and it does not seem correct to see business ethics as being disconnected from a meaningful life; and in this both faith and reason have their role. According to the pope-philosopher John Paul II, “[f]aith and reason are like two wings on which the human spirit rises to the contemplation of truth” ([76], Introduction).

Furthermore, do theology and philosophy need one another? Theology – not simple “religion” – needs philosophy for further developments. Philosophy uses reason not faith, but certain propositions of faith can stimulate reason for rational discussions. Thus, “reason is stirred to explore paths which of itself it would not even have suspected it could take. This circular relationship with the word of God leaves philosophy enriched, because reason discovers new and unsuspected horizons” ([76], n. 73).

This circularity between faith and reason is not far removed from the view of Thomas Aquinas, who provided a solution to the relationship between philosophy and Christian theology based on two points.² Firstly, as noted above, Aquinas distinguishes theology and philosophy as two distinct enterprises, of which the main difference is their intellectual starting points. Whereas theology starts with Christian Revelation and accepts its data on the basis of divine authority, philosophy starts with reason and rational knowledge from information provided by senses. Theology uses as a starting point confidence-based knowledge; it is based on the reliability of God, who reveals Himself to people. The reliability on philosophical knowledge comes from our natural faculties being employed with respect to the natural world.

Secondly, Aquinas defends the convergence of reason and faith in matters accessible to human reason. He held that rational discussion cannot disagree with theology in matters which are accessible to human reason. This includes issues of business ethics such as the prohibitions on stealing, bribing, or telling lies. Of course, this is not the case of strictly supernatural truths such as the Trinity of Persons in One God or the divinity of Jesus Christ, which are not matters of philosophy because of their suprarational character. If, in practice, the conclusions reached by theology or philosophy are in conflict, Aquinas holds that such conflict is apparent and is due to some prior error in the theological or philosophical reasoning, since God is the author of both the Revelation and the world accessible to human reason. Thus, a more accurate rational process will be necessary.

Regarding ethics, Aquinas proposed using both reason and faith in presenting Christian commandments and virtues. Natural moral law, which, as noted above, determined the end of human virtues, is a philosophical approach and a moral matter for all people, including Christians, of course. Christian ethics, however, goes beyond this since it has Jesus Christ as a main reference.

Applied to business ethics, natural reason and human virtues provide foundations for business ethics for everyone, regardless of what religion they might have, or even if they are not religious. Christians should go further by extending what natural reason proposes with Christian teachings.

Conclusion

After presenting an overview of Scholastic thought, this chapter explored how such thought, and especially the tradition based on Thomas Aquinas and the Late Scholastics developments, can provide interesting insights on a number of business ethics topics currently under debate. Linking economics and ethics is within the scope of most Scholastic thought. It is also remarkable how universal principles and situational particularities and cultural differences can be considered altogether, without falling into ethical relativism. In ethical decision-making, Aquinas provided the triple font of morality theory as an alternative to conventional theories based on deontology, utilitarianism, contractualism, for example. He harmonized principles (natural law) and virtues. This suggests overcoming the dichotomy between principle-based theories and virtue-ethics-based theories. Scholastic thought supports the existence of responsibilities toward relevant stakeholders, and not only shareholders, but points out the common good as a main reference, also for purposes of solving problems of conflicting interests among stakeholders. Human rights in a global world receive much attention from Late Scholastics. Finally, the role of philosophy and religion/theology in business ethics, and their relationship, is carefully determined in Aquinas's approach.

Although Thomism is not in the mainstream of business ethics right now, it might again be, as it was in other times. In this regard, we might usefully remember that virtue ethics and the Aristotelian tradition were not present at the beginning of the modern business ethics movement in the 1970s and 1980s, but they are now a respected approach. As noted, Aquinas presented a serious approach to virtue ethics by taking human nature as a reference.

Aquinas may offer lessons for ethics and business ethics today. Significant may be the recognition of Thomas Aquinas by Alasdair MacIntyre, a highly influential author in virtue ethics, mainly for his book *After Virtue*, published first in 1981. In the preface to the third edition of this book, he wrote:

I had now learned from Aquinas that my attempt to provide an account of the human good purely in social terms of practices, traditions, and the narrative unity of human lives, was bound to be inadequate until I had provided it with a metaphysical grounding. It is only because human beings have an end towards which they are directed by reason of their specific nature, that practices, traditions, and the like are able to function as they do. So I discovered that I had, without realizing it, presupposed the truth of something very close to the account of the concept of good that Aquinas gives in question 5 in the first part of the *Summa Theologiae*. ([56], p. xi)

Hopefully, this chapter and the following chapters in this section of the book can contribute to better knowledge of Scholastic thought, especially in connection with business ethics. Our conclusion is that Scholastic thought and more specifically the Thomistic tradition have much to offer in further developments of business ethics.

Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Business Ethics in the School of Salamanca](#)
- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Economic and Business Ethics in Select Italian Scholastics \(ca. 1200–1450\)](#)
- ▶ [Scholastic Business Ethics: Thomas Aquinas Versus William of Ockham](#)
- ▶ [The Influence of Thomistic Thought in Contemporary Business Ethics](#)
- ▶ [The Traditional Christian Social Ethics](#)

Notes

1. Usually the *Summa Theologica* is quoted by mentioning the part, question, article, and, if this is the case, the answer to the numbered objection. Thus, I-II, q. 94, a. 2, ad 1 (or simply, I-II, 94, 2, 1) means “First part of the second part, question 94, article 2, and answer to objection number 1).
2. See “*Philosophy and Christian Theology*” in *Stanford Encyclopedia of Philosophy*: <http://plato.stanford.edu/entries/christiantheology-philosophy/>. Accessed 25 Jun 2011.

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Scholastic Business Ethics: Thomas Aquinas Versus William of Ockham

8

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Abstract

For Thomas Aquinas, economic transactions, as human interactions, cannot be separated from ethics. Since the human being flourishes through virtuous living and strives to flourish, virtues are just as much of relevance to business as they are to every other sphere of human conduct. Moral objectives are neither external nor marginal to economics. Instead, they are fundamental in order to understand central human motivation behind the production and exchange of goods. Business has a social purpose; it is to serve the common good. Thus, Thomas limits the quantitative pursuit of profit by qualitative concerns for human well-being and establishes a hierarchy of life-promoting goods (as ends) that business (as a means) is to procure. On this basis, he develops a rich economic ethics that spells out how business should be informed by virtues and conducted in the light of the idea of social justice. Private property and corporate wealth have to serve all members of society and must be used with respect to the human dignity of each. This, Thomas argues, holds true across time and culture. Irrespective of the requisite specifications that context and circumstance demand, he defends the general orientation of business and the economy toward human well-being and dignity as of global reach and universal validity.

Thomas's normative business theory rests ultimately on intermediary position that he holds in the debates about metaphysical universals that captured the minds of medieval thinkers. According to Thomas, human intellect is capable of conceiving valid universals about reality. This assumption was severely challenged by nominalist thinkers of the late Middle Ages. They argued, on the contrary, that the ideas of the human mind were but the names (*nomina*) of

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things – signifiers, which revealed nothing (objective) about the signified but communicated only the (subjective) interests of their users. Once, however, ideas are viewed merely as linguistic conventions, the assignment of a “natural” value to a given good above and beyond its customary (market) value becomes notoriously difficult. Thus, by undermining the metaphysical foundations of medieval epistemology, nominalist philosophers, such as William of Ockham, also destabilized the ethics that rested upon them.

Introduction

High Scholasticism in the Twelfth and Thirteenth Centuries

The scholasticism of the twelfth and thirteenth centuries is characterized by the conflict between Platonic-Augustinian and Aristotelian metaphysics [49].¹ Fueling this controversy were philosophical problems (e.g., about the epistemological rank of thought vs. experience), theological questions (e.g., about the nature of sin and the moral status of the human body), as well as tensions between philosophy and theology (e.g., about the priority of reason vs. faith). The philosophy of Thomas Aquinas gained the enormous significance it holds up to date because it offered a synthesis to many of these intellectual conflicts on the basis of a reconciliatory epistemology. Between the extremes of a Platonic *idea-realism* (ascribing to ideas an existence independent of the things they described) and a radical *nominalism* (arguing that ideas were but inductive generalizations of particular notions), Thomas Aquinas held an intermediary position. Against the nominalists, Thomas defended the truth of universals through the independence of general concepts from the particular notions, intuitions, and experiences they characterized. Against the Platonists, he argued that the reality of universals must not be used to hypostatize the *conceptual* distinction between universals and their objects of reference into an *ontological* bifurcation. Existence and essence can be separated intellectually but not in reality [33]. In short, while the Platonic idea-realists sought universals *ante rem* (irrespective of objects of reference) and nominalists generated them solely *post rem* (contingent upon such objects), Thomas located them *in re* (as general and thus functionally independent signifiers of the particular objects they signified) [87]. This functional (or transcendental) metaphysics allows the human intellect to disclose interpersonally valid truths about reality [88] and, thus, a realist approach to life and ethics.

With the demise of Thomism in the late Middle Ages, however, the centrifugal forces of the aforementioned positions began to tear asunder the scholastic framework that had held them together, for the didactic method of high scholasticism corresponded closely to its dialectical mission: to elucidate truth by reasoning [66]. In order to succeed, the scholastic project had to establish and defend an intrinsic connection between the “natural light of reason” and the concept of “natural law.” With the dissolution of this very connection through *nominalist* and *voluntarist* theories began, therefore, the demise of scholasticism in general. Therein lies the

overarching significance of the struggle between conceptualism and nominalism, carried out by debates between proponents of the metaphysics of Thomas Aquinas and supporters of *William of Ockham*, that stands at the center of this chapter. First, we will reconstruct the metaphysics of Thomas Aquinas and expound its virtue-based business ethics; then, we will present the alternative philosophy of William of Ockham.

Thomas taught that the “natural light” of reason (*lumen naturale*) leads to truth (*S. th.* I-II, 109, 1 ad 2; II-II, 8, 1 c; 15. 1; 171. 2 c & 4 ob. 3; etc.).² The human being is endowed with rational capacities that may be supervened but are never contradicted or annihilated by “supernatural” (*lumen supernaturale*), that is, revelation-based, knowledge (*S. th.* I-II, 109, 1 ad 2). In emphasizing the capacity of human reason to reach truth unaided by theology, Thomas addresses the rational powers of every human being, everywhere and always (*SCG* 1, 2). Studying the world in its own light, that is, uncovering the laws of nature as they show themselves to reason, honors God, he argues, because through creation we learn indirectly about its Creator (*SCG* I, 7&8 and II, 4). True faith is in harmony with worldly knowledge, since God chose to reveal himself also in, and through, his creation (*De Ver.* q. 14, 9, ad 8). While not everything can be known through the conclusions of reason alone – in matters of faith and salvation the powers of rationality are inadequate (*Sent.* III, d. 1, q. 1, a. 2-3) – the basic tenets of theoretical philosophy can be known solely by reason, and the same holds for the fundamentals of moral reasoning (*S. th.* I-II 94, 2). While Scripture contains transcendent concepts that do not appeal to everyone, in the essential questions of human conduct, Thomas holds that the moral precepts of Scripture and secular reason converge.

The medieval jurist, Gratian, provides an example of one such convergence when he defends the proposition that everyone is bound to do for another that which one wishes to be done for oneself (*Decretum*, I, 1, prologue). While directly revealed through Scripture (*Mt.* 7:12), this Golden Rule is also just as evident to those who proceed through sound philosophizing to an understanding of human nature (*S. th.* I-II, 94, 4 ad 1). It is this overlapping consensus between reason and faith that provides high scholastic thought with the requisite unity for its imposing intellectual works. It is this very unity, too, however, that will be dissolved through the nominalist philosophy of William of Ockham.

Thomas Aquinas’s Approach to Business Ethics

According to Thomas, humans need specific cultural forms in order to articulate ethical norms (*S. th.* I, 5, 1). Moral insight advances through the unification of three different levels of ethical understanding: first, a principled insight into the good (*synderesis*³); second, a situational judgment (*prudentia*) that informs which kind of behavior meets the criteria of law, custom, and virtue that specify the good in each concrete context; third, knowledge (*scientia*) that identifies the specific factual nature of the case at hand. Whereas the second and the third form of moral

reasoning are contingent upon the finite mental abilities and the limited scope of information available to the persons involved – and thus fallible – the first is not [35, 37]. The reason is that all persons know in their hearts that “good is to be done and pursued, and evil is to be avoided” (*S. th.* I-II, 94, 2); the awareness of this fundamental principle (*synderesis*) can never be expunged (*S. th.* I-II, 94, 2); as an indestructible core of sustained righteousness (*perpetuae rectitudinis*), it resides forever in everyone (*Sent.* II, d. 24, q. 3, a. 3 ad 3; [14, 47, 76]). Notwithstanding this fundamental moral principle, people do not always agree on moral questions. What accounts then for their ethical disagreements?

Thomas explains: Whereas in *theoretical* philosophy our (descriptive) theories about the world may *actually* differ (because of flawed deductions, faulty premises, illegitimate inferences, etc.), *potentially*, that is, under ideal conditions, all our judgments could converge. The world is but one, and to Thomas, diversity in its theoretical descriptions thereby proves only that human knowledge of the world has not yet reached its ultimate, adequate, and all-integrative level (*S. th.* I-II 94, 2). Instead, in *practical* philosophy, that is, in regard to all moral (prescriptive) questions, the diversity of judgments is only sometimes, but not always, merely an expression of nonideal conditions. The variety of ethically charged customs and conventions also reflects the divergent contingencies of circumstance of moral practice (*S. th.* I-II 94, 4). Virtuous behavior can, and at times must, vary according to context [8], for instance, when circumstances change so as to alter the object or bar the realization of the intention of the respective action [4].

Obviously, this insight is of immediate relevance for the regional ethics of business. In fact, any and all contemporary theories of business ethics must answer precisely this very question, where to delineate universal strictures from regional customs, lest they succumb either to obtuse universalism or obdurate relativism. When and how may circumstance change the ethical case in point, and how far does reason offer stable guidance even in changing environments? Are there global norms and virtues, and, if so, what are they [30]?

Virtue and Natural Law

Thomas acknowledges general precepts about virtue (*S. th.* II-II, 44, 2, 1) and holds that “all acts of virtue are prescribed by the natural law” (*S. th.* I-II, 94, 3). Hence, if the essence of the latter is intelligible to human reason, so should be the nature of the former. Virtue pursues the good, while the natural law teaches what the basic goods of human life are. Thomas lists the following as the most basic goods of human life: self-preservation, procreation, education of the young, seeking knowledge and the truth about God, and living in society (*S. th.* I-II 94, 2). The general principle “to do good and to avoid evil” becomes more specific when applied to these natural goods, that is, in the command to promote (and to abstain from hindering) their realization. Some concrete moral precepts can be inferred directly, for example, a command, “such as ‘one must not kill’, may be derived as a certain conclusion from the principle that ‘one should do harm to no one’” (*S. th.* I-II 95, 2),

explains Thomas. Other norms, however, need further contextualization in order to afford us ethical guidance. For instance, while “the law of nature holds that the one who does wrong should be punished; that one is punished in such a manner is a (further) determination of the law of nature” (*S. th.* I-II 95, 2). While requisite contextual differences in regard to the specificities of regional customs (*S. th.* I-II 95, 3) and temporal affairs (*S. th.* I-II 96, 1) are generally accepted by Thomas, ethical diversity also meets clear “natural” limits. Not all variants introduced by circumstance and context are morally acceptable.

Thomas points to the habitual thievery of Germanic tribes, for instance, which, in his eyes, is not a legitimate cultural specification of the institute of property but must rather be attributed to the depraved customs and corrupt habits of said Germans (*S. th.* I-II, 94, 4-6). His reasoning is that such a behavior cannot be accepted from a global vantage point, since it rests on a failure to connect a requisite derived precept (*do not steal*) from the universal principle (*do not harm*). (*S. th.* I-II, 94, 6 ad 1) Similar judgments can certainly be made in regard to harsh labor practices that violate the physical integrity of employees and make it impossible for the individual workers to flourish [80]. Thus, the fundamental imperative to advance the natural goods of human life leads to a substantial context-invariant body of moral norms, binding all humans, at all times and in all places [89]. Business actors, just as much as governmental agencies or individuals, are called upon to meet standards whose global reach Thomas defends by stating that the virtuous conduct they demand derives from basic insights of human reason into the nature of the human good (*S. th.* I-II, 94, 3).

While a contemporary moralist might emphasize mostly the benefits of virtuous acts upon their respective recipients, Thomas also stresses the positive effects of justice upon its practitioner. Human virtue, he argues, not only renders the act good but also improves the agent of the good deed. In fact, a natural *inclination* to act reasonably and virtuously is for Thomas common to all human beings (*S. th.* I-II 91, 2), regardless of political, religious, or geographical differences (*S. th.* I-II, 94, 4; 95, 2). Virtuous behavior unlocks otherwise dormant potentialities and helps individuals to make the most of themselves. People flourish from acting justly toward one another; it lies, hence, in the self-interest of individuals (and firms) not to be selfish [3].

According to Thomas, “the natural law, in the abstract, can in no wise be blotted out from men’s hearts” (*S. th.* I-II 94, 6). No human being is ever wholly without an innate awareness of the good and, hence, never thoroughly without any goodness at all. Even those who commit atrocious sins cannot thereby divest themselves of their rational nature as such or of their potential to redirect their lives to the good (*S. th.* I-II 85, 2). While the moral *worth* of individuals changes with their actual actions and convictions, this fundamental capacity to moral reform highlights the *dignity* of each person as a human being, which remains untarnished by personal conduct [91]. Each human being, therefore, is always – in business transactions just as in all other aspects of life – to be treated with respect due to this very dignity [55].

From these deliberations, two important conclusions can be drawn. First, a cross-cultural insistence on the basic moral tenets cannot be dismissed as an illegitimate

infringement on cultural sovereignty rights [36]; rather, any practice that directly contravenes universal prescriptions can justly be proscribed (S.th. I-II, 95, 2). A clear stance in favor of the *United Nations Declarations of Human Rights* and its consistent application in the economic sphere is but the consequent translation of this ethics into our contemporary life world [12, 83]. Since natural law addresses itself to all actors, that is, to firms just as well as to individuals and states, the same holds for a corporate commitment to its principles, as expressed by the signatory companies to the *United Nations Global Compact* [55, 90]. Second, if an inclination to moral conduct is deemed essential for human life, anthropologies (such as the neoclassical *homo oeconomicus* theorem) that overlook this normative dimension will necessarily err in their prognostic treatment of human behavior as well as in their recommendations for economic policy. With Thomas, one must reject as incorrect all positivistic and relativistic approaches to economics. The *prescriptive* nature of human reason must inform any *description* of human agency; in brief, economics without ethics is – descriptively – as incomplete as it is flawed and – prescriptively – bound to pervert the true purpose of economic activity. Not in (quantitative) maximization of utility lies the ultimate purpose of business but in a richer (qualitative) conception of economic success, including virtue and social responsibility [18]. Business, in short, has to benefit the common good, not just the transacting parties and their financiers [61]. Pecuniary measurements can, hence, from a Thomistic perspective, only serve as controlling but never as guiding principles of corporate conduct [41].

Natural Law and Justice

Thomas says that “what is particular to justice among other virtues is that it orders a human being in those affairs which concern another” (S. th. II-II, 57, 1). The idea of justice expresses a “habit according to which one gives to everyone what is right (*ius*) with a constant and perpetual will” (S. th. II-II, 58, 1). The designation of internal constancy of the will to justice implies that true justice not be limited to particular time and circumstances (S.th. II-II, 58, 1, ad 3). Rather, the extension of the individual virtue of justice into social dimensions suggests a need for certain forms of *institutional*, for example, legal, justice. Justice must manifest itself in public laws that represent more than the collective pursuit of individual self-interest; they should address the common good, not just aggregate interest [27]. Moreover, Thomas extends the understanding of the essential nature of justice (arranging affairs in their correct order) beyond the commutative fairness. The virtue of justice is directed to others *in common* and requires that one, who serves individuals within a community, also serves that community at large. As a result, individual justice, when perfected, contributes to justice in society by aligning the forms and norms of legal justice with the general good (S. th. II-II, 58, 5).

As a requisite extension of individual goodness to its societal object, the virtue of justice cannot be limited to the legal realm. Thomas demands that the fair and adequate treatment of others characterizes *all* actions by individual and collective

agents. A durable and healthy society requires that justice not only informs the rules of law, it also demands that justice inspire all norms of moral and social conduct, including the customs of business [81]. Through justice, the equity of social proportions is preserved. Hence, *justice justifies* as it rectifies the agent's social relations and thus legitimizes the agent's position in society, whether this agent be an individual or collective person such as a firm. Justice, moreover, commits one to form a sufficiently objective view of others and what is due to them (*S. th.* II-II 58, 1); that is, through the orientation toward justice, the otherwise overly individualistic notion of virtue gains a decidedly transpersonal content. By commanding alterity-oriented objectivity from the individual's worldview, justice calls for prudence as well. For in obliging the individual to act with adequacy toward others, justice demands that one develop a keen understanding of the lives and needs of others. To act with justice demands the prudent integration of external standpoints and a sensitive regard for the specificities of others, that is, bridging cultural and societal divides and overcoming ethical parochialism [8]. By committing each and everyone to nonpartisan perspectives and integrative viewpoints, the idea of justice promotes a more integrative worldview than a unilateral satisfaction of personal wants requires [16]. Applied to the business context, this approach directs the firm, for reasons of both justice and prudence, to recognize the concerns of and to accept responsibility for *all* of its stakeholders [2].

While Thomas acknowledges that in different countries varying circumstances will lead to the construction of divergent social norms and legal codes (*S. th.* I-II 96, 5), he holds that certain strictures of natural law apply to all peoples around the globe (*ius gentium*) because of their shared humanity (*S. th.* I-II 95, 4). As reflected in later teachings of the *School of Salamanca* that largely developed its cosmopolitan business ethics based on commentaries on Thomas's works, the normative orientation of natural law extends to the socioeconomic realm worldwide [1, 19, 53, 69]. The diversity of global business practices notwithstanding, certain core elements of moral conduct can, and indeed must, be safeguarded universally. While Thomas regards the specifics of wealth creation as alterable social constructs, his conception of *ius gentium* relates also to the business sphere and assigns that the overall direction of economic activity must always be guided by the overarching end of natural law: the common good (*S. th.* I-II, 92, 1). As Thomas's establishment of the precepts of justice as a duty to everyone (*indifferenter omnibus debitum*: ST II-II, q. 122 a. 6) can be understood as the beginnings of a concept of universal human rights ([26], p. 23), the socioeconomic dimensions of Thomas's concept of natural law (*S. th.* I-II, 91, 5) can today be well reformulated as common socioeconomic rights of humanity. Core mandates of socioeconomic justice, that is, ought to attain worldwide legal sanction [89].

Social Justice

Beyond traditional demands of commutative and distributive justice, Thomas proceeds to the idea (albeit not the term) of a social justice that *binds* as well

as *bonds* individuals and societies. Thomas reiterates Aristotle's position that wealth is not an end in itself but merely an instrument to attain higher goods (*S. th.* II-II 118 ad 5). Thomas regards neither wealth as (necessarily) a good nor poverty as (necessarily) an evil. Their assessment depends upon the role they play in human life (*SCG* III, 30, 2). In case riches make individuals anxious or immoral, then, he thinks, it is surely better that poverty frees them from these afflictions. One should, however, neither view poverty as a good in itself; it, too, is only of instrumental value and praiseworthy "only in so far as it liberates (one) from those things by which a human being is prevented from intending spiritual things [. . .]. And this is common to all external things that they are good to the extent that they lead to virtue, but not in themselves" (*SCG* III, 133, 4).

Thomas's repeated emphasis on the merely *functional* nature of possessions is of central importance for his socioeconomic philosophy overall. Individuals shall hold possessions in keeping with their social position (*suam conditionem*, *S. th.* II-II 118, 1). Yet whenever "the practice of virtue is hindered by them, they are not to be numbered among goods, but among evils." (*SCG* III, 133, 1). In contradistinction to some modern notions, Thomas defends concepts of property and profit that merely convey *relative*, yet never *absolute* entitlements, for Thomas's central socioeconomic argument is that goods, whose value is contingent, neither express nor fulfill human nature; in consequence, human beings do not have an *unconditional* human right to their possession [38]. Material wealth is in agreement with the natural rights of human nature under the condition that it is regulated by human laws promoting both individual virtue and the common good. Wealth acquisition and profit making are rendered legitimate through their wider social purposes.

Which are these social purposes of individual possessions? The use of the earth and its goods has been given to humanity in common (*S. th.* II-II, 66, 1). Legitimizing private ownership against a benchmark of initial equality, Thomas simultaneously limits the acceptable forms and manifestations of private properties through their social functions, for, *prima facie*, forms of property that exclude the use of others, that is, "private" property (from Latin: *privare* = to deprive, rob, strip away), do *not* fall within the domain of a common stewardship of the earth. Exclusive property rights are hence in need of moral justification, which can be found in the following arguments.

First because every man is more careful to procure what is for himself alone than that which is common to many or to all: since each one would shirk the labor and leave to another that which concerns the community, as happens where there is a great number of servants. Secondly, because human affairs are conducted in more orderly fashion if each man is charged with taking care of some particular thing himself, whereas there would be confusion if everyone had to look after any one thing indeterminately. Thirdly, because a more peaceful state is ensured to man if each one is contented with his own. Hence it is to be observed that quarrels arise more frequently where there is no division of the things possessed. (*S. th.* II-II 66, 2)

Far from giving unconditional support for the privatization of the earthly goods, this conditional justification *qualifies* and *limits* the individual right to exclusive property [60]. Since private property is *not* a direct institution of natural law but an

institution justified indirectly by it (*S. th.* II-II 57, 3), Thomas states that, *a fortiori*, the specific “division of possessions is not according to the natural law, but rather arose from human agreement which pertains to positive law” (*S. th.* II-II, 66, 2 ad 1). Since the institution of private property has to be justified relative to its function in fulfilling natural law, specific property relations within a certain society can never be defended *absolutely*. They are always subject to critical scrutiny, whether they benefit or harm a given community. One should “possess external things, not as one’s own, but as common, so that one is ready to share them with others in their need” (*S. th.* II-II 66, 2). While not demanding “that all things should be possessed in common and that nothing should be possessed as one’s own,” this passage does indeed mean that society can, and should, define proper boundaries of private possessions (*ibid.*). There is, in short, no abstract right to enrichment at the cost of the common good, either for individuals or for collectives, such as firms, since from a Thomistic perspective, *all* possessions are generally constrained by “the right of all persons to subsist upon the bounty of the earth” ([72], p. 245).

The law accepts, however, the presence of many evils and the absence of numerous goods on behalf of the higher good of human freedom which cannot otherwise be sustained (*S. th.* I-II, 96, 2). Hence, the moral precept of almsgiving or philanthropy does not translate into laws of massive income redistribution. Yet at the same time, Thomas also explicitly denies that the legal provisions for the institution of private property can be used against the right of those in need. “Inferior things” – he declares as if addressing a libertarian audience – “are ordered to assisting those in need. The obligation to assist those in need by such things is therefore not prevented by the division and appropriation of things which proceed from human law. And so things which some have in abundance should be used according to natural law to assist the poor” (*S. th.* II-II 66, 7). Human society, bound by the principle of justice for its legitimacy (*S. th.* I-II 95, 2), must never accept the superabundance of some in the face of the need of others [73]. Thus, a case for redistributive action on all social levels is made that can be extended to corporate actors as well [40]. For if we understand firms as communities of persons, then, just as individuals, they too have to promote social justice. Business cannot relegate all social responsibilities to the public realm. Instead, firms are not only *allowed* but, on occasion, such as given state failure or the total absence of public governance, *required* to act as subsidiary facilitators of social justice [5].

Commerce and the Just Price

In his rejection of avarice (*S. th.* I-II 84, 1), Thomas follows Aristotle’s criticism of greed or *pleonexia* [23]. Yet he also provides a more neutral assessment of commercial exchange than Aristotle, who had accepted trade only as a necessary evil. Exchange relationships, while often leading *subjectively* to a “certain debasement” of the involved tradesperson (*S. th.* II-II, 77, 4), are nonetheless viewed by Thomas *objectively* as transactions without intrinsic faults: their moral value is, like that of private wealth, wholly functional. Whether commercial transactions are

condemned or commended depends on what they accomplish for society. When they benefit all involved parties, they gain his approval (*ibid.*). Merchants, for instance, are allowed to seek not only surplus returns for their labor, costs, and risks (i.e., as reimbursement for their transport and insurance outlays) but also moderate gains resulting from the fluctuations of general market prices and particular customer demand (*ibid.*). Thomas sees the “just price” that shall be observed in trade not as a *quantitative* fixture but as a regulative idea of a *qualitative* nature. It is meant to eliminate excessive pricing in order to prevent the exploitation of dependencies and need, without demanding static prices, fixed to an unalterable economic equilibrium (*S. th.* II-II, 77, 1).

For the later development of the feudal and mercantile economies into the capitalistic system, this deviation from Aristotle is of highest importance [1]. *Prima facie*, Thomas seems simply to follow the many biblical injunctions against usury (Exod. 22:25, Levit. 25:37, Deut. 15:6; 23:19, Ps. 14:5., Lk. 6:34) and to reiterate Aristotle’s charge against the “sterile” nature of monetary transactions in favor of the more “fruitful” dimensions of commodity production and exchange. On second inspection, however, we see that Thomas’s approach is more subtle. On one hand, Thomas does value labor over exchange and, in turn, commodity exchange over monetary investment when it comes to assessing the morality of revenue claims [28]; the healthy preference of “sweat equity” over capital returns that characterizes medieval philosophy in general also permeates his deliberations (*Contra impugnantes*, VI, ad 12). On the other hand, that does not mean Thomas would grant a legitimate role in generating income only to labor and never to capital [65].

While Thomas censures money lending as “usury” with many of the same arguments we find already in Aristotle (Pol. 1258b) and the Bible (*S. th.* II-II 78, 1) and while he also opposes the notion of interest as reimbursement for opportunity costs (*S. th.* II-II 78, 2, ad 1), it would still be erroneous to conclude that Thomas simply espoused a labor cost theory and would have dismissed today’s capitalistic economy therefore as illegitimate (cf. [63]). Thomas does allow for gains without the direct input of labor, for example, revenues from rent and also from investments in trade partnerships (*S. th.* II-II 78, 2). Why these exceptions in favor of capital-based income? The most convincing answer proceeds from the postulation of social justice as the core virtue of business. In either of these forms, the invested money has served a socially productive function – for example, building up real estate in the former, outfitting a merchant voyage in the latter – that is, the money has been used as *productive* capital, realizing social utilities that, without the expectation of gain, might have remained unrealized. This is where the crucial difference lies.

That Thomas rejected lending with interest must be seen before the medieval backdrop. At the time, private surplus funds were not yet identified as social capital because they often remained idle or were used for ostentatious consumption [25]. To lend money demanded hardly more from the creditor than rejecting the morally dubious pleasures of living the life of a miser or a waster, respectively. Those who asked for pay to forgo either option met with moral indignation. An altogether different plane is entered once we view money as capital [84]. Money can, after all,

no longer function as a permanent measure of value when, as capital, it is itself traded. In a thoroughly capitalized and growing economy, money, too, carries a price, and so every outlay implies not only hypothetical opportunity costs but real expenses to the lender. While probably beyond the imagination of Thomas, it is not beyond the reach of his ethics to deal with such a state of affairs. Thomas might well have accepted income from capital investment as long as they were conducive to the welfare of all stakeholders [6]. *Mutatis mutandis*, this thought may nowadays serve as a guideline for a more humane economy [21]; it inspires us to include parameters such as virtue and social responsibility into our management theories [39, 61]. In particular, Thomas's instruction shows how social justice as a relational virtue business can reconcile corporate and societal interests to the benefit of all concerned [22].

William of Ockham and the Demise of Ethical Realism

Thomas had taught that virtue reaches farther and deeper than the law; it can operate where the latter lacks power and extends beyond its commands [75]. Thomas argued, moreover, for an interpersonal dimension to virtue ethics which allows for its application across cultural divides [48], enlisting into the pursuit of the common good businesses just as well as every other human institution [54]. The ultimate foundation for this ethical realism was his metaphysical conceptualism, that is, his conviction that rational concepts can elucidate the natural law and show which conduct best befits human beings. Ethics and anthropology were intimately intertwined. This intricate connection, however, rested itself on an epistemology that was increasingly questioned by posterior thinkers, the most radical of which was, arguably, William of Ockham. Attacking the metaphysical basis of Thomas's epistemology, Ockham severed the "natural" link that Thomas had forged between ontology and axiology.

Theoretical Premises (Nominalism)

"Ockham's razor," as a maxim of argumentative parsimony (*Sent.*, lib. I., *Dist.* I., q. 1&2), is what today most people associate with William of Ockham (c. 1288–c. 1348). Ockham did in fact express the view that, all other things equal, in scientific explanations the simpler explanation shall be preferred and unnecessary assumptions are to be avoided (*Quodlib.*, IV, q. 19). The context for the formulation of this maxim was his opposition against the "realism" of concepts as self-standing universals ([13], p. 115). Ockham held that what can be known with certainty is only that which we derive (directly or through logical deductions) from first-order and second-order intuitions [62]: Intuitions of the first order are sensory perceptions (of individual things), self-evident intuitions (axioms of logic), and knowledge through revelation (*Reportatio* II, qu. 150). These first-order impressions inform us *that* something exists. Intuitions of the second order form relations between the former intuitions (*Quodlib.* I, qu. 15) and instruct us *how* things correlate and as

what we can categorize them ([13], p. 110). Only the former type can establish *real* (existential) knowledge, whereas the latter merely afford us *nominal* (linguistic) definitions ([46], p. 69). Thus, Ockham argues against metaphysical thinking, which, he holds, posits without justification merely nominal definitions as real ones and infuses the realm of the real with fictitious entities (*Summa Tot. Log.*, Pars. I., cap. 12, f. 6, r. A). While using the *idea* “man” in the predication “Socrates is a man” makes sense, assuming an *object* “man” in and of itself does not. We can use the (universal) idea of humanity but shall not presuppose it exists apart from being an illustration of the (singular) objects it describes (Sum tot. log. I, 66).

If one sees universals as mere signs, certain consequences follow. First, the distinction between existence and essence is rendered superfluous, as now (nothing but) existence defines essence (Sum. tot. log. III, 2, 27). This applies also to God; no longer can his “real” existence be proven from a “nominal” definition of his essence. With the rational access to God barred, reason and faith begin to go different ways ([13], p. 121). Second, since reality appears no longer as ordered by universal, or essential, forms of the divine intellect, it must be said to spring from the productive will of God instead [24]. Through changing his will, God could, theoretically, alter all causal connections ([46], p. 29). Unbound by eternal laws (Sent II qu. 5), the will of God (and hence natural law) can no longer be deduced but must be received. Third, with the *essence/existence* bifurcation, the *potentiality/actuality* distinction recedes too. The world appears not as matter-in-potentiality but as actualized matter-of-fact (Summulae I 14). This positivistic ontology concurs with a positivistic axiology. Ockham locates the law of nature in the promulgations of secular and divine law and in actualized morality. As natural law can no longer be derived in a counterfactual manner from metaphysics, it must be inferred from the commandments of the Bible, the laws of the state, and society’s customs ([13], p. 107).

Practical Consequences (Voluntarism)

Ockham had the acuity and audacity to carry nominalism to extreme consequences [11, 62]. He gives up justifying the moral law by appeals to nature or reason. God commands, and his will assures the law’s legitimacy ([82], p. 161). Understanding the rationale behind its norms matters less than obeying them ([67], p. 342). In the old question, already posed by Socrates to *Euthyphro*, whether the Gods demand something because it is good or whether it is deemed good because the Gods demand it, Ockham comes out in favor of a morality based on divine command [64]. The intellect provides no *substantial* reasons that establish the goodness of an act or virtue but only furnishes the human being with *formal* conclusions as to the logical implications of God’s revealed commandments. If God commanded them, even heinous acts would become meritorious (II Sent, q. 19). On the objective level, this view shifts the emphasis of moral theology from *virtues* to *commandments*; on the subjective level, the focus moves from *inclinations* to *obligations* ([67], p. 251).

Whereas Thomas had theorized about morality only after having described the cognitive and appetitive powers of man and had thus oriented his ethics at the

natural inclinations of the human being (*S. th.* I, qu. 75-83), Ockham eclipses these dimensions through a single-minded concentration on the (purity of the) human will. He argues: We can, through suicide, reject life itself. If, however, we can negate life, we can, *a fortiori*, negate its (alleged) ultimate aim: beatitude (IV Sent, q. 14 D). Being able to decline acting upon our innermost inclinations, we are radically free – free, that is, not only to do good but to do anything we choose. Our liberty consists in choice. Inclinations, acts, and even virtues are consequently praiseworthy or blameworthy only in regard to the will that guides them (Quodl. III, 14). Human actions are never good in and of themselves, but always only insofar they follow a will that has subjected itself to Biblical or legal commandments. Thus, the notion of natural law shrinks dramatically, ultimately to represent in Ockham no more than “a traditional, convenient category for listing moral obligations” ([82], p. 336). Thomas had held that obedience to the natural law was good because of the natural goodness of the law itself, whereas in Ockham, the natural law now becomes a derivative of positive (divine and worldly) law. Obedience alone is truly good because it signals the subjection of the individual will under the higher will of God and/or the state. In later centuries, the divine will was dropped from this conception and what remained was the positivistic commitment to the respective political authority, culminating in Hobbes’s dictum that “authority and not truth makes the law” (*auctoritas non veritas facit legem*) (Hobbes 1681 [34], p. 5).

Ethics and Business

Events around the year 1328 – when Ockham decided to take sides against the Papacy – turned him rather into a political writer [79] and so suddenly that some authors divide his philosophy strictly in his (apolitical) writings before and his (very political) works after this date, treating them as entirely distinct spheres [10, 11]. Some interpret his metaphysics entirely without regard for his political philosophy [45]. Others proceed vice versa [51]. Yet at least two major connections between the two realms have still to be admitted. First, Ockham *does* derive certain political postulates from his theology. For example, since the writings of the Apostles are part and parcel of divine revelation, he concludes that the *liberation* they promised was a tenet with binding power for regents [56]. Second, his freedom theory also impacts his views on the (legitimate vs. illegitimate) *dominion* over goods. In regard to the first qualification, Ockham holds that the sovereignty of the Pope and of kings is based on Scripture and must never violate its stipulations ([11], pp. 449–457). The Bible explains how political governance became necessary once man succumbed to sin. Upon leaving paradise, the original communism of earthly goods and the harmony in their use ceased: In order to rein in their harmful selfish desires, people began to need governments (*Breviloq.*, Lib. 3, c. 6). In this process, the demarcation and defense of property as exclusively private also became necessary. This theorem connects secondly with Ockham’s theory of the free will. Since the free will alone inscribes values into the world, the principal task of property is to express voluntary

dominion over the world. Worldly goods are to express the (desires of the) human will and its free choices and thus deserve special respect [50].

This doctrine stands in stark contrast with the theory of ownership for use (*dominium utile*) promoted by Thomas Aquinas [60]. Whereas Thomas respected intrinsic limits to the human use and consumption of nature [57], Ockham does not acknowledge any essential link between morality and legality in the right to goods. Human law must obey natural law only insofar as it tracks divine commandments; human law is, however, not bound to cater to further moral duties [70]. While Thomas advocated a *relative* concept of private property, Ockham sides with an almost *absolutist* notion. As long as human or divine law does not stand against it, human beings are unlimited in their entitlements to commodities [77]. Everything Ockham's framework needs and allows for is already included in the laws. How to use the freedoms that legally remain to individual and corporate actors is, within his framework, a question left to private discretion. In this conception, there is neither need nor space for a virtue-based business ethics. The positivistic tinge of his philosophy colors Ockham's political thought and inspired later thinkers to break with certain Scholastic doctrines of political economics [52]. By reducing the scope of natural law to what *recta ratio* could deduce from the normative principles of the Bible [17], Ockham narrowed down the ethical sphere overall, with marked ramifications for the further development of economic ethics and the future directions of business ethics.

Subjective Versus Subjectivist Values

A consistent follower of Ockham had to reject the conceptualism behind the Thomistic doctrine of the "just price." Against the assumption that there was really some such universal to which prices (ought to) gravitate, a consistent nominalist would let the distinction between the market price and the just price collapse. Whereas Thomas had held that, as a rule, in well-ordered societies the natural price of the market approximated the just price and, where not, could and should find a corrective in the common (interpersonal) estimation of value, in the wake of Ockham, this subtle distinction between signifier and signified was annulled. Absent stark improprieties, the market price was increasingly regarded as the just price of goods. Thus, the entire realm of counterfactual values and their proclaimed objectivity would eventually be ceded to first the customary and later to solely subjective valorizations. From Ockham, in short, goes a straight line to the subjective value theories of modernity [68].

Late medieval theorists who followed this line of thought did, nonetheless, stipulate that market transactions had to remain within limits imposed by the authorities [59]. In fact, there was a strong tradition of late medieval price fixing in the interest of establishing or restoring just prices [85]. When, for instance, prices for grain "went up to fantastic heights in case of dearth," medieval authorities intervened. In such situations, for sure, "it would have been folly to rely on the automatic operation of competition" ([85], p. 429), and the respective governments

were practically “forced to resort to regulation” ([85], p. 425). This tradition of late medieval price fixing, however, must also be understood before the backdrop of voluntarism and the positivistic idea that prices fixed by the government were *eo ipse* just prices, thus the right to economic intervention. Usury was henceforth to be defined by the law alone. The moral use of the usury reproach waned, slowly but surely. Merchants needed ever less moral wisdom but ever more legal savvy in order to meet the normative demands of their societies. Business ethics began to shrivel to the imperative of abiding by commercial laws and regulations.

Through the works of Weber [86] and Tawney [78], we have long been accustomed to seeing the Protestant work ethics as a driver and Catholicism as a retarding force in the development of modern capitalism. In such narratives, the doctrine of the “just price” typically figures as a hallmark of an alleged medieval hostility to commerce and economic progress. This tale must be replaced by a more nuanced view of late medieval and early modern Catholic thinking [53]. We have to note that with the nominalist and voluntarist teachings of Ockham began an approximation to subjectivist price and value theories already in late medieval Catholic social teaching [15]. Protestantism did not invent the latter but only promulgated them more and farther [71].

We have, in particular, to distinguish between at least three fundamentally different ways of utilizing the “just price” theory. (1) Commercial forces were curtailed only where, as by Duns Scotus or John Mair, the “just price” was fixed by a strict labor cost theory meant to replace “unjust” market prices. Only very few medieval theologians, however, followed this view ([85], p. 421). (2) Most, instead, adhered to Thomas’s rather favorable view of the market price that, in well-ordered societies, could serve as a signifier for the just price [42]. Thomas’s later commentaries by the “School of Salamanca” demonstrated how his theory made sufficient room for subjective components of price building, while remaining committed to an overall objective conception of value [9, 58, 69]. (3) Inspired by nominalist and voluntarist notions then, we see an emerging trend within Catholic moral theology toward subjective value theories [32, 74]. Once the objective counterweight of universals was removed, in a number of late medieval price theories the *subjective* components became *subjectivist*. The singular replaced the universal that it hitherto represented: the market price was no longer seen as indicative of but as identical to the just price, at least in the absence of monopoly ([7], p. 76) or undue market entry barriers ([15], p. 83).

With hindsight, one must judge this subjectivist trend in Catholic economic ethics with due caution [29]. As much as narrowly objectivistic conceptions of the just price doctrine are negligent of important subjective and customary dimensions of economic value, wholly subjectivist value theories are, on the contrary, oblivious to all counterfactual and normative value dimensions [43]. Where the former tend to fight the market in the name of justice, the latter operate in the opposite direction. The golden mean lies in a position that reconciles the subjective with the objective components of value ([42], p. 190) and commits all parties to an economic transaction to the common good ([44], p. 439). This can neither be achieved by a static value conception that is impervious to the vicissitudes of trade nor by one that fluctuates with the market without any and all correctives.

Rather, one must combine a stable orientation toward social justice with flexibility toward commercial circumstances so that the just price serves not as a quantitative fixture (i.e., a distinct mathematical price point) but as a qualitative regulative (i.e., a realm of fair prices). The just price is then not an automatic resultant of abstract market forces geared to a predetermined equilibrium but the concrete outcome of human arbitration procedures oriented at equality and equity [58]. Its objective would be the avoidance of economic exploitation through parties intended to respect the common good [42]. The “universal” of the just price has consequently to be located neither “before” nor “after” the market price but “through” it, that is, through fair transactions in a morally well-ordered market. In more technical terms, the requisite value theory can neither rely on an idea-realist nor on a nominalist value conception but must proceed from a intermediary type of metaphysics. Thomas’s economic ethics had been of this sort.

Conclusion

In Thomas’s works, we find a well-balanced harmony between the subjective and the objective moments of value and between the personal and the interpersonal, that is, social demands of virtue. In prescribing justice as a social virtue and directing justice both legally and morally to the common good, Thomas provided an important normative horizon for business. Importantly, instead of moralizing economic transactions from without, this normative orientation proceeds from within economic rationality in that it expresses the fundamental nature of economic transactions as human interactions. By integrating economic rationality, thus, in a comprehensive theory of human reason, Thomas developed a truly global conception of business ethics that withstands the relativistic pressures of cultural diversity and enables a thoroughgoing humanistic conception of management. From unconditional respect for the human dignity of each person, Thomas expanded the realm of business ethics beyond the strictures of law and commutative justice; he declared the well-being of all and the flourishing of each the immanent goal of business overall. Not only did he thus write a stakeholder ethics *avant la lettre* but Thomas made clear that business, rightly understood, is a stakeholder of society and not vice versa. Consequently, the ascription of social responsibilities to corporations does not mean to saddle business with additional burdens outside their area of core competence. On the contrary, once the foundational role of ethics for economics is recognized, one can argue that the assumption of social responsibility must be inherent to each and every corporate endeavor. With Thomas we can argue that – given the moral nature of the human being – its ethical orientation is what makes the success of business truly sustainable.

Cross-References

- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)

- ▶ [The Influence of Thomistic Thought in Contemporary Business Ethics](#)
- ▶ [The Traditional Christian Social Ethics](#)
- ▶ [Scholastic Thought and Business Ethics: An Overview](#)

Notes

1. For instructive feedback, I wish to thank Anthony Celano and Laura Melkonian.
2. Since no critical edition of the *Summa theologiae* has yet appeared, both the Leonine edition of 1888 and the revision of the Piana edition (Ottawa 1953) have been consulted. For the remaining texts of Thomas, the Leonine edition has been used. Where no Leonine edition exists, the Marietti (Turin 1961–1967) version has been used.
3. *Synderesis* is a term first used by Jerome in his commentary on Ezechiel. It may be a misreading of either *syneidesis* (conscience) or *synesis* (intelligence or insight). For its introduction into medieval moral thought, see [47]. For its role in the history of ideas see [31].

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Economic and Business Ethics in Select Italian Scholastics (ca. 1200–1450)

9

Martin Schlag

Abstract

Between 1200 and 1450, Italy was one of the main actors in the “commercial revolution,” which took place in this period. This protagonism positively impacted scholastic reflection on economic ethics. Against the background of earlier chapters, four important authors among a great number of Italian scholastics have been chosen for closer examination: Olivi, Astesanus, Bernardino of Siena, and Antonino of Florence. They justified and exalted the importance of commerce and the social role of merchants praised for their honest work. The profit merchants made was considered to be a just recompense for their service of transporting, storing and improving goods. Profit was not, however, to be sought out of greed or avarice but in order to sustain one’s family and give alms. All authors were unanimous in their condemnation of usury as a form of exploitation of the poor. Their distinction between usury and interest and the establishment of so-called extrinsic titles to interest paved the way for the modern system of regulated interest rates in legal financial markets.

Introduction

Italy plays a very important role in the history of economic thought. This is true for the socioeconomic development as well as for the scholarly reflection on economics. Joseph A. Schumpeter [1], Raymond de Roover [2], Julius Kirshner [3], Robert S. Lopez [4, 5], and Jacques Le Goff [6], just to mention some of the more important authors in recent years, as well as other contemporary scholars like Joel Kaye [7], Diana Wood [8], Fabian Wittreck [9], Giacomo Todeschini [10], and, towering over all others, Odd Langholm, demonstrate that there is, “among

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historians in general, a renewed interest in the Middle Ages” ([11], p. vii). All mentioned authors pay due attention to Italian scholastics.

In the following section, without any claim to originality, I would like to offer a synthetic overview of Italian scholastic thought on the economy, from ca. 1200 to 1450.

The Socioeconomic Context of Scholastic Thought on the Economy in Italy

The scholastic authors wrote during a period of accelerated economic growth generally referred to as the “Commercial Revolution”.¹ It took place from the twelfth to the early fourteenth century and reached its peak between 1245 and 1345. The whole process was a combination of political, economical, monetary, and social factors.

After the year 950, the Genovese, Pisans, and Catalans had conquered all of the islands in the Western half of the Mediterranean, and the first Crusade had finally brought the complete opening of the Mediterranean trade routes. Once again, as in Roman times, the goods that caravans brought to the Syrian ports from India and China could reach Western and Northern Europe. Prominent among these goods were spices, incense, perfumes, medicine, dyestuffs, glue, silks, cotton textiles, paper, rice, oranges, apricots, and gold and silver artifacts ([12], pp. 54ss, 154).² Along with these imports came Arabic numbers and arithmetic and calculus, essential know-how for an increasingly monetized and rational economy ([8], p. 12). In exchange, the European traders sold wool cloth from Flanders, wood, iron, and sadly also slaves.

The period of peace following the defeat of the Saracens and the conversion of the Normans brought about an increase in Europe’s population growth, augmenting the number of soldiers for the armies in the East as well as contributing to the workforce necessary for trade, the cultivation of new territories (either by converting forests into plow land or winning land from the sea by dikes), and the massive construction works in the new urban centers which sprung up everywhere to create space for the new merchant quarters (boroughs, bourgs, borghi) around the old feudal fortresses ([12], p. 66ff).

This commercial activity brought high financial profits, which quickly, thoroughly, and enduringly changed the economic and social structure of Europe. Throughout the entire period studied in this chapter, Northern Italy was clearly predominant not only in an economic sense but also intellectually, bringing forth men capable of rationally penetrating and dominating the mechanisms of economic and financial exchange. This is illustrated by the fact that the financial instruments of modern capitalism and banking were invented and first practiced in embryonic forms in Northern Italy ([1], p. 78).³

The reason for Italian predominance is rooted in its geographical situation. Intellectually, Italy had received the cultural heritage of Greek, Arabic, and Jewish learning through the Byzantine rule and then through Frederick II’s cultural policy

in Southern Italy. Politically, Venice, Genoa, and for some time also Pisa were the great harbors and the undisputed maritime powers of the Mediterranean. Between these coastal cities on the Eastern and Western side of the peninsula, the Lombard plain, with its great urban centers such as Milan, Parma, and Lucca, and, farther to the South, Siena and Florence, were stimulated by the ever-increasing demand for manufactured goods. They grew wealthy through craftsmanship, commerce and soon also through international finance. By the thirteenth century, the “big four,” Venice, Milan, Genoa, and Florence, had taken the lead and were in control of trade.

This movement was furthered by the appearance of international commercial fairs, especially those in the French region of Champagne. Mostly Italian and Flemish merchants who exchanged their goods and also cleared debts, negotiated, sold futures, and made financial transactions visited them.

The eruption onto the scene of a monetary system also began about the year 950 and was one of the decisive factors in the Commercial Revolution. Once again, the Italians took the lead and stabilized the currency by introducing the *grossi* (heavy silver coins) and the gold coins that had fallen out of use since the Carolingian Renaissance. The feudal economy had not had any use for currency of such high monetary value. The need for money with higher value reflected the rapid economic growth of the thirteenth century. Genoa and Florence both introduced their gold coins more or less in 1252. Venice, with its golden “ducato,” established in 1284, was able to create an equally famous and appreciated currency.⁴

But even more important than metal money were the cash-free financial instruments the Italians developed during this time, resulting in the appearance of the great banking houses with representatives in the more important European towns. These were the financiers of the princes and nobility throughout the whole of Europe during the thirteenth, fourteenth, and fifteenth centuries. The Italian merchants held the finances of the entire continent in their hands.

Italian merchant and bankers invented a system, which eliminated the need for payment by coin by transferring sums of money from one account to the other and by using bills of exchange. This first appears in Genoa at the end of the twelfth century. The money changers, who held the deposits of their clients, were able to clear debts among them by transferring payment from one account to another. Moreover, three forms of financial instruments were invented: petty exchange, bill of exchange, and dry exchange. In petty exchange, money was immediately changed from one currency to another. With a bill of exchange, an amount had to be paid back later in another country and in a different currency. Often interest for the loan, disguised as exchange rates and fees, was hidden in the sum returned. Dry exchange,⁵ instead, was a fictitious bill of exchange. The sum was to be paid back with a fee in the same currency and in the same place. This obviously was a circumvention of the ban of usury, as it was a form of credit ([9], p. 147ff).⁶ The rate of interest was usually 10% p.a. in normal commercial credits. In an urgent case of need with high risk, the interest rates could be 50%, 100%, or more. The interest rate of the “Lombards” was 43.3%.

Incessant wars which began in the fourteenth century (1346–1453) and then, after a 40-year lull, continued during most of the sixteenth century, scourging taxation and inflation, recurrent major epidemics, famines, demographic decline, social unrest, the schism of Christianity and the exile of the Popes in Avignon, and perhaps unfavorable climate pulsation deeply and durably scarred the economy in the second half of the fourteenth century. The Black Death in 1348 alone cost Europe a third of her population, fatalities reaching even 65% in centers of dense urbanization: “the cream of the economic world was skimmed” ([5], p. 386).

The wool trade collapsed, and in 1378, the Florentine weavers revolted and social unrest among the laborers spread throughout the whole of Europe ([8], p. 42). The Bardi and the Peruzzi, the biggest companies of merchant bankers in Florence, went bankrupt, and all of Europe was engulfed in an economic depression. It was also the end of the flourishing of an optimistic scholastic learning.

We must, however, not overemphasize this dark picture of the fourteenth and fifteenth centuries. The progress accomplished in business methods during the Commercial Revolution was not lost. It would be a mistake to assume that Italy lost the primacy it had achieved in trade in the fifteenth century. Italian merchants and bankers still towered above the businessmen of the rest of the world. Banking, maritime trade, industry, and agriculture continued to thrive in Italy. Between 1430 and 1480, the Medici Bank was the largest financial organization in Europe ([5], p. 398s).

Special Questions and Topics Dealt with by Select Italian Scholastic Authors

Ever since Joseph A. Schumpeter exalted Antonino of Florence (1389–1459) as an economic genius ([1], p.98) and Raymond De Roover wrote his landmark essay on Bernardino of Siena (1380–1444) and Antonino of Florence (cf. [13]), calling them “the two great economic thinkers of the Middle Ages,” both have been in the center of attention. Roover himself, however, was aware of the dependence of Antonino on Bernardino and of both Bernardino and Antonino on another author to whose texts he had no access, Peter John Olivi (1248–1298) ([13], pp. 19, 42). Later studies demonstrated that Antonino paraphrased Bernardino and that Bernardino copied long passages from Olivi’s manuscripts without acknowledging his source [14].⁷ The reason may be in the fact that the Church had posthumously condemned Olivi because the spiritual faction of the Franciscans⁸ had started a cult around his person. Bernardino, who belonged to the “Observants” among the Franciscans (a movement which took up the Spirituals’ desire of strict observance of St. Francis’ legacy, without breaking away from the Catholic Church), was careful not to expressly quote the intellectual star of the condemned faction, but he does not hide his admiration for the author to whom he refers as a “*magnus doctor*” (grand teacher).

After the terrible events of the fourteenth century, a new spirit of hope began to flourish in the fifteenth. Bernardino was one of the great preachers of his time,

managing to reconstruct religious and spiritual life in a society ravaged by diseases, famine, war, divisions, and moral depravity. His sermons were impressive because of their vivacity and their content. Even his learned Latin handbook “*Quadragesimale de Evangelio aeterno*,” in spite of its scholastic length and burdensome details, contains some brilliant rhetorical figures, explaining the fascination emanating from this priest who dedicated himself exclusively to studying in order to preach. It is easy to imagine how delightful it must have been to hear him describe the misery of the miser who every night checks and rechecks whether all his gold coins are where they ought to be, counts and cradles them as if they were babies, and suffers great agony at every loss. The miser is like a blackbird, writes Bernardino, that can only cry “*mio, mio, mio*” (mine, mine, mine). Although Bernardino’s sermons took several hours, his audience was left with the impression that he had spoken for no longer than half an hour. It is probably thanks to holy priests like Bernardino that the Italian population was reconciled with the Church on the eve of the great schism of Christianity wrought by the Protestant Reformation. Even so, Bernardino was certainly not innovative. In his age, the breeze of the Renaissance was already blowing over Italy. In his writings on economic questions, this is not perceived. Bernardino is medieval. Actually in several aspects, Bernardino is less open to the realities of commercial life than Peter Olivi (d. 1298, nearly 150 years before Bernardino). The true geniuses behind Bernardino are others, particularly Olivi and Duns Scotus. Bernardino does have a keen interest for and a sharp understanding of economy and social life. However, his ethical evaluation of these phenomena remains completely medieval and conservative.

In one of the periods of his life in which he was forced to rest, Bernardino wrote a learned handbook for preachers called *Quadragesimale de Evangelio aeterno*. It fills three volumes of the works of Bernardino in the Quaracchi edition (volumes 3–5). Sermons 32–45 in volume 4 form a unit, like a book unto itself, highlighted by an introductory phrase (“Here begins the treatise on contracts and on usury”) and a concluding sentence (“Here ends the treatise on contracts and on usury”).

This treatise has a systematic structure and possesses the merit of blending the most important quotations together, adding as well personal reflections and evaluations.

I have selected two Franciscan forerunners of Bernardino, Peter John Olivi, and Astesanus of Asti, for the reasons I explain below, as well as the above-mentioned Antonino, Archbishop of Florence, as he was a Dominican scholar, nearly contemporary to Bernardino.

Although Peter John Olivi is French, I include him in this study on Italian scholastics, because he came from the Mediterranean part of Southern France, was a student of the Italian St. Bonaventure of Bagnoreggio, and taught in Florence for 2 years. He deeply influenced thinkers like Bernardino and Antonino. “Next to Thomas Aquinas, no medieval author influenced the ideas of trade and price in the later Italian penitential tradition more markedly than Peter Olivi, transmitted by Bernardino” ([15], p. 120).

Astesanus of Asti, in 1317, published a manual on moral theology called the *Summa de casibus conscientiae* or simply *Summa Astesana* or *Summa Astensis*. It was a very successful book, remaining popular for a long time, as witnessed by the

existence of many manuscripts and *incunabula* (early prints before 1500) editions. By extracting the essence of scholastic (mainly Franciscan) economic doctrine and presenting it summarily in a work designed for everyday use in practical pastoral work, it was certain to reach a large circle of readers ([16], p. 452).

Against the background of the earlier synthetic chapters, I will try to present each of these authors in chronological order. In rendering the contents of the selected works, where possible, I will follow an order of topics: property, exchange, commerce and merchants, the just price, money, usury, and bonds (titles to public debt). In order to avoid repetition, I will fully develop only Olivi's teaching, using it as a reference point to show what new ideas later authors contributed or in which points they lagged behind the greatest economic thinker of medieval Italy, Peter Olivi.

Peter (Son of) John Olivi

Born in Sérignan, Provence, in the year 1248, Peter Olivi entered the Franciscan Order as a mere lad of 12 years. He studied in Paris with the Franciscan Masters William de la Mare, John Peckham, and Matthew of Acquasparta, under the Minister General St. Bonaventure. In Paris, he received the title of Bachelor but did not pursue that of Master.

He dedicated his life to teaching and writing, publishing about 60 books on speculative theology, biblical exegesis, and spirituality, which earned him the honorific title *Doctor speculativus*. His ideas were so innovative and original that he repeatedly had to defend himself against accusations of heresy. Many admired him for his holiness of life and his ingenious insights and teaching. He was acclaimed the leader of the Spirituels and as such maintained an ideal of perfect poverty in the spirit of St. Francis.

In the last years of his life, he taught in Florence at Santa Croce (1287–1289) and then in Montpellier (1289–1292). He then withdrew to the convent in Narbonne where he died in 1298.

After his death, all of his books were collected and burnt by order of the Minister General, and heavy penalties were laid on any friar who, defying the prohibition, dared to hide and conserve manuscripts of Olivi's books. Many of his writings, however, were conserved and have reached us under false names or anonymously, as evidenced in the case of his economic writings.⁹

Nearly all of his economic thought is contained in three treatises, combined in a book whose title is unknown but which is now called "*Tractatus de emptione et venditione, de contractibus usurariis et de restitutionibus*." There are also some *Quodlibeta* which touch on economic affairs, especially Quodlibet I, q. 16, and q. 17 on interest.

What is new in Olivi is that he does not look to the Bible to define economical concepts but he looks at reality as it is first and only then measures it by faith. This type of analysis remained exclusive to the thirteenth century. Its results were copied during the fourteenth and fifteenth centuries until the intellectual seeds of the method sprouted in the Renaissance.

Commerce, Merchants, and Profit

Peter Olivi dealt with commerce and merchants in the sixth “*quaestio*” of his treatise on purchases and sales. He did so indirectly by answering the question whether it was morally admissible to buy and resell a good at a higher price than the price it had been bought at “as merchants usually do.” This approach was of course typically scholastic. The moral problem they were trying to solve was justice and equality in exchange. How could somebody buy and resell the same good at a different price without committing the sin of injustice? Had the good changed its value by passing from one hand to the other? What if this problem affected a whole profession?

Olivi tackled this problem by adducing five arguments in favor of commerce and of commercial profit, not without stating that in practice it was very difficult for a merchant to avoid sin. The first argument was the advantage for the common good brought about by the merchants’ activity. Farmers, craftsmen, and soldiers could not travel to the foreign countries where the goods lacking at home were abundant. Few people had the diligence and the know-how to do that. It was therefore convenient for the community that those who possessed the necessary qualities for commerce dedicated themselves to this service for which they deserved recompense. Merchants had to be trustworthy and honorable (*honorabiles*) and also wealthy (*pecuniosi*) in order to be able to acquire the expensive merchandise they needed in sufficient amounts. As far as I know, this is the first time that a Christian author combines honor and wealth in a positive and affirmative way. The second argument ran as follows. The profit the merchant made by raising the prices did not exclude the people working in his supply chain from profit. Even more, his commercial activity made the others’ livelihood possible. The third argument had two parts. One was an argument based on equality. If the craftsman and the farmer were allowed to make profit when selling their goods, so was the merchant by raising the price at resale. The other part of the argument, however, was more important and original to Olivi. The merchant was a specialist in evaluating the value and the price of goods. This was an important service to society. People in general were thus advised and guided as to the real market value of goods, which was not at all easy to estimate. In their purchases, potential buyers were protected from overpricing by the good and trustworthy merchants who made a reasonable profit but did not overcharge. This service justified the existence of merchants and of the profits they made.

Exchange and the Just Price

Both Thomas Aquinas and Olivi agreed that the price had to be just and that it had to correspond to the value of the good sold. Olivi, however, gave overruling importance to the economic value, and he analyzed it in the process of formation. Following Augustine, Olivi identified value with utility (use value): a mouse is worth less than a piece of bread even though the mouse is ontologically more valuable than a lifeless object (*De Civitate Dei*, XI, 16) [17]. According to Olivi, this use value varied in regard to time, place, and person. He developed three criteria in its formulation, which Bernardino copied and summarized very strikingly. The utility of

a good is defined by (1) its qualities which in themselves satisfy our needs (*virtuositas*); (2) its scarcity: the rarer something is, the more we value it (*raritas*); and (3) the special affection we have for something (*complacibilitas*). This last criterion reflects that the economic value is also a consequence of individual choice, a novel insight formulated by Olivi ([14], p. 34ff).

In the exchange of goods, the value of the thing given and received should be equal. Thomas Aquinas and Olivi spoke of an “estimation” of value and therefore of price. This word “estimation” expressed that the price was not an exact amount but had a “convenient margin.” Obviously, if subjective utility were equal, nobody would exchange. May this inequality influence the price? Olivi solved this problem by giving priority to subjective utility with its three above-mentioned criteria; however, he also defined his concept of utility by introducing the common good: the value of utility was not purely individual but was the typical utility of the general public. He was concerned with the injustice of establishing price exclusively by personal use and interest. Take the cases of selling a lifesaving medicine to a dying person or a cup of water to a parching man. If the price were solely based on individual subjective utility, then it would be infinite in these cases, because their subjective value as a lifesaving means is infinite. Olivi thus valued common use over individual subjective use and the common good over one’s own individual good. Acting otherwise would destroy the social network of humanity, the civil society. It is interesting to note that for Olivi, all economic contracts must aim also at the common good. This is an important insight. The common good is referred to by Olivi as the sociability of man and as the community, to which he belongs. The common good is the “good life” of the community in which one lives in and is, therefore, one’s own life. The common good was not conceived of as something different from the citizens who form the community.

The general estimation of the price in such a community resulted in the “just price”: it was the common estimate of the value of a good according to its common use in the community interested in maintaining its common good. With this concept, Olivi has introduced what in modern parlance would be the market price ([14], p. 40ff).

In his analysis of how the market arrived at the common estimation of price, Olivi considered two elements in regard to demand and two in regard to supply. All four elements were objective and are not used in an individual but in a generalized sense.

In regard to demand, Olivi wrote that: (1) The common estimation cherishes the natural qualities of goods. A good which is instrumental to other goods or that holds longer or is prettier than others is esteemed more. (2) The community (market) values the scarcity of a good.

In regard to supply, we find arguments from the costs of production. (3) The community (market) considers the costs and the risks undertaken by the craftsmen and merchants to produce the good or the service and to make it available. The community (market) also values expertise (an architect receives more than the mason). (4) Insofar as wages are concerned, the community (market) also considers the dignity connected with certain labors and grants higher wages to persons who have more representative costs.

The common estimation can deviate from the value of the good and still be accepted as the just price. For example, in a period of famine¹⁰ which affects the entire community, the prices should be allowed to rise as they will naturally do. Olivi realized that this could have a positive effect: high prices motivate merchants to import and to sell, reducing the famine. This is a remarkable example of an analytical explanation “instead of vaguely referring to natural law” (cf. [16], p. 360ff).

This analysis demonstrates that Olivi grasped that there could be a difference between the effective market price and the perfectly just price, allowing the market price to be binding for the contracts. The question is: When does this difference become so large that the effective market price is forbidden because sinful? This problem was posed by Olivi not insofar as it referred to the common market price but to the individual concrete price in practice. On this theme, Olivi was innovative in comparison to Thomas Aquinas. Thomas had distinguished between civil law and moral law. Whereas, he acknowledged, civil law drew the line with the *laesio enormis* (the stipulated price is more than a half above or below the true value of a social good), the moral law is stricter, as God sees the heart and requires equality in exchange. So the just price, can only be the price that corresponds to the true value of the good exchanged. Olivi objects to this that after original sin, social institutions had to be made to fit the nature of fallen man. A sick man must not be treated in the same way as a healthy one. After original sin, mankind is sick. What is evil, therefore, is the *intention* of making an unequal exchange. The unequal exchange in itself, however, might be socially useful and correspond to the necessary equity. Olivi brings four arguments in favor of his position. (1) The common custom has the force of law; so does the common estimate of the value of a good. Forbidding any small deviation from the just price and obliging the parties to give back what was won unjustly would cause endless strife and ruin peace. (2) God does not demand perfect equity and equality in business. (3) A contract is ratified by the free will of both parties. Therefore if someone, who has not been deceived by the seller’s fraud, wants to buy something at a certain price, then this is as just as if he wanted to make a gift. (4) All human estimates on prices are highly uncertain and imprecise.

Olivi draws the *moral* line with the *laesio enormis*. This means he makes the legal criterion converge with the moral one. He does comment though that “perfect justice” requires equality; this means that the just price has to strictly correspond to the true value of the exchanged goods. He thus introduces a distinction between “mere justice” which suffices for everyday life and “perfect justice” which seems to be impracticable and unfeasible as a criterion for business ethics. His moral line for business transactions is the *laesio enormis*. Any price, 50% above or below the value of the sold good, is unjust and requires restitution. Anything within this margin of price, however, is acceptable. He uses an analogy to make his point: Sour wine is still wine. There is a degree of sourness when wine turns to vinegar (cf. [14], p. 49ff).

Usury

Like all scholastic authors, Olivi was very clear in condemning usury, understood as any sum of money to be given back beyond the amount loaned. However, he was

quite innovative in his time and the distinctions he made influenced later development. His thoughts did not have an immediate impact but exercised their influence like a subterranean river, re-emerging when the times were ripe.

Olivi distinguished between “mere” money in a drawer or a chest destined for consumption and capital. For Olivi, “capital” is any good, including money, which has a “*ratio seminalis*” (the character of a seed) of profit.¹¹ Money is therefore not always and in any case capital but acquires the seed character and becomes “capital” through the “*propositum*” (resolution) of its owner to invest it in a concrete commercial project. It is the owner’s deliberate intention to invest which turns money into capital. Through this investment finalization, money acquires an added value (“*valor superadiunctus*”) to its face value (cf. [14], p. 64ff).

Underscoring the owner’s intention in his actions, Olivi condemned usury as the *intention* to make speculative gains with loans. Whether or not the creditor actually made a profit was not decisive. Intention determined the relation of the loan to usury. Olivi thus concluded that giving a loan in itself could never be an investment. A sum of money invested in commerce always implied a participation in the risk. It could also be lost. On the contrary, a loan characteristically established the right to receive the same amount of money back without loss. The general rule, therefore, was: If someone gave money to a merchant, he had to partake of profit *and* loss. If he was to receive back his money independently of the outcome of business, this was usury. Olivi even forbade the contract in which only the capital had to be returned in case of loss whereas interest was due if the merchant had made profit ([18], p. 121).

If, however, the creditor of the loan was a merchant, who had been planning to use the money for an investment, but instead gave it as a loan to a friend, then he could charge an interest for the lost investment he had been determined to make with his capital. Together with other scholastic teachers, Olivi distinguished between usury (any sum of money given back beyond the amount granted as loan) and interest (indemnification for damage or lost profit). He allowed the agreement on interest from the beginning of the loan; this means that the interest was calculated from the first day of the loan. This does not mean that Olivi would have accepted a general interest on loans but only on those sums of money which had already been destined for commercial investment and whose investment had become impossible because of a friend’s plea for a loan. The general Italian tendency was different: Thomas Aquinas, Innocence IV, Johannes Andraeae, and other Italian scholastics were of the contrary opinion which allowed indemnification only after the term agreed upon for repayment of the loan. This Italian mainstream opinion prevailed from the fourteenth to the sixteenth century; then, the general opinion reversed to that of Olivi.

The notion of capital is also decisive for solving the problem of discount. Time as such has no price, writes Olivi in accordance with the other scholastic teachers, but if the debtor pays back his debt before the stipulated term, then this is *his* time in which he would have been able to invest the sum. His interest in doing so has a price, which is paid by the creditor with a discount. Olivi is the source of Bernardino’s famous theory of the “year of a horse” [19].¹² If I have been given a horse in lease for a year, this year of the horse is mine, and I can sell my year

(my year's use of the horse). Similarly, if I have been granted a 3-year term for repayment of a loan, and we convene that I should pay back earlier, then I deserve recompense for the time I concede. This is not the "common time" which cannot be sold because it belongs to all men but "my time" which I can sell. Olivi also considered whether one could extend this argument to money in general which someone owns perpetually without time limit. He denies this possibility, stating that in this case, money is simply mine and its use is not divided into units of time. In the eyes of a modern beholder, it is inconsistent of Olivi (and the scholastic tradition in general) not to allow the inverse of discount: should a buyer wish to have paid later, the seller was not allowed to charge a higher price for the deferment of payment. This would constitute usury. Olivi, however, adds that this would only be the case if payment were specifically made for deferment, because time was a common good, belonging to God and to all people. It could therefore not be sold. In the case of deferred payment, however, Olivi expressly allowed the merchant to raise the price to the possible upper limit of the just price, that is *laesio enormis* ([20], p. 114ff).

Olivi enumerated nine arguments against usury, which – to him – proved that this practice was contrary to divine and natural law ([21], p. 97ff). It is important to point out that Olivi did not recur solely to divine law (stemming from faith) but also to natural law, as a moral system accessible to human reason. Olivi stated that usury weakened and destroyed all piety in society. Usurers devoured the goods of others, simulated compassion, and in reality were capable of selling benevolence. Our author repeatedly used the argument of consumption developed by Thomas Aquinas: whosoever gave a loan did not grant any use of the lent money besides its consumption. The use and utility of money, for the scholastic teachers, consisted in its consumption. Charging interest above and beyond the restitution of the lent sum (without there being a case of incurred damage or lost profit) meant selling the same thing twice, which was clearly unjust ([21], p.104). Moreover, the reason the debtor profited by the loan was his labor, not the loan ([21], p. 107).

Once again, Olivi went beyond this traditional and conservative stance as regards usury in his analysis of capital used by merchants. His conclusion was that the merchant who bought "capital" (not simply money) with the sole intention of investing it and of making it fruitful was actually buying the future fruits of something. However, as future fruits were not absolutely certain but were only probable and at risk, so this contract, according to scholastic teaching, was not usury ([18], p.123). It was licit because of the risk involved.¹³ Capital therefore is capital only in the hands of an active merchant; otherwise, it is simply money, worth its face value alone, or at least it does not contain any value of profit.

The interest of the probable profit was contained in this capital in a potential way and, as it were, in an embryonic state, otherwise it could not be legitimately charged; but in the above mentioned case, what is sold is interest, contained as potential in capital in as far as it is capital, that means it must be really and not only hypothetically retained and destined for commercial operations. ([18], p.125)

Olivi also underscored that the creditor ran the risk of losing his capital, which he left completely in the hands of the merchant. The merchant would most probably,

even certainly, draw profit from the borrowed capital. He was an expert and would not have borrowed money if it were not for certain gain ([18], p. 127). Therefore, capital was worth more than its nominal value as money when it was given as capital to a merchant. What was then being sold was its future profit. Money, simultaneously and actually, had two natures, wrote Olivi ([18], p. 127f): simple money value and capital value. This capital value was the future profit, derived from its commercial use; it already existed therein and was sold and bought as such. Therefore, in commercial credits, Olivi allowed the stipulation of interest from the beginning of the loan. If I understand Olivi correctly, he proposed a balance between the value of capital, the probable profit, and the probable risks, in order to calculate the interest rate. All this shows that Olivi was far ahead of his time, already in the thirteenth century grasping the logic of commercial credits and the added value of the use of money in commercial investments.

In his book on restitution, Olivi quoted examples that further clarify the way he understood the seminal quality of capital. If somebody's hand is cut off, the guilty perpetrator of this crime is liable to indemnify his victim of the medical costs but not of all possible future gain he would have had with his hand, because the hand was too remote a cause of gain. Cutting off the hand meant destroying the power or the capacity for profit but not the actual cause of profit or the act of profit as such. In the same way, he who stole money or a horse did not have to restore all possible gain but only the probable amount deriving from the concrete investment plans which had been frustrated by the theft [22].

This acuteness of distinction and penetration of economic reality becomes apparent also in what Olivi wrote regarding the rights to the future possession of something. The acquisition of future *rights* to a good was worth less, wrote Olivi, than the possession of the good itself, because the future was uncertain ([23], p. 128ff). Therefore, it was not usury to buy a future rent. Olivi, for example, accepted that a person bought five future annual rents of 1,000 lb per year to be paid throughout the coming 5 years (totalling 5,000 lb) at the price of 2,500 lb cash down. Of course, this contract would become illicit if the *intention* was usurious, that is, if the contract in reality was intended as a circumvention of the ban of usury and was a disguised form of loan. The example Olivi gave for this makes it clear what the scholastics had in mind when they were talking about and condemning usury: I give a loan of 500 lb to be paid back after 10 years. Every year, I am supposed to receive 100 lb as installment on the interest and the capital, and after 10 years 1,000 lb. What made this contract illicit in the eyes of Olivi and his fellow teachers was not the 300% interest rate but the *intention* of receiving interest on a mere loan of money which was not capital ([23], p. 129).

Inversely, Olivi discussed an interesting case of his time. Someone had lent a merchant a sum of money so that the merchant could trade and work. The two had agreed upon the merchant paying back the sum at the end of the term. If the merchant had made a profit, then he was to pay the creditor 50% of his profit; if he had not been successful and made no profit, then he was only to give back the capital. According to canon law, such an agreement was considered to be usury. However, the creditor in his heart had the firm intention not to demand the capital

back if it was in any part lost. He merely wisely refrained from saying so, in order not to create a moral hazard for the merchant. Olivi stated that because of the creditor's intention, this loan was not usurious as the creditor partook of both profit and loss. Therefore, the creditor could justly receive his 50% share of the profit. However, Olivi could not omit stating that such dealings were sinful, because they created the impression of usury, thereby motivating others to follow suit. Instigating others to evil acts (in this case usury) was and is a sinful act known as scandal.

In the wake of Henry of Ghent, Olivi ([20], p. 116), Alexander the Lombard, Astesanus of Asti, Bernardino of Siena, and other Italian scholastics affirmed that changing money was not usury. Money changing was seen as a necessary element in commercial practice and a service to merchants for which money changers could justly demand recompense. If the merchant, however, intended to make profit from the volatility of the exchange rates, this was condemned as usury.

State Title and Treasury Bonds

In Olivi's time, the financially hard-pressed city governments had begun to resort not only to taxation of their citizens but also to forcing them to grant loans to the public household. This practice was intensified in the course of time. In Bernardino's and Antonino's age, it was normal practice not only for governments to sell their public debt but also for the private investors to trade in these titles. Olivi stated that citizens justly received interest for the damages caused and the profit lost by forced loans to the public household but that citizens were obliged to subtract the lack of risk in regard to their capital or their profit. The interest rate could therefore be lower ([23], p. 130ff). As we shall see, Bernardino and Antonino were to extend this line of thought.

Astesanus of Asti

Hardly anything more than what has already been written above is known about the life of the Franciscan friar who wrote the *Summa de casibus conscientiae*. Even his name is unknown; "Astesanus" simply means "a man stemming from the town of Asti."

His *Summa* comprises eight books covering a general foundation of moral theology and its application to particular cases as well as to economic reality. Economic cases are specifically dealt with in Book Three on contracts and last wills. In spite of its name, the *Summa* is not a "case book." It is written with refreshing brevity and in an intelligible Latin.¹⁴ It is a manual of moral theology, including the sacraments, with a strong leaning toward canon law. Its contents, but not its structure, follow Thomas Aquinas. There is also a clear influence of the Franciscan school, but Astesanus maintains his own originality and independence of thought. His definitions are often taken from Augustine, but he does also quote Aristotle quite frequently.

The section relating to his general thought is important, because he bases his moral teaching on love, love of God in the first place. From this commandment,

all other commandments are to be derived (Summa, I, [24], t. 3, a. 2). Astesanus does not mention the distinction that Duns Scotus made between *potentia absoluta* and *potentia ordinata* and which was to forcefully influence William Ockham. This distinction had been introduced to explain why God could seemingly make exceptions to the Ten Commandments in the Old Testament. The Ten Commandments were divided into two tablets: the first three commandments formed the first tablet, which referred to God. From these God could not make exceptions. The second tablet contained the commandments referring to one's fellowmen. From these, so Duns Scotus and Ockham affirmed, God could make exceptions. Astesanus expressly rejected this distinction: God could not and would not dispense from the commandments on the second tablet of Law, because these commandments constituted the love of neighbor without which nobody could love God (Summa, I, [24], t. 3, a. 5). This starting point is important in order to avoid casuistry.

Private Property

Book Three on Contracts and Last Wills is a thoroughly legal book, which logically and coherently sets out from the question of private property.

With Duns Scotus and all other scholastic moralists, Astesanus assumes that there was not any private property in Paradise. All goods were in common, and this system in Paradise worked better than the division of goods among private owners. After original sin, this precept of common ownership of material goods was reasonably revoked: without private property, a peaceful life in society would not be possible and the necessary sustenance would not be guaranteed, because people do not take care of communal goods as efficiently as they do of privately owned things. Furthermore, in a system of collective ownership, the stronger would dispossess the weaker. These arguments are in origin Aristotelian, and in consequence, Astesanus argues more or less in the same way as Thomas Aquinas. However, there is an important difference. Whereas Thomas conceives private property as a precept added to natural law by reason and incorporated into natural law through the *ius gentium*, Astesanus conceives private property as the result of the repealing of the natural law precept of common ownership. Following Duns Scotus, Astesanus taught that private property was split up by positive human law, for example, through the paternal authority of Noah after the flood. Division of property was not made by natural law but by human law (*secundum codicem humanum*), which belongs to positive law. Thus, private property was not contrary to natural law but is added to it through an invention of human reason (Summa, III, [24], t. 1).

As in scholastic mainstream thought, Astesanus distinguished between property and use, maintaining that nobody should consider things as destined exclusively to his own use but to the use of all, in order to be able to readily communicate things to others in need (Summa, III, [24], t. 1).

Commerce and Merchants

In this chapter as well, the dependence of Bernardino on Astesanus and of both on Alexander of Hales becomes apparent. As Diana Wood has analyzed, the medieval

attitude toward commerce went through three phases: condemnation, justification, and exaltation (cf. [8], p. 111ff). With Duns Scotus, Astesanus and Bernardino scholastic teaching enters the phase of exaltation.

Commerce is not only not illicit but allowed and approved of by natural law. Astesanus thus grants commerce a greater legal standing even than private property. God, the Lord of all, has created the world with different regions, in which some have abundantly what others lack. Therefore, one region should remedy the needs of another through trade. Commerce, wrote Astesanus, could be just and profitable at the same time. Where there is abundance of a certain good, the price is lower; where this good is rare, its price is higher. The profit resulting from transporting the goods from one place to another and selling them to the local price is just. From Duns Scotus, Astesanus takes – albeit not integrally – the notion of “*commutatio negotiativa*” (commercial exchange). For commercial exchange to be just, it had to serve the commonwealth, which it did if the merchants transported and stored the goods for sale. Whosoever thus served the commonwealth could justly receive profit as reward for his labors, solicitude, industry, and risk. On the other hand, merchants who neither transported, nor stored, nor improved commodities, nor certified that prices corresponded to the value of the goods on sale, but only bought to immediately resell at a higher price, were to be expelled. Astesanus also condemned as “abominable” monopolists who bought up all the stock, induced need, and raised prices over the market level at their will. His verdict on speculation was likewise negative: gains from buying wheat and wine in order to resell them later when prices rise were “filthy lucre,” and the profit had to be given back to the poor (Summa, III, [24], t. 8, a. 10).

Trade therefore could become illicit under certain negative circumstances, in which both Astesanus and Bernardino paraphrased Alexander of Hales: the wrong person (e.g., a cleric), the wrong cause (greed), the wrong method (fraud), the wrong time (holidays), the wrong place (in Church), and abusing the inexperience of strangers could make what was licit become sinful. A layman was permitted trade in order to sustain his family and give alms but not out of avarice and greed.

Just Price

Neither Astesanus nor Bernardino possessed the economic insights and the flexibility, which characterized Olivi. Both held more traditional positions and substantially followed Thomas Aquinas. Nobody was obliged to sell, wrote Astesanus, but if he proffered his good for sale and his price was not just, then the judge could force him to lower the price (Summa, III, [24], t. 8, a. 6). A merchant was, however, allowed to sell his good for more than it was worth. Of course, this was only true if no fraud was involved, and the price had to correspond to the just estimation of the good “at the price it is commonly sold at on the market” (Summa, III, [24], t. 8, a. 10). There is a very clear axiomatic formulation of scholastic theory on exchange strewn in among the reflections on the doubtful cases of usury. Between buyer and seller, wrote Astesanus, there should be the equality established by natural law that a good should be exchanged only for a good of the same value measured by money. This equality, however, had a wide margin of estimation (*magnam latitudinem habet*).

Therefore, small digressions were harmless as long as they remained within the margin of half the good's value (Summa, III, [24], t. 11, a. 5). Astesanus thus accepted Olivi's criterion of *laesio enormis* as a moral and not only legal benchmark. He went further, however, in introducing a quite modern sounding distinction between merchants and consumers. Merchants could deceive each other up to half the good's value, because they were specialists. If they then paid a higher price, they had a reason for so doing: either they had a particular esteem for the good or their payment was deferred. The consumer, on the other hand, was simpleminded (*simplex*) and weak. Astesanus therefore strove to protect him from wily businessmen by granting him protection from deceit for less than half the good's value. In consumer contracts, the just price thus had to be much closer to the real value of the good than in business among merchants and definitely further from deviations such as the *laesio enormis*: "*etsi non jure fori, tamen jure poli*" (if not by the law of the Courts, then by law of the market) (Summa, III, [24], t. 11, a. 5). This is a very early example of both consumer protection and of the idea of soft market law granting legal validity to economic ethics.

Astesanus abides by the rule established by Thomas Aquinas and endorsed by Duns Scotus that selling and purchasing was introduced for the common good, the good of both the buyer and the seller. Neither, therefore, should have an advantage over the other. The buyer could ask for indemnification by raising the price if parting with the good meant a great loss for him. He should, however, not raise the price if the buyer was in great need of the good. This would mean deriving an advantage from someone else's need, and this was considered to be unjust. (Summa, III, [24], t. 8, a. 10).¹⁵

Astesanus fully accepted discount: a merchant could charge higher prices knowing that he would reduce them in the case of a cash payment. Astesanus clearly distinguished this from usury. What was new in Astesanus is that he accepted the logical inversion of discount, namely, the increase of the price in the case of delayed payment. This generally was considered to be usury, because the period of time which would elapse between the contract and the payment was valued and paid for in money. Astesanus, on the contrary, excused the seller: he had not raised the price simply because of the lapse of time but because of his wish for indemnity and for his labor derived from granting the deferment of payment (Summa, III, [24], t. 11, a. 4).

Money, Wealth, and Beneficence

Astesanus underscored the social obligation of almsgiving. He frequently quoted St. Ambrose, saying that whatever one possessed beyond what was necessary for sustenance was "violently retained." This went especially for clerics. With St. Jerome, he repeated: "whatever clerics possess belongs to the poor." They committed theft if they spent more than they needed for food and clothing (Summa, I, [24], t. 35, a. 2).

For the laity, his standards were more realistic but still severe: a merchant could make a "moderate profit, as it were a wage for his work" (*lucrum moderatum quasi laboris stipendium*), in order to sustain his family and in order to be able to give

alms to the poor (Summa, III, [24], t. 8, a. 10). The rich, furthermore, were sternly reminded of their duty to succor the poor. Those who did not want to help were “thieves and robbers.” If a poor person died because he had not received assistance from his rich neighbor, he had been slain by the rich man who had not shared his goods with him in his extreme need. Rich people who held back the surplus they had no need of for themselves and who knew and saw the need around them committed robbery by their stinginess (Summa, I, [24], t. 35, a. 1). This harsh verdict is mitigated by two considerations. First, what was necessary differed according to the social status and the social responsibility a rich man had. For instance, a king needed more than a count (Summa, I, [24], t. 35, a. 1). Like Thomas Aquinas, Astesanus taught that one was not obliged to give what one needed to preserve one’s own social status, except when the other person was in extreme need (Summa, V, [25], t. 26, a. 3). The second consideration bespeaks the common sense of our author. One could reject a plea for help because of one’s own need, because the pleader had enough or was malicious or there were others who needed help more urgently (Summa, I, [24], t. 44, a. 7). In our hearts, we should want to do good to everybody. Although we cannot actually aid everyone, we can desire to do so. In the case of enemies and criminals, the good we do them is the avoidance of their committing further evil (Summa, II, [24], t. 66).

Part of the social dimension of property was the willingness to give gratuitous loans. This is of interest also in connection with usury, because it makes clear that the prohibition of usury has its origin in the obligation to help the poor. Astesanus taught that one was obliged to give loans freely to neighbors in need. One sinned against this commandment if one did not lend, demanded the loan back too early, did not give back or destroy pawns, charged interest for the loan, or accepted payment for extending the term of payment (Summa, I, [24], t. 44, a. 8).

Usury and Money Changing

Astesanus took his rather intricate and complicated definition of usury from other scholastic sources. He shared the general condemnation of interest on loans: anything returned in addition to the owed sum was usury. Of course, this did not hold for any free gift: if the debtor, after having paid back his debt, freely and of his own accord gave a present to the creditor to show his gratitude, this was not usury (Summa, III, [24], t. 11, a. 1). Astesanus condemned usury as a mortal sin, basing his position on arguments stemming from human reason and from divine authority. He clearly belonged to those authors convinced that there were rational arguments against usury. His arguments may seem unacceptable nowadays, but they are clear, sober, and not overlaid with unnecessary words. His arguments, however, were not innovative. Basically, he stated that loans should be an expression of charity with the needy: we are obliged to help those in need, not to sell to the poor what we should give to them freely. That is, we should help them with free loans instead of charging usury. He quoted Thomas Aquinas’ argument from consumption and referred to the unfruitfulness of money as such, becoming fruitful only through the debtor’s labor. Moreover, usury was not voluntary on the debtor’s side. He was in duress and constrained to accept the

creditor's conditions. As his contract was not voluntary, the usurer committed a theft when he received the interest (Summa, III, [24], t. 11, a. 3).

In spite of these negative evaluations, Astesanus did distinguish interest from usury; however, he did so without differentiating between money and capital as Olivi had done. Interest for Astesanus was indemnification. In this context, he brought up the same example as Olivi: a merchant was about to make a sure investment, when a friend pleaded with him for a loan. The merchant ceded on the condition that he would receive back the loan plus the lost profit. This, said Astesanus, was interest, not usury. In essence, Astesanus accepted *damnum emergens* (damage), *lucrum cessans* (lost profit), and *poena morae* (penalty for delayed payment) as extrinsic titles to interest, distinguishing them from usury. He did not particularly highlight them, and they are to be found scattered among rather dated arguments. He also subordinated them to secondary justifications of interest by positive law. This just shows that Astesanus himself probably did not quite grasp the momentum these arguments contained.

Money Changing and the Purchase of Rights

He was, however, clearly positive on the question of money changing. Like Olivi and Alexander of Alexandria before him, Astesanus considered money changing (*campsoaria*) to be licit and necessary, because merchants and legates traveled through regions with different currencies, obliging them to change their coins. This exchange was not a loan but a barter. With some detail and as an early representative of this insight, Astesanus distinguished between the nominal (*valor secundum taxationem legis positivae*) and the material value (*valor secundum naturam rei*) of coins. The *campsoar* knew these different values and the rates of exchange between currencies and could therefore establish a just change from one currency to another. For this service, he could justly charge recompense and draw a profit. Money changing was not a gratuitous contract as was the loan contract (Summa, III, [24], t. 9, a. 5).

In Astesanus' time, kings had resorted to the devaluation of coins to reduce public debt. Can somebody, who fears such a devaluation, stipulate that the loan he has given be paid back at the same real value it has at present? Astesanus seems to have answered this question in the affirmative, because the creditor does not seek his gain but indemnification (Summa, III, [24], t. 11, a. 5).

In other ways too, Astesanus was innovative for his time. Where he was not bound by tradition (as was the case in usury), he was open to the present economic reality and understood its rationale. Rents are an example, which he dealt with under the question whether one was allowed to buy future annual rents of money. He was aware of the opinion that such a purchase was in reality a usurious loan, because the buyer received back more than his capital. He himself, however, endorsed the contrary position. The purchase of a future rent is not a loan, and usury was only possible in loans. What was bought in a rent contract was the *right* to receive money in the future, and "*jus non est pecunia*" (a right is not money). Astesanus made it clear that he did not like this sort of business. It was not as "honest and decent" as the selling and buying of visible objects where equality in exchange could more easily be verified. He illustrated his attitude with an example

of a rent contract that he considered to be illicit: A young 25-year-old woman bought a life rent at such a price that she would have received her whole capital back after only 8 years. If this woman were not ill or exposed to such hazards that her premature death were in some way probable, such a contract was unequal and illicit (Summa, III, [24], t. 8, a. 11).

Up to this point, Astesanus probably did not transcend Olivi. In another example, however, he comes closer to modern reality. A man had 100 lb “in banco,” which were to be paid to him in 4 months time. Could someone buy his right to receive the 100 lb in the future for 80 lb in the present? Many scholars had answered yes: A right to 100 lb was and is worth less than 100 lb. It is safer to have a good than to have a right to a good. Therefore, a right to something could be sold at a cheaper price. Astesanus quotes Alexander of Alexandria who considers this case to be uncertain. It seems to be hidden usury for an indirect loan: somebody gives 80 lb in order to receive 20 lb as interest. If, however, there were a risk of not receiving the deposited money, then the transaction would certainly be permitted. Astesanus leaves the question open but ends in such a way that one is left with the impression that he is in favor of permitting this operation.

Astesanus also allowed a merchant to sell to the city of Genova the salt he had transported there. The sales contract contained the clause that payment would be made in future when all the salt merchants had brought in their salt. The merchant could not wait and sold his right to a probable 25 lb to a financier for 20 lb. Both have an advantage and a risk (Summa, III, [24], t. 8, a. 11).

His moral judgment of bonds is similar. Astesanus had already presupposed that the government paid interest to their citizens if they had forced them to grant loans to the public household. He went on to say that the citizens could legitimately sell their titles to public debt on the private market. He who possessed a just title could also sell it legitimately for the price it was given on the market, because a thing was worth the price it could fetch (*res tantum valet, quantum vendi potest*) (Summa, III, [24], t. 11, a. 5).

Bernardino of Siena

St. Bernardino was born in 1380 in Massa Marittima as son of the noble family Albizzeschi from Siena. As has already been noted, he entered the observant branch of the Franciscan Order at the age of 22 and dedicated his life to preaching. His sermons were largely popular not only due to their direct and authentic style but also because they dealt with the real life of his congregation. Aspects of the economic life of his time are consequently prominent (cf. [26]). He was the first theologian after Peter Olivi who wrote a complete book on economic questions. As Bernardino copies literally from Olivi, and Antonino from Bernardino, and Bernardino draws heavily from Duns Scotus or Astesanus, little remains to be said about the ethical aspects of economy as they were already present in the two Italian saints of the fifteenth century. Bernhard is more systematical and synthetical than Olivi, summing up Olivi’s ideas in precise phrases. For instance, in analyzing

value of utility, he expresses Olivi's criteria with the slogans "*virtuositas, raritas, complacibilitas*," thus indicating the qualities of the good in itself, its scarcity, and the subjective esteem of the beholder. This is part of the rhetorical and communicative genius of Bernardino. Both Bernardino and Antonino have the merit of having realized the importance of Olivi's analysis, blending his quotations with others and saving his ideas from oblivion. However, both were more conservative than Olivi. Bernardino does not copy Olivi's third question in his treatise on sales and purchases, in which Olivi develops the free formation of prices and advocates the raising of prices in the case of famine as a means of reducing dearth ([14], p. 69ff). Bernardino even reinterprets the principle of Roman law, present in all scholastic thought on economics, that a good is worth as much as the price at which it can be sold on the market (*res tantum valet quantum vendi potest*), by introducing an ethical criterion: a good is worth as much as it is allowed to be sold. This, of course, is something quite different: a descriptive definition has turned into a prescriptive norm (Sermo 34) ([27], p. 188). Bernardino is above all a moralist, and he is therefore interested less in penetrating the market logic than in regulating passions and curbing sins.

As regards the economic thought of Bernardino and Antonino, we can refer to what has been said about Olivi and Astesanus. Within the limits just described, Bernardino also accepts Olivi, Astesanus, and Duns Scotus as regards the "seminality" of capital justifying interest and discount.

What follows are important supplements, which can highlight some peculiarities of these two authors.

Private Property

Bernardino drew his conclusion from the axiom that private property was a result of positive human law. As property only existed due to human law, just positive law could also transfer existing property rights. He did not, however, seem to have confiscations by the public hand in mind but was striving to justify the legal institutes of prescription and *usucapio* of property. He also adds that laws transferring private property against the will of the owner must have the same cause and the same aim as the original division of property after the original sin of man (Sermo 32) ([28], p. 124f). This position is less respectful of individual rights than the position of Thomas Aquinas who purported a natural right to property.

Property could, of course, be transferred voluntarily, and this is the only real core of economic exchange. It is interesting to note that Bernardino, following Duns Scotus, distinguished two kinds of transfers: gift (*actus mere liberalis*) and exchange (*actus secundum quid liberalis*). (Sermo 32) ([29], p.134ff). The Latin wording renders the meaning better. Gift and exchange are economically speaking very different, but both were seen by Bernardino as two ways of living the virtue of liberality and the virtue of administering wealth. Both giving away and selling are forms of parting with what one possesses. But there was a further connotation in Bernardino's definition: both gift and exchange were seen as forms of generous "liberality." Even in exchange, there was an element of gift, wrote Duns Scotus, because both partners to the exchange had to cede in some points in order to reach an agreement.

Exchange and Just Price

Exchange according to Bernardino had to be just and in accordance with right reasoning (*secundum rectam rationem*). This meant that the value derived from the utility of the exchange should be equal for both parties. The equality of value, however, was not an invisible point but a wide margin of estimation (Sermo 32) ([29], p. 139). In order to protect the weaker party from the bargaining power of the stronger party, the scholastics underscored this criterion of the just price and referred to the common or the market price as a general benchmark against overpricing. In this line of thought, Bernardino quotes the Roman law maxim that the just price is the general estimate of a good's value on the market, that price at which the good could be sold (*secundum aestimationem fori occurrentis, secundum quod tunc res quae venditur in loco illo communiter valere potest*). Like Thomas Aquinas, Bernardino held that the moral obligations regarding the just price were stricter than the legal ones. Bernardino therefore did not accept the limit of *laesio enormis* as morally relevant. (Sermo 33) ([30], p. 157f).

Commerce and Merchants

Bernardino is certainly to be counted among those scholastic authors that exalted commerce and merchants. As Olivi and Astesanus before him, he not only justified but defended the service of honest merchants to society. Commerce was all the more worthy of reward and profit because of the four great virtues of merchants: industry or efficiency, responsibility, work or diligence, and risk. Of course, commerce could also become perverted when it turned against and damaged the common good. Two or three bad merchants could spoil all the other merchants of a city and should therefore be expelled and banned. As was already present in the tradition before him, Bernardino listed a number of abuses of commerce. He dedicated many pages to the wrong way to conduct commerce: by lies, perjury, duplicity of speech, sophisticated expressions, circumvention of prohibitions, falsification of measures and weights, etc. (Sermo 33) ([30], 145ff). He proposed that merchants should use the rules of good conduct, which he establishes, as “mirrors” for their own self-bettering. He also imposed on them accountability to their business partners at least once a year, the necessity to carefully take written note of all monetary transactions and the foresight to always have their testament ready in written form. “Such a merchant with the help of God will become rich (*lucrosus*), famous, pleasing to God and men, (. . .)” (Sermo 33) ([30], p. 162).

Usury and Financial Operations

Bernardino listed twelve reasons why usury was against natural law. These are all traditional arguments whose validity Bernardino never doubted (Sermo 38) [31]. What is of permanent value in their arguments even today is their struggle against the exorbitant interest rates, which were common then and would also currently be severely condemned as usury. They warned against unwise indebtedness, then and now a deplorable phenomenon, which becomes apparent for instance in pure consumer credits. The scholastics, and among them Bernardino, raised their voices against the unproductive hoarding of wealth locked up in a chest, instead of being

put to the service of society through investment. Then and now, the idea of fraternity they strove to spread among men was and is important: there are always the poor that need help. By developing “extrinsic titles” and distinguishing usury from interest, the Italian scholastic teachers paved the way for our present usage of the word “interest” and the regulated interest rates common in the legal world of finance.

From Olivi, Bernardino took the sound rule: “profits and losses (risk) should go together” (*lucra et damna communia esse debent*) (Sermo 39) [32]. He forbade any kind of financial investment in which only the entrepreneur took a risk and the financier was secure. For instance, he was very skeptical about the so-called irregular deposits. These were bank deposits that the banker was allowed to use for investment. At the end of the term, the banker gave the depositor a certain percentage, which was called “*dono de discrezione*” (“discretionary gift”). Both Bernardino and Antonino condemned this relentlessly as usury (Sermo 37) ([27], p. 233). Bernardino condemned public institutions that granted loans at a regulated interest rate. He criticized as usurers merchants who “out of insatiable greed amass wealth,” seeking out widows’ dowries as loans in order to invest them in business expansion. He likewise criticized moneylenders who took up cheap loans from the public institutions and then made loans at profitable interest rates with this money (Sermo 43) ([27], p.381). All this goes to show that Bernardino was not yet capable of grasping or appreciating modern financial mechanisms. He does have the wise social insight, however, that buying goods from the poor is better than giving them loans and bleeding them with interest. Even though the price the poor fetch for their goods might not always be just, they would certainly end up better off this way than by taking loans and giving their goods as pawns (Sermo 43) [33].

Money was the blood of society, wrote Bernardino, and the blood had to flow through the whole body returning to the heart of society. In this context, I must not omit a negative aspect in Bernardino: he is belligerent toward and exclusive of the Jews. Ambrose had stated that usury was allowed only as a weapon against one’s enemies. Bernardino endorsed this, allowing usury against enemies (among them the Jews and other infidels) and warning Christians against becoming prey to supposed enemies. Bernardino excluded “infidels” from the blood circulation in society (Sermo 42) [34]. Astesanus in this context was more benign and inclusive. He interpreted Ambrose’s dictum rhetorically: nobody, Christian, Jew, or pagan, must be our enemy; therefore, usury never is allowed (Summa, III, [24], t. 11, a. 3).

After all that has been said, it is clear that Bernardino was not an intellectual forerunner of the “*montes pietatis*” the Franciscans would soon be establishing throughout Italy. From 1462 onward (only 18 years after Bernardino’s death), Italian Franciscans opened the first chain of more than 150 “*montes pietatis*.” Bearing some similarities to modern-day “pawnshops,” these were places where one could take out a loan at very low interest against some type of bond or surety. This practice was established all over Italy to provide credit accessible to craftsmen and poor farmers in moments of crisis (i.e., microfinance and loans to small and medium enterprises). These friars were in constant contact with the poor, who

frequently ended up the victims of usurers. The latter paradoxically, and precisely because of the canonical prohibition against giving loans with interest, fell outside all regulation and therefore at times demanded exorbitant interest. At the same time, the poor often were forced into a much greater indigence, because the usurers impounded their work instruments and their livestock. This situation was reversed thanks to the “*montes pietatis*,” for which the Franciscan theologians after Bernardino, overcoming great difficulties, had to create the necessary theoretical framework.¹⁶

Antonino of Florence

The great scholar and bishop Antonino of Florence was born as Antonino Pierozzi in 1389. He became a Dominican and soon had to bear official responsibilities in his Order, which he did so well that Pope Eugene IV, in exile in Florence, personally appointed him archbishop of this city. He fulfilled this calling with charity, magnanimity, and profound learning. He died in 1459. Among other books, especially his manuals for confessors, he wrote a large and comprehensive handbook of moral theology called *Summa theologica* or *Summa moralis*. His aim was to educate priests to be able to respond to the intellectual needs of their time and to live up to spiritual and cultural standards. As Florence was one of the commercial and financial centers of the time, it is not surprising that he deals with several economic aspects. It has already been said that Antonino is not original but draws mainly upon his predecessors, especially from his fellow Dominican, Thomas Aquinas, but also from Bernardino and others. Langholm summarizes Antonino’s importance as follows: “In the area of economics, the stature of Antonino of Florence has shrunk a bit in recent years as more of the medieval sources of that work (*Summa moralis*) have come to light. Among other things, he drew on Peter Olivi, mainly, and perhaps entirely, through Bernardino of Siena. Antonino was not an outright compiler, however, for he drew attention to new areas and problems of economic ethics and thereby influenced subsequent authors of penitential works, Dominicans as well as others” ([15], p. 132).

Antonino defined commerce simply as profit made by reselling goods whole and unchanged. Commerce was lawful if conducted for some good purpose. In this case, commerce, among “all mechanical arts,” was the most honorable in society (*Summa*, P. III, [35], p. 218, t. 8, c. 3, col. 298).¹⁷ This positive evaluation only held for modest commerce exercised according to the justice demanded by God, not that conformed only to human justice (*Summa*, P. II, [35], p. 217, t. 1, c. 16, col. 254) and not if the merchant’s principal purpose was greed. In this case, his gain became *turpe lucrum* (*Summa*, P. II, [35], p. 220, t. 1, c. 16, col. 250). Antonino considered price-fixing among merchants as fraudulent (cf. [15], p. 134). In the *Summa moralis*, Antonino also attacked another antisocial activity of the rich merchants of Florence: the truck system. Workers were paid not with money but in kind (cloth or silk or wheat), for which they had no need, and were thus obliged to sell these goods at an inferior price than that at which they had been received (cf. [15], p. 135).

Conclusion

As has become apparent throughout this chapter, the scholastic period in Italy was of paramount importance for the development of the economy in Europe. Italy's geopolitical position in the Mediterranean and its cultural heritage from the Antique past and its Christian present resulted in a characteristic and fruitful blend. The Franciscan school of philosophy and theology was especially important, perhaps because of the social background of many of the friars in middle-class commercial families which enabled them to grasp the practical problems of the merchants' life in a realistic way. Medieval evaluation of commerce went through different phases: prohibition, justification, and exaltation. Italian scholars tended to exalt the social role of merchants and to underscore the great service they did to society by importing, storing, improving, and selling needed goods. This economic activity required money (in the words of Bernardino of Siena, the "blood of society") and financial operations. The existence and usefulness of money for commerce was never put into doubt, and a growing understanding of forms of cash-free operations, including certain forms of credit, slowly gained ground. Of course, some of the results achieved by the Italian scholastics are outdated and may even seem bizarre to contemporary readers. This is especially true for the condemnation of all forms of interest as usury, independently of the rate of interest. However, what all authors were unanimously aiming at though the prohibition of usury was avoiding the exploitation of the poor, a value of unabating actuality. Their distinction between usury and interest and the establishment of so-called extrinsic titles to interest paved the way for the modern system of regulated interest rates in legal financial markets. Besides, the many rational arguments put forward against non-gratuitous loans do pose some questions to modern business ethics that are worth considering: exorbitant interest rates were and are a severe problem; unwise indebtedment, then and now a deplorable phenomenon, becomes apparent, for instance, in pure consumer credits. The Italian scholastics raised their voices against the unproductive hoarding of wealth locked up in a chest, instead of being put to the service of society through investment. Then and now, the idea of fraternity they strove to spread among men was and is important: there are always the poor that need help.

The economic thought of the Italian scholastics was characterized by a wholistic approach to economic questions, which, first, placed the personal relationship between the buyer and the seller at the center of attention and, second, evaluated economic phenomena as part of a greater whole, the ethical perfection of the persons involved in economic intercourse. This is why the virtue of justice and the equality of the value of the goods exchanged are of central importance in scholastic thought. This led to the in-depth study of the meaning of value and to important insights in the value of goods. Value was derived from utility, which was conceived as a sum of objective qualities, of the scarcity of the object, and of subjective choice.

This wholistic approach procures lasting interest in the economic thought of the scholastics. Langholm therefore rightly suggests that we direct our search for

a “possible (and a possibly very important) legacy” of scholasticism toward ethics ([10], 199).

Cross-References

- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Scholastic Business Ethics: Thomas Aquinas Versus William of Ockham](#)
- ▶ [Scholastic Thought and Business Ethics: An Overview](#)
- ▶ [The Influence of Thomistic Thought in Contemporary Business Ethics](#)

Notes

1. This concept was popularized particularly (but not created) by Robert S. Lopez. See his various writings, especially Lopez [4, 5]. See Lopez [5] for a description of the “Age of the Commerical Revolution”.
2. See also Lopez [4], 95.
3. See also Roover [2], 200ff.
4. For an excellent overview, see Wittreck [9], 139ss; Wood [8], 79ss; Pirenne [12], 130ss.
5. For a complete explanation, see Roover [2], 183ff.
6. See also Wood [8], 199ff.
7. This book contains Peter Olivi’s *Tractatus de emptione et venditione, de usuris et de restitutionibus*, written in the 13th century, 69ff.
8. The “Spirituals” were a group of friars who were discontent with the development of the mainstream of the Franciscan Order and wanted to return to the original radicalism of St. Francis. They ended up becoming extremists and were condemned by the Church. See Iriarte [32], 107ff.
9. For this biography, cf. Spicciani, Amleto, and Vian, Paolo, and Andenna, Giancarlo. 1998². *Usure, compere e vendite*. Europia, 173f.
10. Olivi together with all other scholastic teachers condemned artificial famines brought about by monopolies. Cf. Spicciani, Amleto, and Vian, Paolo, and Andenna, Giancarlo. 1998². *Usure, compere e vendite*. Europia, 48.
11. In his commentary on the *Sentences of Peter Lombard*, Olivi identified “rationes seminales” in a general way as the potentiality contained in things, *Quaestiones in secundum Librum Sententiarum*, q. 31, edited in 1922 by Bernardus Jansen SJ, vol. I, Quaracchi: Collegium S. Bonaventurae.
12. Bernardino paraphrases this passage from Olivi in his *Sermo 34* (Bernardino of Siena (1956), 165ff).
13. This distinction was a result of canonical regulation.
14. From this positive evaluation, one must except the antisemitic passage in *Summa*, II, t. 47. Bernardino in tone is even more belligerently antisemitic.
15. Cf. also Aquinas, (1999)³, II-II, q. 77, a. 1c.
16. The Bull “*Inter multiplices*” (May 4, 1515) promulgated by Leo X recognized the “*Montes Pietatis*” as charitable institutions, with an interest rate that had to be reasonable (i.e., covering the running costs). The prohibition of requiring interest remained in force even after the publication of this Bull, unless the interest of the loan was to be used for the salaries of the employees and to cover the other costs of the “*Montes Pietatis*” and not simply to pay for the loan as such. Cf. Denzinger Heinrich, and Hünermann, Peter. 2003. *Enchiridion Symbolorum*. Bologna: EDB, nos. 1442–1444.

17. Confront with the online version of the Bayerische Staatsbibliothek of München, http://www.digitale-sammlungen.de/index.html?c=autoren_index&l=de&ab=Antoninus+%26lt%3bFlorentinus%26gt%3b.

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Abstract

The School of Salamanca consisted of a distinct group of Iberian scholastics of the sixteenth and early seventeenth centuries that worked mostly within a Thomistic framework and developed it in order to deal with the European expansion into the “New World” and to make sense of the important ethical issues arising from the rapid growth of commercial and financial activity in this period. After briefly reviewing the socioeconomic and cultural context of the School and its intellectual background, this chapter surveys their main contributions for business ethics, namely, on the legitimacy and limits of property rights, the ethical evaluation of commerce, justice in contracts, just price theory, banking and interest, taxation and regulation, and human rights and international law. It is shown that the School of Salamanca provided important contributions for the understanding of the operation of market processes and for business ethics by relying on a realistic natural law framework that emphasizes the ethical, legal, and anthropological foundations of the market economy.

Introduction

The label “School of Salamanca” is used to refer to a distinct group of Iberian theorists of the sixteenth and early seventeenth centuries. The Dominican Francisco de Vitoria (c. 1483–1546) is widely and justly credited as the founder of a School of thought in which several other Dominicans (such as Domingo de Soto and Martín de Azpilcueta) were prominent. But a number of Jesuit authors (such as Luis de

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Molina, Juan de Mariana, and Francisco Suárez) can also be included in this specific line of late Scholasticism.

Of particular relevance for business ethics is the fact that the authors of the Salamanca School applied and enlarged the Thomistic framework in order to deal with the European expansion into the “New World” and also to make sense of the important ethical issues arising from the rapid growth of commercial and financial activity in this period.

While the University of Salamanca was extremely important for the birth and development of the School, the use of the expression “School of Salamanca” can be misleading, as that was not by any means the only university where authors belonging to this tradition worked and taught ([2] pp 13–23). In Spain, Alcalá de Henares was also a key intellectual center, and some of the most important authors of the Salamanca School developed the largest part of their work in the Portuguese universities of Évora and Coimbra.

Origins and Development of the School of Salamanca

The founder of the Salamanca School, Francisco de Vitoria, studied at the University of Paris where he developed a distinctly Thomist line of reasoning. In 1526, Vitoria assumed the prime chair of theology at the University of Salamanca, a position from which he exerted tremendous influence over the next two decades. In the following years, numerous Vitoria’s disciples came to occupy important academic and political positions not only in Iberia but also in Latin America. An important contemporary of Vitoria (and greatly influenced by him) was Domingo de Soto, who also held a chair of theology at Salamanca and who in 1545 took part in the Council of Trent following a request by Charles V. Soto, also a Dominican like Vitoria, analyzed many issues of great interest for business ethics and his treatise *De Iustitia et Iure* was greatly influential in this and other regards. Another important disciple of Vitoria was Diego de Covarrubias y Leyva (1512–1577), who held a number of important administrative positions and played an influential role in the Council of Trent. Covarrubias published widely on matters of theology, history, law, and economics and his work reflected both his vast theoretical knowledge and his practical managerial and leadership experience. Several Salamancans devoted a great deal of attention to the ethical dimension of financial transactions and Martín de Azpilcueta – who was born in 1492 in Navarra and taught both at Salamanca and at Coimbra – put forth a pioneering account of the quantity theory of money [1]. The realistic and thorough analysis of commercial practices was an important feature in many of the works of the late Iberian scholastics and in this regard the work of Tomás de Mercado (born c. 1530) should also be mentioned. Combining accurate historical descriptions with ethical analysis of business activity, Mercados’s *Suma de tratos y contratos* (*Compendium of treatises and contracts*) was first published in Salamanca in 1569 and is one of the prime examples of its kind, constituting in some respects a forerunner of business ethics manuals. Mention should also be made of key Jesuit authors who

worked within a similar theoretical and methodological framework and provided many important contributions for the ethical analysis of business issues, taxation, human rights, and international law. These include Luis de Molina (c. 1535–1600), who studied in Salamanca and Alcalá and held academic positions at Coimbra and Évora and the highly polemic Juan de Mariana (1536–1624), who studied at Alcalá and taught in several locations in Europe, including Rome and Paris. All of these authors contributed to a distinctly integrated tradition of scholastic inquiry where the analysis of practical business problems and of the conduct of all of those engaged in economic activity was believed to require a solid understanding of the central principles of natural law and justice.

The Socioeconomic and Cultural Context

The intellectual importance of the School of Salamanca corresponded historically with a period in which the Iberian Peninsula was in many respects the center of the world. This golden age of Iberia partly came about as a consequence of the worldwide journeys of discovery enacted by Spanish and Portuguese navigators and explorers. But it was also fostered by favorable demographic, economic, cultural, and political circumstances. The Iberian Peninsula was in this period a privileged focal point not only for commerce and diplomacy but also for intellectual intercourse, and the University of Salamanca held a key position in this regard.¹

In the Iberian Peninsula, the fifteenth century was marked internally by the culmination of the process of reconquest of land from the Arabs. Externally, both Portugal and Spain carried out a series of successful maritime expeditions throughout the world. Portuguese expeditions explored the African coast, pioneered a sea route to India in 1498 that came to revolutionize trading patterns in the following decades, and were the first Europeans to reach Brazil in 1500. The most significant of the Spanish undertakings of this period was undoubtedly Columbus' expedition to America in 1492. By the end of the fifteenth century, Portugal and Spain were the two most important economic and political powers on the world stage and the 1494 Treaty of Tordesillas can be regarded as a symbol of this dominance. The Treaty, signed between the two Iberian powers to settle territorial disputes, divided the World (outside of Europe) in two parts, with the Western section assigned to Spain and Eastern one assigned to Portugal.

Throughout the sixteenth century, the Iberian Peninsula became the world commercial center, with cities like Lisbon and Seville flourishing with economic activity and also becoming major points of diplomatic, social, and cultural exchange. New ethical problems and new questions inevitably arose from the new relationships, particularly in the economic sphere. It is therefore not surprising that Iberian scholastics of the time came to be at the forefront of reflecting upon them and putting forth new answers. Grasping this socioeconomic context is essential to understand the depth and the vast scope of the contributions of the Salamanca School. As synthesized by Melé [4]:

In the sixteenth century, commerce, trade and banks experienced spectacular development, which was supported, in large part, by the discoveries of the New World and by the influx of precious metals. Spain became a significant center of commerce, acquiring the economic hegemony previously enjoyed by northern Europe and the northern Italian cities. Fairs like the ones celebrated periodically in Seville, Burgos and Medina del Campo, all perfectly synchronized with other European fairs, were privileged settings for the economic transactions of this era: exchange of merchandise, coins, bills of exchange and other financial instruments. (...) These new economic phenomena, coupled with the great religiousness of the people, led them to seek moral guidance from theologians and priests. The authors of the School received abundant requests for consultation from merchants, moneychangers, bankers and even public authorities.

Alongside the expansion in economic activity and the establishment of overseas domains came the enlargement of bureaucratic structures, both civil and military. Thousands of people were hired to perform administrative, managerial, and judicial roles and this provided further stimulus for the growth in higher education. Iberian Universities faced an increasing demand to train lawyers, managers, tax specialists, and other professionals and this was an additional factor fuelling the expansion of academic and intellectual activities in this period. The religious Orders most active in academia and the external demand for professionals fostered a competitive academic environment that also contributed to the scholarly productivity of this period. Educational innovation and competitiveness are well expressed in the motto of the University of Salamanca: *Omnium scientiarum princeps Salmantica docet*, which stressed that Salamanca was the leader in the teaching of all the sciences.²

Culturally, the interaction between Christian, Jewish, and Muslim elements in the Iberian Peninsula was also an important factor. Furthermore, the development of the printing press brought about unprecedented possibilities for the mass production of literary material and the rapid diffusion of new ideas. The humanistic lines of thought that characterized the Renaissance were present in Universities such as Alcalá and Salamanca, and while in some ways the new trends did not fit easily with traditional Scholasticism, they were also certainly a cultural incentive for the renewal of scholastic approaches.

Finally, in what regards the social, theological, and cultural context, mention must also be made of the vigorous confrontation between Catholics and Protestants that swept Europe. The conflicts between Catholics and Protestants provided further stimulus for the development of strong intellectual centers. Threatened by different strands of Protestant reformers all claiming to be closer to the original meaning and practices suggested by the biblical texts, the Catholic Church was under strong pressure to mobilize intellectual resources and reinvigorate the defense of its positions. In the context of the Protestant challenges, the Council of Trent (1545–1547, 1549–1551, 1561–1563) put forth a number of internal Church reforms and offered a strong condemnation of key Protestant claims.³ The perceived need to restate the Catholic doctrinal positions led to the movement that came to be known as the Counter-Reformation. A movement in which the Society of Jesus – formally recognized in 1540 – played a key role. It is worth remembering at this point that from the later part of the sixteenth century, Jesuits assumed a prominent role in the School of Salamanca which contrasted with the

leading role of Dominican scholastics in the foundation of the School. It is not a coincidence that some of the most important works of the late Iberian scholastics (particularly of the Jesuits) were written precisely in the context of the Counter-Reformation and of a pressing need to answer the Protestant theological and cultural challenges.

With an unprecedented expansion of economic activity, new questions arising from interactions in the “New World” and the serious theological and cultural challenges posed by Protestants in Europe, reflecting upon ethics and developing solid moral arguments mattered more than ever for the Iberian Catholic scholastics. Justice and its practical applications became a central intellectual concern.

Intellectual Background: Relevance of Justice

The European revival of Thomism – spearheaded by figures such as Pierre Crockaert (c. 1450–1514) and Thomas de Vio (1469–1534) – was an extremely influential movement in the genesis and development of the Salamanca School. Starting with Francisco de Vitoria – who studied under Crockaert in Paris – the thought of the late Iberian scholastics was greatly influenced by the Thomist approach to natural law ([2], pp. 30–34). In the Thomist framework, natural law is the part of eternal law that deals with mankind and it can be discovered by employing human reason. It is deemed “natural” not because it is held to be purely instinctive but rather because it can be reached through man’s natural ability to make use of reason in order to separate right from wrong.

Since natural law in its purest form does not offer more than general principles, it is by itself insufficient to direct all human actions. The primary precepts of natural law are the ones that can be known with greater certainty but they are also the more general. Secondary precepts of natural law offer more guidance for decision-making but have a much larger degree of variation and uncertainty, since they reflect different particular circumstances of time and place. Humans are thus obliged to reason from the general principles of natural law both to develop supplementary human laws and to make moral decisions.

Closely related to natural law, is the notion of justice as that of rendering to each person what she is due. Acting ethically requires the employment of right reason so that in each specific circumstance one behaves toward others in accordance with the demands of justice. In line with the Thomist tradition, for the late Iberian scholastics the capacity to discover the principles of natural law was not directly dependent on faith, but reason by itself was not sufficient to ensure their application. Prudence, understood as a practical disposition to act according to right reason, was also deemed necessary. In this perspective, exercising right reason requires not only understanding what justice demands but also having the prudential virtue of acting according to those demands.

The adherence to this integrated Thomist conception of natural law is a common feature of the vast majority of the late Iberian scholastics. But in addition to being largely shaped by the preexisting Thomist framework, the works of the Salamanca

School also expanded it, particularly in what concerns the analysis of economic and business issues. It was precisely in these fields – more so than in theology or political philosophy – that the authors of the School introduced more substantial innovations that broadened the Thomistic framework allowing the resolution of existing ambiguities and the fruitful analysis of the emerging complex business phenomena of their time.

The type of ethical analysis practiced by the authors of the Salamanca School can be described as “casuistry based on solid principles” ([4], p. 182). This essentially means that proper ethical analysis must start from a solid understanding of the general principles of justice and then apply them accounting for the specific circumstances of each case. The Salamanca School’s use of casuistry attaches great importance to prudence in decision-making and to the consideration of particular circumstances but frames them within a rigorous theoretical understanding of justice. Contemporarily, casuistry has gained a bad reputation that is often fully justified given that this type of analysis, if not pursued rigorously and under a proper theoretical framework, can easily degenerate into moral relativism and rhetorical play. Nevertheless, the late Iberian scholastics contributions to business ethics demonstrate that this does not need to be the case. By combining solid theoretical knowledge in the Thomist tradition with a thorough understanding of the business realities of their time, the authors of the School were able to provide ethical analysis that was simultaneously nonrelativistic and applicable to real-world scenarios and decision-making.

Most of the analyses of economic and business problems by the late Iberian scholastics appear in their voluminous and detailed Treatises on *De Iustitia et Iure* (on justice and law) and in other works dealing primarily with moral theology ([6], p. 101). A good example is Domingo de Soto’s own *De Iustitia et Iure*, a work first published in 1553–1554 that contains numerous insights not only on matters of theology, law, and political philosophy but also on questions concerning economic and business affairs.⁴ Although contemporary readers may find that awkward, the location of the texts concerning business ethics should not lead to the deeply mistaken conclusion that this constituted a limitation for the authors of the Salamanca School. For, as explained by Melé:

They recognized that the Bible contains no abundance of norms regarding concrete economic behavior, and that the ones that can be found there refer to economic practices contemporaneous with the publication of those texts. But this did not hinder the authors, for as Catholics they knew that the sources of moral theology are not limited to the Bible. Morality is also derived from the powers of reason, to which God has given the capacity to know the natural moral law, at least in its most elementary aspects. ([4], p. 179)

The prime concern of the late Iberian scholastics in what concerns business activity was to analyze conduct from an ethical perspective. But they also realized that accurate ethical judgment required a proper understanding of economic processes and that existing knowledge was often insufficient in this regard. They thus undertook the double task of developing a better understanding of the economic phenomena they observed while simultaneously seeking to formulate appropriate ethical judgments and recommendations that could serve as guidance for business conduct.

While the major authors of the Salamanca School gave currency to their ideas through lengthy treatises on justice, it is interesting to note the existence from very early on of complementary – simplified – handbooks containing a summary of applied teachings and insights directed at merchants and businessmen in general. As pointed out by Grice-Hutchinson ([8], p. 96), these minor treatises came to enjoy substantial influence in their own right, a fact that signals that the concern with business ethics in this period of rapidly expanding commercial activity was not confined to ivory tower scholars disconnected from the real world of business.⁵ It is probably not a coincidence that these works were published in cities in which the imperial economy was developing with great dynamism.⁶ These handbooks were important not only as means of disseminating to a wider audience the complex theories of natural law expounded in the more formal treatises but also as sources of practical guidance for everyday business life, contracts, and decisions. The multiple editions and translations, as well as citations by subsequent authors, strongly suggest that their popularity was quite significant, a fact that is even more striking if one takes into consideration the levels of literacy at that time.

The combination of a permanent emphasis on justice with a realistic natural-law outlook (that incorporates actual human ends without ignoring the necessity to evaluate them from an ethical standpoint) is a distinctive feature of the Salamanca School's contributions for business ethics. In the perspective developed by the late Iberian scholastics, individual agents and their moral conscience occupy a role that cannot be replaced by "third-person" mechanisms of ethical evaluations. It is therefore an approach "centered on action, but ordered to the agent," ([4], p. 187) as evidenced by the Salamanca School's contributions toward the analysis of specific issues in business ethics.

Legitimacy of Property Rights and the Common Good

For the School of Salamanca, the justification of private property lay in its potential to promote a better use of material goods while at the same time contributing to an ordered, hospitable, and peaceful community. The defense of private property by the School of Salamanca was thus closely connected with an understanding of the very negative consequences of common ownership of material goods given the conditions and characteristics of human earthly existence. In the words of Domingo de Soto:

Considering also the premises that in a corrupted [i.e., fallen] state of nature, if men lived in common they would not live in peace, nor would the fields be fruitfully cultivated, men have deduced that it is more convenient to divide property. ([7], book i, q. v, a. iv. (our translation))

And in the context of replying to popular arguments in favor of common ownership:

What the poet has said, that these words: mine and yours, lead to many disputes and fights, we sincerely recognize; but there would be many more [disputes and fights] if the things were possessed in common. ([7], book iv, q. iii, a. i. (our translation))

Although private property was strongly defended and regarded as being fully compatible with the principles of natural law, it was not considered an absolute right. It was rather a “dominion ordered to a social function.”⁷ Private property’s ultimate subordination to the common good meant that in extreme circumstances of imminent danger to human life it could be legitimate to make use of goods one did not own. Thus, for example, Vitoria referred to the implications of situations of extreme need as follows:

It is enough to see the indigent prostrated in his bed, anguished by his ailments, or when tolerating hunger for an extended period reaches such extremes that, if he is not succored, he would rapidly walk to death. It is then, when there is extreme need and, if it can be done without scandal, that it is licit to rob from the rich.⁸

Even in these cases, however, the late Iberian scholastics tended to have a cautious approach, stressing that the goods should be returned to its original owner whenever possible.⁹

Commerce: Wealth and Fair Transactions

In line with their views on private property, the authors of the School of Salamanca analyzed commercial activity essentially based on its social consequences. In some notable cases, the late Iberian scholastics distanced themselves from long-established prejudices directed against merchants and trade. In addition to placing the emphasis on the individual patterns of conduct of business men (as opposed to condemning business activity on the whole), there are clear recognitions of the social importance of commerce. Juan de Mariana understood commerce as a way of overcoming scarcity through mutually beneficial exchanges and he stressed that:

If the exchange of goods were abolished, society would be impossible, and we would all live in distress and anguish. We would not have faith in our children nor would children trust their parents.¹⁰

Considering the ideas they inherited, the authors of the Salamanca School held in many regards a more tolerant view of commerce and market activity in general than previous scholastics. While they never failed to emphasize the grave moral dangers posed in the context of profit-seeking activities, their concerns were largely balanced by a sophisticated comprehension of the social benefits of free exchange in market settings. Profit could thus be ethically justified in numerous circumstances as long as the ultimate goal was compatible with the common good and business activity was pursued in accordance with principles of justice and morality.

Domingo de Soto stressed that commercial transactions in themselves are not intrinsically virtuous or vicious:

Business is not in itself intrinsically good, as is the virtue of charity, nor is it in itself intrinsically bad, as is lying, it is in itself indifferent, as the act of eating, which can be good or bad depending on the its purpose and on the circumstances. ([7], book iv, q. ii, a. ii. (our translation))

While Soto emphasized that commerce is necessary for society, he also warned that the art of business is “surrounded by many dangers.” Among these, he particularly condemned lying and fraud, vices that Soto understood are not an exclusive problem of commerce but can be more prevalent when businessmen fall prey to an insatiable thirst for profits.

In one of his most significant passages for business ethics, Domingo de Soto stresses that “the vices of merchants are not intrinsic to commerce but to the persons who practice it” ([7], book iv, q. ii, a. ii. (our translation)). And he eloquently adds that if one wanted to ban commerce from society due to the sins of merchants then one would equally have to ban farming and all forms of industry, given that there are also farmers and producers of other goods and services that lie and cheat in order to obtain higher profits.

Justice in Contracts

The late Iberian scholastics devoted a great deal of attention to contracts, and particularly to the conditions under which they could be considered licit and as giving rise to legal and moral obligations. As noted by Roover, [14] the great importance attached by the Salamanca School to the study of justice and ethical implications of contracts was deeply influenced by Roman Law. This influence on the works of the late Iberian scholastics should not come as a surprise considering that the Roman Law tradition held a lasting influence on European legal thought and that the most important custodian of this tradition was the Catholic Church.¹¹

From Roman Law – and particularly from Justinian’s compilation – the Salamanca School adopted primarily a thorough and systematic methodology of analyzing contracts and also the principle of voluntary and free consent that is central to the Roman legal tradition. The late Iberian scholastics combined this framework with a Thomistic understanding of the importance of commutative justice and applied it to evaluate the increasingly complex business contracts of their time.

Commutative justice was generally regarded as demanding equality between the parts involved in a contract but the exact implications of the principle in practical terms were often the subject of intense debate.¹² A strict interpretation of the Aristotelian concept of reciprocity of exchange can lead to a significantly restrictive position on contracts but the idea can also be interpreted in terms of mutuality. Under this more flexible interpretation, as explained by Elegido ([16], pp. 34–35):

The principle of equality only asks for mutuality; this can be put negatively as requiring that one party does not gain precisely by the loss of the other; it can also be formulated positively as requiring that the transaction makes the two parties better off. Therefore, there is nothing in this principle that precludes one party from making very high profits; all it requires is that he makes those profits by creating very high value for his customers while keeping his costs as low as possible. If he succeeds in doing this, it will be possible, in strict conformity with this principle, for him to contribute a lot of value to others and to do very well for himself and for those to whom he bears special responsibilities.

While there is some room for debate in terms of what is required by commutative justice in terms of the outcome of specific business transactions, there was no doubt for the late Iberian scholastics that coercion, fraud, and deceit all gravely undermine the justice of contracts. In the words of Domingo de Soto:

To make use of lying or deceit to sell something dearer than it is [i.e., for a price higher than its just price] or to buy it cheaper [i.e., for a price lower than its just price] is a sin, as it is in every contract, and a mortal sin for its kind. ([7], book vi, q. iii, a. i. (our translation))

In what concerns the implications of different scenarios of asymmetric information on the justice of contracts, Molina offered what is quite possibly the most clear and thorough treatment of the problems involved.¹³ In some instances, the informational disadvantage of one of the contracting parts may be such that the voluntary nature of the contract is put into question. Simultaneously, when one of the contracting parts holds an illusion about the object of the contract, the resulting inequality is prone to jeopardize respect for the principle of commutative justice. Building upon the works of other late Iberian scholastics, Molina went as far as providing a detailed analysis of the obligations of sellers to inform potential buyers of defects in the products being sold ([17], pp. 229–259). He equated in considerable detail the different circumstances under which business contracts should be annulled due to defects in the products involved and also situations in which discounts should be granted on account of them.

Nevertheless, the issue where the authors of the Salamanca School provided their most important contributions to the ethical analysis of business is quite possibly just price theory, a matter that is obviously related to justice in contracts but requires separate treatment. And it is also in this subject that the distinctive comprehension of market processes developed by the late Iberian scholastics is clearer.

Market Economy and Fair Price

One of the key distinguishing features of the Salamanca School – and perhaps the most important characteristic of its economic thought – is its sophisticated understanding of the operation of the market economy. While the late Iberian scholastics did not, in most areas, offer a radical break with the past, they often put forth a more benevolent view of the functioning of the market economy than other earlier and contemporary thinkers. This view was also associated with a greater awareness of the dangers associated with undue political intervention in the market, which raised a broad scope of ethical concerns. As synthesized by Madigan [18]:

These thinkers developed an “optimistic” attitude towards the early developments of capitalistic business economics, going against the tide in castigating the developing absolutist monarchies for such policies as attempted price controls, interventions in the market through currency debasement to raise revenue, and the *encomienda* system of land grants which frequently resulted in brutal enslavement of the native peoples.

At the same time, the operation of the market economy was itself also subjected to moral evaluation in a way that led the late Iberian scholastics to analyze in depth

the ethical implications of economic activity. This is perhaps clearest of all in the Salamanca School's contributions to the discussion of what constitutes a just price. In his *History of Economic Analysis*, Schumpeter [19] attributed to the late scholastics a key role in the development of price theory and stressed the importance of ethical concerns in their work:

Aristotle not only distinguished value in use and value in exchange as clearly as did any later writer but he also perceived that the latter phenomenon derives somehow from the former. But in itself this is not only common sense but also commonplace, and further than this he did not advance. His failure to do so was made good by the later scholastics, who are entitled to the credit for having developed the theory of price which he himself cannot be said to have had. It has been held that this was due to his preoccupation with the ethical problem of justice in pricing—"commutative" justice—which diverted his interest from the analytic problem of actual pricing. Nothing could be farther from the truth. Preoccupation with the ethics of pricing, as the example of the later scholastics suffices to show, is precisely one of the strongest motives a man can possibly have for analyzing actual market mechanisms.

The theory of value and the economic and ethical analysis of the role of prices in transactions are naturally areas of great relevance for business ethics. The Salamanca School provided important contributions in this regard. Elegido summarizes them as follows:

In my view the leading authors of the Salamanca School can contribute three key ideas to a modern discussion of justice in pricing. They used a substantive standard for assessing the justice of exchanges; they claimed that the fundamental standard of commutative justice is equivalence in value; and, finally, they argued that the best indicator of the value of a good is the price that it fetches in an open market. ([16], p. 30)

The first two contributions are directly related with the Salamanca School's consistent approach to the analysis of justice in contracts. But it was the third that had wider and deeper implications for business ethics. The association of value with common estimation in the market results from an understanding of prices as being ultimately grounded on what contemporary economic science refers to as the subjective theory of value. Molina is one of the most sophisticated scholastics in this regard, as can be observed in his explanation of the concept of "natural price":

They call him so not because it doesn't depend to a large extent upon the esteem with which men appreciate some things more than others, as happens with certain precious objects, that sometimes are valued in more than twenty thousand gold coins and more than many other things, which, by their nature are much better and more useful; nor do they call him so because that price doesn't fluctuate and change, since it is evident that it does change; but they call him natural because it is born out of these same things, independently of any human law or public decree, but dependent on many circumstances which make it vary and on the affection and esteem that men have for things according to the several uses in which they can be employed. ([17], p. 168)

Covarrubias goes even further along this line by stating that the "value of an article does not depend on its essential nature but on the estimation of men, even if that estimation be foolish."¹⁴ This understanding of the value of goods as deriving from subjective human preferences has important implications in terms of the

ethical evaluation of prices. A price that reflected “common estimation” and was practiced in a business transaction in a free trading environment that did not involve force or any form of fraud could be considered a fair price. Again, Molina is particularly clear in this regard:

To sum it up, the just price of goods depends, primarily, of the common estimation of the men in each region; and when in a region or place it is usual to generally sell a good by a given price without fraud, monopoly or other forms of deception, that price should be taken as the measure and rule to judge the just price of that good in that region or place, provided there is no change in the circumstances with which the price legitimately fluctuates up or down. ([17], p. 169)

The use of common estimation as a value standard has important implications. As explained by Elegido:

If the standard of justice for a price is the amount obtainable in an open market, it not only follows that it is right to charge the price obtainable in an open market even when one’s own costs are much lower, but also that it is unjust to charge a higher price if one’s costs happen to have been significantly higher. (. . .) The moralists of the Salamanca School used the prices obtainable in an open market as an indicator of value. What can be said in defense of this choice? Prices obtainable in an open market are a value standard, as opposed to a cost standard. A strong reason for not using a cost standard for defining a just price is that not all activities which add costs add also value. ([16], pp. 32–34)

This does not mean, however, that only the natural price (derived from common estimation in the market) was considered just for the Salamanca School. In line with earlier scholastics, the authors of the School also considered the possibility of a legal price being set by a legitimate authority. However, while both the natural price and the legal price were part of the notion of just price, authors like Mariana and Azpilcueta displayed great skepticism toward distortive political controls on prices and showed concern for their harmful social consequences.¹⁵

Ethics of Banking: Usury and Interest

Due to their specific characteristics, financial activities were held to a higher degree of ethical scrutiny than the remaining areas of business. The moral condemnation of usury was a traditional hallmark of scholastic thought on business ethics and, in its beginnings, the Salamanca School did not change this stance. However, the gradually more liberal interpretation of the traditional extrinsic titles that could justify the payment of compensation on loans meant that more and more situations where interest was effectively charged were accepted or at least tolerated. While this paved the way for the acceptance of interest payments as part of regular business activity, the fact that the formal terms of the moral prohibition of usury remained mostly unchanged meant that the late scholastics were, in this regard, open to charges of hypocrisy.¹⁶

The contributions of the Salamanca School were more significant in what concerns another aspect of the ethics of banking, namely, the debate over reserve requirements. Within the School, there were those who argued for the necessity

of requiring full reserves on demand deposits and those who believed in the permissibility of a fractional-reserve system. In the first group were included authors like Saravia de la Calle and Martín de Azpilcueta, who were highly critical of the bankers' practice of loaning out funds received as demand deposits and argued for a system of full reserve requirements that would limit credit creation and monetary expansion. Other authors, such as Domingo de Soto and Luis de Molina, accepted the practice of fractional reserve banking but stressed that it imposed strict ethical obligations in terms of the prudent management of the funds received and of the risks taken. This obligation is made explicit by Molina:

It is important to warn that [bankers] commit mortal sin if they use in their own business dealings so much of the money they hold on deposit that they are later unable, at the right time, to hand over the quantities the depositors request or order to be paid against their deposited funds.... In addition, they commit mortal sin if they become involved in business dealings entailing a risk of not being able to return deposits.¹⁷

The Salamanca School thus devoted substantial attention to the ethical analysis of financial activities. While theoretical progress on the subject of interest payments was limited, the late Iberian scholastics demonstrated a rather developed understanding of banking practices and particularly of the economic and ethical implications of different reserve systems.

Business and Government: Taxation and Regulation

The financing of government and its implications for business and economic activity were also a theme of concern for the Salamanca School, particularly in what concerns taxation. In line with the Thomist tradition, moderate taxation to finance the proper activities of legitimate governments was deemed justified and implied an ethical obligation to contribute. But simultaneously the authors of the School were deeply concerned with the possibility of excessive public expenditure and the consequent oppression of the population in order to finance government spending ([2], pp. 83–85).

Of particular interest in this domain is the relationship between public spending, inflation, and the business activity. In the period during which the Salamanca School was active, the Spanish government greatly expanded its financial needs, both for internal purposes and for imperial expansion. This led to a constant search for revenue streams and one of the most readily accessible for government was currency debasement. Among the late Iberian scholastics, the harshest critic of these practices was Juan de Mariana, who devoted a great deal of attention to the subject: He understood it as a particularly aggressive and dangerous form of taxation. Mariana went as far as describing the debasement of copper coins as a government perpetrated form of theft:

The king is not free to seize his subjects' goods and thus strip them from their lawful owners. May a prince break into granaries and take half of the grain stored there, and then compensate for the damage by authorizing the owners to sell the remainder at the same price as the original whole? No one would be so perverse as to condone such an act, but such was the case with the old copper coin. [21]

Inflationary policies were condemned not just because of constituting a particularly mischievous form of taxation but also because of their very negative effects on business activity. Given that a monetary unit of account is essential for commerce, any policies that jeopardized its stability – just like that of weights of measures – should be avoided and denounced.

The contributions of the Salamanca School on taxation and inflation make clear that its authors understood that the broader economic, legal, and political framework has important implications for business ethics.

The late Iberian scholastics also held interesting views on competition, and these have important implications for regulation. For the most part they refrained from resorting to the idealized models of perfect competition that have come to dominate the imagination of many contemporary economists and regulators. As explained by Elegido:

The members of the Salamanca School had never heard of a perfectly competitive market; in fact, nobody did for two hundred years after them. They are clear that a market price which results from hoarding, collusion or any other effort to restrict artificially the goods offered in the market, does not provide a standard of fairness; but at the same time many of the examples they offer as instances of just prices refer to situations in which there are few vendors or even only one. (. . .) They themselves usually refer to the “common estimation” of people and the examples and arguments they put forward make it plain that they do not think of this as a “common opinion”, far less as the result of a formal poll. What they have in mind is the price at which a certain article is commonly sold, provided that there has been no collusion or artificial restriction of supply. ([16], p. 32)

This did not stop the late Iberian scholastics from understanding the harmful consequences of anti-competitive practices. Being keenly aware that the number of buyers and sellers in a given market influences prices, the authors of the Salamanca School were in general quite critical of situations of monopoly and monopsony. In the words of Domingo de Soto:

This conclusion clearly shows the iniquity of monopolies, which arise when a person buys from his prince the privilege to be the only one to sell an article; or when two or three merchants, forestalling the rest, combine to buy up stock, so that everyone must buy from them; or when they agree not to sell below a fixed price. (. . .) Symmetrically, and for the same reason, even if it does not happen as frequently, the monopolies of buyers with the intent to reduce prices are also unjust. ([7], book vi, q. ii, a. iii. (our translation))

Although the authors of the Salamanca School generally expressed tolerance for the establishment of monopolies by public authorities under certain conditions, their calls for moderation and restraint provide further evidence of their awareness of the problems associated with them.¹⁸ By contemporary standards of competition law, no comparable detailed regulatory prescriptions are to be found in the works of the Salamanca School, but it is probably safe to affirm that the positions of the late Iberian scholastics would point toward a regulatory mandate to promote contestable markets and limit anti-competitive practices that are detrimental to the common good.

Human Rights and International Law

The Salamanca School's contributions to the fields now referred to as human rights and international law are numerous and diverse but they share the common feature of trying to harmonize a Thomist conception of the common good with a respect for individual rights and personal autonomy. Although the concrete definition of the common good was not a central point of discussion in the Thomist tradition [22], the notion was generally employed in an organic sense to refer to the desirable conformity of the social order with the mandates of natural law. The Salamancans, for the most part, accepted this perspective but they added to it a stronger emphasis on personal autonomy than previous authors in the Thomist tradition. This is clear, as pointed out by Brett [23], in Vitoria's defense of the people's liberty to hunt wild animals on the grounds of valuing the personal responsibility of each individual to autonomously act according to right reason. Domingo de Soto further elaborated upon the notion of individual rights and stressed the intrinsic value of each person. This is particularly clear in a passage where Soto argues against the idea that a nation may legitimately sacrifice one of its innocent citizens in order to achieve a common goal, because "a man, although he is part of the commonwealth, is nevertheless also a person existing for himself, and so capable of suffering injustice, which the commonwealth may not impose on him" ([7], book v, q. i, a. vii. (our translation)). In the case of Jesuit authors like Molina, Suárez, and particularly Mariana, the emphasis on an individual sphere of freedom was most prominent in their discussion about the concept of self-defense. This was deemed to include not only individual life and integrity but also the protection of property and even actions against illegitimate aggressors of third parties.

An important characteristic of the Salamanca School is the emphasis placed on universality. That is perhaps clearest of all in the thought of Diego de Covarrubias y Leyva, who developed upon the ideas of Vitoria and Azpilcueta.¹⁹ Covarrubias started from an assumption of natural equal liberty among all men in a universal setting. Based on that, he argued for the existence of a basic set of individual rights that ought to be universally recognized and that are an indispensable part of the correct conception of the common good. This line of enquiry leads directly to an understanding of fundamental rights that largely transcends particular political and historical circumstances, as evidenced by the contributions of the School of Salamanca to the conceptualization of international law.

Francisco de Vitoria – along with his disciple Covarrubias – can be said to occupy a central place in the foundation of modern international law.²⁰ The late Iberian scholastics developed the traditional Roman law concept of *ius gentium* (*right of people*), extending its application to a global setting. The *ius gentium* was regarded as universally applicable and independent of the will of particular rulers or legislators. This meant that basic individual rights and fundamental principles of justice – as well as obligations to respect them – were not circumscribed to a particular nation or specific groups of people. Vitoria – although not all members of the School – went as far as considering the free movement of people and freedom of commerce as part of the *ius gentium*, a position that led him to be critical of restrictions imposed in these areas.

The practical application of the ideas of the Salamanca School in what concerns human rights and international law was clearest of all in the arguments about colonization and economic relationships in the New World. Making ample use of the doctrines of the late Iberian scholastics, the activist Bartolomé de Las Casas (1474–1566), a Dominican who studied at Salamanca, pursued a relentless campaign against the *encomienda* system that was prevalent in America. The *encomienda* system consisted essentially in allocating land and indigenous populations to European colonizers, who were legally entitled to explore their labor and demand tribute. While colonizers were also legally obliged to convert and educate the Amerindians, abuses were common and the practical situation was frequently one of near serfdom. The lobbying and campaigning efforts led by Las Casas directly led to the New Laws of 1542 enacted to limit the exploitative treatment of American Indians.²¹ The public controversy over the ethical implications of the colonization of the New World culminated in 1550, with the famous intellectual confrontation between Bartolomé de Las Casas, who argued that the Amerindians ought to be treated as free men, and Juan Ginés de Sepúlveda, who defended the Spanish colonizers on the grounds that Native Americans were slaves by nature.²²

The controversies over the colonization of America provide ample evidence not only of the notable universalistic conceptions about individual rights and the intrinsic dignity of the human person held by authors of the Salamanca School, but also of their courage in applying those ideas to the ethical analysis of widespread political, economical, and business practices of their day.

Contributions and Limitations of the School of Salamanca for Current Business Ethics

In line with the Thomist tradition, the business ethics of the Salamanca School is characterized by the aspiration to harmonize reason and faith. It is true that, in a context of increased religious diversity, some of the theological aspects of the School may appear misplaced or even naive. But that limitation seems less relevant if one is aware of the deep shortcomings of present-day business ethics in terms of supplying a purely rationalistic foundation for their conclusions. Furthermore, the method of the Salamanca School was rooted in a genuinely universalistic approach. Natural law was regarded by the late Iberian scholastics as apprehensible even by non-Christians and thus as universally applicable. The role of theology should be seen in the context of an interdisciplinary approach that sought to integrate ethical, juridical, and economic insights to a complete and robust understanding of real-world business activities. Both the universality and the interdisciplinary nature of the Salamanca School's contributions to business ethics constitute a valuable asset in the context of a global economy where problems and decisions have an increasingly important international and intercultural dimension.

The Salamanca School's approach to business ethics is also particularly relevant in the context of contemporary Catholic social thought.²³ Through the integration

of solid ethical foundations with an understanding of economic processes, the late Iberian scholastics show the importance of business activities for the common good and also how Christian principles can be made an integral part and a source of guidance for those activities.

It is true that in some areas – such as the payment of interest – there are considerable limitations on the positions of most authors of the School. It would be unreasonable and anachronous to expect them not to exhibit any such shortcomings. Nevertheless, they contributed notable achievements in some other areas – such as the subjective theory of value – that led to an understanding of the role of prices and entrepreneurship from which many valuable insights may be taken to enlighten contemporary debates on topics such as “fair trade,” market regulation, and even wage determination.

Conclusion

Overall, the main contributions of the Salamanca School to business ethics rely on the consistent application of a realistic natural law framework that emphasizes the ethical and anthropological foundations of the market economy. The first-person ethics adopted by the late Iberian scholars combined a universal understanding of the dignity of each person with a stress on individual responsibility. It was this approach that allowed them to make and explore the vital distinction between acts of misconduct undertaken by merchants and businessmen and the ethical evaluation of commerce and business in the context of their important contribution for the common good.

It was also by making use of this framework that this distinct group of Iberian scholastics of the sixteenth and early seventeenth centuries were able to make sense of the important ethical issues arising from the rapid growth of commercial and financial activity in the period in which they lived.

Cross-References

- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)
- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if any?](#)
- ▶ [Duties of Justice in Business](#)
- ▶ [Economic and Business Ethics in select Italian Scholastics \(ca. 1200–1450\)](#)
- ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
- ▶ [Scholastic Thought and Business Ethics: An Overview](#)
- ▶ [The Influence of Thomistic Thought in Contemporary Business Ethics](#)
- ▶ [The Traditional Christian Social Ethics](#)

Notes

1. Cf. [2] and [3].
2. Cf. [3], pp. 25–26.
3. Cf. [5].

4. Cf. [7]. The degree of the author's success and influence can be ascertained by the fact that in the following five decades no less than 27 additional editions of this monumental work came into existence.
5. [9–11]. The already mentioned – and highly influential – Tomás de Mercado can also be included in this group although his work had in some respects a wider and deeper scope.
6. Cf. [12].
7. [4], p. 182. Cf. also [13].
8. Quoted in [6], p. 44.
9. Cf. [6], pp. 42–45.
10. Quoted in [6], p. 35.
11. Cf. [15].
12. Cf. [6], pp. 90–92 and [16], pp. 29–46.
13. Cf. [17]. Francisco G. Camacho provides a useful summary of Molina's positions on these matters in pp. 64–76.
14. Quoted in [8], p. 100.
15. Cf. [6], pp. 88–89.
16. Cf. [6], p. 123; [14].
17. Quoted in [20], p. 96.
18. Cf. [6], pp. 93–94.
19. Cf. [24].
20. Cf. [25].
21. Cf. [26].
22. For more on the 1550 disputation cf. [2], pp. 95–100; [27, 28].
23. Cf. [2], pp. 115–117.

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The Influence of Thomistic Thought in Contemporary Business Ethics

11

Helen Alford

Abstract

The chapter opens with a short passage that bridges from the time period covered by the previous chapters in this section, twelfth to early seventeenth centuries, to the period considered here, the twentieth century. Between the seventeenth and nineteenth centuries, the relation between business/economics and ethics fundamentally weakens, so that the way Thomist thinkers deal with questions in these fields in the twentieth century is often more fragmented than in the past. Similarly, economists and business experts themselves rarely make reference to philosophical ethics and almost never to Thomism. On the other hand, Thomism receives a major boost at the end of the nineteenth century, thanks to Pope Leo XIII, who also launches what becomes a new body of thought known as Catholic social teaching (CST), and thus, CST is much influenced by Thomism, although on some key points of importance to business ethics, there has been some divergence between Thomism and CST. Three areas of some divergence are discussed here. Key concepts within the Thomist/CST body of thought that are of importance for business ethics include: the concept of what is good, the nature and dignity of the human person, the common good, and human virtue. A more extensive account is given of two book-length treatments of economics and business, since although these kinds of texts are few in this period, they continue the Thomistic tradition of a systematic reflection on commerce and business, and other areas of business ethics where Thomistic thought has been influential are discussed. An assessment of the influence on business ethics of Thomism and CST is made. While they are currently ignored to a great extent by the mainstream of business ethics, there is

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potential for a “breakthrough” in the future. This is due to the kind of problems that business ethics is currently experiencing and to what Thomism and CST can offer to remedy these problems.

Introduction

The previous chapters in this section regarding “Scholastic Thought and Business Ethics” demonstrate how scholastic thinkers, over about a 400-year period, developed very detailed analyses of key economic and business problems from an ethical point of view. By the time we arrive in the twentieth century, a lot of water has gone under the economic bridge; economic thought has become far more sophisticated, while the relation between economic thought and ethics has been fundamentally weakened and, at least for most leading economists, entirely broken. Whereas law, which developed as a separate field of study long before economics, always included within it serious reflection on the philosophy of law (jurisprudence), the philosophical reflection of early economists, including Adam Smith, never develops into a consistent tradition of reflection on the philosophy and ethics of economics. Thomism too, even among philosophers and ethicists, has been through a long period of marginalization, swept aside firstly during the Reformation, which included a strong antiphilosophical element as part of its elevation of the importance of the Bible, and then, for philosophical reasons, in the Enlightenment. Any ethical and philosophical overarching system of thought, such as that of Aquinas, breaks down in the face of these onslaughts, just as science and technology are developing integrated models of the world, increasing the marginalization of philosophical ethics and theology. Alasdair MacIntyre [27] has thus characterized the contemporary period as one of “living in the ruins” of any kind of ethical synthesis. One of the main concerns of this chapter, therefore, is to highlight the ways in which twentieth-century thinkers have tried to recover or renew the links between the most important strand in scholastic thought, Thomism, and the thought and practice of economics and business. One of the consequences of this situation is that we find far fewer systematic treatises on economic and business questions from the point of view of Thomism in the twentieth century than in the past; one of the few to have been attempted is the *Wirtschaftsethik* of Arthur Fridolin Utz. Since, thanks to its metaphysics, Thomist thinkers have always tried to produce an integrated system of thought, the attempt by Utz to produce an integrated socio-economic ethics for the twentieth century that takes into account twentieth-century economic thought and practice is particularly significant for this chapter and therefore will be considered in some detail.

Against this rather bleak backdrop the nineteenth-century Pope, Leo XIII (elected 1878) produced two “encyclicals” (authoritative statements, often quite long and detailed, made by a Pope) that make a crucial change in the situation, at least as regards the members of the Catholic Church. One year after his election, he published the encyclical *Aeterni Patris*, where he presented the thought of St. Thomas Aquinas as the basic source for theology and for the training

of priests.¹ Leo argued that the thought of St. Thomas on key issues such as the genuine meaning of freedom, on the sources of authority and law, on just forms of government, and on the importance of mutual love for social life, were a vital resource in dealing with the challenges of the day. Then in 1891, he published another encyclical on the condition of the working classes, entitled *Rerum Novarum*. Since Leo himself was deeply influenced by Thomism and convinced of the value of a Thomist ethic for the modern world, the main philosophical influence on this document is that of Thomism. As we will see later, *Rerum Novarum* launched a whole new area of reflection and action on the part of members of the Catholic Church with regard to “earthly realities,” including economics and business, which came to be known as the “Catholic social tradition.” Like Leo himself, this tradition is deeply influenced by Thomism.

Interest in these developments was not only limited to the Catholic Church, however. In October 1891, shortly after the publication of *Rerum Novarum*, John Keane, the recently appointed Rector of the new Catholic University of America, wrote an article for the *Quarterly Journal of Economics*, the oldest economic journal still in publication, under the title “The Catholic Church and Economics” [25]. Although the article denounces the way that economic thought has developed, separated “from what the civilized world understands by ethics” ([25], p. 29), it is nevertheless striking that such a prestigious economic journal, where many foundational articles in economics have been published in the twentieth century, should have accepted such an article. In many ways, this example is symptomatic of the relations between business ethics and both Thomism and the Catholic social tradition; in some ways, the fields of economics and business resist discussions about ethics, and yet, again and again, through different phases of the twentieth century, and in different ways, we will see them interacting, sometimes quite strikingly. It is not altogether surprising, therefore, that in looking ahead to the prospects for the future, we can identify some positive tendencies that may suggest that the currently marginal position of Thomism and the Catholic tradition in business ethics could develop into a more solid relationship.

Within the Catholic social tradition, there are a few other important terms to note, most of which also have the acronym in English of “CST.” The term “Catholic social teaching” usually refers to the encyclicals and other official documents of the Papacy, but it may also include documents produced by individual bishops or conferences of bishops, since all bishops are considered as official “teachers” in the Catholic Church. The term “Catholic social thought” usually includes Catholic social teaching but extends beyond this to include reflections produced by scholars and others on social questions (sometimes the nonofficial part of Catholic social thought is referred to as “Catholic Non-Official Social Teaching” (CNOST), as in Boswell et al. [12]). Catholic social movements have been crucial in carrying the social teaching and social thought out into the workplace and the wider society and for channeling practical experience and innovations on the practical level back to the teachers and scholars and thus promoting the ongoing development of this body of thought and practice. These movements have included Christian trades unions, the Young Christian Worker’s movement, the international movement of Christian

businesspeople (UNIAPAC), as well as more modern movements such as Communion and Liberation (with its special section for entrepreneurs known as the “Compagnia delle Opere”), and the “Economy of Communion” group of businesses that are linked to the Focolare movement.

In this chapter, for the sake of both brevity and clarity, the primary reference will be to Catholic social teaching, and the acronym “CST” will be used for this.

Twentieth-Century Developments in Thomism

Thanks to the impulse it had been given by Leo XIII, at the beginning of the twentieth century, Thomism was riding high in the Catholic Church. Some scholars (e.g., [13]) have suggested that, apart from its evangelical and pastoral merits, the Thomistic renewal was part of a move by the Church Magisterium from a defensive stance vis-à-vis modernity and liberalism toward constructive engagement with it. At the same time, however, this engagement with modernity should not be seen as an uncritical recognition of its value (nor of its economic and business elements that are of relevance to us here). Rather, the tension between Liberalism and Church teaching remains, even if the terms in which it is couched become less strident. A potential tension between accepting what is good and maintaining a critical edge toward modernity and postmodernity is an ongoing part of the interaction between Thomism and Catholic social teaching with modern sociopolitical and economic systems.

Thomism itself is not monolithic, with different schools of thought having developed within it following *Aeterni Patris*, often with very strong disagreements between them. These internal struggles within Thomism itself (mostly among Thomist philosophers) have given rise to various “hyphenated Thomisms”: “Neo-Thomism,” the most important strand within which came to be known as “Existential Thomism,” associated with the names of Etienne Gilson and Jacques Maritain; “Transcendental Thomism,” the leading thinkers within which have included Karl Rahner and Bernard Lonergan; and, later, “Personalist Thomism,” as developed by Jacques Maritain and Karol Wojtyła (later Pope John Paul II) and their followers.² As can be seen by the fact that Jacques Maritain figures strongly in both, Neo-Thomism and Personalist Thomism are close to each other, and both differ on key points from Transcendental Thomism.³ From the point of view of business ethics, the most important schools have been Neo-Thomism, for the first half of the twentieth century, especially in its Existential Thomist form, followed by Personalist Thomist in the latter part of the century.

In the area of Thomism more directly connected to business ethics, moral theology and philosophy, and more especially in the English-speaking world in the latter part of the twentieth century, there has been renewed interest in a Thomistic virtue-based ethics, pioneered by Elizabeth Anscombe and Peter Geach, and then picked up by other figures such as Alasdair MacIntyre. Of these thinkers, MacIntyre has had the biggest influence in the field of business, even though he has written little that deals directly with business ethics [19]. Apart from the general

importance of his thought, which applies to other great thinkers of this period like Anscombe, his significance for business ethics may be in part due to the fact that he uses the figure of the “manager” as symbolic of modern culture in a hypothetical reconstruction of the characters in a modern version of the medieval mystery play [27]. Interestingly, MacIntyre too is largely regarded as being “antimodern,” though Dobson contests the label often given to him of “antibusiness” since “modernity has corrupted business” ([19], p. 128); for Dobson, it is a “critique of modernity which lies at the heart of MacIntyre’s work, that provides the key to a full understanding of his position on business” ([19], p. 125). One of the key ideas in MacIntyre’s thinking is that of a “practice,” where internal goods are promoted in the carrying out of the activities that make up the practice, including the development of human capacities (virtues) in the process. MacIntyre contrasts this type of activity with the way business is conceived in much of the business literature, that is, as means for producing external (economic) goods, with the production of the internal goods of the virtues being at most incidental to the process. Indeed, this represents one of the great ethical challenges to business at the beginning of the twenty-first century; we become more and more efficient at producing economic goods, but we become less and less clear as to *why* we are doing it. Production becomes an end in itself, at least at the social level; only individuals may give whatever individual meaning they desire to their lives and apply the use of the economic goods they have earned or acquired to creating this meaning. The problems are clear: firstly, we spend most of our waking hours working, and if no meaning can be given to this, and we are not developing through our work activity or such development is only incidental, what meaning can we really give to our lives if we can only dedicate ourselves to that meaning in the few hours of “free time” that we have? Secondly, what sense does it have to talk about individual meaning? Language, the primary means by which we express meaning, is necessarily social and arises from a shared way of life. But MacIntyre is right to locate these problems in modern thought, not primarily in business, even if business may be one of the main mechanisms by which that modern thought impacts on our society today.

References in this chapter to CST will be made to the 2004 *Compendium of the Social Doctrine of the Church*, indicating the number of the paragraph referenced.

Thomistic Thought and Catholic Social Teaching: Similarities and Differences

As already noted, as a form of moral philosophy and theology, Catholic social teaching is heavily influenced by Thomism. Compared to Thomist thought, CST is less systematic, but in terms of application to current questions of relevance to business ethics, it is more developed than Thomism. This section, therefore, will present key themes that are common to Catholic social teaching and to Thomism, distinguishing between them where appropriate.

Key Common Concepts in CST and Thomism

Concept of the Good

For St. Thomas, the first concept from which his whole system of thought derives is that of existence. God is existence in a complete sense, whereas other beings participate in God's existence and only exist incompletely. Beings as we know them in this world are always changing – hopefully, mostly developing in a positive way, but they may also be damaging themselves or being exploited or abused by others. They change because they are not fully developed or fully existing; they are always beings *in potentia*, with the potential to change and develop further. Developing as yet unrealized capacities, which exist so far only potentially in the person him or herself – or, we might say, becoming more “alive” – is what is fundamentally good, and other meanings of good are derived from this meaning. This good is developed through action, since it is through action toward good ends that we turn potential into actual capacity – that we realize our potential more completely, exist more fully, and therefore create that which is good. The capabilities approach of Martha Nussbaum [32], building as it does on an Aristotelian philosophy, is close to this position, as is, to a lesser extent, the work on capabilities of Amartya Sen [39]. A Thomistic ethic, therefore, such as a business ethics based on Thomism or CST, starts from the idea that doing what is good is doing what brings about more human development, greater realization of potential, most of the time in a community of action where the good is developed together and, to some degree at least, only held in common (goods like culture, language, or a sense of justice are only held among a particular group of people or they are not held at all; it makes no sense to speak about an individual language, not shared with anyone else, or an individual sense of justice).

Common Good

One of the key Thomist thinkers on the common good in the twentieth century has been Jacques Maritain. Starting from the personalist insight that each human being, though a unified whole, has both an individual and a “personal” (i.e., intrinsically relational) dimension, Maritain can show that we truly do hold goods *in common*, which is possible because of our intrinsic relatedness to others, allowing us to pursue objectives in common and thus to create really shared goods between us. It is through this development of shared goods that we arrive at the articulated idea of the common good, with its various components, outlined below. The common good is there to support our development as persons, since our spiritual or relational dimension extends beyond the physical, and we are all ends in ourselves. At the same time, as individuated beings and members of the species *Homo sapiens sapiens*, our individual good is part of the good of the whole, and the whole as such can ask sacrifices of us (as when soldiers lay down their lives for their countries). Therefore, Maritain can argue that the relation between the good of each person and the good of all persons (the common good) is one of “mutual implication and reciprocal subordination” ([29], p. 46).

“The” common good is the result of the common goods that we develop with each other at various levels and in various groups. It can be “sedimented out,” so to speak,

in tangible ways, as in the development of various kinds of infrastructure (transport, communications, energy supply), and has a very extensive “instrumental” or “tool-like” dimension, such as in policies, rules, and customs, all of which allow the development of persons in the context of various types and level of community. According to one of the most authoritative statements in Catholic thought in the twentieth century, the common good is “the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and easily” ([16], n. 164, quoting *Gaudium et Spes*, 26). Bringing the idea into business ethics, De George [18], following indications in *Gaudium et spes*, identifies five components of “the” common good: (1) “public goods” (parks, roads, armies, and so on, but on the relation between public and common goods, see [2]); (2) common goods that do not necessarily require government provision, such as air or water; (3) immaterial goods, such as relations, conditions, systems, and structures existing in a human community; (4) moral values and virtues, and all that enhances human life and flourishing, such as solidarity, freedom, peace, justice, respect for human life, and so on; and (5) goods and services produced and traded in the marketplace (private goods), insofar as they are part of our overall well-being.

Another way in which the common good is incorporated into business ethics is through “grounding” or “founding” stakeholder theory and corporate social responsibility ([3, 5–7]). Goodpaster et al. [22] have shown that stakeholder theory, for instance, provides a useful analytical tool, helping us to identify who are the relevant parties to be involved in business decision-making, but that it contains no ethical principle itself which would allow it to decide how to make that decision. Various possibilities have been suggested: Freeman and Gilbert [21] suggest using a Kantian principle, but they themselves recognize that this has practical problems; Sacconi [37] suggests using a social contract model, but this suffers from a weak sanctions system (the “reputational mechanism”) and, more importantly, tends to create a “crowding out” effect whereby intrinsic motivation to do the good is replaced by extrinsic (avoiding penalties and gaining rewards). The common good, however, can provide a foundation for decision-making that respects stakeholders as ends in themselves, allows a decision to be synthesized (thus going further than Freeman and Gilbert [21], who claim to base their approach on a Kantian ethic), and, because it is made in the interest of all stakeholders, since it is based on their *common* good, avoids the perverse side effects generated by the social contract approach.

A key place within the common good concept needs to be given to the environment, seen as both an ecosystem on which life depends and as a gift from God, and is referred to in the *Compendium* explicitly as a “common good” ([16], n. 466). Creation is a gift to be treated with responsibility and respect, “destined for all.” The “different categories of beings, whether living or inanimate” cannot be used “with impunity” just for economic ends ([16], n. 466). At the same time, as a gift given by the creator to human beings, responsible human intervention in nature is “positive” ([16], n. 473). Where scientific data on human intervention is limited or contradictory, CST recommends the “precautionary principle” meaning “certain guidelines aimed at managing the situation of uncertainty” and which “encourage every effort for acquiring more thorough knowledge,” as well as, given the

uncertainty involved, transparent decision-making procedures ([16], n. 469). There is both a sense that the environment is a good in itself, to be preserved and developed, with special mention of the value of biodiversity ([16], n. 466), and that the environment needs to be protected for the good of human beings, including indigenous peoples ([16], n. 471) and future generations ([16], n. 467). The principle of the universal destination of goods provides “a fundamental moral and cultural orientation” with regard to the tragic interconnections between poverty and environmental degradation, especially where “hunger and poverty make it virtually impossible to avoid an intense and excessive exploitation of the environment” ([16], n. 482).

Closely related to the question of the common good as it relates to the environment is that of globalization. Strikingly, the *Compendium* presents globalization as one of the three “great challenges facing humanity today,” along with “the truth itself of the being who is man” and “the understanding and management of pluralism and differences at every level” ([16], n. 16). If globalization is to be a true extension of the common good to the global level, it must be a “globalization in solidarity” or, in other words, “a globalization without marginalization” ([16], n. 363). A whole chapter of the *Compendium* is dedicated thus to the “international community,” whose organizations “exist solely for the common good” and “for the purpose of achieving a greater degree of international ordering” ([16], n. 442); more on the question of “order” is given below. Among the many aspects of economic life that are treated with regard to globalization (including work, unions, civil society, and economic/financial systems), perhaps the question of agriculture and the production of food merits special attention, linking this question to the environmental one as well ([16], n. 299).

Nature and Dignity of the Human Person

The fundamental starting point for modern CST is the centrality of the human person for the consideration of any social question. Insofar as this relates to the recognition of freedom of conscience and belief, this represents the reinterpretation and incorporation into Christian teaching of an idea that came to maturity among Enlightenment thinkers (building on early more explicitly Christian thinking) and which it took some time for Church authorities to accept. At the same time, the nature and dignity of the human person grounded on the biblical affirmation that each person is made “in the image and likeness of God,” with an even greater sign of their dignity in the passion, death, and resurrection of the Son of God for each human being individually as well as for humanity as a whole, is standard teaching.

In the *Compendium*, the third and last chapter of Part I is dedicated to the human person and human rights. It begins with reference to the human person as “the living image of God himself” ([16], n. 105), and that social life should have the human person as its “subject, foundation and goal” ([16], n. 106), creating a parallel with the Church herself “since she is neither outside nor over and above socially united men [and women], but exists exclusively in them and, therefore, for them” ([16], n. 106). Social relations create “some of the best possibilities for ennobling the human person” but may also involve the “most loathsome rejections of human

dignity” ([16], n. 107). Being in God’s image indicates a natural openness toward God in the human being, and, since God is Trinity, three persons in one Godhead, a natural relational or social dimension ([16], nn.109, 110). Since both men and women are made in the one image of God, they are equal in dignity and are called to help each other. They are also called to have dominion over the earth, expressed through the image of naming all creatures: “in giving things their names, man must recognize them for what they are and establish with each of them a relationship of responsibility” ([16], n. 113). Sin, however, disrupts these natural relationships, creating alienation, that is, separation from God, from each other and even conflict within oneself. This then leads to mutual accusation, to hate, to killing, and to all kinds of wounds in the social fabric, such that we may recognize that sin has personal and social dimensions. Some sins directly attack the social order, especially those against justice or against human rights, generating “structures of sin,” starting from personal transgressions against the good and amplifying the effects of personal sins so that these effects “grow stronger, spread and become sources of other sins, conditioning human conduct” ([16], n. 119). These effects go “well beyond the actions and brief life span of the individual and interfere also in the process of the development of peoples, the delay and slow pace of which must be judged in this light.” The *Compendium* picks out two of the most important categories of social sins in our day: “the all-consuming desire for profit” and “the thirst for power, with the intention of imposing one’s will upon others” ([16], n. 119). At the same time, there is no cause for despair; through the Incarnation and Redemption wrought for us by Jesus Christ, the grace needed to overcome both sin and its effects is available to us: “the new reality that Jesus Christ gives us is not grafted onto human nature nor is it added from outside: it is rather that reality of communion with the Trinitarian God to which men and women have always been oriented in the depths of their being, thanks to their creaturely likeness to God” ([16], n. 122).

Beyond the biblical texts, looking more philosophically, the human person is neither an absolute individual nor a mere part of a bigger social body. The human person has an individual dimension and a relational (spiritual) dimension, even though, as the *Compendium* affirms as the first of the “many aspects” of the human person that it considers, the human being is a union of these aspects, that is, a union of body and soul ([16], n. 127). Human beings have an individual, corporeal dimension that links them to the material world and a spiritual dimension that confers a unique dignity and a profound openness to relating to others and to God, making our relationality as much a part of our being as our individuality. It is on this basis that the CST can insist on the “social nature” of the human being, a relating to others that is part of our nature and being. Another key aspect of the human person is his or her freedom, which is built on our nature and the nature of the world around us, and needs to be exercised in accord with the order in nature. Human rights are recognized as “one of the most significant attempts to respond effectively to the inescapable demands of human dignity” ([16], n.152), since the “roots of human rights are to be found in the dignity that belongs to each human being” ([16], n. 153).

Duties are “inextricably connected to the topic of rights” since “in human society to one man’s right there corresponds a duty in all other persons: the duty, namely, of acknowledging and respecting the right in question.” Those who claim recognition of their rights while neglecting their duties towards others “build with one hand and destroy with the other” ([16], n. 156).

Virtue

The idea of virtue, or of virtue ethics (as opposed to Kantian or utilitarian ethics), has gained ground in the business ethics literature during the latter half of the twentieth century and this has continued on into the beginning of the twenty-first. The role of the Thomism in this is recognizable, even if the main point of reference for most virtue ethics in business is Aristotle rather than St. Thomas. Interestingly, this idea has not been nearly so prominent in the tradition of Catholic social teaching before John Paul II, compared to some other themes that have been incorporated into business ethics (such as the questions of the common good, just wages, and human work).

One of the issues that has tended to separate the way in which virtue ethics has developed in the business ethics field, compared to its Thomistic version, is the separation of principles from virtues. Solomon, therefore, can say that the virtue-based approach to ethics is opposed to “that 200 or so year obsession in ethics that takes everything of significance to be a matter of *rational principles* . . . Aristotle is quite clear that it is the cultivation of character that counts, long before we begin to ‘rationalize’ our actions” ([40], p. 323, italics original; see also [30]). Solomon argues, however, that this means that virtue ethics needs a “corrective,” coming from the “language of rights” and a “sense of utility” ([40], p. 324). Melé [30], however, starting from Aristotle, but especially also from St. Thomas, argues that “it does not seem incoherent to introduce principles into virtue ethics, if these serve as guidelines for acting virtuously” and quotes St. Thomas in saying “precepts are given about acts of virtue” ([30], p. 228). For St. Thomas and the tradition of Catholic social teaching, virtues are oriented toward the promotion of the common good of a complete (political) community and intermediately to the common good of the incomplete communities in which we take part (families, local communities, and organizations including businesses, sports clubs, and so on). Both the common good and the exercise of virtue are guided by the fulfillment of our nature, that is, the good action is what helps human beings, in communion with creation as a whole, to develop. St. Thomas and the tradition of Catholic social teaching use the idea of “natural law” to explain this; our actions are made good by doing what realizes the potential of our being, in communion with others, which is like saying that it is guided by the “law” of our nature. For St. Thomas and the tradition of CST, therefore, there is no incompatibility between principles and virtues, but rather the two support each other. Melé [30] demonstrates how two principles from the tradition of CST, the “personalist” and “common good” principles, can be integrated into a virtue ethics of business to make it more complete. The superiority of the Aristotelian-Thomistic virtue approach to decision-making over other approaches such as emotional intelligence, in the sense of incorporating passions

or emotions, along with the will, into an integrated decision-making approach guided by the intellect, and thus avoiding dry rationalism, impulsive and relativist voluntarism, or pure hedonism, has also been pointed out [9].

Differences Between Thomism and CST

Person and the Common Good

One of the ways in which CST and Thomistic morality are both linked and differentiated from each other regards the two basic concepts to which they make reference: the common good and the human person. It is not surprising that a solid theory of human action should be based both on a particular model of the human being (or human nature) and on how human beings cooperate toward, and are supported by, common structures and shared goods. But thinkers often diverge regarding how the common good and the person, especially human freedom, relate to each other. While Thomists can take varying positions on the relation between the two, in much of CST, it is the dignity and freedom of the human person that is more emphasized (a “turn to the subject”), though that person is seen to have a “social dimension” which necessarily links the exercise of freedom and the promotion of human dignity to the common good. The German Jesuit school, represented by Nell-Breuning, Gundlach, and especially Heinrich Pesch and his “solidarist” economics (for a good synthesis, see [46]), gives a greater role to human freedom, while German Dominican thinkers of the same period, especially Eberhard Welty, would see the common good as the controlling concept; each person finds their fulfillment in this life on the basis of that common good, and in the life to come, God is the “common good” in which all find their everlasting life and goodness [33]. In the *Compendium*, while the third chapter is dedicated to “The Human Person and Human Rights,” the common good is only the first of the seven principles enunciated in Chap. 4 entitled “Principles of the Church’s Social Doctrine.” To some extent, this difference is explained by the different periods of history in which these two bodies of thought originally developed.

Private Property

Another key issue of relevance to business ethics where a distinction can be made between Thomism and CST is on the question of private property. In the discussion of the thought of Arthur Fridolin Utz, below, we see a classic presentation of the Thomist view of the justification of private property, qualifying this right in a more precise way than one finds in the CST. Especially in *Rerum novarum*, the presentation of the right to private property gives the impression of being more absolute than Thomists would have put it, although the impression given by later encyclicals is that there is a move toward a more nuanced position. But there are clear indications that at least in the early stages of the development of CST there was a difference from Thomism; if not, it is difficult to explain why one of the leading Thomist thinkers of the early twentieth century, the Hungarian Dominican

and Angelicum professor, Alexander Horváth, was censured by the Holy Office for his 1929 book *Eigentumsrecht nach dem Hl. Thomas von Aquin*, including as it did a classic presentation of the Thomistic position on the justification of private property.

Natural Moral Law

A third and final area where Thomism and CST can be distinguished regards the role of natural law. For Thomists, natural law is a foundational concept and is very present in their moral theology and philosophy. Natural law is also foundational for CST, but it is referenced much less than it is by Thomists. This can partly be explained by the twentieth-century general distrust, especially in the social sciences, of any kind of language that seems to fall into the “naturalistic fallacy” as G.E. Moore calls it in his 1903 *Principia Ethica*. Moore argues that one cannot logically move from a factual premise to a moral conclusion, but since he does not argue that one cannot move from a moral premise to a moral conclusion, the so-called fallacy collapses if the argument is expanded to include moral, and not only factual, premises [14, 45]. Ridge [36] points out that Moore himself later accepted that his arguments in his 1903 book to sustain the position that goodness was not a natural category were not sustainable, and there have been many refutations of the so-called fallacy by others [34], including, interestingly, evolutionary biologists [17, 45]. Moral philosophers may still disagree with each other as to how nature and morality relate, but they cannot maintain that it is illogical or inadmissible to start a moral argument from premises that include, among others, statements about nature. As a slogan, however, the term “naturalistic fallacy” has been very successful in blocking the use of the idea of natural law in moral discourse, and the effect of this on CST can be seen. Still, the differences between Thomism and CST regarding natural law are more to do with presentation than substance, and the concept of natural law remains fundamental for it, since not to do so creates an even more difficult problem: with what other criteria does one determine what is just (i.e., in what other way does one recognize what is due to all members of society)? Modern social and ethical theories make reference to various methods of arriving at consensus, referring to the fundamental model of society as a social contract, but there are clear problems with basing our evaluation of what is just on what is the supposed consensus in society. We know from history that the consensus can be unjust (twentieth-century history is full of such examples), apart from the serious problems involved in determining when a consensus has been reached and how to ensure full and real participation in the decision-making process. The great systematic Thomist ethicist, Arthur Fridolin Utz, for instance, saw the importance of natural law as enabling “a pluralist society to achieve successful dialogue and consensus on core values” ([15], p. 344). It is possible that with the current recognition of the “nature” of the environment, that is, that we cannot treat our planet only according to our supposed “consensus” (many would say “what consensus?”) but that we need to treat it according to its own nature, the possibility of seeing nature, including human nature, as a guide for human action in general could be more widely recognized.

Influence of Thomism and CST on Business Ethics

It is notable that encyclopedias of applied ethics or ethics and philosophy will include entries regarding Thomistic thinkers on politics, social ethics, just war theory, and the common good, but that this will be the first handbook which includes a discussion of the relation between Thomism and business ethics.

There is some difference of opinion as to how much Catholic social teaching, and Thomism by implication, has influenced business ethics [20, 28, 31]. Fleckenstein [20] is perplexed as to why “business students and businesspersons are not more influenced” by such an “extremely rich” tradition as Catholic social teaching. She suggests some possible reasons: excessive idealism, resentment of Church authoritarianism, the insistence on rights that preclude mutual agreement, and the underlying secular pluralism of the United States, though her discussion is not limited to the USA. McCann [31] was hopeful that the 1991 encyclical of Pope John Paul II, *Centesimus annus*, could do for late-twentieth-century society “what Leo XIII did for the blue collar working class.” Marens, instead, argues that sociocultural changes over the twentieth century have made it harder for CST to influence society; CST has lost “not relevance, but opportunity” ([28], p. 286). He gives other historical examples to support his case that influence can only be had where there is an openness on the part of society and especially societal leaders to listen to what is being said and to act on it. At the same time, Velasquez and Cavanaugh [42] open their paper on “Religion and Business” with an impressive account of the interest generated across US society, and especially in the business press, during the process that resulted in the pastoral letter entitled “Economic Justice for All,” at the end of which they can say “[t]he letter will likely have a lasting impact” ([42], p. 124).

More generally, it needs to be said that without a philosophical reconstruction of the “mainstream” way of understanding business and management, Thomism and CST will continue to have difficulty in engaging with them properly. This is because, for Thomism, business ethics is not just one subject to be studied alongside the rest but provides the underlying principles for guiding business activity at its more technical level. This is the idea of Utz in grounding business ethics in the wider definition of an ethical economic order, and his thought has been expounded more fully here than that of others here for this reason. Techniques are always used toward achieving certain goals, and one of the objects of the discipline of ethics is to ascertain what those goals are or should be. Technical disciplines that do not recognize that they are based on more profound assumptions or premises that they take as self-evident (unexamined) and on which they are built do in fact have such assumptions, but their experts are not aware that this is the case, and the fact that they use their techniques to achieve these goals is not a question on which they reflect. In such situations, unless these taken-for-granted assumptions happen to be amenable to an Aristotelian-Thomistic ethic, a well-founded, open dialogue with Thomism and CST is not possible. Since utilitarian philosophical assumptions are largely to be found at the basis of most mainstream economic and business theory up to now, a philosophy that is incompatible with Thomism and CST, this block against an open dialogue remains. Thinkers have advanced

proposals for rethinking the fundamental purposes and goals of business within the Thomistic tradition, but these approaches remain marginal to the business disciplines as a whole, including business ethics, and thus, the dialogue remains blocked on this, foundational, level.

The influence of this body of thought also depends on the critiques it receives from elsewhere. Sacconi [38], for instance, has criticized the use of Maritain's concept of the common good as an ethical grounding for corporate social responsibility because he claims it is too "demanding" on a metaphysical level, that is, it requires metaphysical assumptions that most are not willing to make. There is some merit to this argument, though it can be countered in a number of ways. Firstly, one could note that much empirical research on the border between psychology and economics confirms the approach to the common good adopted by Maritain, so that one can arrive at similar conclusions taking a phenomenological approach, with its much more limited metaphysical presuppositions. Secondly, some thinkers have tried to avoid the teleology implicit in virtue ethics by linking it to other, similar bodies of thought. Bertland [11], for instance, tries to base a virtue ethic on the capabilities approach of Nussbaum and Sen, while Velasquez and Brady [44] make the bold attempt to found business ethics, including the virtues, on natural law.

Arthur Fridolin Utz: A Key Thomist Thinker on Economic and Business Ethics

A. F. Utz was one of the major Thomist thinkers in the area of social and economic ethics in the twentieth century. He is one of the few thinkers in this period who was able to continue the tradition of an integrated treatise on economic and business questions from a Thomist position. As a result, his thought merits a more extended treatment than that of others mentioned here. In his *Wirtschaftsethik*, Utz aims to produce a systematic economic ethics, building both from empirical observation and from an ontological analysis of man, of his nature and his ends. In the preface he says: "The moral philosopher thus begins with an empirical analysis. In a second step, he tries to assess how the goal of an action fits within the framework of the overall sense of human life; here he passes beyond the limits of the empirical and pushes towards the essential goals of man. Only in this way does the definition of an action stand squarely on real ground."

One of the fundamental elements of the approach adopted by Utz is the need to abstract from current, historical economic arrangements in order to be able to make a proper evaluation of what the key elements of an ethical economic order should be. As he says in the preface, "there is no realistic ethics without abstraction." Too often, he laments, thinkers take their own historical circumstances as read and reflect on the ethical dimension of such circumstances. He admits that it is not at all easy to make the abstraction required (and we always risk contaminating it with elements that are historically conditioned through insufficient detachment from our concrete circumstances), but he insists that some kind of abstraction is unavoidable, and the question thus becomes how well we are able to do it not whether to do it or

not. All great moral theories have to abstract at some point; Rousseau needed the idea of the social contract, and Rawls has the idea of the “original position,” both of which are abstractions on the basis of which influential moral theories have been developed.

If we start from a nonindividualistic, that is, social, view of the human being, however, the first concern for economic ethics is “to determine what is the common good to be achieved through economic actions” ([41], Sect. 2.2). From this then flows the need to consider the ethics of an economic order or system, “understood as an ordering of actions that are, on principle, not arbitrarily unified, thus not of a contractual nature, but that are oriented to a common good as established by a social ethics” ([41], Sect. 2.2).

Utz maintains that an argument needs to be made on three levels in order to arrive at an ethically sound ordering of the economy. The first level is the most general and abstract, that of the supreme norms of economic ethics. These norms come from the nature of man and can be called the “metaphysics of the economy” ([41], Sect 1.2.5). The defects that are part of concrete human nature are not considered at this level. Here we find the imperative that requires that the common good be placed before the private good in economic action. This is recognized, for instance, in most national constitutions that allow the state to expropriate an individual’s private property – compulsory purchase (UK) or eminent domain (US) – with proper compensation, if the needs of the society as a whole require it.

On the second level, the actual mode of behavior and inclinations of man in relation to economic goods are considered. At this level, we can begin to see what aspects of economic order are needed so that economic actions can realize in at least an approximate way the supreme norms of social justice. So at this level we can ask ourselves: what organizational principle of economic planning is necessary given the natural, or quasi-natural, behavior of the members of that society in relation to natural resources and the general good? We will find the justification of private property at this level of analysis, and, at the end of the analysis itself, we will be able to propose the key elements of a socially just economic order.

On the third level, we find considerations of the various practical elements of a real economy in relation to ethics (price formation, relations between workers and employers, questions of money and credit, and so on). Most books on economic or business ethics focus on this level. But if we do not make the two prior steps in the analysis, we risk requiring too much on an ethical level from the businessperson. The latter cannot be held responsible for problems that arise from the organization of the economic system as a whole; these are in the realm of the politician. If, for instance, the economic system is so constructed that the manager is expected to be primarily concerned about profit, then he cannot be blamed (or at least he is only partly responsible) if he behaves that way. The economic order or system should create the possibility for the profit motive to be harmonized with, or at least to not contradict, the supreme norms of economic action.

Economic rationality has to aim to include social needs in some way or another, or else we end up either with an unstable system or the “economization” of society

and the exclusion from it of higher values. The first step, according to Utz, is to recognize that we are not here dealing with rational economic principles, such as efficiency, that need to be oriented toward the realization of a-rational values (such as those deriving from religious revelation alone), but that the values too can be rationally discussed. His argument arrives ultimately at the position that all political systems have to orient their economies to the satisfaction of needs and the creation of values that can be rationally determined, even if they are not produced in the same way as economic values are. Utz argues as always that these ultimate values come from natural law, such as self-preservation, self-fulfillment/perfection, generation and education of children, acquisition of knowledge, and knowledge of God. A Kantian approach here is not able to help, since it is based on duty and the free exercise of will, rather than on being.

Private property is considered by Utz to be the heart of the problem of the economic order. It relates to the second level of a natural law analysis. For Thomas, at the first level of analysis, we find natural law in the strict sense, “that which is knowable directly from the ends of nature, without rational inference” and is therefore accessible to everyone, from the most simple and uneducated to the greatest scholar. The second level “does not derive from nature in itself but from a rational reflection of man towards a useful configuration of human life” ([41], Sect. 6.1.3.2). This distinction was known to the scholastics as “primary” and “secondary” natural law: “secondary natural law is changeable, contrary to that which is primary, due to the changeable objective, concrete conditions” ([41], Sect. 6.1.3.2). The right to private property belongs to this second level of natural law, since it connects with the need to support individual initiative in the economy, which, as we have seen, we only find in a second moment of our analysis. The primary level of natural law leads us, as already said, to expect that the common good comes before individual good. Thomas also sees this difference as part of the fall of man from his ideal state ([41], Sect. 6.1.3.2).

With regard to the impact on the economic order of the justification of private property, a key issue is whether private property is an individual right, which only in a second moment gives rise to social obligations, or whether it needs to be seen from the beginning in the light of the social nature of the person. Most modern systems of justification of private property start from a subjective, individualistic view of the human person, and thus, private property is justified on the basis of serving the realization of the individual. The social aspect of the economy creates problems for this position, since paying taxes or any other kind of social obligation cannot be satisfactorily justified against this ethical foundation. If, however, private property is justified in terms of a secondary natural law where at the primary level the requirements of the common good are taken to be prior to those of the individual, the justification for a “social mortgage” on private property arises naturally. This has important implications for the creation of an ethically grounded economic order. In order to arrive at the definition of such an order, Utz reasons in three stages:

Step 1: This is on the first, or metaphysical level of analysis, where economic ethics must take the axiological ends of man as the starting point. The aim of the

economy is the material well-being of the members of society, measured according to the essential final ends of man, taking into account the limited nature of resources and a sustainable relation with the environment. Particular attention to the environment is of the highest order among ethical requirements, since all societies have to consider their well-being in relation to others and to the future. The aim of the economy given here requires us to include factors that an analysis based only on pure economic efficiency alone would exclude, such as the need for all to have access to work, and for man's needs that go beyond those arising from work. It is necessary to be aware of anthropologically founded ethical norms, on the basis of which technoeconomic decisions can be made. Economic science, if based on a global orientation such as this one, cannot regard indifferently "more as better"; the end of the economy is not to produce as many consumable goods as possible, while ignoring the consequences of this for the quality of life for the whole of society.

Step 2: Here we move to the second level, where we look at the human being in more concrete terms. At this level, our focus is on the harmonization of individual economic actions with the requirements of the common good. Utz begins by noting that it would be logical for man to put the common good before his own personal good, but that in practice, at least in the economic sphere, we do not find that this is so. Still, the basic principle of step 1 is still valid – ultimately all individual economic actions have to be harmonized with the final ends of man in society. At the same time, concrete men and women are not motivated to participate in the economy by the idea of promoting the common good, and this is partly due to the inability of each one (in a large society) to foresee or know what that common good could be (whereas it may be possible to see it on the level, say, of the family). We can develop useful indicators of the pursuit of the common good in society, but these operate a posteriori, measuring a situation already created by economic actors. So concrete human beings invert the precedence that we have mentioned in step 1: they seek their own personal good first when acting economically. We must found any realistic economic ethic on this "regulating principle" of the economy. The only economy that can be considered to correspond to the nature of man as we experience it practically is one that gives practical priority to initiatives stimulated by the search for individual good. The economic decisions of the members of society have to be harmonized thus, through the economic system, with the common good, since that harmony cannot be found at the first stage of the economic system (in the motivational structure of human beings themselves). We should also note at this level that concrete economic decisions should avoid the waste of resources as much as possible, and thus we must ask ourselves: what are the conditions that lead to the most parsimonious use of natural resources? This condition can only be satisfied in an economic system that legitimizes private property.

Step 3: What are the elements required of the economic system by the common good? Utz says that "an economy oriented towards the common good implies: 1. the capacity to acquire goods on the part of all members of society; 2. the possibility to take part in the economic process for all members of society who have the ability

and the will to do so, either (a) as entrepreneurs, or, (b) as employees” ([41], Sect. 7.8.6). The first condition is satisfied by what we may call the “second distribution of income,” covering all those who do not participate directly in the economic process (the sick, the elderly, and so on). This “second distribution” must be considered as part of the essential definition of a market economy. The second condition implies the widest possible participation in entrepreneurial activities and the offer of work to all those who are able and willing, that is, full employment. In a national economy, stability of prices can be maintained, though this becomes problematic once the economy is seen in an international/global context. Similarly, in an economy where competition is ordered toward maintaining full employment and the stability of prices, growth is necessarily ordered toward these ends and can no longer be growth at any cost. Utz thus arrives at his ethicoeconomic definition of the economic order: “*the competition economy, founded on the universal right to private property, both for production and consumption, with the greatest possible diffusion of productive property, with stability of price levels and full employment.*” He argues strongly that “this definition is the only real one. The shorter one given by economists is instead unreal because it does not correspond to the integral economic ends of man” ([41], Sect. 7.8.6).

Other Thomistic Thinkers on Economic and Business Ethics

Other thinkers who also have produced important general discussions of Thomism in regard to the social political order would include Johannes Messner (see [44]), Thomas Gilby *Between Community and Society* [47], and, much later, Jonathan Boswell in *Community and Economy* [48].

Alford and Naughton in *Managing as if Faith Mattered: Christian Social Principles in the Modern Organization* aim to provide a textbook for an introduction to management course or a business ethics course in Catholic universities, as well as being useful for practicing business people [1]. The aim of the book is to provide an introduction to CST, and the wider Catholic/Christian social tradition, as it relates to business and in a way that makes sense to business people, that is, not by beginning from the principles of CST but from the existential experience of managers who are trying to live as Christians in their workplace. The book is structured around the idea of “engaging” the tradition of Christian social thought with business theory and practice, on the model of the gears engaging in a gearbox and allowing the power from an engine to be transmitted to the wheels of a car. Energy and power is released when people who work in business are able to “engage” or connect their lives of faith with their work lives, instead of living the damaging and weakening experience of a “divided life.” This is the opening idea of the first chapter of the first part of the book “Establishing the Engagement,” which discusses the obstacles to connecting faith and work and then considers three main models for doing so (as mentioned above): an implicit model, based on shared understandings of the good (relying on the natural law); an explicit model, where a business is explicitly founded on Christian principles – we are less accustomed to

this in practice, but we are used to the idea of Catholic schools, hospitals, and civil society organizations, which are also forms of “enterprise” in a wider sense; and a prophetic model, where the level of injustice in a situation is so great that the only way to “engage” it is to denounce it (this is a true form of engagement; the Old Testament prophets were not condemning the people of Israel, but were sent by God to wake them up from their desertion of their true calling and to bring them back to a right relation with God). Two chapters then follow, the first on the structural level of a business, and focused around the question “what is business for?,” and the second on the level of the human person, and focused on the questions of human development and the virtues in business. As part of the structural chapter, it is argued that we need to analyze the goods that a business creates and manage them all in an appropriate way; this means including the management of the production of common goods and excellent or intrinsic goods, those which relate to the development of the human person, both as an individual and as part of the “community of work” which is the business. As part of this analysis, the shareholder model of the firm is found wanting, since it negates the creation of excellent goods within the firm’s production process and treats the business as no more than a machine for making money. The stakeholder theory is also subjected to a qualified critique, since it cannot account for common or shared goods, which are also created during the operation of the business.

Part two, “Making the Engagement,” takes a number of activities that form part of the everyday work of a business and “engages” them with CST on the basis of the general models established in the book’s first part. These are job design (organization of the work process); forms of property ownership in the business; and new product development and pay systems. In each case, the authors attempt to expand the currently dominant vision to include the excellent and common goods that the firm develops during its operation so as to provide a more complete and realistic way of managing these activities.

Alongside book-length presentations, and partly because a dialogue on a truly Thomist/CST business ethics would require other business ethicists to make profound adjustments to their *weltanschauung*, Thomists and scholars of CST have tried to stimulate dialogue on the questions of business ethics in other ways. Many thinkers have made attempts to evaluate elements of business theory from the perspective of Thomism and CST or to evaluate concepts or approaches in business on this basis. This more fragmented dialogue has been carried forward in journals such as *Business Ethics Quarterly* and the *Journal of Business Ethics* by thinkers such as Antonio Argandoña, Albino Barrera, Richard DeGeorge, Wolfgang Grassl, André Habisch, Dennis McCann, Domenec Melé, Patrick Murphy, Michael Naughton, Alejo Sison, Manuel Velasquez, and Jim Wishloff. The *Journal of Business Ethics* in particular has had special issues, such as on the pastoral letter “Economic Justice for All” produced by the US bishops’ conference and an upcoming special number on Caritas in Veritate and business ethics, and also on themes such as “Virtues and Business Ethics.” Recently, a 2010 special issue of the *Journal of Management Development* was dedicated to “Practical Wisdom in the Christian Tradition” as part of a series on various religious traditions and their

contributions to management and business ethics. Some of these contributions, such as Albino Barrera [10], “Social Principles as a Framework for Ethical Analysis” or Domenec Melé [30], “Integrating Personalism into Virtue-Based Business Ethics: The Personalist and the Common Good Principles,” both in the *Journal of Business Ethics*, or Jim Wishloff [46], “Solidarist Economics” in the *Review of Business* try, in an article-length presentation, to give an integrated approach to business ethics based on Thomist philosophy or CST, but again, like the book-length presentations, so far they have not generated a critical mass that would allow this position to enter the mainstream alongside utilitarianism, Kantianism, and social contract approaches. It remains to be seen whether the most recent of these, among them a 2011 article by Wolfgang Grassl and André Habisch in the *Journal of Business Ethics*, “Ethics and Economics: Towards a New Humanistic Synthesis for Business,” which draws extensively on the most recent encyclical, will meet with a similar reaction [24]. On this point, however, we should keep in mind the important insight of Marens that whether a particular point of view is accepted or not depends not only on how well it is formulated but also on the receptivity to it on the part of society as a whole.

More specific issues like the evaluations of concepts and practices within business and economics, such as self-interest, marketing strategies, or the understanding of work, are complemented by articles that aim to bring concepts from Thomism and CST into the vocabulary of business ethics. Thus, for instance, the interesting 1997 article of Manuel Velasquez and F. Neil Brady on “Natural Law and Business Ethics” or another in 1992 by Velasquez alone in the same journal on “International Business, Morality and the Common Good [43].” There are also articles that attempt to review the value of CST as a whole for business ethics in the light of current developments, as does Dennis McCann in his 1997 “Catholic Social Teaching in an Era of Economic Globalization: A Resource for Business Ethics.” McCann here also shows the impact that CST has had on crucial moments of US economic history, such as after the First World War (primarily through the 1919 Bishop’s Program for Social Reconstruction) and at the time of the New Deal. There are also articles that aim to ground concepts within business ethics on the idea of the common good, or on CST, such as Argandoña [7] “The Stakeholder Theory and the Common Good” or Alford [4] “Does Corporate Social Responsibility need Christian Social Thought?” This can often have a certain level of success, in the sense that any attempts in business to go beyond a focus on moneymaking pose the question of the fundamental assumptions on which business theory is based (since they imply a revision of the answer to the question: what is business for?) and for which other theories may be less able to provide the grounding needed. The recent idea of Porter and Kramer [35] called “shared value” represents a further possible point of convergence between management theory and Thomism/CST.

Business ethics textbooks increasingly include a discussion of the virtue approach to ethics. *Business Ethics: Policies and Persons*, a widely used text in MBA courses now in its fourth edition, edited by Ken Goodpaster et al. [23], includes a column for a “virtues-based outlook” as part of its “Case Analysis

Template” (CAT scan), alongside other columns on “interest-based,” “rights-based,” and “duty-based” outlooks. However, the text and the graphical representation of the CAT scan give the impression that these are four alternative ways of thinking about business ethics, with various advantages and disadvantages. Another term, the *moral point of view* (italics original), is introduced which “governs and disciplines what we take to be the central virtues . . . a mental and emotional standpoint from which all persons have a special dignity or worth,” and the case instructor should see the “ultimate purpose of the analysis” as “*to seek the insight of the moral point of view* in the case situation” ([23], p. 10, italics original). From the Thomistic point of view, it is odd to put the virtues in a column alongside partial views of ethics, such as an interest-based one, and then add the idea of the moral point of view as synthesizing them all, and as the “ultimate purpose of the analysis.” So, virtue ethics is present in the book but not in a way that is compatible with a Thomistic or CST view of virtues.

Conclusion

Future Prospects for the Interrelation Between Thomism, CST, and Business Ethics

Currently, there may be said to be both positive and negative signs as to the future possibilities for Thomism and CST to be incorporated more fully into business ethics. On the one hand, the collapse in many quarters of an ideology of “scientism” that excluded on principle any input from a faith tradition has created new openings for religious voices to be heard in the marketplace of ideas. At the same time, the postmodern position is hardly sympathetic to CST and certainly not to Thomism, seeing these two bodies of thought as carrying forward the project of a “universal rationality” which postmodernism negates. Other faith traditions, where the philosophical component to their thought and teaching on social questions is much less extensive and rigorous, may well find a better hearing in this context.

Its philosophical rigor, however, coupled with the interesting empirical results that are emerging from the disciplinary boundary between psychology and economics, such as in the field of behavioral economics, gives Thomism and CST a different, and probably more profound, way of contributing to business ethics than some other religious traditions could. The current problems in the field of business ethics are well known: a cacophony of voices; business theory that incorporates presuppositions into it (often without being aware of them) that make it resistant to ethics; minimal if any impact on the real world of business. David Lutz [26] argues that we cannot overcome these problems without a philosophy of business that starts from a philosophy of human action wherein the virtues, and especially prudence, play a central role, along with the promotion of the common good. Much of the literature discussed here makes a contribution toward doing this, as does the interesting work of others not mentioned in detail, such as Pérez López [8]. Thomism and CST are especially

suiting to the task of providing the basis for this philosophy, as the discussion above of the ethical grounding of CSR indicates. The next best alternative, the social contract position as developed especially by Lorenzo Sacconi, creates perverse side effects that weaken the ethical basis of business action, and these effects can, at least potentially, be avoided with a business philosophy based on Thomism. Much work still needs to be done, including on the objections raised by people like Sacconi, probably both in terms of defending it and using complementary approaches to arrive at a similar position (for instance, a phenomenological approach that incorporates the insights of behavioral economics). Nevertheless, the opening up to religious positions in general coupled with the philosophical strength of Thomism and CST, in the presence of the current disarray in business ethics, could create a set of propitious conditions for a major breakthrough of the Thomist position into business ethics in the not-too-distant future.

Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Business Ethics in the School of Salamanca](#)
- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)
- ▶ [Economic and Business Ethics in Select Italian Scholastics \(ca. 1200–1450\)](#)
- ▶ [Scholastic Thought and Business Ethics: An Overview](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

1. Papal encyclicals (literally meaning “letters”) are always officially published in Latin and are known by their opening words. So the encyclical on the thought of St. Thomas opened with the words “Aeterni patris,” and hence, the encyclical is known by that name and the date of its publication.
2. There have also been other developments, such as the interest that has developed among analytical philosophers in the second half of the twentieth century in the logic of St. Thomas.
3. On this point, see the undated interview with John Knasas at: <http://www.innerexplorations.com/philtex/John.htm>

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Part 3

Morality and Self-Interest: From Hume and Smith to Contemporary Perspectives

Gerhard Engel

Abstract

This chapter first explains the concept of “Enlightenment” in general and delineates the specifics of “Scottish Enlightenment.” Two major conceptional issues will be discussed: (1) How did the philosophers of Scottish Enlightenment react to the Hobbesian provocation, consisting in the claim of man being a creature guided solely by self-interest, ruthlessly enforcing his interests wherever possible? Hume solved the problem by giving a detailed analysis of human motivations and by distinguishing a close range morality, for which he deemed Hobbes’s analysis to be inappropriate, and a far range morality, which (as Hobbes correctly asserted) must erode without institutional support. (2) The second issue consists in conciliating the individual’s behavior in a market economy with moral demands. Hume and Smith were convinced that the way to modernity, assisted and advanced by Scottish Enlightenment, was no aberration but a possibility, compatible with moral demands, to open up new horizons and to unfold man’s inherent potential for development. In conclusion, this chapter will present Hume’s brilliant anticipation of modern answers to the question of the origins of Europe’s singular historic course, or *sonderweg*.

Introduction

The “Scottish Enlightenment” and the “Scottish Miracle”

This chapter answers the following questions:

- What is the meaning of the concept “Scottish Enlightenment”? Here we can make a distinction between a narrower and a wider definition of the term.

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- What does the term “Enlightenment” mean to us?
- What is the difference between Scottish and continental Enlightenment?
- What are the major issues the philosophers of Scottish Enlightenment wanted to solve?
- As a region, it took Scotland a mere century (from around 1700 to 1800) to develop from a backward, agrarian society to an economic and intellectual leader in Europe. Following economic historian Eric L. Jones [25], we can speak of a “Scottish Miracle” and ask: How was this development possible? In preparation for the answer given in section “[David Hume and the “Scottish Miracle”](#),” this section provides some information about Scotland’s geography and history.

“Scottish Enlightenment”: Concept and Figures

In a larger sense, the term “Scottish Enlightenment” describes the period between 1726 (when Francis Hutcheson’s *“Inquiry into the Origin of Our Ideas of Beauty and Virtue”* was first published) and 1816, when Adam Ferguson died. In a narrower sense, this period is marked by two famous main works of Scottish Enlightenment, namely by David Hume’s *“A Treatise of Human Nature,”* published in 1739/1740 [19] and Adam Smith’s *“An Inquiry into the Nature and Causes of the Wealth of Nations,”* ([49]) published in 1776 [48]. The following are considered to be the main representatives of Scottish Enlightenment:

Gershom Carmichael (1672–1729)

Bernard Mandeville (1670–1733)

Francis Hutcheson (1694–1746)

Henry Home (1696–1782)

David Hume (1711–1776)

Adam Smith (1723–1790)

Alexander Gerard (1728–1795)

Thomas Reid (1710–1796)

George Campbell (1719–1796)

Adam Ferguson (1723–1816)

Dugald Stewart (1753–1828)

Hume will be dealt with in section “[David Hume: The Key Figure of the Scottish Enlightenment](#),” Carmichael and Hutcheson in section “[Francis Hutcheson \(1694–1746\) and the “Moral Sense”](#),” and Adam Smith in section “[Hume and Adam Smith \(1723–1790\): Ethics and Economics](#).”

David Hume is a key figure of Scottish Enlightenment. He was the most comprehensive, most thorough, most versatile, and therefore most influential thinker Scottish Enlightenment brought forth. This assessment was already shared by his contemporaries: “Standing head and shoulders above them all was David Hume, pivot (center of rotation, G.E.) and provocation to the group” ([8], p. 2). Hume’s ideas are therefore at the heart of this article.

During the century between 1720 and 1820, Scotland made its way from a poorly developed agrarian nation with geographical and climatic handicaps to an

economical, technological, and intellectual leader – not only compared to England but also to the rest of Europe. The afore-mentioned philosophers of Scottish Enlightenment have accompanied this transformation intellectually, interpreted it, and also advanced it with their insights.

What were the new developments during this century? Essentially, a new way to look at the world and acquire knowledge about it. We can exemplify this claim by considering the changed meaning of the term “Moral Philosophy.” Numerous representatives of Scottish Enlightenment held chairs for “Moral Philosophy.” This term’s meaning in the eighteenth century, however, was quite different from today’s. Isaac Newton published his theories on physics under the Latin title *Philosophiae Naturalis Principia Mathematica*, or *Mathematical Principles of Natural Philosophy*. The term “Natural Philosophy” was therefore equivalent to what we now know as (*Natural*) *Science*: the empirical, scientific study of nature. Accordingly, “Moral Philosophy” in its eighteenth-century meaning was the empirical, scientific study of *man* and *society*. *Experience* takes on a key role in both cases: Just like those of nature, the secrets of man and society cannot be revealed by falling back on higher authorities (such as the bible or the *Corpus Aristotelicum*) but only through *empiricism*, through the methodical quest for experiential knowledge.

The *Scottish moral philosopher’s* studies, however, also included philosophical issues in today’s sense: Scottish Enlightenment philosophers would have regarded the distinction of (empirical) social sciences and (normative) social philosophy and theory, which continental philosophers would later assert, as a fundamentally faulty effort to reasonably arrange human coexistence in society – and precisely, this task can be considered Enlightenment’s main goal and final purpose.

The Meaning of “Enlightenment”

Before we discuss the specifics of Scottish Enlightenment, we will first clarify the concept of “Enlightenment” itself.

1. First of all, “Enlightenment” is the name of an *epoch*. It denotes the time between 1680 and 1830 ([39], p. 31–32) and especially the eighteenth century’s efforts – independent from control by traditional authorities like church, theology, and secular leadership – of understanding the natural and social conditions we live in. Enlightenment therefore *also* always implies criticism of church and religion.
2. Secondly, “Enlightenment” is a *program* meant to help these efforts attain their goal. Part of this program was to make the growing knowledge about nature and society available to everyone. This was the intention of Denis Diderot and the French encyclopédistes, as well as of the authors of the *Encyclopædia Britannica*, published in 1820 by Adam and Charles Black in Edinburgh after having been worked on since 1768 (the French *Encyclopédie* is being worked on to this day). Furthermore, authorities were being put under pressure to justify themselves, fundamental questions about nature and society were being asked, and there was a general effort to correct falsities and errors by relying on

individual experience. All the European Enlightenment philosophers were united in this program of “error elimination” through the method of experience, but it was first and foremost to be found in England and Scotland. Briefly put, in the opinion of the philosophers of Enlightenment, how the world *really* works cannot be understood by reading old books but must, in nearly every case, be clarified by means of experience. At the same time, people in the Age of Enlightenment were increasingly convinced of living in a fundamentally new and better time, even compared to Renaissance humanism, which aimed to surpass Christian and Aristotelian tradition by way of a recourse to classical antiquity.

3. Thirdly, the concept of “Enlightenment” is linked to an *individual attitude*, which can be found in Kant’s famous definition: “*Enlightenment is man’s emergence from his self-incurred immaturity*. Immaturity is the inability to use one’s own understanding without the guidance of another. This immaturity is *self-incurred* if its cause is not lack of understanding, but lack of resolution and courage to use it without the guidance of another. The motto of enlightenment is therefore: Sapere aude! Have courage to use your *own* understanding!” ([26], p. 53) Enlightenment is thus the always risky effort to think for oneself, instead of letting someone else do it.

Three aspects of Kant’s definition are particularly interesting:

- Enlightenment always entails an *individual* learning process. Kant speaks of the *individual* man. Only through one’s personal willingness to free oneself from the “Gängelwagen” ([26], p. 54) (leading-strings), collective learning processes and socially successful Enlightenment become possible.
- Enlightenment is *risky*. People resist new ideas or critical inquiry; they are all too prone to influence the competition of ideas in their favor by seeking (definitory) power, and they neglect, obstruct, or even suppress the free exchange of ideas. Kant’s appeal to the Enlightenment philosophers’ courage and willingness to take risks is therefore no mere pathos.
- Enlightenment requires other people (the scientific community, or the “public,” in the Kantian sense), on whose criticism we depend even in our own learning processes. Enlightenment is a *group* effort in the sociopsychological sense [14]. Individuals play an important role in it, to be sure. But if they do not want to violate one of the most elementary rules of Enlightenment, they must not be impervious to other people’s arguments: *Enlightenment is discursive* – therefore, it conceptionally depends on other people. In this point, too, Scottish Enlightenment is a particularly fine example of Enlightenment thinking, as we will see in sections “[Scottish Moral Philosophy Before Hume: Carmichael and Hutcheson](#),” “[David Hume: His Life and His Works: An Overview](#),” and “[Hume and Adam Smith \(1723–1790\): Ethics and Economics](#).”

Enlightenment is thus the common pursuit of improved knowledge, to the end of an improved life for everyone. All of this, however, would have neither been possible nor fertile, had eighteenth-century Scotland not been able to draw practical consequences from the opinions revised through such discussion and criticism.

Features of "Scottish" Enlightenment"

Just like everywhere else in Europe, Enlightenment philosophers in Scotland also criticized traditional theological views (and therefore their normative effects); on the basis of the new philosophy of nature, we associate with the names of Francis Bacon, John Locke, and Isaac Newton. And, also like everywhere else, the Scots thought about the preconditions and consequences of the sudden explosion of knowledge about nature and society and tried to put this newly gained knowledge into effect in their society. These similarities with continental Enlightenment aside, however, Scottish Enlightenment also developed a number of particularities.

1. All criticism of Christian theology, of Catholic and Protestant clergy notwithstanding, England and Scotland did not experience the development of such an uncompromising and later (after 1789) even violent opposition to Christianity as it has been the case in France, for example: "While it represented a secularization of thought and feeling, as the Enlightenment did everywhere, that is a breach with an essentially theological mentality and a change outlook upon religion, it did not take on, to any marked extent, as did its counterpart in France, for example, an anti-clerical, anti-church, or even a anti-religious character" ([29], p. XII).
2. The Scots avoided metaphysical controversies about the "essence of things" in favor of an *empirical* approach to reality. They therefore considered questions such as: What are the (observable) properties of an object? How does it behave? How does it change when subjected to certain influences? This empiricist attitude had particularly significant effects on the debate on moral questions, as the willingness to include empirical knowledge into the discussion of political and moral questions was (and still is) particularly poorly developed, due to tradition, peer pressure, and old habit.
3. Although the Scottish Enlightenment philosophers were indeed *political* thinkers and thus thought about ways to expand the citizens' freedoms, they were no radical social critics after the French model: "... a demand for a radical reform of society and the state, such as characterized such of their English followers as Price and Goodwin, was seldom heard here" ([29], p. XII; cf. [10]). Demands for improvement were thus of pragmatic, not of ideological nature: There was no interest in revolution but in changes of the rules in everybody's interest.
4. All of science and philosophy, yes, just about every thinking effort had to be useful for the improvement of living conditions ("Human Improvement"). The title of Adam Smith's famous opus magnum *An Inquiry into the Nature and Causes of the Wealth of Nations* is thus quite programmatic.
5. The Scottish Enlightenment philosophers were cautiously optimistic regarding the question whether mankind was capable of progress: "... while Scottish thinkers made much of the idea of progress in the sense of evolutionary naturalism, their belief in progress seldom if ever took on the character of an unrestrained optimism like that of a Condorcet, for example" ([29], p. XIII). This means that according to the Scottish Enlightenment philosophers, there might

not be a *law* of progress, bringing about an improvement of human living conditions independently from human behavior – “behind their backs,” if you will. There is, however, an *option* of progress, as long as people are ready and willing to rigorously base the design of rules for human coexistence on clear thinking and empirical knowledge.

Let us now turn to the question of the ideological and social preconditions that made this project possible.

Two Main Conceptional Problems of Scottish Enlightenment

1. One of the main conceptional issues of Scottish Enlightenment in dealing with morality and politics consisted in conciliating the solutions for the basic problems of human coexistence suggested by Thomas Hobbes (1588–1679) with everyday experience. Hobbes, in the seventeenth century, had drawn first consequences from the contradictions of moral theory and observation, arising from the biblical and Aristotelian theoretical tradition on the one hand and his observations during the British Civil Wars in the first half of the seventeenth century on the other. Hobbes’s philosophy was thus an effort to intellectually deal with the British Civil Wars, which he understood to be paradigmatic for civil war as such. To sum up Hobbes’s question: How can peaceful coexistence be possible, if people know no limits when trying to assert their interests? If they believe totally different things, have different values, different opinions on what is good and bad, sin or no sin, what we should aspire to – in short, if they disagree about what they should *be allowed* to do?

The grim and brutal conflicts between the factions of the civil war showed Hobbes three things:

- (a) Christianity’s moral messages (such as peacefulness and altruism) were obviously not strong enough to significantly direct human behavior in conflict situations.
- (b) Religion is peace building only to a very small extent. In fact, and to the contrary, it is itself a major source of conflict: differences of opinion regarding the “true” way to salvation can turn into bloody conflicts surprisingly fast.
- (c) Neither did the philosophical tradition since Aristotle provide any satisfying theoretical models with which what happened in the English Civil War could be comprehended. Aristotle had described man as a creature hardwired for cooperation “by nature” ([1], 1253a). Hobbes, however, saw man, in the “state of nature,” as acting under conditions in which they could, *as a rule*, not rely on their fellow men to cooperate and honor their contractual obligations. As Hobbes had to observe, cooperation was frequently and radically terminated during the civil war, whenever people hoped to profit from it.

Hobbes thus did not believe in human behavior being fundamentally governed by benevolence’. In reality, Hobbes asserted, we do not live in a “natural” society of

cooperation, without any need for special institutional requirements but rather in a latent “war . . . of every man against every man” ([17], p. 77), which can only be restrained by governmental coercion. As soon as control over man by his neighbors, custom, morality, and tradition dwindles, Hobbes does not deem him a precondition for his fellow man’s realization of “good life” in the Aristotelian sense, but in the worst case, a deadly threat: “*Lupus est homo homini, non homo, quom qualis sit, non novit.*” – “Man to Man is an arrant Wolfe” – these are the famous phrases in “*De Cive*,” Hobbes has been both lauded and reprimanded for ([18], p. 2). They mean, without rules and a governing sovereign capable of enforcing them, we would all find ourselves not in a peaceful state “appropriate for us,” but in the primal state of *war of everyone against everyone*. And the problem aggravates as the population grows and traditional face-to-face relationships are being substituted by anonymous contacts in a large society. In short, he who cannot be sure his counterpart feels bound by rules will easily behave inhumanly toward him. In his “*Leviathan*,” Hobbes writes: “. . .if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end (which is principally their own conservation, and sometimes their delectation only) endeavour to destroy or subdue one another” ([17], p. 76).

To many Scottish Enlightenment philosophers, this image of man and politics painted by Hobbes was unacceptable. They primarily criticized his hypothesis of man being *fundamentally* egoistic and of there being no natural resources for socialization. At first glance, the “experience” Scottish Enlightenment philosophers relied on even seemed to prove them right. Is not the hypothesis of everyone looking after his own interest first, strategically using his reason to snatch as many of the rare available resources (forcefully if necessary), contradicted by everyday “experience”? Do we not see examples of benevolence and “altruism” every single day? We will later see that not all of the Scottish Enlightenment philosophers were able to draw productive conclusions from this contradiction between theory and “experience.” Among the few exceptions is David Hume, with his distinction between natural and artificial virtues (cf. section “[A Treatise of Human Nature, Book III: Of Morals](#)” (1740)).

2. The second conceptual problem arose from the difficulties in morally evaluating the slow change from a static to a dynamic economy in eighteenth-century Scotland. In a static economy, in which the amount of goods virtually does not change, the condition of the poor can only be improved *at the expense* of the wealthy: Economically, *caritas* is a zero sum game. This is why individual willingness to unconditionally offer up parts of one’s own goods for the benefit of the needy was held in high moral regard. In a dynamic economy, however, fundamentally different mechanisms for the betterment of the poor become conceivable: Instead of *donating* money, one can *invest* it, in order to use the profit to provide needed goods for the poor. Under certain conditions, economy can thus also be a *positive sum game*.

The rise of industrial society thus led to new theoretical, political, and moral challenges. The beginning economic dynamics did, of course, not only bring

about positive effects, such as larger bundles of goods, but also negative ones. While the lords of former times fulfilled a certain sociopolitical function in being responsible for the old and the poor in their area of influence, the capital accumulation in industry and agriculture led to a growing army of uprooted poor. While those lords were increasingly weakened economically by mismanagement and the growing importance of trade and industry, to a point where they could no longer fulfill their traditional sociopolitical functions, the usually far-away investors in agriculture, trade, and industry did no longer feel responsible for the well-being of their employees. This resulted in subsequent theoretical and moral issues, which had to be solved *simultaneously*. The subsequent theoretical issue consisted in specifying the conditions under which the economy can become a positive sum game. The subsequent moral issue was: How should traditional morals deal with the challenges of the dawning new era? How can the economical dynamics and its negative consequences be reconciled with Christian morality and philosophical tradition? Can it be an act of charity or altruism to close down a factory or to sacrifice agricultural land for industrial expansion and thus to leave the people concerned to an uncertain fate? And, given that there surely were *also* positive consequences of industrialization and capital accumulation, the further question arose: What “morality” was to be valid now? What is “morality”? What can morality be based upon, how can it be justified? Some Scottish Enlightenment philosophers, such as David Hume and Adam Smith, then went past these very fundamental questions and asked the decisive one: *Might it be possible to show that the rising market economy and industrial society are particularly adequate to certain moral demands?* Sections “[Hume’s Moral Philosophy](#)” to “[David Hume and the “Scottish Miracle”](#)” and “[Hume and Adam Smith \(1723–1790\): Ethics and Economics](#)” will discuss their answers to this question.

Some Remarks on the Geography and History of Scotland

How was the “Scottish Miracle” possible? In preparation of an answer to this initial question, let us first look at Scotland’s geography and history ([11, 51], Ch. 1).

1. Scotland is made up of three geographical regions (see [Fig. 12.1](#) below): (a) In the North, there are the inaccessible, inhospitable *Highlands*, where mountains of up to 1,350 m tower over a land that can only be put to limited agricultural use. (b) In the Center, there are the *Central Lowlands*; a fertile belt crossed by rivers (Clyde, Forth, Tay, Tweed), already densely populated in the eighteenth century and surrounding the big cities of Glasgow, Edinburgh, Dundee, and Aberdeen. The region is rich in natural resources (coal in particular), playing a key role in Scotland’s industrial boom. (c) The *Southern Uplands*, a rolling hill country in the South, separate Scotland from the rest of Britain.

One of the *Highlands’* geographical particularities is the deep canyons, running from east to west. They are the result of the local gneiss’s erosion. This erosion, aided by Scotland’s rough weather, also formed the jagged coastline of Scotland’s North, featuring numerous bays, fjords, and offshore islands.



Fig. 12.1 Geography of Scotland. Internet: <http://en.wikipedia.org/wiki/File:Scotland%28Location%29Named%28HR%29.png> © Rab Knight

Under the circumstances of the time, this geography made for two natural advantages. In case of a *war*, it offered a hard-to-conquer space for retreat in which one could easily survive for some time on a diet of seafood and mountain water. In *peace*, however, its 3,500 km of shoreline offered plenty of possibilities for fishing, shipping, and trade.

2. Already in antiquity, Scottish geography was an obstacle to the enforcement of claims to power. While the Romans were able to conquer great parts of Western Europe and even England, they never managed to penetrate the Scottish Highlands and eliminate the pockets of resistance there. Britain's North thus became the center of resistance against the Romans and a safe haven for all those who did not want to bow to their power, possibly a precondition of some importance for the "Scottish Miracle."

From the fifth century onward, Ireland and Scotland were being Christianized. In the second half of the sixteenth century, the relative stability based on religion

ended with the introduction of reformation to Scotland. Under the leadership of John Knox (ca. 1514–1572), the Scottish Calvinists rose up against the Catholic reign of Maria Stuart (1542–1587). More than 130 years of sometimes very brutal conflict ensued, with Scotland being additionally weakened by a series of weather-related crop failures at the end of the seventeenth century. Around 1700, it became clear that Scotland could only survive economically and politically by giving up its sovereign statehood. After long parliamentary debates, Scotland finally took its place under Great Britain’s political roof.

Although the country lost its statehood in 1707, we can name a couple of factors which advanced the now beginning “Scottish Miracle” and turned the country into Europe’s driving force within a century.

- (a) Scotland gained access to the English colonial trade because its western ports were much closer to the American colonies than London, for example. This circumstance advanced the tobacco and cotton trade, which in turn advanced the development of factories.
- (b) The Scots came to know English liberal and literary ideas, as well as a moderate form of Protestantism; this helped entrepreneurs and scholars to gain prestige and influence.
- (c) Calvinism, being a strictly systematic religion, advanced systematic thought: People were used to painstakingly scrutinize controversial issues.
- (d) Scottish Calvinism interpreted the bible as asserting that only labor makes it possible to lead a life agreeable to God. As John Knox famously wrote: “He that laboureth not, let him not eat” ([27], p. 419). Although this phrasing differs from Paulus’s Second Epistle to the Thessalonians (3, 7-9; Paulus talks about the *willingness* to work, calling on people not to be a burden to others), it still clearly demonstrates the ideological connection between Calvinism and capitalism Max Weber would later analyze.
- (e) And finally, part of John Knox’s ambivalent heritage is a comparatively democratic educational system. Calvinist doctrine favored the alphabetization of large parts of the population out of religious reasons. The individual man was to be enabled to find his own way to God through his *own* reading of the Scripture. This ability to read, however, naturally was not only helpful in the quest for salvation but could also be put to other profitable uses.

Thus, at the beginning of the eighteenth century, the stage was set for the “Scottish Miracle.”

Scottish Moral Philosophy Before Hume: Carmichael and Hutcheson

Gershom Carmichael (1672–1729) and the Individual Duties

Gershom Carmichael (cf. [7]; [50]) studied in Edinburgh from 1687–1691 and then began an academic career. He taught at the University of St. Andrews from 1693–1694 and afterward went on to teach in Glasgow until the end of his life.

In 1718, his main work “*Supplements and Observations upon the two books of the distinguished Samuel Pufendorf’s On the Duty of Man and Citizen*” was published in Glasgow; in 1725, it was reprinted in an expanded version, in which Carmichael presented a fully developed deontology. His relevance to the further Scottish Enlightenment especially lies in the strong influence he had on his student Francis Hutcheson (see section “[Francis Hutcheson \(1694–1746\) and the “Moral Sense”](#)”).

His basic idea was: We cannot live as we want to, for we would then harm ourselves or attract the others’ resentment or even the wrath of God. Man therefore has certain “natural” duties, following from the fact of God’s existence, the laws of nature, and the “moral” laws of coexistence, duties that are not the result of instrumental reasoning but spring from an intuitive understanding of the *conditio humana*. These duties are:

- (a) The immediate *duties toward God*. They cannot be derived from other duties but are justified through the following reasoning: Because God expressed his love of mankind by creating it, it is man’s duty to worship him and to present him with signs of this worship, for example, in prayer and good moral conduct.
- (b) The mediate *duties toward ourselves*. They follow from the immediate duties: If we are God’s creatures, we should behave accordingly and prove ourselves worthy of him; we must, for example, not physically harm or even kill ourselves nor burden our conscience with violations of God’s commandments.
- (c) The mediate *duties toward society*. For the same reason as the duties under (b), we also have duties toward our fellow men. They, too, are God’s creatures; therefore, we should not be a burden to them but do everything within our power in order not to harm them, or even to improve their situation. The accordance of property rights must be measured by this moral criterion: “Each man should promote, so far as it is in his power, the common good of the whole human race, and, so far as this allows, the private good of individuals” ([34], p. 48).

Carmichael thus still stands in the tradition of natural law: Our duties follow objectively (as opposed to arbitrarily, subjectively, or individually) from observation of nature – taking into account its creator.

Francis Hutcheson (1694–1746) and the “Moral Sense”

Carmichael’s student Francis Hutcheson discarded the idea of moral principles deriving from “natural laws.” An Anglican theologian, Hutcheson, began to build a seminary in Dublin in 1719 and then accepted a professorship for moral philosophy in Glasgow in 1729, which he held until the end of his life. Among his most important works are the *Inquiry into the origin of our ideas of beauty and virtue* (London 1725), the *Essay on the Nature and Conduct of the Passions with Illustrations on the Moral Sense* (London 1728), and the posthumous work *A System of Moral Philosophy*, first published in 1755 in Glasgow. Hutcheson argues against Hobbes that we all have a “moral sense,” enabling us to be benevolent and generous, to discern good from bad, and to empathize with others. This assumption of it being *ourselves* who can discern good from bad brought Hutcheson in conflict with theologians.

Hutcheson can be called the benevolent optimist among Scottish Enlightenment philosophers. He did not realize, however, that some individuals not only do not share widely accepted moral ideals but also break rules ruthlessly and without regard for others; apparently, they have no or just a reduced “moral sense.” As we have seen in section [“Two Main Conceptional Problems of Scottish Enlightenment,”](#) Hobbes was more realistic regarding this point: If rule breakers are not effectively sanctioned, even the most benevolent person has to take self-defense measures: *morality can erode, if it is not supported by sanctions*. Hutcheson asserts, though: *We do not feel well, if we do not act morally* – that is the basically stoic principle he followed.

Furthermore, and this makes him interesting as a preliminary to Hume, Hutchinson was the first to have the vision of a “free society” ([16], pp. 79–81). He was the first liberal in the classical sense, “. . . a believer in maximising personal liberty in the social, economic and intellectual spheres, as well as the political. But the ultimate goal of this liberty was . . . happiness – which Hutcheson always defined as resulting from helping others to be happy” ([16], p. 80).

But Hutcheson did not only leave the question unanswered how such a free society was to be constructed, if Hobbes’s idea of man should prove to be realistic; he could not even explain why society works *at all*: “If those desires are really so universal, why do so many societies deny people those very things? Why, given the variety of political and social systems in history, have there been so few that have delivered on Hutcheson’s vision of a free society?” Differently put: Why have there not been many more “Scottish Miracles”? When Hutcheson died in 1746, he left no answer ([16], p. 81).

It was David Hume who first came up with a more satisfactory solution for these issues. Therefore, we now turn our attention to him.

David Hume: The Key Figure of the Scottish Enlightenment

Hume is urging nothing less than the total reform of philosophy. William Edward Morris [35]

In David Hume, we meet with the intellectual center of Scottish Enlightenment. He was extraordinarily versatile, had a keen mind, and uncompromisingly kept on thinking until he arrived at those assumptions he held to be solely tenable in the light of reason and experience.

Hume is a prominent representative of “empiricism”; the philosophical theory stating that all our knowledge is derived from experience and that all our beliefs must prove their worth in the light of our experiences. “Experience,” however, must be both broad and methodical, if it is supposed to be convincing. His judgments thus received their authority only through his wide scientific, philosophical, economic, and historical knowledge. Furthermore, Hume can be counted among the eighteenth century’s most innovative philosophers in the field of ethics and economics.

In section [“David Hume: His Life and His Works: An Overview,”](#) we will deal both with Hume as a person and with his epistemology, as far as it is relevant to his

moral philosophy. Section “[Hume’s Moral Philosophy](#)” then deals with his moral philosophy. Section “[Politics, Ethics and Economics](#)” will take a look at some of his groundbreaking economic ideas, and Section “[David Hume and the “Scottish Miracle”](#)” will return to the idea of a “Scottish Miracle.” There, I will show that Hume already expressed assumptions about the causes of this “miracle” that anticipate much of the twentieth century.

David Hume: His Life and His Works: An Overview

David Hume, was born the son of Joseph Home, advocate, and his wife Katherine, in Edinburgh, on May 7, 1711 ([52], Ch. 2–5). He soon proved to be interested in moral questions. He drew up detailed personal “lists of sins,” for example, in order to find out whether his own life was reconcilable with the rules of Calvinist theology. In school, he became acquainted with the texts of classical authors (Cicero, Virgil, and Tacitus) and with teachers beginning to question the dominant dogmas of theology and moral philosophy. Following his parents’ advice, Hume began to study law in 1726 but discontinued his studies after 3 years and slipped into a severe life crisis. He then decided to become a philosopher – to the horror of his mother, who would have preferred to see her son become a successful advocate in Edinburgh.

The life crisis between 1729 and 1734 also had two intellectual reasons. One of them could be called *Loss of Certainty*: After intense skeptical doubts, Hume brought himself to accept the belief that our *knowledge can never be certain*, and that, based on our past experience, we can only predict future events with some probability. But, just like animals, we may – and do – trust our instincts and experiences in practical matters. The other reason can be called *Understanding of the Inadequate Foundation of our Convictions in Experience*. According to Hume, most of what we think we know proves to be insufficiently grounded in experience; much too quickly we content ourselves with *inventions*, instead of consulting experience.

In 1739/1740, the three volumes of the *Treatise On Human Nature* were published, in which Hume elaborated his thoughts on epistemology (Volume I), psychological anthropology (Vol. II), and moral philosophy (Vol. III), as far as he had developed them at the time. His work, however, was ripped to pieces by reviewers failing to understand it. Hume himself called it a stillborn child [24]. Only in 1748, 8 years later, did he once more recapitulate his ideas of the *Treatise* in his *Enquiry Concerning Human Understanding* [21].

At the end of the *Enquiry*, he formulates his empiricist and antimetaphysical principle, with the famous words: “When we go through libraries, convinced of these principles, what havoc must we make? If we take in our hand any volume – of divinity or school metaphysics, for instance – let us ask: Does it contain any abstract reasoning about quantity or number? No. Does it contain any experiential reasoning about matters of fact and existence? No. Then throw it in the fire, for it can contain nothing but sophistry and illusion” ([20], p. 165).

Following the failure of the *Treatise*, Hume addressed political and economic topics. He wrote essays, planning to publish them in the form of a weekly journal, but ultimately published them in the two volumes of *Essays: Moral and Political* (1741/1742) – anonymously, for he did not want to be identified as the author of the badly reviewed *Treatise*. Finally, he received public recognition; the demand for the *Essays* soon made a second edition necessary. The essays are thematically diverse and do not show any coherence; they are, however, particularly innovative. We will therefore deal with some of those works in sections “[Politics, Ethics and Economics](#)” and “[David Hume and the “Scottish Miracle”](#).”

Numerous subsequent efforts to get a professorship all failed. Hume thus became the travel companion of noblemen and officers – an employment which would take him to the courts of Vienna and Turin, among other places. In 1751, his *Inquiry Concerning the Principles of Morals* was published; a detailed discussion of Calvinist ethics and Hobbes’s anthropology, which, as we have seen, assumed a self-interested individual, not restrainable by subjective authorities like conscience or empathy but only through (state) power (see section “[An Enquiry Concerning the Principles of Morals \(1751\)](#)”).

The year 1752 saw the publication of his *Political Discourses*. This book’s importance to this paper’s issues can hardly be overestimated. Based on this book, some authors hold that Hume is the founder of modern economics; an assumption that is further emphasized by Adam Smith’s speaking about the “Discourses” before the members of Glasgow’s *Literary Society* on January 23, 1752, just a couple of days after it was first published ([52], p. 702). Brady Bryson on this productive period in Hume’s life: “In whatever field one undertook to write after the middle of the century, Hume was almost certain to have been there first, if only with a essay” ([8], p. 215).

In 1754, Hume began his work on a six-volume *History of England*, which would finally make him both famous and financially independent. In it, he proved himself to be a master of historiography, prosaic, well-balanced, and (as far as possible) impartial.

In 1757, the last important work still published during his lifetime was released as part of a collection (*Four Dissertations*): *The Natural History of Religion*. Hume subsequently entered diplomatic service, became undersecretary of state in London, and retired from public life in 1769, in order to devote himself to the revision of his works.

On August 25, 1776, Hume, the great innovator, died happily and calmly from an incurable gastric disease.

Hume’s Moral Philosophy

One of the Enlightenment’s basic concerns was the reintroduction of the *senses*, of human sensitivity to philosophical reasoning. This can be seen in the works on the *moral sense* or on *taste* (as the capability of esthetic judgment), quickly appearing in the aftermath of Shaftesbury’s seminal works around 1700 (*An Inquiry*

Concerning Virtue or Merit, 1699; and *Sensus Communis. An Essay on the Freedom of Wit and Humor*, 1709) [31]. While *stoic tradition* derives the rules we must abide by from *external nature*, from the *world order*, we can see Enlightenment as a turn to the *Epicurean tradition*. According to this tradition, the afore-mentioned rules can be derived from the *internal nature* of man. Hume comes up with a *synthesis* of both approaches: We must have detailed knowledge both of man's internal nature and of the inherent laws of the social systems man functions and acts in.

The essence of Hume's moral philosophy can be found in two of his works: In the *Treatise Of Human Nature, Book III* ("Morals," 1740), and in the *Enquiry Concerning the Principles of Morals* (1751). The *Essays Moral and Political* also includes passages relevant to moral philosophy; as those are, however, closely linked with sociophilosophical, political, and economic observations, we will save their discussion for section "[Politics, Ethics and Economics](#)."

"A Treatise of Human Nature, Book III: Of Morals" (1740)

Norms and Values do not follow from facts. This is *Hume's Law*, sometimes called *Hume's guillotine*, which is highly influential to this day. [5] With every work on moral philosophy Hume ever read, he came to a point where ". . . I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is however, of the last consequence" ([19], p. 241).

This position is widely accepted in contemporary philosophy (with Searle being one of the exceptions [46]): The transition from *is* to *ought* is not only held to be "imperceptible" but even to be "logically impossible" [53]. If facts, however, are not a sufficient foundation for norms and values, ethical rationalism ("Virtue is nothing but conformity to reason" ([19], p. 234)) must be false as well. Hume's major objection to it is: *Reason alone cannot motivate action* ([51], p. 187–190). Even though practical decisions may be determined by cognitive conviction as well as by moral *reasoning*, the latter alone does not suffice to produce the specific *sentiment* qualifying an action as morally good: "It is therefore more correct to speak of moral feelings than of moral judgments" ([19], p. 242).

This does not mean that moral feelings only have subjective validity. One can *develop the moral sense* – much like a judge learns, during his education, to judge an issue as *intersubjectively* as possible, or like an art connoisseur is trained to refine his given esthetic taste through studies. How can we develop our *moral sense*, though, if it is primarily focused on the realization of our own interest? Hume's answer is: By communicating with each other, and thus through the integration of other positions and points of view into our own reasoning. Hume's concept of *sympathy* thus means more than simple *commiseration* (or joint suffering) and much more than a warm, fuzzy feeling: The important part is the *constitution of morals and rules through the effort of methodically putting oneself in the position of somebody else*. One's own interests are not abandoned in this process but are being methodically included. For if others demand this principle's validity in *their* own interest, they must also respect *ours* – this is the argument's point. One is tempted to

think that Hume, the critic of religion, here presents a generalized version of the well-understood Christian law of love “Thou shalt love thy neighbor *as thyself*” (Leviticus 19,18; Matthew 22,37–39): “Thus the original motive for the establishment of a system of justice is *self-interest*; but what attaches moral approval to justice is *sympathy with the public interest*” ([19], p. 259; italics by Hume).

Where does this *sympathy with the public interest* come from, this individual interest in the existence of rules that also bind other people? According to Hume, not only can man not exist alone, but his wealth increases through his dealings with others – with others he does not know. *Socialization brings benefit* [6]. Spontaneous, *natural* sympathy, however, is only felt toward our next of kin. As the distance from the primary groups *family* and *clan* gets greater, we therefore need *two things*: Firstly, we need a *legal system*, rendering safe our cooperation with strangers; secondly, we also need special *virtues* Hume calls “artificial virtues” ([19], p. 300). These virtues, especially adherence to the law and to contracts, cannot be considered given but only develop in the interplay with an institutionally and legally secured environment, and they do so both through the *understanding* of the fact that all concerned parties benefit from the existence of such rules and through the *experience* that in a complex society, every stranger could potentially become a close acquaintance who benefits from our natural virtue of benevolence.

If we put the *Treatise* in the context of Scottish Enlightenment, and thus in the context of the intellectual confrontation with Thomas Hobbes, we can summarize: Regarding the close social sphere of family and clan, Hume believed Shaftesbury and Ferguson’s image of man to be convincing. It is based on spontaneous sympathy and natural virtues (honesty, reliability). In the larger sphere, however, we require a legal system, which, as Hobbes had realized, must stabilize our interactions and functionally depends on the *artificial virtues* of adherence to law and contracts. The *Treatise* thus represents a *productive synthesis* of the respective positions and, therefore, a solution to one of the two fundamental conceptional issues of Scottish Enlightenment.

“An Enquiry Concerning the Principles of Morals” (1751)

On the last page of the “Treatise,” Hume announces the argumentative direction a further, “separate work” on moral philosophy would take: In it, the “peace” (of mind) and “*inward* satisfaction” springing from adherence to rules were to be focused on “. . . because no mind can bear to look at itself if it hasn’t been relating as it should to mankind and society” ([19], p. 320). From a Hobbesian point of view, one might therefore consider the *Enquiry* a *setback*, as Hume obviously valorizes the stabilizing function of virtue at the expense of rules.

Hume himself, however, considered his work (written 10 years after the *Treatise*) his “legacy to posterity” ([52], p. 299; originally in German): He spent the last days of his life revising a new edition. What are the reasons for this change in the way of posing his moral philosophical question?

Hume starts out from the observation that people do by no means always only care about their own interests. We see some people (one might call them “moral

pioneers”) being capable of judging with universal fairness and general benevolence. *Experience* thus seems to show “. . . a thousand . . . examples are signs of a general benevolence in human nature in situations where no real self-interest binds us to the object” – or, as we would say today, in morally *low-cost situations* [43].

Hume’s moral philosophical reasoning shows a remarkable, underlying optimism. Transferred to contemporary conditions, one might say: Man is not overburdened by globalization. In the course of time and through the contact with others, people will *learn* to outgrow the horizon of their short-term interests and recognize the long-term benefits of global cooperation. We are talking about *individual* learning processes, mind you, not about institutional ones. And, in this point, we can even call Hume a humanist: He shared “the Renaissance’s assumption, that man, as a noble being, is destined to realize himself in his commitment to the common welfare” ([52], p. 307; [12]; originally in German). We might be better able to understand this argument, if we take into account that Hume also pursued a strategic goal with it: The critic of Christianity looking to invalidate *otherworldly* punishment in hell must offer a *worldly* substitute.

Is Hume’s optimism regarding the *individuals’* aptitude for moral learning justified, however? There is reason to doubt this: We do not want to categorically reject the possibility of “moral pioneers” wanting to promote common welfare, not only their own. But, firstly, Hume does not make clear where the limits of individual and *common welfare* are ([52], p. 304); secondly, it is not always clear what this *common welfare* consists of; and thirdly, Hume overlooks the fact that Hobbes’s assumption of self-interest is linked with a heuristics: We are to analyze a given social situation *theoretically assuming* man acts according to self-interest and then verify to what extent such an assumption proves its scientific and practical worth. The common sense experiences Hume refers to are not enough to define the empirical coverage of Hobbes’s theory. And more: Even a common sense empiricist like Hume might have quantitatively overestimated the circle of people to whom “a virtuous life is its own reward” and who consequently do not require any incentives or rules. Be that as it may, it is highly remarkable that Hume, in the last revision of his favorite work, asked his publisher to scratch the words “that there is something like benevolence inherent in human nature” ([52], pp. 565–566; originally in German). What had happened?

In the last weeks of his life, Hume asked his friend of many years, Adam Smith, to publish the previously unpublished “*Dialogues Concerning Natural Religion*.” To Hume’s great disappointment, Smith refused to do so – out of reasons probably dictated both by philosophical reservations ([3], pp. 87–89) and by concerns regarding Smith’s own academic career. This incident proves Hobbes right, against Hume: When it comes to important matters, we pursue our own interest, in spite of all moral learning processes (and who would deny Smith had undergone them?), and we are prepared to (sometimes abruptly) reduce the circle of people benefiting from our “benevolence.” That this is not necessarily a moral flaw has been shown by none other than Adam Smith.

Politics, Ethics, and Economics

Hume's thoughts on political economy and on business ethics are available in the "*Essays Moral and Political*" (two volumes: Edinburgh, 1741 and 1742) and in the "*Political Discourses*" (Edinburgh, 1752; extended edition 1758). With these treatises, Hume founded political economy; that is, the study of the interdependencies of economy and society.

The "*Political Discourses*" in particular enjoyed a sweeping success. This book, not Adam Smith's "*The Wealth of Nations*," has with some right been considered the actual cradle of economics. As soon as 1920, the sociologist Harold J. Laski asserted: "The theory of utility enables Hume to see the scope of economics – the word itself he did not know – win a more generous perspective than at any previous time. . . . The *Wealth of Nations* would less easily have made its way had not the insight of Hume prepared the road for its reception" ([28], pp. 154–155; cf. [13]).

The *Discourses* and *Essays* have no thematical order; the scope of their topics reaches from economic psychology to the moral characteristics of entrepreneurs, from questions of tax, interest, and monetary policy to freedom of press, state debt, demographical development, criticism of mercantilism, and to fundamental issues such as the best kind of government or the causes and essence of cultural progress. Roughly put, in all these works, Hume tried to find an answer to the question: "In what ways are trade and capitalism useful to society?" ([52], p. 330, originally in German) Due to this topical heterogeneity, we can do no more than discuss his main ideas based on a couple of select examples. (cf. Section "[David Hume and the Scottish Miracle](#)").

Hume's Economic Psychology

Hume's ideas on economic psychology (that is, on the motivations of entrepreneurial activity) are not available in a single, particular essay but can be found in various parts of his *Political Discourses*. They therefore lend themselves to a comprehensive presentation in this paper ([52], p. 330–332).

According to Hume, the businessman is motivated by four incentives: the striving for activity, for amusement and diversion, for leisure and calmness, and for profit. The first three incentives (activity, amusement, and calmness) are constants of human nature: *No* human being can be happy without finding the social conditions allowing for an *alternating* satisfaction of these needs – even though people may well differ regarding the intensity of these needs.

Hume, however, deems the need for activity to be the most important one. That means being forced to idleness is worse for people than being forced to activity; amusement becomes a burden more quickly than activity. Man is thus, according to Hume, an *active being*.

Under these anthropological preconditions, politics are about a double task: Firstly, it must provide conditions promoting human activity and allowing them to take an efficient and goal-oriented course. Secondly, it must raise awareness of the fact that only economic, profit-oriented activity can create the individual and social conditions for leisure and more sophisticated amusements. Foreign trade,

Hume asserts, plays a key role in this: “If we consult history, we shall find that in most nations foreign trade has preceded any refinement in home manufactures, and given birth to domestic luxury. . . . Thus men become acquainted with the pleasures of luxury and the profits of commerce; and their delicacy and industry, being once awakened, carry them to farther improvements in every branch of domestic as well as foreign trade. And this perhaps is the chief advantage which arises from a commerce with strangers. It rouses men from their indolence; and presenting the gayer and more opulent part of the nation with objects of luxury, which they never before dreamed of, raises in them a desire of a more splendid way of life than what their ancestors enjoyed . . .” ([23], p. 11).

Under these circumstances, the entrepreneur must decide in what way he will put the profit he made to personal use. According to Hume, he can use the fruit of his labor to enjoy more leisure and amusement or he can find joy in increasing his profit even more. Hume does not regard this process of “profit maximization” (to use Marx’s words) as being negative. In fact, increased economical activity is satisfying in itself to some people, produces goods and services that satisfy the needs and wants of others (a frequently forgotten insight, especially nowadays), and it limits “the interest in less harmless amusements” ([52], p. 332; originally in German).

In short, also in his thoughts on economic psychology, Hume demonstrates how to avoid moralizing. It can be avoided by focusing on three questions: (1) What are the facts? (2) What are their effective interdependencies? (3) What do people think of the result? His *own* value judgment (What *should* be the facts? What *should* people think of the result?) is of little importance to the empiricist, as he is fundamentally different from a propagandist.

Free Trade and the Criticism of Mercantilism

In *Of the Jealousy of Trade* (1758) ([23], pp. 67–70), just as in his 1752 essay *On Commerce* ([23], pp. 1–14), Hume takes position for the *free trade doctrine*, which is still rather controversial today [57].

He criticizes protectionist policies of import limitation and rejects the mercantilist concern that one country can only improve its position at the expense of another. From today’s point of view, Hume’s argument is remarkable not only because of his correct opinions on free trade but also because of his utilization of methodological individualism, reconstructing social facts from individual actions: “the increase of domestic industry lays the foundation of foreign commerce. Where a great number of commodities are raised and perfected for the home-market there will always be found some which can be exported with advantage. But if our neighbours have no art nor cultivation, they cannot take them, because they will have nothing to give in exchange. In this respect, states are in the same condition as individuals. A single man can scarce be industrious where all his fellow-citizens are idle. The riches of the several members of a community contribute to increase any riches, whatever profession I may follow” ([23], p. 68).

Exchange means profit for both sides – even if an individual or a society could manufacture every product better and cheaper than the competition

([30], Ch. 9; [56]). *One* precondition for participation in profitable exchanges must be given, however: the “spirit of industry” ([23], p. 69). Whoever does not have it and can therefore not offer anything on the market, whoever takes his leave from the general exchange network in order to supposedly protect his wealth will sink into poverty. Not the facts or side effects of market exchange are responsible for this, however, but a lack of individual motivation and performance: “Were our narrow and malignant politics to meet with success, we should reduce all our neighbouring nations to the same state of sloth and ignorance that prevails in Morocco and the coast of Barbary (Africa). But what would be the consequence? They could send us no commodities, they could take none from us. Our domestic commerce itself would languish for want of emulation, example, and instruction; and we ourselves should soon fall into the same abject condition to which we had reduced them” ([23], p. 70).

The point of the argument is the plea for free trade is not the result of a normative judgment but of historical research: “If we consult history, we shall find that in most nations foreign trade has preceded any refinement in home manufactures, and given birth to domestic luxury” ([23], p. 11). Indeed, “There is probably no better plea for free trade than *this* essay by David Hume” ([51], p. 473; italics by Streminger; originally in German).

David Hume and the “Scottish Miracle”

Let us return to our initial question (see section “[Some Remarks on the Geography and History of Scotland](#)”) of how it was possible for Scotland to experience such an enormous boom in the century between 1720 and 1820. Hume can teach us to understand the answer to this question as a particular instance of the question regarding the European *sonderweg*, as well as the Enlightenment and prosperity in ancient Greece.

In his sociology of religion (1922) [55], Max Weber posed the question: Why were Northwestern Europe and Northern America the first to develop a capitalist economy, and why have countries like India or China remained so economically backward, despite impressive initial successes? How was it possible that the world, in a few centuries and starting from a geographically fraid out region on the Western rim of the Asian landmass, where almost all of the people lived in poverty, ignorance, and political oppression, suddenly developed the known economic, technological, scientific, artistic, and political modernity?

Ever since Max Weber raised these questions, generations of historians, economists, and anthropologists have been trying to come up with answers to them [33, 36–38, 40, 41, 45, 47]. Here are some of the more recent researches’ numerous answers:

- (a) As opposed to Asia, Europe has not seen the development of a large empire but of a *system of states*, in which different rulers competed. This was an effect of geographical causes: Natural obstacles like mountain ranges, rivers, or waterways hindered the enforcement of centralized power [25].

- (b) Heterogeneous, small-area *landscapes* and the existence of numerous rivers allowed for inexpensive transportation of mass goods like wood or grain. This promoted the development of appropriate means of transportation and provided an incentive for the rulers to guarantee legal security. This was an effect of economic causes: While the confiscation of luxury goods may be profitable, the confiscation of mass goods is rather self-damaging, if alternative routes are available.
- (c) Badly governed subjects of small-area states have a higher *possibility of emigration*. States securing personal and property rights could therefore gain economic and military power, while badly governed states had to fear the emigration of the most productive parts of their population. Hume's pertinent argument in his criticism of theories of social contract, asserting that people's acceptance of a state's existing rules cannot be concluded from their remaining in that state ([23], pp. 174–191), loses empirical value in smaller states with a higher possibility of emigration.
- (d) Reformation advanced the population's *alphabetization* and therefore its education and economic productivity (see section "[Some Remarks on the Geography and History of Scotland](#)").
- (e) Due to geographical reasons, and as opposed to the empires of Asia and the Middle East, Europe's agriculture had to face the problem of *drainage*, not of *irrigation* [32]. This fact advanced the development of mill technology and consequently of mining, metallurgy, and the metal-working industry. The use of metal in turn advanced the durability and efficiency of capital investment.

Even though he himself witnessed the beginning industrialization (and therefore the European *sonderweg*), and even though historians do not consider contemporary witnesses to be very discerning observers of their own era, Hume, due to his outstanding historical knowledge, recognized the striking similarities (geographical and otherwise) between Europe, Scotland, and ancient Greece. This led him to *surmise that the European, Scottish, and Greek Enlightenment have some identical causes*. In much the same way, Europe is the geographically fraid out Northwestern rim of the Asian landmass, Scotland can be considered the British Island's fraid out Northwestern rim, and Greece can be regarded as Europe's fraid out Southeastern rim; with its many islands, peninsulas, mountain ranges, and waterways already promoting the development of various small city states and their productive competition in antiquity. In his essay *Of the Rise and Progress of the Arts and Sciences*, Hume writes: "Greece was a cluster of little principalities, which soon became republics; and being united both by their near neighbourhood, and by the ties of the same language and interest, they entered into the closest intercourse of commerce and learning." Then he draws the decisive parallel: "... mankind, having at length thrown off this yoke, affairs are now returned nearly to the same situation as before, and Europe is at present a copy at large, of what Greece was formerly a pattern in miniature" ([22], p. 84). We can now add, Scotland, in this sense, is a copy of Greece and a miniature copy of Europe.

From this point of view, it is no longer surprising how clearly Hume anticipated the results of today's economists' and historians' research on the European

sonderweg. Hume already knew limited authority and control of power promote the progress of knowledge: “. . . the divisions into small states are favourable to learning, by stopping the progress of *authority* as well as that of *power*” ([22], p. 83). Small states put their rulers under performance pressure: “Those who rule their country worse than their neighbors first lose influence, and may later lose their independence or even their power” ([56], p. 45; originally in German). Conversely, better-governed states can profit from the knowledge and abilities of the other states’ refugees. This makes for a gradual acceleration of the progress of knowledge and for the respective innovations’ diffusion (cf. [4]). Although England and Scotland were politically unified in 1707, the Crown had much less influence on the local economic policy than the French king had in France, for example: Courts did not or only partially enforce granted privileges, monopolistic practices could be circumvented in various ways. Furthermore, the majority of regulations passed after 1700 only pertained to old forms of industry, allowing the newly founded ones to ignore them.

Hume already knew that China, being a large area, centrally governed empire, lost its temporary lead in technology and science because it effectively repressed innovation at times and because there were few possibilities of emigration from the gigantic, geographically isolated empire: “In China, there seems to be a pretty considerable stock of politeness and science, which, in the course of so many centuries, might naturally be expected to ripen into something more perfect and finished, than what has yet arisen from them. But China is one vast empire, speaking one language, governed by one law, and sympathizing in the same manners. The authority of any teacher, such as Confucius, was propagated easily from one corner of the empire to the other. None had courage to resist the torrent of popular opinion. And posterity was not bold enough to dispute what had been universally received by their ancestors. This seems to be one natural reason, why the sciences have made so slow a progress in that mighty empire” ([22], pp. 84–85).

Among his contemporaries, Hume was famous for his historical works. From today’s point of view, we can say that in the end, Hume was not a historian but a philosopher, but his reasoning powers as a philosopher and political economist were crucially boosted by his work as a historian. We therefore owe to him an extraordinarily clear-sighted sketch of an explanation of the European *sonderweg* and thus an early theory of modernity, as well as a number of astute observations on the meaning of capitalism for civilization, and on the advancement of morality through well-organized competition.

Hume and Adam Smith (1723–1790): Ethics and Economics

Smith Versus Smith?

Adam Smith’s eighteenth-century fame did not come from his book *The Wealth of Nations*, for which he is famous today, but from his *Theory of Moral Sentiments*, which appeared nearly 20 years earlier. It was published in 1759, 8 years after

Smith became professor of moral philosophy at the University of Glasgow, and just a couple of years after he came to know and admire David Hume. In 1776, the year Hume died, the book that was to make Smith famous to this day was published: *An Inquiry into the Nature and Causes of the Wealth of Nations* [49].

Before we can address Smith's relation to Hume, we must, if you will, clarify Smith's relation to Smith. More to the point, we must briefly discuss the question whether Smith's two major works do contain a consistent moral philosophy or if the "Inquiry" rather takes back the moral philosophical positions Smith held in the *Theory*. This problem is known as the "Adam Smith Problem" in scientific literature [15], [42], [54]. In this literature, we can distinguish the representatives of a "consistency approach" from those of a "turnaround approach." The advocates of consistency [44] assume that Smith's positions have not fundamentally changed between 1759 and 1776. At the most, they have been accentuated, differ only in details, and otherwise pay much closer attention to the institutional frame people act in. The advocates of a turnaround, however, are of the opinion that Smith took a fundamentally new moral philosophical approach in his work from 1776, emphasizing *selfishness* as central motivation of human activity, instead of *sympathy* and *benevolence*. This reading takes the *Inquiry* to be a treatise on human egoism, which can, however, combine the selfish actions of people to a socially acceptable result through the benedictory influences of the "invisible hand."

This "Adam Smith Problem," however, is deemed to have been solved in the sense of the consistency approach throughout the more recent literature: "Self-interest lives side by side with benevolence. They are not incompatible; each has its part to play at the appropriate time; and exclusively to concentrate upon one dimension of life is seriously to distort the whole" ([58], p. 99). Here are a couple of arguments supporting this position:

- (a) The later editions of the *Theory* would have had to be revised in the sense of the turnaround approach. This, however, has not happened ([9], p. XXXVIII).
- (b) The "*Lectures of Jurisprudence*" (1763) are widely consistent with the positions held in the *Inquiry*. If the turnaround approach was right, Smith would have taken back his own opinion only a couple of years after the publication of the *Theory*.
- (c) Both of Smith's main works were subject of his 1776 lecture on moral philosophy. It is hardly believable that he would have presented contradictory concepts to his listeners.
- (d) The term *sympathy* in the *Theory* does not denote a positive or even altruistic emotion, from which the *Inquiry* would have had to distance itself later on but merely the *disposition* of being able to put oneself into somebody else's position. This disposition must not be mixed up with an altruistic attitude.
- (e) In the end, the leeway we allow for self-interested economic activity in society must be justified before the "impartial spectator" ([2], pp. 69–74).

Briefly put: "The so-called 'Adam-Smith-Problem' was a pseudo-problem based on ignorance and misunderstanding" ([44], p. 29).

With the *Inquiry*, Smith has therefore not written a treatise on the fundamentally beneficial effects of *egoism* but an analysis (enriched by historical and economic

knowledge) of the *conditio humana*, of which, as Hume had already realized, self-interest is *also* a part. The point is, therefore, to institutionally canalize self-interest in a way that can bring about effects that are morally harmless in the eyes of the “impartial spectator.” Kathryn Sutherland is thus correct in writing in her introduction to the *Inquiry*: “An enquiry in five books, the *Wealth of Nations* sites economic activity within a framework of a wide-ranging discussion of social institutions und human propensities. The effect of its extended description is to complicate and problematize economic analysis by driving the economic impulses deeper into the recesses of human personality as the natural basis of our psychological and social existence” (54, p. xi).

Hume and Smith

Hume and Smith agree in many points of their moral philosophy:

- They both take a mediating position between Hobbes and Hutcheson: Man is a social being, who is both self-interested and has traits that simplify and render his life in a community possible.
- Positive moral judgments do not follow from the existence of particular motivations but arise from the judgment of an impartial spectator; a judgment made possible by *sympathy* and taking all sides into account.
- Both of them know that reason alone cannot motivate action.
- And they both know about the constitution of morality by emotions without which we would be morally blind.

Furthermore, they are united in their appraisal of free trade: According to them, it leads to theoretical and practical innovations and takes the concerned societies to higher cultural and economic levels.

Nevertheless, there is an important difference between Hume and Smith. According to Hume, we value a virtue or action with regard to its usefulness for society. According to Smith ([48], Part IV), however, the usefulness of rules and virtues is often not even being realized before they have grown to be old habits. Their usefulness can thus not be the first source of our approval or disapproval. It is not even their most important source: “. . .the sentiment of approbation always involves in it a sense of propriety quite distinct from the perception of utility” ([48], p. 207). In short: “Utility considerations are . . . (to Smith) neither the specific object nor the original motivation of moral judgments, although they often accompany them as reinforcing motivations” ([3], p. 85; originally in German).

In the first part of this paper, we have formulated two major issues of Scottish Enlightenment (Section “[Two Main Conceptual Problems of Scottish Enlightenment](#)”):

1. How can the Hobbesian image of man be reconciled with the experiences we make every day as moral subjects?
2. Under what conditions can the social subsystem *economy* become an approvable positive sum game?

Hume particularly contributed to the first problem's solution, by grounding moral philosophy on a descriptive pluralism and on an observation of the consequences of moral virtues and actions. Smith mainly solved the second problem: He studied the incentive conditions people in a modern economy act in more closely than Hume, and he put more emphasis than him on the mechanisms of self-organization we can utilize in order to take morally approvable paths of development with their help. Both thinkers, however, were deeply convinced that the way to modernity, accompanied and promoted by Scottish Enlightenment, was not a folly but represented the chance to move on to pastures new and to free the potential for development inherent in man.

Conclusion

The Scottish moral philosophers, and David Hume very much in particular, are characterized by a new way of asking questions. Instead of deducing rules of coexistence from tradition or nature, the philosophers of Scottish Enlightenment taught us to move descriptive questions to the foreground: What are the facts? How do people judge moral controversies? What are the interdependencies in economy and society? How do people value the results of different institutional arrangements? Personal value judgment is thus less relevant than the clarification of empirical questions. This does not mean, however, that moral questions are of no importance: With the utilitarian evaluation of rules (Hume), and with the authority of an impartial spectator (Smith), the protagonists of Scottish Enlightenment suggested moral criteria for judgment which are still interesting today. Furthermore, David Hume's political economy proves particularly compatible with the modern discussion because he – as far as I can see – was the first to develop a brilliant assumption regarding the causes of the European *sonderweg*, an assumption foreshadowing much of the twentieth century.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Entrepreneurship and Ethics](#)
- ▶ [Scientific Study of Morals](#)
- ▶ [The Classic Social Contract Tradition](#)
- ▶ [Utilitarianism](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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Abstract

Adam Smith is respected as the father of contemporary economics for his work on systemizing classical economics as an independent field of study in *The Wealth of Nations*. But he was also a significant moral philosopher of the Scottish Enlightenment, with its characteristic concern for integrating sentiments and rationality. This chapter considers Adam Smith as a key moral philosopher of commercial society whose critical reflection upon the particular ethical challenges posed by the new pressures and possibilities of commercial society remains relevant today. The discussion has three parts. First, I address the artificial separation between self-interest and morality often attributed to Smith, in which his work on economics is stripped of its ethical context. Second, I outline Smith's ethical approach to economics, focusing on his vigorous but qualified defense of commercial society for its contributions to prosperity, justice, and freedom. Third, I outline Smith's moral philosophy proper as combining a naturalistic account of moral psychology with a virtue ethics based on propriety in commercial society.

Introduction

These days, Adam Smith is most familiar to us as an economist and specifically as the defender of the famous invisible hand of free-market economics, wherein the private self-interested actions of private individuals, mediated through free markets, generate results that are good for all. The market system comprehends the true level of demand for any good and provides the appropriate

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incentives – profits – for producers to adjust their output to match. No external intervention or guidance is necessary. A great deal of contemporary (neoclassical) economics can be understood in terms of translating Smith’s invisible hand metaphor into a systematic theoretical form, with a particular emphasis on the economic efficiency of perfectly competitive markets.

However, the popular view of Smith that has resulted from this emphasis is twice distorted. Firstly, it is based on the narrow foundations of a few select quotations from *The Wealth of Nations* (WN) that are taken in isolation as summing up his work, and secondly, these quotations have been analyzed in a particularly narrow way. As Amartya Sen puts it, “While some men are born small and some achieve smallness, it is clear that Adam Smith has had much smallness thrust upon him” ([10], p. 54). In order to understand and assess Smith’s importance as a moral philosopher of commercial society, it is first necessary to remove the artificial limitations which have been placed upon our reading of him ([Part I: Private Vices and Public Virtue](#)).

On turning to the full *Wealth of Nations*, one finds an economics discussed and justified in explicitly moral terms, in which markets, and the division of labor they allow, are shown to both depend upon and produce not only prosperity but also justice and freedom, particularly for the poor. Unsurprisingly, Smith was a staunch and vehement critic of those particularly grotesque sins associated with early capitalism, European empires, and the slave trade. Smith’s commitment to a realistic liberalism led him to endorse commercial society over any previous socioeconomic system as a social order in which the most people possible could live decent lives. Nonetheless, while the structural features of commercial society set the terms of its main opportunities and challenges, they did not determine the outcome. Commercial society was for Smith an ethical project whose greatest potential benefits had to be struggled for and which could and should be much better than it was ([Part II Smith’s Defence of Capitalism: for Prosperity, Justice, and Freedom](#)).

Smith’s other great work, *The Theory of Moral Sentiments* (TMS), was the book that first made his reputation while he was still professor of moral philosophy at the University of Glasgow. It was greatly influenced by his close friend and colleague, David Hume, and elaborated successfully on Hume’s own account of moral psychology in its analysis of sympathy and the impartial spectator. Smith’s analysis culminated in a *virtue ethics* based on propriety and thus shaped by the social context of commercial society in its choice and understanding of the major virtues: prudence, justice, benevolence, and self-command. Smith was perhaps the last philosopher to consider prudence a proper virtue, rather than mere cleverness at best ([2], p. 204). Doing so allowed him to distinguish the morally praiseworthy disposition to properly understand and further one’s self-interest from the vice of selfishness. But he also resisted reducing all motives to self-interest and considered man a fundamentally social being, motivated to seek the approval of others and to help those dear to him. Smith’s ethics was concerned with explaining how individuals become decent moral agents and how a sustainable moral order can evolve without central direction or coercion. In doing so, it also described and promoted

ethical ambition and excellence, though only a few might attain it ([Part III: The Bourgeois Virtues: How to Live Well in Commercial Society](#)).

Part I: Private Vices and Public Virtue

George Stigler is reported to have started his banquet speech at the bicentennial of the original publication of *The Wealth of Nations* by declaiming, “I bring you greetings from Adam Smith, who is alive and well and living in Chicago.” By this, he meant that Chicago (neoclassical) economists were fulfilling Smith’s legacy by producing mathematical representations of the “invisible hand”: how individuals acting from private self-interest can nevertheless make society as a whole better off.

This narrow reading of Smith’s economics stems from a narrow reading of select lines from WN. Notably, such famous remarks as,

It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. ([12], I.ii.2)

and Smith’s (single) reference to the invisible hand,

...by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good. ([12], IV.ii.9)

are first plucked from their local context in the surrounding text and their wider context in Smith’s methodology and concerns and then inflated to the status of stylized facts about Smith’s whole economics, not only concerning exchange but also of all aspects of production, distribution, and consumption. This stylized account presents Smith in a crudely Mandevillian sense: as arguing that public benefits depend on private vices. It has the pernicious effect of deflecting interest in Smith away from his supposedly primitive and unoriginal ethics and back toward his real achievements in economic theory. The Mandevillian interpretation works further harm since Mandeville, unlike Smith, reduced all motivations to self-interest and all self-interest to the vice of selfishness [5]. Smith is thus presented as promoting not even an amoral but an antimoral economics and one that is conveniently compatible with the selfish utility maximizing *homo economicus* of contemporary orthodox economic theory.

This popular interpretation of Smith’s economic ethics is of course very difficult to sustain on any close reading of WN, and it certainly clashes mightily with the ethical system Smith laid out in TMS. Its perniciousness rests partly on an understandable desire by most modern readers to sum up Smith’s contribution in modern terms and without having to read him in full. But the origins and legitimacy of this particular stylized Smith relate to an entrenched, though long thoroughly discredited, academic thesis that both separates Smith’s two books and

distorts their individual interpretation. The core of this so-called Adam Smith problem is the claim that there is a severe discontinuity in Smith's ethics between his two main works.¹ In TMS, actors are said to be motivated by "sympathy," while in WN, they are motivated by "selfishness." The most extreme version sees Smith as changing his mind between publishing TMS (1759) and the later WN (1776), with the implication that WN's endorsement of individual greed represented Smith's mature thinking about ethics and trumped whatever he had previously said.

The first problem with the thesis is that Smith published multiple editions of both books, with substantial revisions, right up until the end of his life. Thus, the fundamental change of mind attributed to him must have been more of a continuous violent oscillation than a considered judgment. There is also plentiful evidence from drafts, correspondence, and student notes from his lectures in moral philosophy at Glasgow that Smith had been developing the main lines of the analysis that would appear in WN even before the first publication of TMS. Smith appears to have had an entire system of thought in mind, of which the only books he completed occupied quite different branches of moral philosophy: ethics (TMS) and natural jurisprudence (of which WN addressed one subbranch, concerning "police, revenue, and arms, and whatever else is the subject of the law") ([2], pp. 29–39). It should not be surprising that two books about different subjects have a rather different emphasis.

The second problem is that WN and TMS do not seem to contradict each other as the thesis claims (though there are tensions, as I discuss below). Smith in WN is of course particularly concerned with the motivation of self-interest (or the desire to better one's condition), but this is not the same as selfishness, of which he was rather caustic. Self-interest is also positively defended in TMS as natural and morally praiseworthy, in its proper place (under the virtue of prudence) and as one among other motives. In this, Smith placed himself against those, like his teacher Francis Hutcheson, who saw benevolence as the only virtuous motivation for behavior and those cynics, like Bernard Mandeville, who saw self-interest likewise always as a vice (selfishness) but a publicly beneficial one. Nor is it correct to say that in TMS, actors are motivated by sympathy. For Smith, "sympathy" is the technical term for a complex mechanism in our moral psychology responsible for moral judgment. It does not motivate us directly, nor should it be confused with selflessness or the disposition to be nice to other people that the word sympathy nowadays evokes. The reason Smith talks about sympathy a lot in TMS, rather than WN, is because his sophisticated (and original) analysis of how sympathy works is the core of his system of moral philosophy.

To read Smith through the narrow conventional lens of economics vs. morality, or selfishness versus altruism, may serve certain rhetorical purposes well, but it reduces a great thinker to a caricature and makes Smith appear a stumbling block to business ethics rather than a valuable resource. Once one sets this artificially limited perspective aside, one can begin to get to grips with the real insights and challenges of this quintessential moral philosopher of commercial society.

Part II Smith's Defense of Capitalism: For Prosperity, Justice, and Freedom

Smith's defense of capitalism (or, in his terminology, "commercial society") is unambiguous but qualified. There is no inconsistency here. Reconciliation with imperfection was central to the thought of this particularly pragmatic and self-reflective thinker and can be seen in Smith's anthropological attention to human frailties, the modesty of his goals, and his forceful rejection of abstract theoretical systems as the basis of moral philosophy or political economy. Smith was optimistic about the achievements, and even greater possibilities, of commercial society in allowing more people than ever before to live decent lives characterized by material prosperity, justice, and freedom. But he was no blind zealot for the market. Smith was acutely aware of the possible ethical shortcomings of commercial society and, for example, carefully read and responded to Rousseau's powerful critiques of its materialism, inequality, and inauthenticity [3, 9].

The enlightenment concern for perfecting social order was both the background to Smith's thinking and a goal Smith eschewed. As Rousseau put it in *The Social Contract*,

The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before. ([8], I.6)

While Rousseau sought a perfect and absolute solution to the problem through his famous social contract, Smith can be understood as arguing, in both his ethics and political economics, for a society's ability to endogenously produce a decent social order for coordinating moral and economic conduct without centralized direction or coercive moral policing by religious or secular authorities. For morality, the sociological mechanism is sympathy (which we will return to), while for economics it is market exchange. Smith was not interested in what a perfect society might look like but rather with understanding the world as it is and how it might be improved. What Smith described and analyzed so well was the appearance of *commercial society* characterized by an enormously increased division of labor, dependence on strangers, formal property rights, and individual mobility.

Smith noted (following a number of previous writers in political economy) that a European peasant was now materially better off than an African king, but he attributed this not to innate European superiority but to changes in the political economy. The recent increase in the wealth of certain nations was due to the increasing role of markets in their economies, which made possible and rewarded the technical innovations and efficient organization of labor that dramatically increase the productivity of labor. That benefits the ordinary citizens of a country – i.e., the poor – in two ways. Firstly, when producers compete fairly and freely with each other to supply the public with cheaper (and better) products, there is a natural tendency for the market price to fall toward the actual cost of production, meaning less profits for producers and cheaper products for consumers. Secondly, at the

other end, the rise in labor productivity means that wage laborers (the bulk of the population) can exchange their labor for a greater command of those goods. The wealth of the nation – the ability of its citizens to command goods to satisfy their wants – is increased. It was particularly important to Smith that the poor benefit from this process:

No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, cloath and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, cloathed and lodged. ([12], I.viii.36)

That concern for fairness over and above economic efficiency was behind the vehemence of Smith's opposition to mercantilist (business-friendly) arguments for policies that would protect producer profits. Smith saw such arguments, whether for direct subsidies or competition-restricting regulations, as an intellectually bankrupt, and often morally corrupt, rhetorical veil for what were actually taxes upon the poor. Although Smith's concept of justice was concerned only with acts of commission, it still had bite. Such "taxes" are unjust because they violate fair play both in the deceptive rhetoric by which they are advanced and by harming the interests of one group in society to further the interests of another. As Smith put it, "To hurt in any degree the interest of any one order of citizens, for no other purpose but to promote that of some other, is evidently contrary to that justice and equality of treatment which the sovereign owes to all the different orders of his subject" ([12], IV.viii.30).

Such injustice is not only formal. There is an outrageous degree of iniquity in the rich and powerful classes choosing to place such burdens on the poor and powerless. Justice was central to Smith's critique of contemporary mercantilist commercial society and to his alternative proposal of a "system of natural liberty." While mercantilism had achieved a great deal, it still fell far short of creating the level playing field and commitment to fair play that Smith argued a civilized society should realize in its positive jurisprudence and institutions. In terms of a level playing field, Smith excoriated the efforts of the politically connected to write rules that suited themselves. The mercantilist system had nationalized the corporation model of the towns in the feudal system, but in doing so, it had also nationalized the "underling" ethics of monopolist tradesmen and manufacturers, who preferred to lobby collectively for self-serving rights and privileges at the political level than to compete on equal terms with others in the market. The "impertinent jealousy of merchants and manufacturers" led to ridiculous but pervasive and onerous economic regulations, but at the political level, it also promoted an invidious zero-sum view of trade that led to seeing the prosperity of other nations as your loss ([12], IV.iii.c.9).² Likewise, fair play was routinely violated by price- and wage-fixing cartels among merchants and manufacturers, while workers' combinations were the subject of severe laws and hyperbolic moral denunciation ([12], I.viii.13). It is worth noting that Smith was acutely aware of who the likely readers of WN might be and supplemented such arguments for the moral priority of justice with hard-nosed utilitarian arguments about its constitutive role in social order and economic

development. When people gain equality before the law and thus security from the predations of the powerful, they have the security they need to make the investments that increase productivity.

Freedom from constraints, freedom from domination, and the freedom of autonomy were also central to Smith's economics. Smith is most associated with the first of these, also called classical or negative liberty, because of his famous endorsement of the "natural system of liberty" (so-called *laissez-faire* economics) in which, "Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men" ([12], IV.ix.51).³ A great deal of WN is concerned with identifying and criticizing the artificial and unjustified obstacles placed in the path of ordinary people trying to get on with their own lives and better their condition. Smith argued forcefully, and in great econometric detail, that England had become richer in spite of and not because of the government's mercantilist policies (the hard-nosed utilitarian argument).

But such mercantilist regulations were wrong not only because they reduced economic efficiency by reducing and distorting competition. They were also wrong because of the insufferable impertinence of a government (or any other body) taking it upon itself to manage people's affairs on their behalf. This was not only a matter of the freedom of great merchants to engage in high international trade. Smith was particularly exercised about the eighteenth-century English laws that deprived wage laborers, whose only means of subsistence was to sell their labor, of the right to change occupations, negotiate wages, or even move around the country. Of course, that produced an inefficient allocation of economic resources (not enough wheelwrights in one place, too many in another), but even more importantly, it disrespected the right of ordinary people to make decisions on matters of the greatest concern to them, which were no-one else's proper business, and about which they best placed to judge. These policies, justified by chimerical arguments about the public good, reduced and distorted the options available to ordinary people to help themselves and through such artificial helplessness induced real hardship and destitution.

One should note that liberty was a maxim for Smith rather than a dogma, and he was in favor of regulations properly justified by the public good. For example, he argued for banking regulations which though "in some respect a violation of natural liberty" upon a few individuals were justified by the government's duty to protect "the security of the whole society" ([12], II.ii.94). And he argued for fixing the rate of interest at a relatively low level (just above the prime market rate) in order to prevent imprudent "prodigals" (subprime borrowers) and "projectors" (speculators with crazy South Sea Bubble type schemes) from getting access to credit and diverting it from prudent investment.⁴ In contrast to many contemporary economists, Smith saw prudence as a more cautious than an enterprising virtue and trusted markets to school it but not to substitute for it.

Smith also argued that commercial society produced freedom from domination (or "Republican freedom" in modern terminology). The feudal system that Smith

describes as preceding commercial society (and whose traces could still be seen in his own time in parts of Scotland) was a society characterized by direct relationships of dependence, a world of great landowners with the power of lords over their tenant farmer subjects and retainers. Such a social order caters to a pernicious human vice – pride – that all too easily becomes a vicious institution.

The pride of man makes him love to domineer, and nothing mortifies him so much as to be obliged to condescend to persuade his inferiors. Wherever the law allows it, and the nature of the work can afford it, therefore, he will generally prefer the service of slaves to that of freemen. ([12], III.ii.10)

The appearance of commercial society changed all that. In commercial society, informal webs of mutual obligation are transformed into formal consensual relationships between independent agents because these are far more economically productive. The division of labor mediated by extensive markets replaces closed relationships of direct dependence, in which some must subordinate themselves to the whims of their masters and curry favor to survive, with open networks of interdependence spread among the thousands of people involved in producing and bringing to market the most ordinary essentials of life.⁵ On the production side, this liberates workers to sell their labor without having to sell themselves. If people find the working conditions in one employment oppressive, they are free to take their labor elsewhere. In markets themselves, the very fact that people interact as relative strangers, and therefore appeal to each other's self-interest rather than their benevolence (as beggars must), means that they meet in conditions of relative equality where they must endeavor to persuade others of the qualities of their goods by the gentle arts of persuasion.⁶

Smith also believed that personal autonomy – self-determination – could flourish in commercial society, particularly through its scope for moral self-development. Increased wealth and the security that followed a proper administration of justice allowed ordinary people to reflect about matters beyond their daily subsistence. Freedom from artificial constraints and domination allowed them to control important aspects of their own lives, from religion to employment, while taking greater responsibility for how they lived. Markets themselves could be schools for certain virtues. For example, people who worked for themselves would be more industrious and temperate; people who interacted through markets would be more honest than when trapped in sycophantic relationships with masters. As a result, Smith considered commercial society compatible with the moral autonomy of its ordinary citizens and believed that such societies would exhibit more moral decency, though less moral greatness, than either classical or contemporary “savage” societies.

Nevertheless, Smith was careful to acknowledge the particular problems and limitations that life in commercial society posed for autonomy and, after extolling the benefits of free markets at great length, spent book V of WN laying out in great detail partial institutional correctives for its deleterious consequences. He noted, for example, that the division of labor could have deleterious effects on the physical, mental, and moral capacities of workers performing simple repetitive rote tasks, as in the famous pin factory. They could all too easily become “pinheads” “as stupid

and ignorant as it is possible for a human creature to become. . . incapable . . . of conceiving any generous, noble, or tender sentiment” ([12], V.i.f.50). Smith argued that a public education system could mitigate such consequences. He also worried that the anonymity of city life might diminish ordinary people’s ability to hold themselves to moral standards, since they would no longer be under the disciplinary gaze of others as they would be in a small country village ([12], V.i.g.12). When no one else attends to your conduct, Smith thought, it was less likely that you would scrutinize your behavior as you should. He worried too that religious zealotry would flourish in cities by providing a crutch for personal identity – the members of small sects tend to care very much about each other’s conduct. But though sectarian membership might head off the danger of dissipated morality and hold people to high moral standards, it was all too often based on a hubristic moral righteousness that Smith considered a travesty of real moral autonomy and, through its tendency to political factionalism, a threat to social order. This danger might be mitigated, noncoercively of course, through the official encouragement of those antidotes to superstition and gloom – the study of science and philosophy and public entertainments (such as painting, poetry, music, dancing, or drama) ([12], V.i.g.12–15).

Smith was a true “friend of commerce,” supporting the project because of its achievements and its even greater potential but constructively critical about both the shortcomings of the mercantilist society he lived in and commerce in general. His “economic” analysis is saturated with moral values. He justified commercial society for its tremendous contribution to the prosperity, justice, and freedom of its members, and most particularly for the poor and powerless in society. But he was no naive ideologue for free markets and profits. He criticized the moral character of the very merchants and manufacturers who, he acknowledged, were driving economic development and not only told them they should act better but also argued for institutional measures to restrict their worst influences (particularly by getting government out of the business of economic micromanagement). Though its promise was great, commercial society also meant the loss of valuable old ways and posed new challenges of its own. Its success was not predetermined but had to be worked for. That spirit of optimistic pragmatism contrasts markedly with contemporary critics of commercial society like Rousseau, who saw things in more absolute terms.

Part III: The Bourgeois Virtues: How to Live Well in Commercial Society

Smith’s moral philosophy was addressed to two distinct questions, which appear in different forms throughout TMS. The normative question: “Wherein does virtue consist? Or what is the tone of temper, and tenour of conduct, which constitutes the excellent and praise-worthy character, the character which is the natural object of esteem, honor, and approbation?” And what he called the “philosopher’s question”: “By what power or faculty in the mind is it, that this character, whatever it be, is recommended to us?” Or, in other words, “How and by what means does it come to

pass, that the mind prefers one tenour of conduct to another, denominates the one right and the other wrong; considers the one as the object of approbation, honor, and reward, and the other of blame, censure, and punishment?" ([11], VII.i.2). Smith's answer to the first was a virtue ethics based on propriety like classical accounts but updated for life in a commercial society. His answer to the second, which we will turn to first, was a sophisticated model of moral psychology based on sympathy.

Smith built up his account of moral psychology from an anthropological study of how ordinary people go about their moral lives. His motivations for doing so were to be true to the phenomena in question. Firstly, he had little patience for those who tried to squeeze actual moral phenomena into distorted shapes to fit an elegant conceptual system, for example, on the aesthetically pleasing principle of accounting for everything with as few principles as possible ([11], VII.ii.2.14). Secondly, Smith wanted to save the agent's perspective in morality and conducts a running battle in TMS with those, such as Mandeville and Hume, who considered the ultimate (utilitarian) causes of morality more relevant to the understanding of moral thinking than ordinary first-order moral perceptions. Smith argues that ethics is irreducibly phenomenological and that the theorist is mistaken to believe that an analysis of causes can displace the agent's point of view ([2], pp. 53–4).

That moral phenomenology was structured around an emotional economy mediated by sympathy and oriented toward harmony. Smith, in the sentimentalist tradition of the Scottish Enlightenment, understood emotions as having cognitive and normative content, incorporating actors' general beliefs and concepts and their specific (determinate) judgments of particular situations. That cognitive content could be vicariously grasped and evaluated by a critically engaged spectator who (1) considers the emotions expressed by an actor (from their expressions, talk, and actions), (2) considers how she would feel in the actor's position (sympathy), and (3) brings this together and evaluates whether the actor's emotions are more or less appropriate for the situation as she understands it.

In this account, sympathy should be understood adverbially, as applying to an emotion felt *sympathetically*, according to the spectator's own feelings when imaginatively transposing herself into an actor's position. Sympathy is thus not necessarily a concordance of feelings between actor and spectator because their assessments of the relevant situation may vary, and it is the situation that generates the spectator's sympathetic feelings, which she then uses to evaluate the propriety of the actor's behavior. Mutual sympathy, or "fellow feeling," occurs when both actor and spectator feel the same emotion (although of course even a spectator of great sensibility will not feel it to the same extent) and the concordance generates an additional pleasure, whatever the emotion in question. Smith's account of sympathy is thus more complex than Hume's, which firstly understood the transmission system in terms of direct emotional contagion rather than imaginative reconstruction and secondly limited sympathetic approval to those emotions that were beneficial to society.

Sympathy depends on what Smith considered a natural human capacity, as fundamentally social creatures, for imagining ourselves in another's situation, combined with a natural human disposition to seek harmony (also seen in our

propensity to “truck, barter, and exchange”). Of course, this power of imagination is limited in that the spectator can never entirely leave herself behind but always remains aware of her detachment from the real actor, which in Smith’s terminology is a “fortunate design” for otherwise the spectator might break the liberal principle of respecting the actor’s internal autonomy. But that separation is also an epistemic resource because the spectator is able to bring her own knowledge and sense of propriety with her to the assessment of this new perspective.

Of course, judgments about the propriety of other people’s displays of grief, joy, anger, or gratitude require an existing understanding of how the world and people work and what standards should apply. Smith argues that this too comes about through sympathy. People have a natural desire for the approval of others and an aversion to their disapproval ([11], III.i.13). Not only is the spectator capable of imagining herself in an actor’s situation but actors too can imagine how they appear to others, since all of us are continually switching between both roles. From childhood, we learn to see ourselves as others see us, to understand what others approve of and what they are unwilling to go along with, and through such discipline and direction, we gradually come to understand and internalize the prevailing moral norms of propriety in terms of what the representative disinterested bystander – any *impartial spectator* – would go along with, even if no such spectator is physically present. Smith’s anthropological approach reveals asymmetries in this system passed over by previous philosophers. For example, spectators are more reluctant to sympathize with some emotions than others, even when they are justified. They will go along with an excess of joy far more than an excess of grief or anger, because joy is more pleasant. As a result, and in a manner generally beneficial for social order, people will particularly tend to self-censor their less pleasant or unsocial passions, to lower their pitch to the level the impartial spectator can go along with.

This produces an ethics of conventional propriety that is important for social order and an important stage in moral education but not its final goal: virtue. Smith argues that as well as desiring praise, people want to be objectively worthy of praise ([11], III.i.8). They want to achieve real virtue and not merely its appearance, and this requires wisdom as well as love of virtue. As Smith puts it,

The wise and virtuous man directs his principal attention to the first standard; the idea of exact propriety and perfection. There exists in the mind of every man, an idea of this kind, gradually formed from his observations upon the character and conduct both of himself and of other people. It is the slow, gradual, and progressive work of the great demigod within the breast, the great judge and arbiter of conduct. . . . Every day some feature is improved; every day some blemish is corrected. ([11], VI.iii.25)

The impartial spectator is the “great demigod,” the device by which people can try to bridge the gap between conventional propriety and an understanding of true virtue (though always imperfectly). It provides a tool for identifying subtle dissonances between appearances and reality that goes beyond the basic reality check that social norms provide to our self-rationalizing passions and interests. It has the character of an internal Socratic dialogue, of demanding continuous critical reflection and interpretation of what we think we know, such as by rigorously testing and

sifting the quality and coherence of the values that society espouses. Smith, for example, used the European condemnation of Chinese foot-binding practices as a mirror to reveal the parallel injustice of the unexamined European custom that compelled women to wear physically disfiguring corsets ([11], V.i.8). The impartial spectator can thus operate like a ratchet to generate a more transcendent “objective” understanding of morality out of the base materials of our conventional proprieties. Smith saw moral development as an ongoing project in every individual’s life that all could in principle aspire to, even if most stopped at the level of common decency and were more focused on wealth and success than identifying and pursuing true excellence ([11], I.iii.3.2). In any case, true virtue – excellence – required moral autonomy for it depended on the development of an aesthetic sensibility for true propriety rather than the following of moral rules (except in the case of justice).⁷

Smith has been called “the last of the former virtue ethicists” [7], but his was a virtue ethics adapted to life in a commercial society and to enlightenment values of liberal individualism, and this gives it a striking demotic character: incorporating equality, accessibility, frailty, and the mundane. Smith considered that a society’s political economy, through the character of its institutions and social interactions, affected the understanding and arrangement of the virtues it endorsed. Thus, definitions of virtues such as prudence could shift and border between virtues blur, while some virtues would rise in significance and others would recede (as was the fate of courage and magnanimity in commercial society). Smith’s bourgeois virtue ethics has four major virtues, as well as such minor ones as civility, industriousness, and temperance. Prudence is the virtue concerning the proper pursuit of one’s own interests; justice and benevolence concern our relations to others; self-command concerns propriety.⁸

Prudence concerns the bettering of one’s condition and is motivated fundamentally by the desire to acquire the respect of one’s peers. It combines the “superior reasoning and understanding” of the “remote consequences of all our actions” for our interests with the self-command to resist immediate temptations ([11], IV.i.17). Thus, the prudent person has a proper concern for her health, fortune, reputation, and happiness and is cautious not to expose these to unnecessary hazard and, for example, chooses her friends carefully. She studies situations and her actions with the critical distance of the impartial spectator. She is apolitical, industrious, and frugal and thus a “public benefactor” in Smith’s economic analysis, who merits “cold esteem” from others though not ardent love or admiration. It is worth noting that although Smith’s insistence that prudence is a virtue in its own right gives it a “classical flavor,” it differs from its Aristotelian counterpart (*phronesis*) in two ways: it is tied to self-approbation (via the impartial spectator) rather than self-perfection, and it requires judgment and a sense of propriety but no great wisdom ([2], pp. 204–205).

Justice concerns governing our actions affecting others according to a “sacred regard” for the general rules of natural jurisprudence. It is a peculiar virtue in Smith’s system, a necessary foundation for any society to persist – even one upheld merely by the “mercenary exchange of good offices according to an agreed valuation,” but insufficient for a happy and flourishing society. On the one hand, it can

be seen as having a strikingly narrow remit as a “negative virtue” in which excellence is impossible because it concerns strict compliance in one’s actions with fixed rules. As Smith puts it,

Mere justice is, upon most occasions, but a negative virtue, and only hinders us from hurting our neighbour. The man who barely abstains from violating either the person, or the estate, or the reputation of his neighbours, has surely very little positive merit. He fulfils, however, all the rules of what is peculiarly called justice, and does every thing which his equals can with propriety force him to do, or which they can punish him for not doing. We may often fulfil all the rules of justice by sitting still and doing nothing. ([11], II.ii.9)

On the other hand, justice can be seen as playing a much more extensive and demanding role in moral life both in the fundamental orientation to others that it prescribes and the actions it proscribes. Justice prescribes a foundational commitment to impartiality and equality between ourselves and others that follows, Smith hoped, from the humbling recognition we come to have in the course of our moral development that “we are but one of the multitude, in no respect better than any other in it” ([11], III.3.4). The proscriptive conclusion follows that to harm others to further our interests or to violate fair play by jostling or tripping one’s competitors in the “race for wealth, and honours, and preferments” is to behave in ways that not only one’s victims but all of mankind would find abhorrent (recall Smith’s criticism of mercantilist “taxation” of the poor for private gain) ([11], II.ii.2.1).

Benevolence concerns how we should care about and attend to others. It is the second major virtue concerned with how we should behave to others and unlike justice consists of the unjuridicable, loosely defined, and contingent moral responsibilities that one owes to particular others depending on one’s relationship to them. Smith agrees with the stoics (a strong influence on his moral philosophy) that it is a brute fact about human nature that our concern for others depends upon the closeness of our relationship to them (*oikeiōsis*). But he rejects as unnaturally severe their cosmopolitan conclusion that morality requires collapsing this affective distance, so that one cares for oneself only as much as one cares for distant others. So although Smith draws the standard stoic expanding concentric circles of decreasing intimacy and concern around the moral agent – from family to community to political state to humanity in general – he argues that this natural order is also the proper order for our benevolence ([11], VI.ii Chap. 1–3).⁹

Smith’s analysis is based on the naturally declining affective concern for and information about others as one moves further from the spectatorial center. He argues that, “What is called affection, is in reality nothing but habitual sympathy” ([11], VI.ii.1.7). That is, it depends upon our ability to understand others. When one is intimately connected with others, for example, by living closely with them, one gets better and better at understanding their character and circumstances, and one’s ability to sympathize with them – to put oneself in their place and consider all the relevant circumstances – becomes more fluent and accurate until “it approaches. . .to what (the spectator) feels for himself” ([11], VI.ii.1.2). Of course, the reverse is also true, and people further away become more abstract and less knowable to the spectator. In any case, beyond the confines of one’s political state, it is not possible (at least in Smith’s time) to help them in any way. At that distance,

strangers deserve only our “good wishes,” anything more would be implausible, emotionally exhausting, and fruitless ([11], III.3.9).

Self-command concerns following propriety and has strong stoic overtones, for example, in measuring its praiseworthiness by the strength of the passions and temptations it must overcome. It is an element of every other virtue because all require checking self-love to the degree required by propriety – as represented by the impartial spectator. Yet it is also a particular character trait and thus a suitable candidate for analyzing as a virtue. For example, to subdue one’s anger because one recognizes its impropriety is to act virtuously. To check one’s anger from fear is not only less than admirable because unmotivated by propriety – the impartial spectator would not approve – but it is also incomplete, since the anger may continue to fester unaddressed ([11], VI.iii.10).

In summing up Smith’s bourgeois ethics, it is worth touching on one of the deepest tensions in his account, between excellence and decency, and how it relates to another tension, between the true interests of the individual (virtue) and the good order and prosperity of society. As Smith put it,

To deserve, to acquire, and to enjoy the respect and admiration of mankind, are the great objects of ambition and emulation. Two different roads are presented to us, equally leading to the attainment of this so much desired object; the one, by the study of wisdom and the practice of virtue; the other, by the acquisition of wealth and greatness. ([11], I.iii.3.2)

While more people in commercial society would be able to pursue truly virtuous lives than ever before, Smith expected that few would do so. That followed from the fundamental asymmetry in our moral psychology mentioned above. Because as spectators, we are disposed to sympathize more with joy than with sorrow, so as actors, “we make parade of our riches and conceal our poverty” ([11], I.iii.2.1). For Smith, it is this economy of attention that drives the “real” economy. People pursue riches, Smith argued, because wealth draws the attention and sympathetic admiration of others, who *enjoy* imagining how nice it must be to live such a life and want to emulate it. Fame and fortune thus provide a convincing and seductive simulacrum of a successful life. In contrast, the wise and virtuous, whose perception is undistorted, live a humble and frugal life that draws no such attention, though it is in reality the truly excellent path.

That effect will be particularly marked in a commercial society, where people are free to pursue fame and fortune even though that is not in their true interest. In his parable of “The poor man’s son, whom heaven in its anger has visited with ambition” Smith lays out how the desire to emulate the imagined comfort and tranquility of the rich can lead to a lifetime of extraordinary industriousness ([11], IV.1.8). Not only is such endless industriousness incompatible with the goal of tranquility but its pursuit comes at the cost of the real tranquility that is always within the grasp of anyone, poor or not. Nevertheless, from the perspective of society, this tendency is beneficial, since “It is this deception which rouses and keeps in continual motion the industry of mankind. It is this which first prompted them to cultivate the ground, to build houses, to found cities and commonwealths, and to invent and improve all the sciences and arts, which ennoble and embellish human life” ([11], IV.1.10).

Conclusion

For a quite considerable time, Adam Smith's moral philosophy has been neglected even by those who thought they knew him. The overwhelming popularity of Smith's economics, which was rightly celebrated as the foundation of a new discipline, overshadowed his moral philosophy which had to compete for the attention of the modern reader with such contemporary luminaries as Rousseau, Hume, and Kant. Over the last 20 years, that unjust obscurity has been eroded by a steady stream of excellent analysis and commentary by philosophers and historians of ideas (only some of whom I have been able to refer to in this short chapter). Their work suggests that Smith's moral philosophy, particularly his original analysis of sympathy and the impartial spectator, is an achievement comparable with his economics and of much more than historical interest.

Bringing out the moral philosopher in Smith also improves our understanding of his economics. In particular, it allows us to see the benefits and challenges of commercial society from Smith's perspective, which went considerably beyond the cold utilitarian efficiency of the ghostly invisible hand to look at how the new social order affected social interactions, values, and moral life. It also allows us to open up the question of morality and self-interest by moving past the simple dichotomy it evokes and looking instead, as Smith himself did, at its more subtle tensions and challenges, such as between moral decency and excellence or between the ethics appropriate to market competition and other settings such as the household or the firm.

Cross-References

- ▶ [Aristotle on Character Formation](#)
- ▶ [Confucian Virtues and Business Ethics](#)
- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [Duties of Justice in Business](#)
- ▶ [Property Rights Versus Governments](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)
- ▶ [Scientific Study of Morals](#)
- ▶ [The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?](#)
- ▶ [Utilitarianism](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

1. For a succinct account of the scholarly deficiencies of "the Adam Smith problem," see the excellent introduction to *The Moral Sentiments* by Raphael and Macfie ([11], pp. 20–25).
2. A point mirrored in TMS ([11], VI.ii.2.3)

3. Of course, government was still left the rather ambitious and substantial tasks of providing national defense, legal justice, and public goods.
4. See on prodigals ([12], II.iv.15; II.iii.20–25) and on projectors ([12], II.ii.69 and following passages).
5. See ([12], I.i.11) for an evocative description of the distributed production of goods in commercial society.
6. In his *Lectures on Jurisprudence* (according to his students' notes), Smith suggested a direct correspondence between the human propensity to "truck, barter, and exchange" in argument and in the market. "The offering of a shilling, which to us appears to have so plain and simple a meaning, is in reality offering an argument to persuade one to do so and so as it is for his interest" ([13], vi.56). As the eminent Smithian scholar Charles Griswold puts it, "Life in a market society is an ongoing exercise in rhetoric" ([2], p. 297).
7. Rules do play an important role in Smith's account, but they have the character of action guiding maxims rather than themselves being reasons on which to base moral conclusions. They are produced by reflection on our experiences and observations (enhanced by encountering and thinking through the moral issues portrayed in drama and literature) and, as commitments, can help us to keep to what the impartial spectator would approve of at times when it would be easy to allow momentary temptations and passions to distort our judgment.
8. The hierarchy of Smith's virtues is contended. For example, Deirdre McCloskey considers *prudence* Smith's central virtue [6], Patricia Werhane considers it to be *justice* [14], Ryan Hanley *beneficence* (active benevolence) [4], and Raphael and Macfie take the stoical interpretation that it is *self command* [11].
9. For an extended analysis of Smith's *oikeiōsis* and its anticospopolitan orientation, see [1].

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Abstract

This chapter offers a concise discussion of classic utilitarianism which is the prototypical moral doctrine of the utilitarian family. It starts with an analysis of the classic utilitarian criterion of rightness, gives an overview over its virtues and vices, and suggests an overall assessment of its adequacy as a theory of morality. Furthermore, it briefly discusses whether classic utilitarianism holds promise as a philosophy for doing business.

Introduction

This chapter addresses two questions: Firstly, is utilitarianism adequate as a theory of morality? Secondly, may utilitarianism be an appropriate philosophy for doing business? Given the scope of the chapter, we will have to restrict ourselves to the prototypical moral doctrine of the utilitarian family: classic utilitarianism.¹ At the end, though, we shall draw a tentative lesson about utilitarianism in general. Throughout, we shall attempt to conduct the discussion in such a way as to avoid a problem rightly lamented by Fred Feldman. He complains that “philosophers have set out to defend (or attack) certain doctrines without first discovering precisely *what* doctrine they desire to defend (or attack)” [1]. We shall thus proceed as follows: In the next section, we shall carefully delineate classic utilitarianism by way of an analysis of its criterion of rightness. This will make explicit the doctrine’s fundamental moral claims. After that, we shall proceed to the question whether utilitarianism is adequate as a moral conception. Armed with a list of evaluative criteria for moral theories, we shall look at its virtues and vices. Then, we shall discuss whether classic utilitarianism may be a reasonable ethical guide for doing

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business. In the last section, we shall sum up and conclude that utilitarianism ought to be rejected as a general moral theory, though it may be a reasonable moral outlook for doing business, provided it is applied within a regulatory framework which countervails its severe moral problems.

Classic Utilitarianism: The Nature of the Beast

The purport of classic utilitarianism is commonly stated either as a thesis about moral rightness or as a thesis about moral obligation. An act is right, according to classic utilitarianism, if and only if it maximizes the sum total of happiness or utility of all sentient creatures. It is obligatory if and only if it *uniquely* maximizes total happiness, that is, if there is no alternative which produces at least the same amount of happiness. This apparently simple doctrine involves a number of distinct moral commitments, to wit, consequentialism, maximization, hedonism, summation, equal treatment, and universalism.

First, let us categorize these components. The cognoscenti of moral philosophy know that “[t]he two main concepts of ethics are those of the right and the good” and that “[t]he structure of an ethical theory is (...) largely determined by how it defines and connects these two basic notions” ([2], p. 21). The components of classic utilitarianism can, hence, be classed as belonging either to the concept of right or to the concept of good. Consequentialism and maximization belong to the former (cf., e.g., [3]). Hedonism, summation, equal treatment, and universalism belong to the latter.

As a moral thesis, consequentialism (or “teleology,” as it is sometimes called) is the claim that the rightness of an act depends solely on the moral good that it brings about. Maximization specifies this dependency. It says that an act is right if and only if it *maximizes* the moral good.

The *moral* good is the good as seen from an *impersonal* perspective. What does that mean? When we consider the good from an impersonal perspective, we do not ask the *nonmoral* question “What is good from the perspective of a particular person?” Rather, we ask the moral question “What is good from a perspective which adequately takes into account and weighs the good of all morally relevant individuals?” The impersonal perspective is specified, then, by answering the following four questions. Firstly, what is good for the individual? That is, what constitutes his or her well-being? Secondly, how do we give adequate consideration to the well-being of all morally relevant individuals? Thirdly, what is an adequate method for weighing the well-being of the individuals relative to one another? Fourthly, who is morally relevant? Classic utilitarianism answers these questions in the following way.

Its answer to the first question is hedonism which claims that the well-being of an individual is to be determined by his or her mental state. A person is better off (worse off) the more (less) utility or happiness he or she experiences, where the terms “utility” and “happiness” refer to the balance of pleasurable sensations over unpleasant sensations.

The answer to the second question is summation. It says that the well-being of each morally relevant individual is adequately taken into account if it is taken to be a part of a sum of properly weighted individual well-beings.

Equal treatment is the classic utilitarian answer to the third question. It claims that the same weight should be given to the well-being of each morally relevant subject. To use a phrase attributed to the famous utilitarian thinker, Jeremy Bentham, each is “to count for one, nobody for more than one” [4].

Universalism pertains to the fourth and last question. It claims that *all* individuals whose well-being we may conceivably affect by our actions ought to be given moral consideration. Note that this formulation of universalism draws on the notion of well-being. Since in classic utilitarianism this notion is specified by hedonism, universalism takes the form of “universalistic hedonism” ([5], p. 411) which holds that the sphere of morally relevant subjects is, as Henry Sidgwick has put it, the “innumerable multitude of sentient beings” ([5], p. 404).

Taken together, hedonism, summation, equal treatment, and universalism claim that the moral good is the sum total of happiness of all sentient creatures. Maximization and consequentialism claim, jointly, that an act is right if and only if it maximizes the moral good. These theses, taken together, add up to the claim that an act is right if and only if it maximizes the sum total of happiness of all sentient creatures.

Evaluation

The evaluation of a moral doctrine requires (albeit implicitly) a set of evaluative criteria. Before we consider the virtues and vices of classic utilitarianism we should, therefore, lay bare the criteria which we shall use in our discussion. Note that at least some of them are rather controversial, as is the field of moral evaluation in general.

Evaluative Criteria

In the following, we shall assume that a moral doctrine ought to fit our moral intuitions about moral principles and moral cases (intuitive fit), avoid contradiction (consistency), class every moral act as either right or wrong (completeness), class at least one act in every choice situation as right (moral dilemmas), use only intelligible notions (conceptual clarity), make economic use of basic notions (simplicity), establish logical connections between its logical components and basic notions as well as its moral principles and case judgments (systematicity).

Virtues

In view of these criteria, how well does classic utilitarianism do as a theory of morality? First, how well does it fit our moral intuitions?

Its first component, consequentialism, appears to be quite an intuitive claim. Some authors even go as far as to maintain that it is *the* one feature of classic utilitarianism that we are most taken in by. Christine Korsgaard, for example, explains that utilitarian moral doctrines have such a strong grip on us because many of us believe that “the business of morality is to *bring something about*” [6]. Other authors have put forward similar views (cf., e.g., [7, 8]).

Maximization seems to have “a deep intuitive appeal” as well, as John Rawls remarks. He thinks that this is so because it appears to “embody the idea of rationality.” “It is natural,” Rawls says, “to think that rationality is maximizing something and that in morals it must be maximizing the good” ([2], p. 22). Similar claims can be found elsewhere in the literature (cf., e.g., [7, 9]).

As Roger Crisp notes, hedonism, too, has “long seemed an obviously plausible view” [10]. A simple line of thought developed by John Stuart Mill suggests why this may be so. Assume, firstly, that something is good for us if and only if we desire it. After all, “[t]he only proof capable of being given that an object is visible, is that people actually see it. The only proof that a sound is audible, is that people hear it (. . .). In like manner (. . .) the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it” [11]. Now it is undoubtedly true that we desire our own happiness. So happiness is a good for us. Of course, this does not establish hedonism. For we desire a host of things besides happiness – money, music, friendship, and what have you. However, it is not wildly implausible to maintain, secondly, that we desire all these things merely because they make us happy. This, then, establishes the hedonist claim that, ultimately, happiness is the only thing which matters in life.

What about summation? This principle is certainly intuitive, since it is “the most familiar operation” [12] to calculate the impersonal good. As in the case of maximization, there is an analogy with rationality which lends it some credibility. If you want to find out whether act A or act B is the better choice, it seems rational for you to take stock of your gains and losses in each case and balance them off against one another. The better choice option is the one which is more beneficial to you *in sum*. In a moral choice problem, it seems, you should proceed analogously. To work out whether A or B is the morally better choice, you should look at their respective gains and losses from all the relevant personal perspectives and add them up. The morally better option is then the one with the more beneficial balance of gains over losses.

Finally, what about universalism and equal treatment? It makes sense to look at them in conjunction, since they are closely connected with each other. Universalism requires that, in calculating the moral good, we take all sentient creatures into account whose well-being we may conceivably affect. Equal treatment demands that we weight their well-being equally. Both claims seem to embody the idea of impartiality. This ties them together and makes them appear very attractive from the moral point of view [13].

Let us move on, then, to the issue of consistency. It is generally believed that it is among the practical virtues of classic utilitarianism that it “will never entail that we ought to do something and we ought to refrain from doing it” ([14], p. 23). Consider a choice between two mutually exclusive acts, A and B. Classic utilitarianism will

either tell you to do A rather than B, if A produces more well-being than B, or B rather than A if the reverse is true. Or it will give you a choice between A and B if both are equally conducive to general happiness. In all possible scenarios, the doctrine's judgments are perfectly consistent. And there is no further possibility. So it seems that classic utilitarianism is, indeed, logically consistent.

Furthermore, it seems that the prescriptions of classic utilitarianism also fulfill the criterion of completeness. The doctrine appears to class *all* acts as either right or wrong. It may demand that you do A, if A produces more happiness than B. In that case, doing A is right and doing B is wrong. Or it may demand that you do B, if B produces more happiness than A. In that case, doing B is right and doing A is wrong. Or it may give you a choice between A and B, if they produce the exact same amount of utility. In that case, it is right to do either one and no option is wrong.

A further plus of classic utilitarianism is that it is apparently free of moral dilemmas (cf., e.g., [15–17]). The doctrine, it seems, will never judge that in a choice between A and B, both options are wrong. Either A is morally better than B, in which case it is right to do A. Or the reverse is true, in which case we ought to do B. Or A is as good as B, in which case we may do both. (It is sometimes said that if A and B both bring about very bad results, even classic utilitarianism must acknowledge a moral dilemma. After all, if all options produce bad results, there will only be wrong options available to the agent which means that there will be a dilemma. Note that this reasoning confuses a moral dilemma with a “tragic choice.” As much as any serious moral theory, classic utilitarianism acknowledges that in certain situations, the agent has to choose between the devil and the deep blue sea. But it holds that even in these cases, there is at least one option which, though it may be bad in absolute terms, is best in comparison and, hence, right.)

Classic utilitarianism seems to do well with regard to conceptual clarity and simplicity, too. It is very economical in terms of basic notions. After all, general happiness is the only key concept. That makes it very simple. Arguably, this should also make it conceptually clearer than other doctrines. In focusing *only* on general happiness, classic utilitarianism avoids elusive notions other moral doctrines rely on, for example, “desert,” “need,” or “justice.”

Finally, classic utilitarianism appears to exhibit a high degree of systematicity. It construes the right as maximizing the good and thus establishes a logical connection between the two main concepts of ethics. Furthermore, the components of the classic utilitarian notion of the good are internally connected. Universalism links up with hedonism. Equal treatment and universalism are united through their connection with impartiality. Lastly, all moral verdicts in classic utilitarianism are united by the fact that they follow from one simple standard of right and wrong.

Vices

In what follows, we shall look at classic utilitarianism from a more critical angle, reconsidering some of the above points. Let us start, as we did above, with intuitive fit.

Consequentialism, we said, is intuitively plausible, because it captures our intuition that the business of morality is to “*bring something about*” [6]. Its drawback is that it is very counterintuitive in other respects. In claiming that rightness depends *only* on goodness, it neglects other “normative factors” [18] which we intuitively acknowledge (cf., e.g., [19, 20]). Assume, for example, that you have a choice between A and B. Both promote the moral good to the same extent. However, while A involves the killing of an innocent person, B does not. It seems that this non-consequentialist consideration should at least break ties in favor of B. Another problem with consequentialism is that it apparently misinterprets the sphere of morality. Most of us believe that this sphere is limited and that not all acts are moral acts. Some acts, we think, are amoral. They are neither right nor wrong. (It is very plausible, e.g., to conceptualize moral questions as questions about “what we owe to each other” [21]). According to consequentialism, though, all acts are moral acts. For in every situation, you have a choice between alternatives, some of which have consequences – for better or worse – on someone’s well-being! Instead of going to work today, you could, for example, go to a retirement home to read to the elderly. Instead of going to play squash tomorrow, you could, for example, help your neighbor run some errands and so on. There is always an alternative which impacts on the well-being of someone!

Maximization, we said above, is plausible because it appears rational. A lot of philosophers have attacked this justification, however (cf., e.g., [22, 23]). They have argued that rationality and morality do not always go hand in hand. This criticism seems to make sense. Practical rationality is standardly interpreted as “instrumental rationality” which “instructs agents to take those means that are necessary in relation to their given ends” [24]. In contrast, in morality, the question whether the ends justify the means is a very contested one. Note, however, that this criticism is itself problematic, as it assumes that practical rationality and morality are disconnected. A different strategy to critique maximization which avoids such a “Dualism of the Practical Reason” ([5], p. xii) is to offer a unified, non-maximizing account of practical reason, as Julian Nida-Rümelin does (cf. [25]).

A number of points can be added to positively undermine maximization. To start with, it obliterates moral freedom. If an act is wrong unless it *maximizes* the impersonal good, the number of “moral options” [26] which constitute moral freedom is usually reduced to a single act (the notable exception being the case where two or more options tie for first place). As a consequence, supererogatory acts fall by the wayside. Such acts are morally desirable, but not required, since they involve substantial self-sacrifices which, intuitively speaking, go well beyond the call of duty. If there is no moral freedom, though, no brownie points can be earned by doing an especially *good* act. The best we can do is always “just good enough.” This implies, for example, that Mahatma Gandhi, Martin Luther King Jr., or Sophie Scholl did nothing especially laudable.

It seems, then, that maximization is out of touch with common-sense morality when it comes to the issue of self-sacrifice. It fails to recognize that self-sacrificing acts are laudable. But this is only part of the problem. Maximization may also *require* self-sacrifices to an unreasonable extent. Suppose you donate a kidney in

order to save a person's life. Not only will a maximizing moral doctrine like classic utilitarianism fail to see that this is an exceptionally virtuous deed. Worse yet, it will probably require that you give up your second kidney too – and thereby your life! After all, there are always people who need kidneys and some of them will be able to “use” them better than you, since they have higher life expectancies (or a more exciting life). Donating your second kidney would, thus, promote overall well-being and would, accordingly, be required by a maximizing moral conception. This is counterintuitive enough, but there is more. Suppose now you *want* to give a dear friend a kidney, though you know that this will shorten your life expectancy more than it will extend his. Maximization forbids this, since it decreases total well-being. It, thus, conflicts with our conviction that we always have “agent-sacrificing permissions” [27] to immolate our own good for the sake of helping others.

What about the classic utilitarian notion of the impersonal good? Above we reproduced Mill's justification of hedonism. On closer examination, it turns out as bogus. Mill assumes that an analogy can be drawn between the way it is proven that a sound is audible and the way it is proven that an object is desirable. But this is false. The fact that a sound is audible is proven by the fact that people hear it, because this is what it *means* for a sound to be audible. In contrast, the fact that people desire a thing is *not* what it means for that thing to be desirable. (Think, e.g., about drug addicts who desire their daily fix.) Desirability is a normative property. As such, its meaning cannot be fixed in terms of observable properties. In fact, the very attempt to do this has become known as the “naturalistic fallacy” [28]. The second part of the argument seems to be flawed too. Mill assumes psychological hedonism which claims that people are solely motivated by their own happiness. But this seems wrong. For example, parents and spouses buy term life insurances to protect their loved ones financially. Such an insurance only pays if the buyer of the policy has died, at a point in time, that is, when she is unable to feel anything. Plausibly, then, the motivation for buying such a policy cannot lie in the anticipation of increased happiness. The buyer, it seems, pursues a goal which is independent of the goal to be happy. (It may be argued, contrary to this, that the buying of the policy may make the buyer happy *now* and that this may be seen as his or her motivation for doing it. But this seems hardly plausible. To be sure, this is not to deny that the buyer will feel good about having bought the policy. It is to deny, rather, that this can be seen as the *ultimate* motivation that drives the act. It makes much more sense to say that the ultimate goal of the buyer is to protect his or her loved ones and that his or her being happy is merely a side effect of having achieved this goal.) Another well-recognized criticism of psychological hedonism is that it does not square up with classic utilitarianism as a whole. Assume, contrary to what we have just said, that individuals are, in fact, only motivated by their own happiness. It would then follow that it is psychologically impossible for them to adhere to the demands of classic utilitarianism which requires them, as we have seen, to sacrifice their own happiness for the sake of others. Psychological hedonism in conjunction with classic utilitarianism seems to violate, hence, the deontic principle “ought implies can.”

In the past few decades, many moral philosophers have proposed further arguments to discredit hedonism as a theory of value. A classic objection has been put

forward by Robert Nozick (cf. [29]). He asks us to imagine that neuroscientists have invented an “experience machine” which can stimulate people’s brains. If you plug in, you are guaranteed experiences which give you utmost pleasure – much more than you could expect from real life. According to hedonism, happiness is the only thing that counts. So you should prefer to spend your life hooked up to the machine. Many people find this counterintuitive, since it matters to them whether the experiences which make them happy are real or fake. (Larry and Andi Wachowski’s movie trilogy *The Matrix* masterfully illustrates the strength of this intuition. It revolves around the protagonists’ struggle to break free from a simulated reality.)

Hedonism can be criticized, furthermore, because it is an entirely subjective criterion of well-being. It may be seen as implausible, because “the criteria of well-being that we actually employ in making moral judgments are objective” [30] or, at least, not entirely subjective. The problem is this: “If a starving wreck, ravished by famine, buffeted by disease, is made happy through some mental conditioning (say, via the “opium” of religion), the person will be seen as doing well on this mental-state perspective, but that would be quite scandalous” [31].

Finally, hedonism assumes a questionable symmetry between pleasure and pain. It supposes that pleasures and pains of equal magnitude offset each other. Since this is so, the moral goodness of a state of affairs does not change if suffering is added, provided the same amount of happiness is added, too. This holds even in cases in which the amount of pain and suffering is enormous. Karl Popper has pointed out that this seems wrong, since there is “from the ethical point of view, no symmetry between suffering and happiness, or between pain and pleasure” [32]. Intuitively, the alleviation of suffering seems to be of much greater ethical concern than the promotion of happiness. Hedonism, however, does not acknowledge this.

Like maximization, summation can be made plausible via an analogy between rationality and morality. This analogy, though, seems again unwarranted. To recap, we said that in a self-interested choice between two options for acting, A and B, it seems rational to look at their respective gains and losses, balance them off against one another, and choose the one which is more beneficial in sum. Analogously, in a moral choice between A and B, it seems reasonable to calculate the respective gains and losses of each option from all the relevant personal perspectives and balance them against one another, the morally best option being the one with the most favorable total. Given the aforementioned asymmetry of pleasures and pains, this is untenable. It is plain, though, that there is a further problem. The analogy just does not hold. There is an obvious moral difference between the two cases. In a rational choice, the relevant perspective is that of a single individual. Balancing gains and losses is perfectly fine for that one person, since “each man in realizing his own interests is certainly free to balance *his own* losses against *his own* gains” ([2], p. 21). After all, every loss that is suffered is compensated for by an even larger gain *to the same person*. In contrast, in a moral choice problem involving more than one person, the balancing of gains and losses is more problematic. One person’s loss may be balanced against another person’s gain. Thus, summation can be criticized for not taking seriously “the distinction between persons” ([2], p. 24).

A further problem about summation is that it ignores how gains (or losses) are distributed. This has two morally problematic consequences. Firstly, summation is “supremely unconcerned with (...) interpersonal distribution” [33] and, hence, entirely indifferent to concerns of distributive justice. A situation in which my well-being is 10 units and so is yours is morally just as good as a situation in which my well-being is 20 units and yours is 0. Secondly, summation may give rise to a “repugnant conclusion” ([34], p. 387), as Derek Parfit has called it. Since it does not care how goodness is distributed throughout individuals, it does not care whether one person has 10 units of well-being or two persons 5 units or 100 persons 0.1 units. It may conceivably judge that the morally best state of affairs is one in which a 100 billion people “have lives that are barely worth living” ([34], p. 388), since total well-being may be maximal in this state. It should be noted that one way of getting rid of this problem is to depart from total well-being as a measure of the moral good. Instead, we may look at the well-being per capita. This “average utilitarianism,” of course, solves the repugnant conclusion. But it leads to another problem. “[A]verage utility could also be increased by killing the worst off” [35].

Equal treatment and universalism, we said, appear plausible, since they express impartiality. Two points can be made against this justification. Firstly, the idea that the connection between impartiality and morality is ever so close can be rejected (cf., e.g., [36]). Secondly, one may acquiesce in the idea that this connection is close, but argue that universalism and equal treatment actually (dis)favor certain individuals instead of treating everyone equally (cf., e.g., [37]).

As for the first line of critique, imagine that a friend of yours is in danger and needs your help. He or she is in a burning building, say, trapped together with other people. In this situation, should you attach the same weight to his or her well-being as to everyone else’s? It seems that you should not. In fact, it appears that you *ought*, morally, to be partial to your friend, because the two of you share a special relationship which you do not share with the others. This relationship gives you a “special obligation” to care more for him or her [38]. But special obligations are not the only justification for partialities. Arguably, we have a moral reason to be partial to those who have suffered historic injustice. And we have a moral reason, it seems, to give special treatment to those who are especially deserving, because they have done much good for us or for others in the past. Impartiality seems, therefore, not always to be a moral virtue. Hence, it cannot justify universalism and equal treatment.

The second line of critique consists in showing that the equal treatment of everyone’s interests may, paradoxically, lead to morally objectionable partialities. “If I have disabilities and you do not, then I might well get less benefit from a stock of material goods than you get from the very same stock. Now suppose you and I have exactly equal stocks of material goods. Because you are in effect a more efficient converter of material goods into personal benefit, utility will be increased here if material goods are transferred from me to you” [39]. This seems to favor you and disfavor me, though. Now, in and of itself, this may not be a problem. For, as we have just seen, there seem to be unobjectionable forms of partiality. But this particular one seems rather dubious. It turns upside down the intuitive principle that

“[b]enefiting people matters more the worse off these people are” [40]. I am worse off than you. If anything, then, I should be favored. Let us conclude, therefore, that the reasoning for equal treatment and universalism seems to be lacking a foundation. In fact, the conjunction of these two claims leads to unacceptable moral implications. It seems, however, that the blame for this is to be put entirely on equal treatment. There is nothing wrong with taking everyone’s perspective into account, as universalism commands. The mistake lies in the equal weighting of well-being. This is incompatible with special obligations and a priority of those who are badly off.

In the section above, we observed that classic utilitarianism appears to be free from contradiction. Lars Bergström and Hector-Neri Castaneda, however, point out that there may be a problem regarding its consistency when reasonable deontic principles are added to the picture [41, 42]. Assume that A is the uniquely happiness maximizing act for you in some choice situation S. It produces more well-being than any alternative act. It is, hence, right by classic utilitarian standards. Assume further that A is a complex act which consists of A' and A'', each of which can be done independently of one another. They are, then, alternatives to A in S. That is, the agent may do A' or A'' instead of A. Since A is the uniquely happiness maximizing act, A' and A'' must be wrong. Now stipulate the following deontic principle, D: If all parts of a complex act are wrong, the complex act itself is wrong. It follows from this principle that A is wrong, since both of its parts, A' and A'', are wrong. According to the classic utilitarian criterion of rightness, however, A is right. There is, hence, a contradiction.

One way to get rid of this problem is to modify the classic utilitarian criterion of rightness so that A comes out as wrong. We can do this by augmenting its criterion of rightness with D so that it says that following: An act is right if and only if it maximizes general happiness *and* not all its parts are wrong. This removes the inconsistency. Instead, we get a moral dilemma, because under this criterion, every act comes out as wrong. This shows, contrary to the prevailing view, that it is possible for classic utilitarianism to produce a formal dilemma – at least if it is combined with seemingly weak assumptions about deontic logic.

Note that a number of authors have proposed different solutions to the consistency problem which do not lead to a dilemma (cf., e.g., [43–45]). Some, however, may lead to incompleteness, as for example Erik Carlson’s proposal. It is easy to reproduce the result. To avoid the dilemma, we stipulate that alternative acts must be mutually exclusive. Since A' and A'' are included in A, they cannot be alternatives to A. Rather, A' & non-A'' and non-A' & A'' are alternatives to A, since they are incompatible with A. This removes the moral dilemma, since A' & non-A'' and non-A' & A'' are not parts of A. As a result of restricting the notion of an alternative, A comes out as right and this does not produce a contradiction. But now some acts, to wit, A' and A'', lack moral status.²

What about simplicity? Above we said that classic utilitarianism involves only one key concept – general happiness – and is therefore very simple. Many moral philosophers, however, have refused to count this as an advantage. Bernard Williams, for example, urges that “the desirability of a system of social choice can

be considered only relative to what it can reasonably be asked to do” [47]. Classic utilitarianism ignores, as we have seen, moral constraints, special obligations, moral freedom, distributive justice, and so on. If we believe, as most ethicists do, that a moral doctrine can reasonably be required to accommodate these things, we may come to share Williams’s view that “the simplicity of utilitarianism in this respect is no virtue” [47].

We also said that classic utilitarianism appears to involve a higher degree of conceptual clarity than other moral doctrines, since it draws only on one key notion – general happiness – and thus avoids notoriously unclear concepts like “justice,” “need,” and so on. But this, by itself, does not make it clear. For, as it turns out, the notion of general happiness on which the doctrine exclusively relies is itself quite unclear. Firstly, it is hard to explain how quantities of happiness can be measured and intrapersonally compared. Secondly, it is hard to make sense of the notion of a utility *sum*, since this requires interpersonal comparisons. With regard to the first problem, Jeremy Bentham suggested that the amount of pleasure (or pain) that an individual experiences should be seen as the product of intensity and duration. (Bentham’s proposal is actually more complex. In addition to intensity and duration, he mentions the certainty or uncertainty of a pleasurable sensation, as well as its propinquity or remoteness, its fecundity and its purity [48]. For our purposes, however, intensity and duration suffice to make the point.) Does this explanation help? Duration is undoubtedly a clear notion. But intensity is not (cf., e.g., [49]). How would you, for example, rate the intensity of the pleasure that you get from tasting your favorite sort of ice cream relative to the intensity of the pleasure that you get from listening to your favorite piece of music? It is hard to express this in numerical values, because the respective experiences are very different. A related problem is hinted at by Henry Sidgwick ([5], p. 127). Since our sensations are so heterogeneous, it is hard even to figure out which sensations count as instances of pleasure and which sensations count as instances of pain. For example, why do we consider both eating ice cr me and listening to music as pleasurable? What do they have in common? The notion of individual happiness, then, is in dire need of explanation. But even if this complication could effectively be addressed, a second problem would remain. How do we make sense of an interpersonal utility *sum*? As Jeremy Bentham himself conceded, in summing utilities we are adding up totally distinct entities. There is no such thing as our collective utility. There is only *my* utility and *yours*. Instead of adding them, we might as well “pretend to add 20 apples to 20 pears” [50].³

Systematicity is the last item on the list. Above we said that classic utilitarianism appears to be a very systematic doctrine and there is indeed not much to add to this. A minor point is that it appears unsystematic in at least one way. It demands to give moral consideration to all sentient beings. At the same time though, it cannot be morally binding upon all sentient beings, since some of them act only on impulse and do not have the cognitive resources to apply the doctrine. Kantianism, for example, possesses the highest degree of theoretical unity in this respect. The rationality of a being is the source of its moral obligations. At the same time, it is the reason why it is owed moral consideration.

Classic Utilitarianism and Business Ethics

Let us now turn to the second question. May classic utilitarianism be an appropriate philosophy for doing business? As we have seen above, it seems to be defective as a general theory of morality, since it focuses all too narrowly on general happiness and disregards, thereby, important moral concerns. Is it then possible that classic utilitarianism may be a reasonable moral code for business? Somewhat surprisingly, it might be, provided an adequate legal framework exists which restricts its morally problematic tendencies. The justification of classic utilitarianism as a philosophy of business is analogous to the justification of self-interested behavior. The idea is as follows: We write up a system of moral standards which is properly administered and sanctioned, so that everyone will follow it. This legal framework will ensure that moral boundaries are not transgressed. That is, it will remove certain options for actions which are morally intolerable. If economic agents choose among their remaining options in a way that promotes general well-being, this will no longer be morally objectionable.⁴

Here is an example of how this might work. Consider Sally. She is a manager who is committed to promoting general well-being. In and of itself, this is not a bad thing, so long as Sally does not transgress any moral boundaries. One day, however, she ponders whether it would promote general well-being if she had her workers beaten. She reasons that this would make them more productive, thus promoting total well-being. In order to prevent her from doing this, we have to set up the legal rules in such a way that the beating of the workers would not increase aggregate well-being. We can do this, for example, by imposing a penalty on a business practice like this which eats up any increase in utility. Taking this penalty into account, Sally would conclude that she ought not to have her workers beaten.

The suggestion to use classic utilitarianism as a philosophy of business has, however, an obvious Achilles heel. It may involve an implementation problem. As we have seen above, the fact that the doctrine transgresses moral constraints is not the only problem it has. Another problem is that it may, at times, demand enormous moral sacrifices. This, it may be claimed, is not only morally questionable. It is also incompatible with the imperative of a business environment which is to make profits (cf., e.g., [51], p. 25). After all, if a business does not make sufficient profits, it may be forced to leave the market. The worry is, then, that a classic utilitarian business ethic is impossible to implement in a market environment, since its demands may clash with the need of businesses to make profits. Whether this criticism applies depends on what the doctrine will actually demand. The answer to this question is a priori unclear and should be investigated by further research in applied ethics. It depends, roughly, on whether the “shareholder theory” or the “stakeholder theory” is correct. “[U]tilitarians favouring the shareholder theory argue that maximizing shareholder interests (. . .) will (. . .) tend to maximize overall utility. (. . .) Advocates of the stakeholder theory argue that all stakeholders (shareholders, employees, customers, suppliers, society, etc.) should be taken into consideration directly in the utilitarian calculation” [52]. If the shareholder theory is correct, the demands of a classic utilitarian business ethic may be sufficiently

aligned with the imperative of a market economy. If, on the other hand, the stakeholder theory is correct, classic utilitarianism may regularly demand that businesses sacrifice their profits in order to benefit stakeholders. In that case, a classic utilitarian business ethic would, indeed, face a severe implementation problem in a market economy. Putting this question aside, let us conclude, merely, that classic utilitarianism may be a candidate for a reasonable philosophy of business if it is applied against the background of an adequate legal system. However, we must not conclude that this exculpates classic utilitarianism from the problems we have identified above. The reason why it seems to be unobjectionable as a morality for business is that, by assumption, “elsewhere in the social system the necessary corrections (. . .) are being made” [53] on the basis of non-utilitarian moral considerations.

Conclusion

Let us recap and conclude then. We started our discussion of classic utilitarianism with an analysis of its criterion of rightness which says that an act is right if and only if it maximizes the sum total of happiness of all sentient creatures. Logically speaking, this claim is the result of combining consequentialism, maximization, hedonism, summation, equal treatment, and universalism. In the next step, we analyzed the classic utilitarian doctrine in view of its correspondence with our intuitive moral judgments, its consistency, its completeness and its potential moral dilemmas as well as its conceptual clarity, simplicity, and systematicity. *Prima vista*, we found that classic utilitarianism had something to be said in its favor on all counts. At second glance though, we had to revise this judgment. Many of the arguments supporting classic utilitarianism are unsound or, at least, questionable. In addition, there are many considerations which positively undermine the doctrine. This holds particularly with regard to its intuitive fit. Overall, then, I suggest that classic utilitarianism should be rejected as a general theory of morality. All of its components, except universalism, yield implications which are (sometimes wildly) at odds with our moral sense. However, classic utilitarianism may be a reasonable philosophy for doing business, provided it is applied within a framework of rules which incorporates non-utilitarian moral concerns and thereby countervails its severe moral problems.

Above I said that our discussion of classic utilitarianism will enable us to make a tentative pronouncement about the family of utilitarian doctrines in general. So how do we generalize our conclusion? To see this, let us look at some non-classic versions of utilitarianism. Take, for example, *preference* utilitarianism. It rejects hedonism in favor of a preference-based view of well-being, but keeps the other components of the classic doctrine on board. It may, then, conceivably avoid the flaws of hedonism. But it will inherit all the other problems associated with classic utilitarianism. The same holds for *average* utilitarianism. It rejects plain summation and avoids, thus, some of its problems (e.g., the “repugnant conclusion”). But it inherits all the other flaws of classic utilitarianism. The same holds for other versions of utilitarianism that modify certain aspects. Therefore, I suggest, cautiously, that we ought to reject as

theories of morality all forms of utilitarianism which are sufficiently similar to the prototypical case, since most problems carry over.

Admittedly, this conclusion does not come as a surprise. For quite some time, it has been a commonplace in moral philosophy to pronounce utilitarianism dead. In this connection, a famous conjecture by Bernard Williams comes to mind. He claimed that “the day cannot be too far off in which we hear no more of it” [54]. Curiously, though, it seems that the demise of utilitarianism has been greatly exaggerated. It is still “alive and kicking” ([14], p. 2), as some believe. At any rate, it is remarkably resilient in the face of severe moral complications. And it “tends to haunt even those of us who will not believe in it” [7]. Why is this so? How does utilitarianism survive, given that it is so objectionable a doctrine? I suspect that its resilience can be explained by our psychological disposition to mistake a strong “*pro tanto* reason” for a “*sweeping* reason” [55]. If an act promotes general well-being, this is certainly a consideration which, to a considerable extent, counts in favor of it. It is certainly a *pro tanto* reason. From a logical point of view, this observation is, of course, worlds apart from the utilitarian claim that considerations of general well-being are sweeping reasons. Psychologically, however, the two propositions appear to be quite close, so that a move from the one to the other seems to be only a small step which appears “so short and looks so innocent” [22]. In order not to fall into the trapdoor of utilitarianism we should, therefore, remind ourselves, as Amartya Sen urges, that “[i]t is one thing to see utility as important, which it must be, but (. . .) quite another to insist that nothing else matters” [56].⁵

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)

Notes

1. Note that the term “classic utilitarianism” does not refer to the doctrines held by classic utilitarians (Bentham, Mill and Sidgwick). It refers, rather, to a stylized moral system which involves *paradigmatic* elements of utilitarian moral philosophy.
2. This incompleteness may not be found problematic, as the following example shows: “Jones is driving through a tunnel behind a slow-moving truck. It is illegal to change lanes in the tunnel, and Jones’s doing so would disrupt the traffic. Nevertheless, she is going to change lanes (. . .). If she changes lanes without accelerating, traffic will be disrupted more severely than if she accelerates. If she accelerates without changing lanes, her car will collide with the back of a truck” [46]. Eric Carlson has pointed out that in this situation the act of (not) changing lanes arguably lacks moral status. The best Jones can do is not to change lanes and not to accelerate. So, if Jones does not accelerate, it is right for her not to change lanes. However, if she

accelerates, it is right for her to change lanes, because if she does not, she will crash into the truck in front of her. In and of itself, it is therefore unclear whether the act of (not) changing lanes is right or wrong.

3. Note that this point about interpersonal comparison is confined to hedonism which supposes that “utility” has an objective referent. Modern-day economics has dropped this assumption and has developed ways of comparing utilities, for example, on the basis of a scaling procedure: “It is, of course, possible to define a metric on utility characteristics so that each person’s utility scale is coordinated with everyone else’s in a way that equal social importance is simply ‘scaled’ as equal marginal utility. If interpersonal comparisons of utility are taken to have no descriptive content, then this can indeed be thought to be a natural approach” [37].
4. This suggestion combines two ideas. I take from Rawls the idea of a “constrained utilitarianism” which maximizes utility within certain bounds ([2], p. 281). And I use Homann’s idea that the legal framework is to be used to ensure moral standards (cf. e.g. [51]).
5. I would like to thank Johanna Griebhammer, Ludwig Heider, Benjamin Hensel, Lisa Herzog, Christoph Lütge, and Martin Rechenauer for their useful comments on an earlier version of this paper.

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Biological and Experimental Perspectives on Self-Interest: Reciprocal Altruism and Genetic Egoism

15

Hannes Rusch and Ulrich Frey

Abstract

The question how the diverse forms of cooperative behavior in humans and nonhuman animals could have evolved under the pressure of natural selection has been a challenge for evolutionary biology ever since Darwin himself. In this chapter, we briefly review and summarize results from the last 50 years of research on human and nonhuman cooperativeness from a theoretical (biology) and an experimental perspective (experimental economics). The first section presents six concepts from theoretical biology able to explain a variety of forms of cooperativeness which evolved in many different species. These are kin selection, mutualism, reciprocity, green-bearded altruism, costly signaling, and cultural group selection. These considerations are complemented by two short examples of evolved cooperative behavior, one from microbiology and one from ethology. The second main section focuses on recent experimental research on human cooperativeness. We present a brief review of factors known to impact individual human decision-making in social dilemmas, most prominently communication, punishment, reputation, and assortment. Our conclusion then draws attention to tasks for further research in this area.

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Introduction

Human Altruism and Ultrasociality

“Are humans egoists or altruists?” “What is their motivation for cooperation with other humans?” “Do they always pursue their selfish interests, or are they, at least sometimes, considerate of other people’s needs?”

These questions have been a challenge for philosophers of all times. Prominent answers are Hobbes’ pessimistic view on the state of nature: “a war [...] of every man against every man” [1] – the exact opposite of cooperation. Locke on the other hand argued that the state of nature is governed by reason, which should always lead us to realize that we are God’s children and therefore should not harm each other, as this meant that we harmed God’s own belongings [2]. Locke’s Christian stance was later opposed by Rousseau who hypothesized that in the state of nature, humans would evade each other most of the time and were only forced to live together in modern societies. This leads to envy and pride because humans start comparing themselves to others as soon as they live too closely together [3]. Hume, finally, claimed that humans cannot be understood but as social beings [4]. The state of nature, he claims, is that of groups of rational human beings having to solve problems of coordination and cooperation for which they developed, step-by-step, institutions such as law and justice.

In the following, we present contemporary approaches to the question of why humans cooperate so frequently. We restrict our view to two major domains: evolutionary biology and experimental (or behavioral) economy. These disciplines provide us with empirically informed perspectives on how human cooperativeness might have evolved and in which forms it appears in modern humans.

Today, countless empirical studies show that humans – unlike other animals [5] – cooperate willingly in various different situations. Sometimes, they even give when they can expect no reward whatsoever. Among the most prominent experimental settings in which humans display altruism – i.e., behavior with a negative net balance for the acting person – are dictator and ultimatum games.

In a dictator game, a first subject – the dictator – is given an amount of money and told that there is a second person – the receiver – to whom they can give any fraction of the money they just received. The receiver will be informed of the dictator’s decision, but has no possibility of reacting to that decision at all. Dictators are informed that the receiver will not be given any other information – particularly not about who the dictator is – so that there is absolutely no possibility of reciprocation.

Theories which understand humans as rational utility maximizers – such as the classical homo *economicus* approach (see e.g., [6, 7]) – predict that in this situation, the only rational option for dictators is to keep the money entirely for themselves because any amount they give to the receiver is lost, with no prospect of any possible future gain resulting from their benevolence.

And yet, people of all kinds of cultural backgrounds readily share some of the money they received as dictators with anonymous, unknown, and absent receivers [8].

Although the proportion of money shared varies with different cultural backgrounds, the phenomenon of altruistic sharing seems ubiquitous.

Ultimatum games are set up like the dictator game differing only in the receiver's option to either accept or reject the fraction of money offered. If they accept, the money is split in exactly the way the first person offered. If they reject the offer, both subjects receive nothing. Here again, rational choice theories predict different behavior than is actually observed. It would be rational for the second person to accept any offer greater than zero because "a bird in the hand is better than two in the bush" – meaning receiving any amount greater than zero is better than getting nothing, which is the only other option.

Yet again, throughout all cultures studied, many subjects reject offers they perceive as too low [8]. In western cultures, for example, these are offers below a margin of about 25%. By rejecting, subjects altruistically punish those who make offers below a threshold of what is perceived as fair. The exact value of this threshold again varies between cultures and individuals [9].

It is our everyday experience that those people we have anonymous one-shot interactions with usually do not try to betray or overreach us. Instead, we frequently observe acts of kindness and generosity. We are used to this, although costly acts of genuine altruism still tend to astonish us. From a theoretical point of view, altruism is even more astounding. Many theorists during the ages have conceived of our world – for human and nonhuman animals alike – as an endless competition for resources (e.g., [1, 10, 11]). Whoever manages to attain stable, exclusive, and secure access to more valuable goods, services, resources, mates, etc. than others is able to actively form the future of the group, i.e., to spread ideas, norms, values, and – most importantly in the long run – genes.

Biological Perspectives

The measure of success from an evolutionary perspective is fitness. Genes that frequently increase the fitness of their carrier in comparison to the carrier's competitors are – on average (!) – copied more frequently into the next generation and thus slowly spread through the population. Note that fitness is always a relative measure: fitness of X in comparison to Y under circumstances Z. Therefore, we can speak of adaptive, nonadaptive, and dysfunctional (genetic) traits. Trait X may well be an adaptive solution to a problem posed by circumstances Z1 while being nonadaptive (neutral to fitness) or even dysfunctional (fitness reducing) under circumstances Z2 or Z3. Keeping this in mind, we easily understand that behavioral traits promoted by natural selection will seldom be inflexible. Instead, behavioral adaptations – just like all other genetically heritable traits – mostly come as norms of reaction to certain frequently encountered problems posed by a species' environment of evolutionary adaptedness (EEA).

Now, why is altruistic behavior astonishing from the evolutionary perspective? In many situations where two unrelated organisms could cooperate for a common benefit, they face a classical prisoner's dilemma: they could create fitness benefits

for both of them if they cooperated, but each of them could gain even greater fitness benefits by defecting if the other cooperated. In game theoretical terms, defection represents the dominant strategy in the prisoner's dilemma. Even if somehow a population of cooperators appeared, this group would quickly be invaded by defectors if only one individual switched to a defective strategy, for example, by a small genetic mutation. Unconditional cooperation does not represent an evolutionary stable strategy (ESS; [12]). Evolution, it seems, imposes restrictions that promote "genetic egoism" – i.e., defective strategies for fitness relevant, competitive situations of a prisoner's dilemma structure.

Kin Selection

Of course, this is only one part of the evolutionary picture. There are several ways in which different sorts of cooperative strategies can evolve even under the restrictions of genetic egoism.

First, genetically related individuals have been excluded from our short account above. Hamilton ([13–15]) and others ([16]) pointed out that if an individual's fitness is calculated, not only that particular individual's reproductive success (its direct or Darwin fitness) has to be included but also the reproductive success of its genetic relatives (its indirect fitness). This is achieved by defining *inclusive fitness = direct fitness + indirect fitness*. Direct fitness equals the reproductive success of an individual. Indirect fitness is given by the reproductive success of its genetic relatives multiplied by the respective coefficient of relatedness r , which, for example, is 0.5 for parent-offspring relationships or full siblings, 0.25 for grandparent-grandchild relationships or half siblings, etc. Thus, we get (Fig. 15.1).

$$fit(X) = R_X + \sum_i r_i \cdot R_i$$

Fig. 15.1 The inclusive fitness of individual X is given as the reproductive success of X (R_X) plus the weighted sum of the reproductive success of X 's relatives (R_i)

This definition of fitness as inclusive fitness explains why seemingly altruistic acts among relatives can be understood as selfish acts from the genes' point of view. A strategy can promote an individual's fitness by increasing its direct or its indirect fitness. Whenever a strategy leads to a gain in indirect fitness that is greater than its costs (its reduction of direct fitness), natural selection will favor that strategy. This relation is expressed in Hamilton's famous inequation (Fig. 15.2).

$$B > r \cdot C$$

Fig. 15.2 Hamilton's rule. B is the benefit a strategy yields for an individual's kin, r is the coefficient of relatedness, and C is the cost of the strategy to the individual

Whenever this inequation is satisfied, kin selection may guide an evolutionary process. A prominent example of a strategy which evolved in this manner is the

so-called “helper at the nest” behavior. In meager times, in many species, some of the offspring stay with the parents to help raise their siblings while never reproducing themselves. This behavior, obviously, is very costly in terms of direct fitness for the helpers, but since their siblings, who usually carry about half of the helper’s genes, go on to reproduce, it is adaptive, nevertheless. They “make the best out of a bad situation.” In richer times though, when the helpers have good chances to achieve a higher fitness by reproducing on their own, their behavior changes, just as Hamilton’s rule predicts [17].

Hamilton’s concept of kin selection can explain cooperation and even altruism between genetically related individuals by reducing it to individual fitness calculations. At least in the human case, however, we observe ampler forms of cooperation than just that. So are there evolutionary scenarios in which not only relatives but also genetically unrelated individuals can individually benefit from cooperation? This question is especially interesting in the human case because current demographic results from anthropology lead to the conclusion that our ancestral subsistence groups of hunter-gatherers indeed cooperated extensively among nonkin [18]. Long-term reciprocity within groups composed of kin and nonkin is the rule, not the exception. Since humans very likely lived as hunter-gatherers most of the (evolutionarily relevant) time, these results are highly relevant for all explanations of cooperative behavior.

Mutualism

The most obvious scenario in which cooperation can evolve is when cooperation yields greater benefits than defection. Defection is not always the dominant strategy. Cooperation can be dominant in situations which do not have the structure of a prisoner’s dilemma. In game theory, these are called “win-win games” (see, e.g., [19]). Here both interaction partners benefit from (unconditional) cooperation in terms of direct fitness simply because defection would be costlier than cooperation. This form of cooperation is called mutualism [20]. A simple example for such situations among nonhuman animals is the formation of groups and herds: in a herd, every individual reduces its average risk of predation. Another example are lion males which form small collaborative groups for conquering prides of lion females. Every male in such a coalition increases its chance of reproduction by cooperation, none of them would be better off on its own.

Despite such clear-cut situations in which no one can achieve a benefit by defecting, there are more intricate scenarios which can lead to cooperation among nonrelatives. One class of such scenarios is represented by biological markets. Here, although both parties can benefit from cooperation, both parties also have incentives for defection and even deception. In game theoretical terms, these would be “trust games,” “stag hunts,” and other coordination games. Biological markets exist where individuals can choose from a group of potential social or sexual interaction partners. Adaptations for nontrivial problems posed by such freedom of choice encompass abilities to assess potential partners and one’s own “current

market value” and capabilities of calculating a comparison balance between current options and future prospects [20]. Examples for biological markets [21] include the relationship of cleaner fish and reef fish [22], chimpanzees’ exchange of grooming and other services [23], and of course many aspects of the various systems of mating – bonobos, for example, trade food for sex [24].

To sum up, mutualism can evolve rather easily, and has indeed evolved frequently, because all interaction partners benefit from unconditional cooperative strategies. On biological markets, cooperation can evolve when problems of coordination are solved. To achieve this, strategies are needed, which use mechanisms and heuristics for the detection and analysis of both risks and opportunities of cooperation. A huge variety of such strategies has evolved in nonhuman animals.

Reciprocity

When the appropriate game theoretical model for social interactions changes from coordination games to the class of genuine dilemmas, called “tragic games” [19], cooperative strategies still – at least theoretically – have a chance to evolve. Trivers [25] proposed a model of reciprocally altruistic strategies which can achieve a net fitness benefit in a “society” of strategies similar to themselves. Probably, the most prominent theoretical study on this issue is Axelrod’s computer-based tournament in which various different strategies for playing the repeated prisoner’s dilemma competed with each other [26]. The striking result was that tit-for-tat (TFT), a clear-cut, simple, and cooperative strategy, outcompeted all its rivals, although most rival strategies were noncooperative, hence presenting an unfavorable environment for “nice” strategies. TFT always cooperates in its first move with a new interaction partner. During the following encounters, it simply mirrors the partner’s choice of their previous interaction. In this manner, TFT “rewards” cooperation by continuing cooperation and “punishes” defection by defecting on the next occasion. TFT’s main advantages are: (1) it cannot be exploited by defective strategies, and (2) whenever two instances of TFT or any other cooperative strategies meet, they reap the cooperative optima. Thus, TFT can thrive in a variety of social environments and may even become evolutionarily stable. This means that no strategy can invade a population of TFTs under certain circumstances (see [26] for details and proofs).

Although there are strong theoretical arguments underlining the power of TFT (and some improved versions of TFT, e.g., “contrite tit-for-tat”; [27]), there is still little evidence that reciprocal altruism actually has evolved in nonhuman animals [20]. TFT-like strategies are cognitively demanding. They require at least the capacities to (1) recognize interaction partners, (2) remember the behavior of interaction partners over time, and (3) control momentarily affective impulses in order to achieve a later goal (see also [28]). In addition, TFT can only flourish when the probability of meeting interaction partners again is sufficiently high. These conditions, so it seems, are not met frequently in nature. A simpler conditional strategy, “Pavlov,” which partially overcomes these problems of TFT, has been

investigated by Nowak and Sigmund [29]. Pavlov, or “win-stay lose-shift,” continues to play one option as long as it leads to success and switches to alternative options as soon as “unsatisfactory” results, i.e., low payoffs, are obtained. This strategy is very robust and even able to outcompete TFT because it can exploit unconditional cooperators and does not run into defective “dead ends” like TFT if one interaction partner accidentally defects.

The major constraint on the evolution of reciprocally cooperative strategies is that they require a sufficiently high probability of encountering their interaction partners again. It can be proved that this probability must be greater than the cost-to-benefit ratio of cooperating in order for direct reciprocity to have an evolutionary chance – see [30]. For modern human societies, this requirement is not met frequently: we commonly face so-called “one-shot anonymous” encounters, but behave cooperatively in these as well. Therefore, direct reciprocity can only be regarded as a partial solution to the puzzle of human cooperativeness.

Green-Beard Altruism

Another explanation of the evolution of altruistic behavior uses slightly more intricate preconditions than the TFT-reciprocity approach. Imagine a population in which altruists have the ability to recognize other altruists and regularly band together with them for cooperative enterprises which benefit all members of those subgroups dominated by altruism. Dawkins labeled such a mechanism of self-recognition and self-preferential treatment of genetic traits in different phenotypes “green-beard effect” [31]. An additional assumption is that members of these altruist groups reap higher fitness benefits than the members of groups in which there is a majority of individuals acting selfishly. Under these circumstances, the proportion of altruists in a population can grow to a fairly high level, although altruists are regularly exploited when they meet nonaltruists. This scenario has been proposed by Sober and Wilson [32] and has received much criticism ever since, mostly because they claimed to have made a case for the existence of a group selection mechanism.

But, as Gildenhuis [33] clarifies, if we understand the ability to form groups of biased composition by recognizing others with similar prosocial tendencies as an individual-level trait – which it is – then we can use this model to understand how altruism can stabilize on the population level while being exploited on the individual level. As long as bands of altruists regroup from time to time and have much higher rates of reproductive success than other groups, altruistic traits can spread in a population – even if in the altruist-biased groups, a minority of egoists free rides on the altruists’ expense so that the proportion of altruists in that group slowly decreases.

Since we do not know whether the preconditions for this evolutionary path are met in our species or in others (see, “[Assortment](#)”), green-beard altruism remains a theoretically possible explanation for the evolution of human cooperativeness. One of the most important preconditions is that defectors must be unable to grow convincing imitations of these green beards (the recognizable indicators for the

altruistic trait) and thus invade cooperative groups. In consequence, green beards must be forgery-proof, honest signals in order to guide the evolution of cooperativeness.

Handicap Altruism/Costly Signaling

Another evolutionary mechanism, considering signals, may play an important role [34]: altruistic behavior might not be directly fitness enhancing itself. Rather, it might be a publicly displayed signal for a hidden quality (e.g., parental skills) of those individuals, the senders, who act altruistically.

The classical example for the logic of the handicap principle is the peacock's tail [35]. Darwin himself explained its evolution through sexual selection – stating increased female preference for males with impressive tails as the proximate cause – but could not give an ultimate explanation for this choice of the hens. Almost exactly 100 years later, Zahavi argued that impressive, brilliant tail plumes pose a self-inflicted handicap for males, thus being a costly and honest signal for their genetic quality, making it ultimately profitable for females to use them as a criterion for mate choice: only parasite-free peacocks are able to produce such splendid colors, which is an indicator for a good immune system, which in turn is an indicator for health and thus fitness.

Costly signals show that the sender can afford their costs – they pose a self-inflicted handicap. The signal indicates clearly that the sender has a surplus of resources. Applied to cooperation, this logic results in the simple conclusion that you can only afford to give if you have enough to give. Giving and sharing in this sense are both costly and forgery-proof or “honest.” These honest signals then benefit their senders indirectly because they become more attractive future interaction partners for those receiving the signals. Thus, the senders indirectly enhance their fitness through publicly displayed altruistic behavior because they can calculate on reaping future benefits from increased attractiveness as social partners and mates.

A thorough theoretical application of the handicap principle to cooperativeness has been carried out by Gintis et al. [34]. They provide a detailed game theoretical analysis of the relatively broad conditions under which handicap altruism can prosper and stabilize in a population. It is remarkable that – to our knowledge – the potential explanatory power of this approach has not led to more experimental investigation in this direction. One of the few commonly stated observations of a possible influence of signaling on cooperativeness is the increased willingness to give when others are watching (e.g., [36]; see also, “[Reputation](#),” and [37]).

Cultural Group Selection

Yet another evolutionary approach to human cooperativeness puts forward the idea that humans' unique level of prosociality is a consequence of humans' unique

cultural abilities. Such a level of prosociality is only paralleled by eusocial animals like bees, ants, and naked mole rats. However, all of them, unlike humans, live in genetically closely related populations. Henrich [38] presents his line of argument of this approach as follows: Altruistic individuals are beneficial for their group, but every member of that group always has an incentive to free ride on the altruists' expenses rather than reciprocating their efforts. Therefore, even if groups purely consisting of altruists existed, they would always be vulnerable to invasion by free riders although possessing a higher fitness than mixed groups or groups consisting purely of free riders. According to Henrich [38], genetically anchored altruistic traits can never stabilize, but will always be selected against by natural selection, because of the rather dynamic flow of individuals between groups in human populations. In technical terms, without further mechanisms in place, within-group selection is always (much) stronger than between-group selection (see [16, 39]). This condition prevents the evolutionary spread of group-beneficial traits. Given this, every approach to explaining human prosociality must state how humans could overcome this evolutionary barrier. Henrich and others (e.g., [40]) argue that the most viable solution to this problem is given by cultural group selection. Cultural group selection must not be misunderstood as a mechanism equivalent to natural selection. Rather, cultural group selection for cooperativeness means that groups in which altruistic behavioral traits are prevalent reap higher fitness benefits than groups without these traits, and thus, these groups grow faster than the latter. "Extinction" of groups in cultural group selection does not necessarily mean that all individuals in that group die. Instead, these individuals could also disperse into other groups or adopt other behavioral traits.

Now, how does this approach solve the within-group/between-group selection problem? The spread of behavioral traits via cultural transmission has, Henrich argues, one crucial property: it is biased towards within-group conformity. It is a well-known phenomenon that humans – but also many other species – adapt their behavior to what they perceive as the common behavior in their group. Humans, though, do this in a manner unparalleled by any other species [41]. Combined with the evolution of a punishment mechanism for those who do not conform to group behavior (e.g., "shunning"), between-group selection can become stronger than within-group selection because within-group differences are mostly leveled out by the combination of these mechanisms [42]. Punishment of nonconformist behavior has evolutionary benefits apart from the stabilization of altruistic traits, mainly through solving coordination problems, so it might have evolved before the spread of genuine prosocial behavior [43]. According to Henrich [38], the combination of punishment of nonconformist behavior and the preferential cultural learning of behavior common in a group then constitute an environment stable enough to enable the spread of genetic prosocial traits.

Unlike the other approaches outlined above, cultural group selection models specify reasons why human prosociality is unparalleled in other species. It is also supported by the finding that prosociality in humans significantly varies between

cultures (see e.g., [44–46]), which it does not in other species [38]. On the other hand, this approach relies on assumptions about the strength of cultural learning mechanisms which need further empirical investigation.

Examples of Cooperation in Primates and in Bacteria

Before we concentrate exclusively on human cooperation in Sect. 3, we will discuss two examples from the animal kingdom – biofilm production in bacteria and cooperative hunting in chimpanzees. Both are particularly interesting because bacteria show cooperation on a very basic level, whereas chimpanzees are the closest living relatives to humans.

In general, we should expect bacteria to have high levels of cooperativeness since they reproduce asexually. In consequence, their degree of kinship is very high, sometimes up to $r = 1$. In contrast to humans and chimpanzees, however, bacteria, of course, have no cognitive abilities, no social networks, and no goals in a superordinate sense.

One interesting feature of most bacteria (99%) is the production of biofilms. Advantages of biofilms include high resistance against antibiotics, physical forces, and the opening up of new ecological niches [47, 48]. However, biofilms are expensive both resource- and energywise [48]. The more individuals contribute to the biofilm, the stronger it gets. Individuals who do not contribute to the production, i.e., free riders, reap the benefits, but do not share the costs. Thus, biofilm production is a common-pool resource problem.

How is this very basic form of cooperation sustained? One important prerequisite is the spatial separation of cooperating populations and free riders. Separation can be partly the effect of the biofilm itself since it creates a new niche but also the effect of active resistance by cooperators [49]. If the exclusion of free-riding bacteria cannot be sustained, biofilm production will quickly deteriorate – the so-called tragedy of the commons – since free riders have clear fitness advantages [50, 51].

What can be learned of that? First, cooperation does not necessarily depend on complex cognitive abilities. Second, selection can favor cooperation if spatial separation (i.e., working exclusion of free riders) and few mutants are given. Third, although free riders do have lower costs in direct comparison, individuals in a cooperative group will usually outperform them. In conclusion, cooperation exists even on a very basic level without elaborate preconditions.

Chimpanzees, on the other hand, do possess highly developed cognitive skills and social networks. Some groups are successful cooperative hunters, while others seem unable to coordinate such complex behavior. In general, cooperative hunting is rare in the animal kingdom since it is not an evolutionary stable strategy under most circumstances because free riders constantly threaten to destroy the common-pool resource (the cooperative hunting activity) by not hunting, but taking their share of the prey afterwards.

In chimpanzees, the motivation to engage in hunting is egoistic since chimpanzees seem to be neither altruistic nor mutualistic [52]. Preconditions for the forming

of a group include a common history of food sharing [53], not too large differences in age and dominance and strong kinship relations [54]. It does play a role which individuals are in a group and which habitat the group lives in since these factors determine (among others) the cost-benefit ratio for each individual [55–57].

The hunt itself is an extremely complex 3-D coordination game where experienced hunters take key roles. It takes up to 20 years to become a proficient hunter, to anticipate possible escape routes of the prey, and to know which role to play. The contribution of each individual during the hunt is duly noted and is accounted for when the prey is distributed [58].

Again, what can be learned from cooperative hunting in chimpanzees? Complex social rules, roles, and proportional fairness are not unique to humans. It takes years and considerable cognitive abilities to solve such notoriously hard coordination problems. Solutions like that are instable – as soon as one greedy and dominant individual reverts to snatching more than its share, other skilled hunters stop hunting in the group and hunt on their own [58]. Thus, one of the key elements for cooperation to come into existence is an advantageous individual cost-benefit ratio.

These insights about cooperation in nonhuman creatures and the above theoretical explanations take us to the question on what human cooperation really depends. The field of experimental economics has shed much light on this question during the past decades. We will now turn to that evidence.

Experimental Perspectives

Today, there is a veritable “industry” of conducting experiments on cooperation-related questions. Virtually thousands of different experiments have been done. Although they have shed much light on many questions, a consensus or a theoretical model of cooperation able to explain cooperation generally under diverse circumstances is not to be expected soon. However, there are some robust results that occur again and again, even in very different settings and cultures. This section focuses on these results, particularly those known to reliably enhance cooperation in humans.

One “work horse” of experimental game theory is the public goods game (PGG). These games are repeated *n*-person prisoners’ dilemmas. Here, in a group of subjects, subjects each receive an endowment of tokens and may either keep them for themselves (private pool) or invest parts or even all of it in a public pool. The experimenter usually doubles the amount paid into the public pool (to simulate the enhanced efficiency of cooperation in a group) and pays back an equal share of that amount to all subjects irrespective of their contribution. One extreme outcome is that all players behave egoistically (i.e., invest nothing in the common pool); therefore, no public good is produced. The other extreme consists in all players behaving altruistically by investing everything into the pool which means that the social optimum is reached. The social optimum always remains susceptible to free riding, whereas the all-egoistic extreme is the Nash equilibrium predicted by game theory. Although there are other famous games like the dictator and ultimatum games [59, 60], we will focus on PGG in the next sections.

Flexible Strategies of Humans

The first interesting aspect of human cooperative behavior is that it seems to be very adaptable – according to circumstances. Although there seem to be recurring types of players (“pure altruists,” “pure defectors,” “conditional cooperators,” [61]), humans switch strategies swiftly if settings change [62]. Twenty-seven percent of complete free riders (i.e., subjects who do not contribute anything to the public good in PGGs) in one study switch to full cooperation when they change from an institution without punishment to one with it. Moreover, 70% of all subjects who switch from a punishment institution to one without reduce their contributions. Strategic changes are also dependent on the perception of others (“How altruistic are they?” “Can they be trusted?”), the settings (“Is the setting fair to all or asymmetrical?”), and the motivation. Conditional cooperators, in particular, make their contributions dependent on the contributions of others (more on conditional cooperators, e.g., [61, 63, 64]).

However, it is far from easy to identify the respective strategies of subjects. One reason is that subjects, when asked, are often unable to produce a coherent strategy. In addition, introspective reports are notoriously unreliable. In consequence, only actual contributions may be used to deduce the strategy behind them.

Let us begin with one of the most robust results in PGG. On average, almost worldwide subjects contribute around 50% of the endowment to the public pool in the first period (see Fig. 15.3 below). This surprisingly high mean contribution decays rapidly to 0–20% in the last period. Usually, the last period shows an additional sharp decline since players are very much aware of the fact that they cannot lose future benefits by defecting in that last period.

Parameters Influencing Cooperation Levels

There has been much research on measures that influence cooperation. Less research has been done on the effects of age, gender, educational level, and socioeconomic background. The evidence concerning them is sparse and conflicting. However, increasing age seems to have a slight correlation with higher cooperation levels [66–68].

Furthermore, group size does not have a negative influence on cooperation levels [69], although this has been repeatedly posited theoretically (e.g., [70]). Anonymous cooperation, however, does have a clearly negative effect [71] (see Section “Reputation”).

There is evidence that humans do not learn from failed cooperation [69] and that the amount of possible earnings (in some settings, up to three monthly wages may be earned for a few hours of play) does not influence altruistic behavior [72].

It is unclear why important social variables like gender or educational level have no or little influence on cooperative behavior. However, the fact that there are only few clear indications may be simply due to missing data. The result that the possibility of very high earnings does not alter behavior substantially is even more surprising. Cultural influences, in contrast, do change cooperative behavior [73].

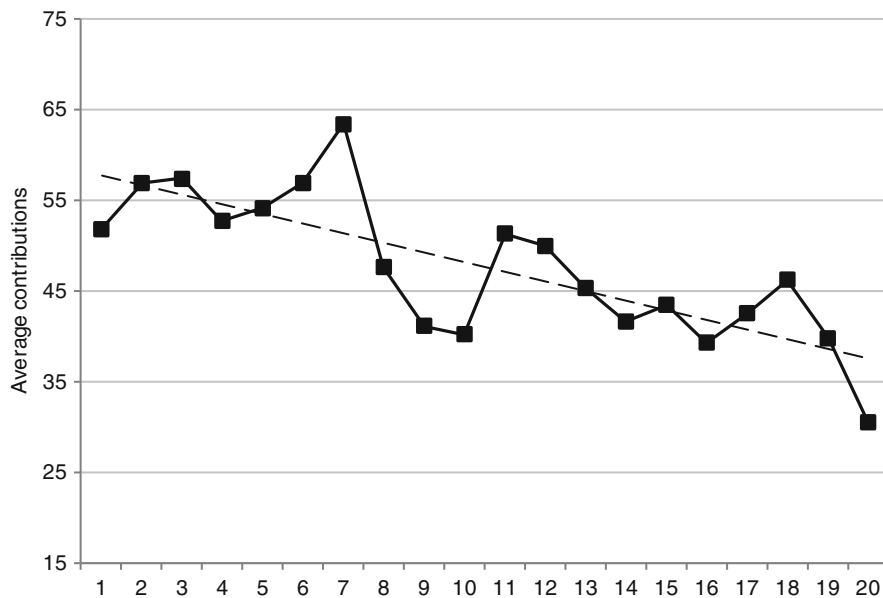


Fig. 15.3 Typical decay of contributions in public goods games (Data with permission from [65], our chart)

Communication

The largest increase in cooperative levels can be achieved by introducing the possibility of communication in laboratory experiments. Throughout many studies, cooperation is boosted by allowing individuals to communicate with others (see, e.g., the surveys of [74, 75], and [66]). Contribution levels of up to 98% of the endowment can be reached compared to 47% without communication [76]. If the settings are more realistic, e.g., in common-pool resource games, the difference is even greater: in a study by Ostrom [77], for example, efficiency reaches the social optimum – which is an increase of 65% compared to the baseline with no communication. The advantage of communication is that it has almost no costs, compared to mechanisms like punishment (see, “Punishment”).

This has important consequences for economic theory since even promises which cannot be enforced by any sanctions – so-called cheap talk – are often kept and are meant sincerely in about 80% of cases in such and similar situations [78].

When communicating, subjects first focus on what is the best strategy for the group, that is, they try to figure out what situation they are in. Depending on the settings, this seems to be surprisingly hard for many of them. In consequence, one person in the group able to explain the best strategy may foster cooperation just by pointing out the social optimum to the others. Second, subjects in fact try to agree on a strategy – which in most treatments is difficult, since the actual strategic choice is independent of previous promises. Nonetheless, people do get emotional when

defectors undercut their efforts to cooperate. A notable problem with communication is that subjects have substantially more problems to come to an unanimous agreement than just a majority vote [77] which may lead to suboptimal outcomes in some groups.

Punishment

Punishment is another important mechanism to increase cooperation. Not only is it ubiquitous in our societies (courts, police, etc.), but it has also been researched extensively in laboratory settings.

Punishment means that subjects receive the option to invest part of their endowment to impose fines on other subjects. The typical ratio used is one token cost for three tokens fine. That means, if, for example, three tokens are invested in a fine, the punished subject loses nine tokens. Figure 15.4 below shows that punishment can lead to high and stable contributions, whereas without it, the typical decay sets in.

It is remarkable to what extent the possibility to punish defectors increases contributions – bringing it close to the social optimum (see also [80]). However, there are a few points complicating such results. First, sanctions depend on their effectiveness, i.e., “How much do I have to invest to punish another player?” [80–82]. Second, free riders are not the only ones who are punished, but there is a significant amount of punishment against high contributors, the so-called antisocial punishment ([83]). Moreover, there is counter-punishment ([84]), i.e., people who punish are punished by the punished as a kind of revenge. Both, of course, are highly detrimental to efficiency, i.e., the amount of money remaining when all costs (investments in punishment and punishment costs) are subtracted.

Taken together, efficiency in punishment treatments is often smaller than in treatments without punishment (e.g., [65, 82]) since there are costs for both the punisher and the punished, which have to be subtracted from the overall earnings, thus lowering efficiency considerably.

However, efficiency may be better in the long run since expenditures for punishment decrease drastically from the first round to later rounds (Fig. 15.5, [85]). This can be seen in common-pool resource systems, too. Punishment is not only delegated from one individual to a group (a council, the local jurisdiction, etc.), but sanctions are typically graduated. The first violation of group norms often results in a very mild disciplinary measure or even a reprimand only. Repeated offenses are then dealt with sanctions increasing in severity.

Reputation

Reputation is another very effective way to increase cooperation levels. The image of a person, a company, or a nation is an important asset. Again, reputation building is ubiquitous in our societies – see, for example, Amazon, eBay, or any other

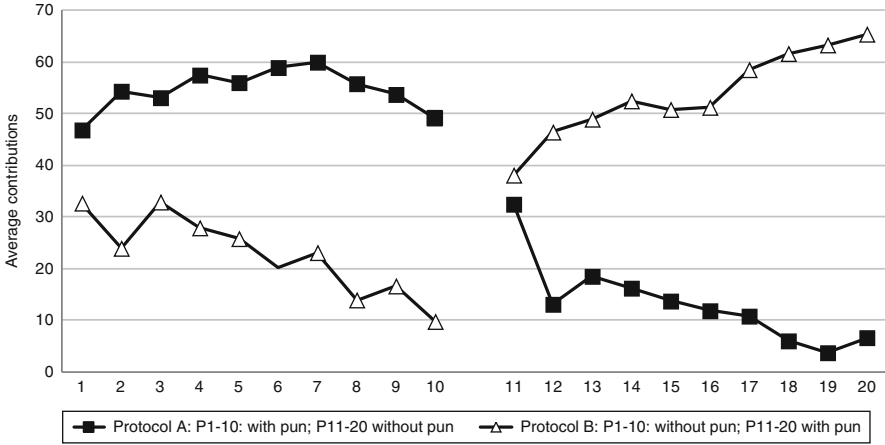


Fig. 15.4 Comparison of average contributions in a PGG with punishment and without punishment (pun); subjects in *protocol A* played the treatment with punishment first and then the treatment without; *protocol B* vice versa (Data with permission from [79], our chart)

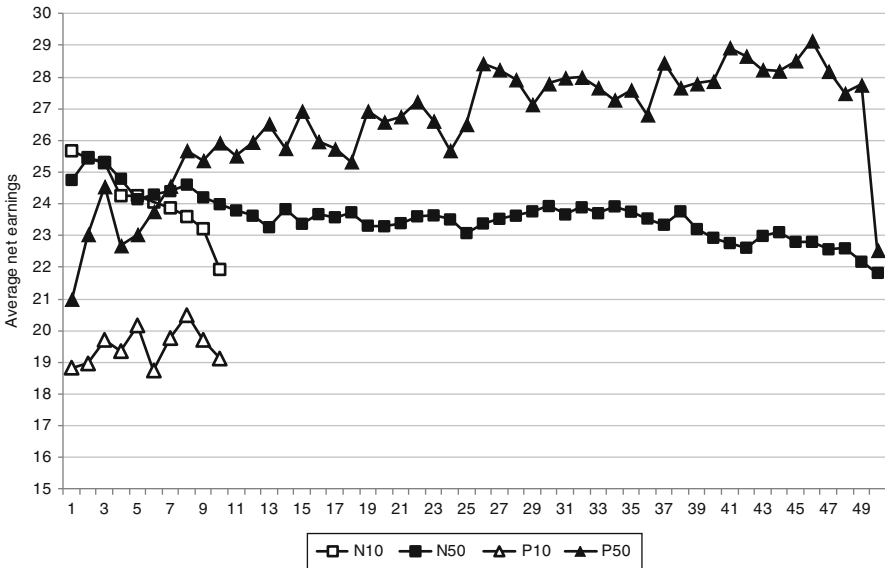


Fig. 15.5 Comparison of earnings in treatments with (*P*) and without punishment (*N*) in short- (10 periods) and long-term (50 periods) PGG (Data with permission from [85], our chart)

Internet platform, where reputation is a decisive factor for sales. For companies, the right image can be worth billions of dollars – think of Apple versus BP. In the laboratory, cooperation levels remain high (95% against 53% of endowment in the baseline [71]) if subjects are allowed to build up reputation by giving

generously in reciprocity games (see also [86]). Results from other experiments and real-world data suggest that persons behave in a more cooperative way with less rule breaking and defection when they know or suspect that they are observed [36]. The cues for this can be very subtle – for example, an ornamental eye on a box.

Reputation is especially important in situations where the other party is unknown, hence its importance in trade and on the Internet in particular. To build up a good reputation is time-consuming, costly, and a long-term effort. A reputation for being a trustworthy and reliable cooperative partner is probably a costly signal (see [87]). On the other hand, it could be used to attract other cooperators and thus be useful in the long run.

Assortment

Assortment refers to individuals actively searching out other high cooperators and avoiding free riders. This presupposes the ability to discriminate between cooperators and free riders: suppose cooperativeness is a stable disposition in individuals' behavioral repertoires, do humans possess the ability to reliably discriminate between potential cooperators and defectors?

Indeed, Frank et al. [88] found that subjects were able to predict their interaction partners' decisions in a prisoner's dilemma game better than chance when they were allowed to interact with them for 30 min before the actual game was played. In a study by Fetchenhauer et al. [89], subjects achieved a comparable quality of predictions when they were presented 20-s silent video clips of target persons and asked to assess how these would decide in a dictator game.

The general problems of assortment approaches are that (1) recognition of cooperativeness must be reliably better than chance and (2) defectors who mimic signals of cooperativeness must be ruled out (see [90]). As long as defectors are somehow able to sneak into cooperative groups, they will reap higher benefits and flourish, thus leading to the decay of cooperation.

In humans, assortment with other cooperative persons might be a mechanism readily used by subjects when the possibility for it exists. In a study by Page [91], subjects have to pay a little fee to be allowed to switch groups. After every third round, subjects could decide to rank their fellow group members. The first rank indicated the most preferred partner in future interactions. Correct information about all contributions of all individuals in the past rounds was available. Subjects frequently used this option: 94% of all subjects ranked at least once, and a surprisingly high 79% of all subjects took part in each ranking round. In consequence, free riders ended up in groups with other free riders and little payoff. On the other end, the most sought-after cooperators played in highly profitable groups which played near the social optimum. On average, contributions rose by around 30% compared to a baseline without this combination of assortment and reputation building mechanisms.

Apart from the mechanisms discussed above, there is a host of other parameters known to influence cooperation significantly as well.

Framing Effects

It is well known that humans are sensitive to context. There is an extensive literature in cognitive psychology about framing effects (see e.g., [92, 93]). Most heuristics are suited only for a certain, specific environment [94]. It is therefore no surprise that even very subtle manipulations in the wording of instructions in experimental games, for example, mentioning the word “fair,” increase contributions by about 20% [75]! Other studies find large differences just by switching “someone” to “matched partner” in the instructions [95].

In real settings, this effect has been demonstrated for a substantial number of subjects (32,961) [96]. Students at the University of Zürich have to re-register each semester. On the respective form, there are two checkboxes for donations to two public funds at their university – one for foreign students and one for students in financial difficulties. Until 1998, the situation was as follows:

Before the winter semester of 1998, students received two invoices and had to choose between the two; one with the amount of the compulsory tuition fee on it, and the other with the amount of the tuition fee plus the amount due for contributions to both Funds.

After the year 1998, the text changed so that students:

[...] have to tick boxes to decide if they want to donate money to one or the other Fund, to both or to neither of the Funds. 1 month later, they receive an invoice with the compulsory tuition fee plus the chosen amount for the Social Funds. ([96], p. 77)

From an economic standpoint, these two decisions are completely identical. The results, however, are not: students' contributions to both funds rose from 44% to 62%.

If framing indeed plays a major role, then all laboratory experimental settings are deficient in some way. Since they are not real and subjects know that they are being tested in an artificial setting, their behavior could deviate significantly from their usual choice in the real world. This suspicion is supported by the few studies that link experimental rigidity to real-world environments [77, 97, 98]. Some researchers even found completely divergent behavior [99].

Another aspect that has to be taken into account is that humans seem to have an appreciation for fairness. It seems to be important that – whatever subjects perceive as fair (in most cultures a division of 50:50) – strategies have to be fair in some way. Worldwide around 71% of all subjects offer between 40% and 50% of the endowment in ultimatum games; only about 4% offer less than 20% [60, 100]. The importance of fairness can also be supported from modern political philosophy where fairness is one of the central concepts [101].

Additional Influences

Besides the mechanisms and parameters mentioned, there are lots of other factors influencing cooperation levels to be considered. We will restrict ourselves to two important ones. The first factor is known as marginal per capita return (MPCR).

This simply means as follows: how much of their investment into the public pool do players get back? Not surprisingly, the higher the return, the higher the willingness to contribute in the first place [66, 69, 102, 103]. In addition, the percentage of free riders is lower with a higher MPCr.

The second factor has been described as “integration to markets” or “level of globalization.” There is a high correlation between being near to markets and experienced in trading goods and trusting strangers in market transactions and the willingness to contribute to public goods [59, 104]. One study found that the probability to contribute to the public pool (the global pool in this particular experiment) of the “most globalized” individuals is 77% (from the USA); the probability for the “least globalized” is only 17% (Iran) [104].

There is one further very important result from [89] whose relevancy for game theory has apparently been underestimated. This study used an iterated prisoner’s dilemma game, but tested a sequential version as well. Sequential means that the decision of the first player (A) was known to the second player (B). Now, the prediction is clear – if a subject knows that player A cooperates, then defection is clearly the best option. However, quite surprisingly, 61% of American, 73% of Korean, and 75% of Japanese subjects (players B) cooperated as well after A cooperated! This is not due to confusion since 88% of Japanese and 100% of American and Korean subjects defected as a reaction to a prior defection.

It is difficult to interpret these results, but one suggestion from the authors is that humans have a cognitive mechanism they call “social exchange heuristic”: “The SEH is a robust psychological mechanism which makes people seek mutual cooperation in social exchange.” ([96], p. 87). This, of course, does not answer the question of why and how this mechanism could evolve in the first place.

Conclusion

The question as to why humans are such a cooperative species, unparalleled in nonhuman animals, has been under interdisciplinary investigation for more than two decades. The formal toolbox of evolutionary game theory enabled researchers to map possible pathways along which cooperative strategies might have evolved. This area of research is very much alive and constantly expands in numerous directions. Models and simulations of evolutionary effects of different mechanisms for amplifying and sustaining cooperation abound. For recent reviews and classifications of this vast literature, see [30] and [105]. Literature on theoretical pathways for the evolution of cooperation is complemented by experimental economics. For overviews, see, for example, [63] and [80]. In our article, we tried to review the most general and well-established findings of both fields. (Side note: it is encouraging to see how fruitful and successful interdisciplinary research can be. Cooperation research is propelled by results from such diverse disciplines as theoretical and evolutionary biology, experimental economics, behavioral ecology, evolutionary psychology and anthropology, philosophy and others.)

However, a synthesis of generally acknowledged results is still lacking in cooperation research. Many possible pathways for the evolution of cooperation

have been widely accepted, yet no consensus has been reached which way human evolution actually took. In addition, no consensus has been established on the ranking, scope, logic, and ultimate ends of the psychological mechanisms which make humans act altruistically in the experiments mentioned above.

Another very prominent open question in cooperation research is: “What exactly started human cooperativeness?” There is a good understanding of the developmental paths along which a critical mass of conditional cooperators could have thrived and stabilized at high rates in ancestral human populations, but theories diverge on the question where this critical mass came from. Suggestions here encompass cultural group selection [38, 80], cooperative breeding [106], and side effects of shared intentionality [107] to name but the most prominent. While some problems continue to puzzle researchers, others have been solved and have given rise to new, more specific questions.

Cross-References

- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [Moral Implications of Rational Choice Theories](#)
- ▶ [Scientific Study of Morals](#)

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Part 4

Kantian and Hegelian Thoughts on Modern Economics

Karsten M. Thiel

Abstract

This chapter is an introduction to the categorical imperative and its application. The categorical imperative is applied in order to find out about the moral worth of a particular action. However, Kant does not apply the categorical imperative to actions immediately. In fact, he evaluates actions by reflecting on the maxim inherent to an action. It is important to realize, first, that the fact that a particular action has moral worth does not imply that this action ought to be accomplished. Second, an action with no moral worth is not immoral, at least not necessarily. This chapter focuses on the most difficult case of actions, which Kant calls action in conformity with duty. Most interpreters argue that Kant is a purist and a rigorist for whom an action in conformity with duty cannot have moral worth. This chapter, however, questions this view.

Introduction

Kant's ethics is prominent in business ethics, even more than virtue ethics, and it is the categorical imperative that provides a major resource for many business ethicists ([1], p. 57). Most Kantians might be astonished about this situation as they think of business and ethics as two separate domains which have little in common because, for Kantians, actions are either profit-oriented or moral. In their view, the very idea of business ethics is a contradictory one. Do business ethicists who refer to the categorical imperative misinterpret Kant? Or is it the traditional Kantians who are wrong? Those familiar with Kant might assume that neither of them is

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wrong, for they know by experience that Kant often is much less clear about things as it seems to be. This gives reason to reconsider whether and, if yes, how the categorical imperative goes together with profit orientation.

It should be noted that any approach that centers on the categorical imperative is very selective with regard to Kant's ethics. Kant introduces and discusses the categorical imperative in his *Groundwork of the Metaphysics of Morals* of 1785. It is not the only subject of the *Groundwork*, maybe not even the most important. Moreover, the *Groundwork* is not Kant's only contribution to moral philosophy. It is followed by his second critique, the *Critique of Practical Reason*, in 1788 and by his *Metaphysics of Morals* in 1797. If it were mainly the categorical imperative that were dealt with in business ethics, then a great deal of Kant's ethics would still left to be discovered for business ethics. Interestingly enough, the later *Critique of Practical Reason* (1788) and the *Metaphysics of Morals* (1797), although they are no less important for Kant's ethics, play a minor part not only in business ethics but in almost any current interpretation of Kant's ethics. The focus on the *Groundwork* thus is not specific to this chapter.

A close reading of the first two sections of the *Groundwork* will make evident what the categorical imperative is about. On this basis, it will have to be decided whether profit orientation has, or can have, any moral worth and whether there even is, or can be, an obligation to increase profits. This means to apply the categorical imperative in order to evaluate the fundamental principle of business, if it is correct that the business of business is to increase profits, as Friedman ([4], p. 178) famously put it. Business ethics is no homogenous discipline, and evaluation is a task that is alien to some approaches to business ethics. Some business ethicists therefore might be uncomfortable with the idea of the fundamental principle of business being evaluated. With respect to business ethics, the approach of this chapter thus is not neutral then.

According to the many approaches to business ethics, there is no unrivaled definition of business ethics. For some business ethicists, business ethics is a branch of applied ethics, and applied ethics is itself often understood in contrast to ethical theory ([1], p. 47). This understanding is common since there are numerous branches of applied ethics. It rests on the idea of ethical theory being applied to some specific domain like business, sports, and medicine. The idea of application suggests, or even implies, that there is a primacy of ethical theory and that several varieties of applied ethics all are derived from ethical theory. From a historical point of view, however, there is no such primacy as can be learned from the history of business ethics. In the USA, business ethics emerged from management theory, not from ethical theory ([5], pp. 21–22). Initially, it was not called business ethics but became well known as the stakeholder approach to management, in contrast to the then established shareholder approach [3]. Like all management theory, the stakeholder approach is decision-oriented. As by now, business ethics has become a discipline independent of management theory, it is not strictly decision-oriented any longer. It is this shift away from orientation toward decisions that prepares the ground for an understanding of business ethics which allows evaluating the fundamental principle of business. This kind of business

ethics encompasses evaluation, justification, or critique of market systems, regulation of markets and firms, self-regulations of firms, and the activities of businesses or individuals working for, or in interaction with, businesses. This broad understanding of business ethics reaches far beyond the domain of applied ethics and ethical theory, and, in consequence, political philosophy becomes more and more important for business ethics ([6], p. 428).

Within the German tradition, business ethics as a discipline of evaluation, justification, and critique of markets and market-related institutions is called *Wirtschaftsethik*, whereas business ethics as a decision-oriented discipline is called *Unternehmensethik*. Yet the German concept of *Wirtschaftsethik* is ambiguous. In its original meaning, it refers to all kinds of rational organization of life relevant to economic performance. For Max Weber, who was one of the first to use this notion, it is religion and, in more secular ages, ethics that have the strongest impact on rational organization of life. Originally, however, Weber's concern was to understand why capitalism became immensely productive among protestant sects. Insofar, his approach is a hermeneutic one. Hermeneutics still is prominent in business ethics: Sen, for instance, insists that only business ethics can help understand how business actually works in practice and that "it is not adequate to concentrate only on the motivation that makes people *seek* doing business" ([16], p. 47). Business ethics of this kind is not evaluative and might therefore be unable to adopt the idea of the fundamental principle of business being evaluated.

What Is the Categorical Imperative About?

The question what the categorical imperative is about inevitably involves the more fundamental question what the *Groundwork* is about. In his preface, Kant explains that it is the aim of his *Groundwork* to search and establish the supreme principle of morality (IV 392).¹ It is important to note that Kant thinks that there is exactly *one* such principle. Kant does not defend this claim although it indicates a shift in his way of thinking. Until his *Groundwork*, Kant thought that there are two principles of morality and not one ([13], p. 22). Yet the *Groundwork* is important not because it inaugurates the idea of a single principle of morality. In fact, for Kant, an investigation into the principle of morality is important because it has some positive impact on practical issues. The benefit results from the fact that "morals themselves remain subject to all sorts of corruption as long as we are without that clue [*Leitfaden*] and supreme norm by which to appraise them correctly" (IV 390). Kant thus thinks that morals are constantly deteriorating and that they need to be kept up. Yet a standard is needed in order to reestablish them according to an original plan, as it were. It seems that he compares morals to an old building that is subject to weathering and decay. He then tries to find the plan of the building in order to keep it up and restore those parts that have been lost. Morality, however, is not like an old building. Although it is ramified similar to old buildings that are often mazy, morality does not require a manifold of floor plans and other sketches as is the case with buildings and, in particular, old buildings.

Morality, by contrast, requires nothing but a supreme principle in order to be restored. This makes evident how ambitious Kant's project actually is.

If Kant wants to be able to restore morals according to a supreme principle, this principle cannot be gained from an empirical analysis of morals. To be precise here, analyzing morals can yield a supreme principle, and this principle can correctly be called supreme principle of morals. Such a principle would be inapt for Kant's purpose, however. If there were some morals that did not conform to this norm, it would be impossible to decide whether it is the norm that is wrong or the respective morals that need to be restored. A supreme principle derived from morals as they are would therefore be inappropriate for appraising morals. But this is exactly what Kant wants. He thus cannot gain the principle in question from empirical analysis of morals. In consequence, he has to start from somewhere else. Those familiar with Kant's philosophy will not be surprised that Kant thinks that the norm can be found in reason. Kant concludes that it is "indispensably necessary [. . .] for investigating the source of the practical basic principles that lie a priori in our reason" (IV 389–90).

So far, it has been made clear that Kant seeks a supreme principle of morality in order to appraise morals, and the categorical imperative will turn out to be this principle. It has also been made clear that Kant thinks that the practical basic principle lies a priori in reason. Nevertheless, Kant does not begin with reason but with "common rational moral cognition" (IV 393). Common rational moral cognition does not know about the categorical imperative, at least not immediately. Two other concepts are central to common rational moral cognition, namely the good will and duty. If there is anything that common rational moral cognition can think of as good without limitation, then it is a good will (IV 393). Kant provides no precise definition of a good will. He clearly does not mean a morally restrained will that is not good originally but has been made good. In fact, he thinks of a will that is originally good ([15], p. 34f). The concept of duty, then, "contains that of a good will though under certain subjective limitations and hindrances, which, however, far from concealing it and making it unrecognizable, rather bring it out by contrast and make it shine forth all the more brightly" (IV 397). Which are these limitations and hindrances that make the good will shine forth all the more brightly? Actually, there is but one, namely, inclination. According to Kant, action can be motivated by inclination. But other kinds of motivation are possible. There also is action from duty, as Kant puts it. In this case, however, it would be improper to say that such action is motivated by duty. And, at last, there is action in conformity with duty, as Kant puts it. (IV 397–9) The most simple of these three cases is that of an action that can be traced back to inclination and the respective action is motivated by inclination. How, then, is an action from duty motivated? Kant claims that "*duty is the necessity of an action from respect for law*. For an object as the effect of my proposed action I can indeed have *inclination* but *never respect*, just because it is merely an effect and not activity of a will" (IV 400). An action from duty is thus motivated by respect for the law, and, moreover, this respect for the law is an activity of a will. Duty thus exhibits an activity of a will instead of inclination. This will is no other than the good will. The good will thus turns out to be the negation of inclination. As its negation, it is contrasted with inclination which indeed makes it

“shine forth all the more brightly.” Despite of the strict conceptual distinction of inclination from the good will, actions can be motivated by both and be in conformity with duty, as Kant puts it. Kant might have in mind cases like that of a person who seeks to help other people because it makes them feel better and not because of altruism. It thus is inclination that motivates such a person to help other people. At the same time, however, the person is obliged to help other people and might have this in mind, too, when helping other people. The motivation is thus mixed. As there is inclination involved, the person does not act from duty, but in conformity with duty.

But does inclination really limit and inhibit the good will, as Kant says? This has to do with the fact that the concept of action from duty is hard to apply. It is impossible to show that no inclination is involved and, in consequence, to decide whether an action is an action from duty or an action in conformity with duty. Even the acting person cannot be sure that no inclination is involved. He might refuse that inclination is involved, not with levity but after the most scrupulous self-examination. Yet it is possible that inclination is involved, and he just does not realize it for some reason. In short, there is no way to verify that an action is an action from duty. Kant concedes that no evidence of an action from duty can be given (IV 407). For Kant, this shows that the concept of an action from duty is not taken from experience (IV 406), which is important for him because he wants to get through to a priori principles – and a priori principles cannot be found in experience. But it seems that actions from duty and the good will are fiction rather than reality. If this were true, then there would be no morality either because, for Kant, there is no moral worth other than that earned by actions from duty (IV 397–8). For this reason, Kant has to show that the idea of action from duty is no fiction. He thus proceeds to the principles that guide action or to maxims. His first thoughts about those principles and maxims are rather unclear. But they lead him toward the categorical imperative (IV 399–402). However, he tries again, and his second approach is more systematic than his first. He now begins with the categorical imperative, which he distinguishes from the hypothetical imperative (IV 414).

For Kant, any imperative expresses what ought to be. It indicates “the relation of an objective law of reason to a will that by its subjective constitution is not necessarily determined by it (a necessitation).” (IV 413) This constitution of the will expresses its capacity to ignore the law or to act in ways other than those prescribed by the law. Hypothetical imperatives, to begin with, “represent the practical necessity of a possible action as a means to achieving something else that one wills” (IV 414). In more modern terms, hypothetical imperatives are the same as instrumental reason ([12], pp. 215–216). The hypothetical imperative thus refers to action that is “good merely as a means *to something else*.” The categorical imperative, by contrast, refers to an action which is “represented as *in itself good*” (IV 414). From a conceptual point of view, the distinction of hypothetical imperatives from the categorical imperative is strict. Yet it is easy to imagine an action that is good in itself and, at the same time, good as a means to something else. Actions like this are called overdetermined actions ([8], p. 42). How does Kant handle actions of this kind? It seems that he does not dispute that actions of this kind

are possible. But are actions of this kind covered by the hypothetical imperative or by the categorical imperative? With a hypothetical imperative, as mentioned before, an action is merely good for something else. This implies that overdetermined actions cannot be covered by the hypothetical imperative. With the categorical imperative, however, an action is good in itself, but it does not need to be good in itself only. Overdetermined actions thus would be covered by the categorical imperative.

Interestingly enough, Kant discusses overdetermined actions. He calls them actions in conformity with duty. If overdetermined actions are identified with actions in conformity with duty, it is possible to pinpoint action in conformity with duty within the classification of imperatives. Otherwise, the classification of imperatives would be incomplete or actions in conformity with duty would be nonsense either. The same conclusion can be drawn from Kant's thoughts about the motivation to act from duty. For Kant, the motivation to act from duty cannot be explained by the intended effect of an action. It can only be explained by the principle of volition. Actions from duty are motivated by respect for the law instead of inclination. It is this respect for the law which alone gives them *moral worth*. As a result, actions motivated by inclination have no moral worth. (IV 399–401) Actions in conformity with duty are actions that, at the same time, can be seen as actions from duty and as actions motivated by inclination. There are two ways to make sense of actions of this kind. Firstly, they are motivated either by respect for the law or by inclination, although they can be seen in both ways. This view implies that the way actions appear can differ from the way they are. If this has to do with the fact that there is no certainty about the true character of an action from duty, then the problem is purely epistemic. In consequence, there would not be any actions in conformity with duty. There would only be actions motivated by inclination, and the rest, which, for epistemological reasons, could not be classified with certainty. If this were the case, it would be under- rather than overdetermination. If there are actions in conformity, they have to be motivated by both respect for the law and inclination. They can only be overdetermined therefore. As actions motivated by respect for the law as well as by inclination, they might even have moral worth. At least, it seems, they are eligible to have moral worth.

With regard to Kant's distinction of the hypothetical imperative from the categorical imperative, it should be added that he introduces one further distinction. For Kant, there are two kinds of the hypothetical imperative. An action can be "good for some *possible* or *actual* purpose." In the first case, the imperative is a problematically practical principle, and in the second, it is an assertorically practical principle. (IV 414–5) The categorical imperative, by contrast, commands "without being based upon and having as its condition [*als Bedingung zum Grunde zu legen*] any other purpose to be attained by certain conduct" (IV 416). This does not mean that there can never be any such purpose. Absence of any purpose to be attained by certain conduct is no necessary condition for an imperative to be categorical. Nor is it a necessary condition for an imperative to command categorically. Yet an imperative commands categorically only insofar as no purpose to be attained by certain conduct is involved.

Kant calls the categorical imperative the imperative of morality (IV 416). This might appear arbitrary. Earlier passages in the text will help to understand Kant. For Kant, an action has moral worth not because of an “effect expected from it”; its moral worth “does not lie in any principle of action that needs to borrow its motive from this expected effect.” He concludes that “nothing other than the *representation of the law* in itself, *which can of course occur only in a rational being*, insofar as it and not the hoped-for effect is the determining ground for the will, can constitute the preeminent good we call moral” (IV 401). The categorical imperative seems to be such a law (IV 420). Not just in this context is it worth noting that Kant does not contend that an action has moral worth if it is motivated only by representation of the law. He does say, however, that an action has moral worth insofar as it is motivated *only* by representation of the law. Hence, the moral worth of an action results from the fact that it is motivated by representation of the law. Yet it does not matter whether it is motivated by representation of the law in its entirety or to some extent only.

Kant is now able to couch the categorical imperative: “[W]hen I think of a *categorical* imperative I know at once what it contains. For, since the imperative contains, beyond the law, only the necessity that the maxim be in conformity with this law, while the law contains no condition to which it would be limited, nothing is left with which the maxim of action is to conform but the universality of a law as such; and this conformity alone is what the imperative properly represents as necessary. There is, therefore, only a single categorical imperative and it is this: *act only in accordance with that maxim through which you can at the same time will that it become a universal law.*” (IV 420–1) This is not the only formula of the categorical imperative. Kant will provide another four formulas, i.e., five in total. Nevertheless, he once mentions that there are “three ways of representing the principle of morality” (IV 436); later on in the text he notes that, if “one also wants to provide *access* for the moral law, it is very useful to bring one and the same action under the *three* concepts mentioned above and thereby, as far as possible, bring it closer to intuition.” (IV 437; the second emphasis is mine). Paton tried to investigate relations between all five formulas of the categorical imperative in order to make evident that there are no more than exactly three formulas ([15]: 129–30). Kant scholarship has discussed this matter at length. However, the debate did not shed any new light on the categorical imperative, and this is why there is no point in reporting on it here.

An important question with regard to the categorical imperative, however, is the question concerning its reality. This echoes the earlier question with regard to the reality of actions from duty. When it comes to questions of reality, Kant normally relies on a method he calls transcendental deduction. This method is highly complex and well discussed. Those debates must be omitted here, but not because they are difficult: Again, they do not help in understanding the categorical imperative better. This holds true for the initial question about the categorical imperative and how it goes together with profit orientation. Those interested in these questions will find more material in the literature [17].

The results of this first section are important in respect to the initial question concerning the categorical imperative and how it goes together with profit orientation. In the first place, it should be mentioned that, for Kant, actions can be overdetermined. An action is overdetermined if it is good not only in itself but also for something else. This means that an action motivated by the desire to increase profits, i.e., an action that is good for something else, can, at the same time, be good in itself. Secondly, it should be mentioned that overdetermined actions are covered by the categorical imperative. Thus, they do not necessarily contradict the categorical imperative. In fact, an action motivated by the wish to increase profits is covered by the categorical imperative if, to some extent, it also is good in itself. In sum, profit orientation can go hand in hand with the categorical imperative, and those denying this either ignore that overdetermined action is possible for Kant or that the categorical imperative covers actions that are overdetermined.

On the Moral Worth of Increasing Profits

As, for Kant, overdetermined action is possible and covered by the categorical imperative, it has to be asked whether they have, or can have, moral worth. It has already been mentioned that the moral worth depends on whether an action is motivated by respect for the law. More precisely, an action has moral worth insofar as it is motivated by duty instead of inclination. This defines a criterion for moral worth which can be applied to overdetermined action. For this task, it is pivotal to know how to apply the criterion. This can be learned from Kant who examines several cases in order to find out whether they meet the standard for an action from duty. Interestingly enough, Kant begins with a case taken from business ethics. He presents the following situation: “For example, it certainly conforms with duty that a shopkeeper not overcharge an inexperienced customer, and where there is a good deal of trade a prudent merchant does not overcharge but keeps a fixed general price for everyone, so that a child can buy from him as well as everyone else. People are thus served *honestly*; but this is not nearly enough for us to believe that the merchant acted in this way from duty and basic principles of honesty; his advantage required it; it cannot be assumed here that he had, besides, an immediate inclination toward his customers, so as from love, as it were, to give no one preference over another in the matter of price. Thus, the action was done neither from duty nor from immediate inclination but merely for purposes of self-interest.” (IV 397). For Kant, then, the action of the merchant neither is immoral nor has it moral worth. Yet it might be surprising that Kant does not detect any moral worth in the merchant’s action. How does this opinion fit with earlier statements that an action can have moral worth even if it is overdetermined? Does not an overdetermined action have double worth, earned from respect for the law as well as from the intended effect of the action?

These questions justify highlighting an aspect that will help to escape incoherence. It is important to see that an action has moral worth not because of conformity

with duty. An action has moral worth only if it is motivated by respect for the law, and respect for the law appears when no inclination is involved (IV 399–401). By definition, an overdetermined action is good in itself and good for something else, and it therefore might have a double worth but, it seems, no *moral* worth. It does not have any moral worth, it seems, because inclination is involved and, in consequence, no respect for the law which is required for an action to have moral worth. There is no incoherence in this view, but it seems that, for Kant, profit orientation cannot have moral worth because it is motivated by inclination. If this were true, then morality and business would indeed be two different domains which have nothing in common. Yet there is more to come.

The previous argument suggests that, for Kant, an action has moral worth only if it is *entirely* motivated by respect for the law. Some interpreters call this Kant's purism ([2], p. 125). But Kant is no purist. It might be worth noting that, for Kant, "nothing other than the *representation of the law* in itself, which can of course occur only in a rational being, insofar as it and not the hoped-for effect is the determining ground for the will, can constitute the preeminent good we call moral" (IV 401). Kant could not be much clearer, but things are not as simple as some interpreters think. He says that an action has moral worth only because of the respect for the law. He does not claim, however, that it is a necessary condition for an action to have moral worth that respect for the law is the only "determining ground for the will," as he puts it. In fact, he explicitly says that an action has moral worth insofar as it is respect for the law that determines the will. This allows inclination also being involved. Although an action cannot have moral worth insofar as it is motivated by inclination, this does not mean that an action that is motivated by inclination cannot have any moral worth at all. There are more passages which confirm this reading: "Only what is connected with my will merely as ground and never as effect, what does not serve my inclination but outweighs it or at least excludes it altogether from calculations in making a choice [*von deren Überschlage bei der Wahl*] – hence the mere law for itself – can be an object of respect and so a command." (IV 400) Kant requires that respect for the law outweighs inclination and explains that it is sufficient if there is something which cannot be explained by inclination. If Kant were a purist, how could it be possible to outweigh inclination? In short, if Kant was a purist, then the passage previously quoted would in parts be nonsense. Immediately after that passage, Kant mentions that "an action from duty is to put aside entirely [*ganz absondern*] the influence of inclination" (IV 400). It should be noted that to put aside does not mean to eliminate. This passage therefore does not exhibit the demand to abstain from inclination. In fact, it exhibits Kant's method of isolation, as Paton put it ([15], p. 47). In his *Groundwork*, Kant wants "to work out for once a pure moral philosophy, completely cleansed of everything that may be only empirical and that belongs to anthropology" (IV 389). This idea implies that Kant starts from experience and isolates, step by step, everything that is not empirical. This means not to stop unless everything empirical has been removed. This exhibits some purism, and this purism is specific to Kant's moral philosophy, maybe even to his entire philosophy. Nevertheless, Kant's purism is purely *methodological* ([9], p. 133).

Those insisting on Kant's purism might refer to the conclusion of the previously quoted passage. It goes as follows: "[T]here is left for the will nothing that could determine it except objectively the *law* and subjectively *pure respect* for this practical law, and so the maxim of complying with such a law even if it infringes upon all my inclinations." (IV 400-1) It seems that Kant insists on ruthlessness toward one's inclinations. Yet this ruthlessness exhibits rigorism rather than purism. Firstly, this rigorism is unjustified ([14], [9], p. 148, [17]). Secondly, rigorism does not imply purism. Rigorism applies to inclinations which are incompatible with duty. It does not apply to any inclination, and this is why rigorism cannot be interpreted as purism.

All this is important if it comes to decide upon the moral worth of an action and of overdetermined action in particular. Overdetermined action requires calculating the moral worth, as it were. If respect for the law is stronger, as it were, than inclination, the action has moral worth; otherwise it does not. In case it is not possible to calculate, an action has moral worth if it cannot be explained only by inclination. Otherwise it has no moral worth. Kant proceeds in exactly this way in his example of the merchant. The merchant's way of acting can be explained completely by inclination or self-interest. There is nothing about his behavior which cannot be explained by inclination or self-interest, and this is why his action has no moral worth.

Most of Kant's examples are not well chosen; some even are unfortunate insofar as, in most cases, he omits action in conformity with duty. He thus leaves out the most interesting case with regard to moral worth. Immediately after the example about the merchant, Kant discusses the duty to preserve one's life, and he presents the case as an extreme case, contrasting action from duty with action motivated by inclination. People normally preserve their lives by inclination, not by respect for the law. Those weary of life, however, preserve their lives not by inclination, but from duty. As they preserve their lives from duty, their action has moral worth. (IV 397–8) Kant here seems to assume that those weary of life have lost all interest in their life. Otherwise he could not claim that they do not preserve their life by inclination. He thus construes his example in such a way that it does not exhibit an interesting case. It would be more interesting, and more realistic, if it would be about someone who is weary of life, yet still has some interest in his life.

Kant's next example is about the philanthropist. If he is a benefactor from reasons of vanity or because it pleases him, then there is nothing about his action that would indicate respect for the law so that, in the end, his behavior would have no moral worth. Kant then compares him to a benefactor without sympathy for anybody and guesses that such a person no longer is incited to be beneficent "by any inclination, he nevertheless tears himself out of his deadly insensibility and does the action without any inclination, simply from duty; then the action first has its genuine [*ächt*] moral worth" (IV 398). It is this conclusion in particular that indicates that the benefactor's action has moral worth only because all inclination is taken away from him. This is not the case, however. Kant says that the benefactor's action has "genuine moral duty" as he "does the action without any inclination [. . .], simply from duty" (IV 398). The English word "genuine" stands for the German

“ächt” which means unadulterated. This helps to understand Kant's conclusion correctly. For Kant, the benefactor's behavior has unadulterated moral worth because no inclination is involved. If inclination were involved, then his behavior would still have moral worth, although it would not be unadulterated moral worth any longer. This again makes evident that, for Kant, it is essential for an action to have moral worth to be motivated by respect for the law. It is irrelevant whether inclination is also involved.

Kant concludes with the duty to assure one's own happiness. This example is well chosen insofar as it explicitly confirms the position presented here. Most people seek to assure their own happiness by inclination. Happiness does not mean, however, to accommodate every inclination without making any concession. In fact, it is impossible to accommodate every inclination. As a result, the quest for happiness is motivated by inclination. Nevertheless, it cannot be explained only by inclination because it requires abstaining from some inclinations. This is why, for Kant, respect for the law must be involved. In consequence, the quest for happiness has moral worth despite of inclination being involved. (IV 399)

In sum, Kant discusses some actions that have moral worth. Most of them, however, are actions from duty and not in conformity with duty. So why is it impossible to provide an example for an action from duty? Kant says: “In fact, it is absolutely impossible by means of experience to make out with complete certainty a single case in which the maxim of an action otherwise in conformity with duty rested simply on moral grounds and on the representation of one's duty” (IV 407). The difficulty is not that actions from duty are rarely possible. The difficulty is epistemic. It is hard, even impossible, to find cases of actions from duty which can be verified as cases of action from duty. Falsification is always possible, but not verification. How is that possible? Kant explains: “It is indeed sometimes the case that with the keenest self-examination we find nothing besides the moral ground of duty that could have been powerful enough to move us to this or that good action and to so great sacrifice; but from this it cannot be inferred with certainty that no covert impulse of self-love, under the mere pretense of that idea, was not actually the real determining cause of the will; for we like to flatter ourselves by falsely attributing to ourselves a nobler motive, whereas in fact we can never, even by the most strenuous self-examination, get entirely behind our covert incentives, since, when moral worth is at issue, what counts is not actions, which one sees, but those inner principles of action that one does not see.” (IV 407)

This section has brought to light that, for Kant, overdetermined action can have moral worth. This is important with regard to profit-oriented action, which, if it is *also* good in itself, can have moral worth, then. Otherwise, overdetermined action and profit-oriented action could not possibly have moral worth, and, in consequence, business and morality would be two domains which have nothing in common. Yet there is one limitation. The moral worth of overdetermined action results only from that part which cannot be traced back to inclination or which can be traced back only to respect to the law. Although overdetermined action can have moral worth, it does so only insofar as it is not motivated by inclination.

On the Moral Obligation of Increasing Profits

It seems that, for Kant, profit orientation is compatible with morality although it has no moral worth by itself. This might contradict the self-concept of most managers and business people who claim that their job has moral worth. Those managers and business people feel obliged to increase profits ([2], p. 142). Kant did not elaborate on this matter, although he discussed a couple of maxims. More precisely, he tested four maxims with regard to whether they are eligible as duty. Analogous to the test of these four maxims, it might be able to decide whether there is an obligation to increase profits. If this were the case, it would be possible that profit orientation had moral worth by itself.

Kant's examples cannot be understood unless the first reformulation of the categorical imperative has been considered. The first and the second formula of the categorical imperative differ very little ([15], pp. 129–130). The first formula goes as follows: “[A]ct *only in accordance with that maxim through which you can at the same time will that it become a universal law.*” Kant now wants to understand better “the universality of law in accordance with which effects take place” and contends that it is “properly called *nature* in the most general sense (as regards its form) – that is, the existence of things insofar as it is determined in accordance with universal laws.” The categorical imperative therefore can be reformulated as follows: “[A]ct *as if the maxim of your action were to become by your will a universal law of nature*” (IV 421). From this formula, Kant gains criteria which enable him to test maxims. These are, firstly: “We must *be able to will* that a maxim of our action become a universal law: this is the canon of moral appraisal of action in general” (IV 424). Kant provides two examples which show that this first criterion has been applied. Kant's examples also make evident, and this is the second criterion, that some maxims “cannot even be *thought* without contradiction as a universal law of nature, far less could one *will* that it *should* become such.” (IV 424) Those maxims that cannot be thought as universal law without contradiction are “opposed to strict or narrower (unremitting) duty.” If, in addition, it is impossible to will that a maxim is raised to the universality of a law of nature, the maxim is opposed “to wide (meritorious) duty” (IV 424). Hence, Kant here identifies necessary and sufficient condition for a maxim to count as duty. This means that two criteria have to be met if the maxim to increase profits can count as duty. Firstly, it has to be tested whether it can be thought of as a universal law. If the maxim passes this test, it then has to be tested whether it is possible to want this maxim to be raised to the universality of a law of nature.

With his first two examples, Kant discusses maxims that cannot be thought of as universal law of nature. By coincidence, it seems that these two examples exhibit cases of duties to ourselves or perfect duties, whereas the other two examples exhibit cases of duties to other human beings or imperfect duties (IV 421), for there is no reason to believe that Kant wants to suggest that, unlike imperfect duties, perfect duties can never be thought of as universal laws of nature. The way Kant proceeds is remarkable not only in this respect. He begins with discussing two maxims that do not meet the necessary condition and continues with two different

maxims that meet the necessary, but not the sufficient condition. While discussing the two maxims that do not meet the sufficient condition, he does not make evident why and how they meet the necessary condition. He thus discusses maxims that do not meet the criteria but none that meet them. His examples therefore leave some questions open.

Kant gets back to an example discussed previously. Someone is weary of life and expects more displeasure than pleasure and therefore contemplates suicide. This suicide would be based on the following maxim, Kant says: “[F]rom self-love I make it my principle to shorten my life when its longer duration threatens more troubles than it promises agreeableness” (IV 422). The second example is about a person who is urged to lend money. He knows that he will not be able to pay the money back but that he will have to promise to pay back the money and now asks whether he is allowed to give a promise he knows he will not be able to keep. Is it possible, then, to think as a universal law of nature to promise if one knows that there is no chance in keeping it. For Kant, both maxims cannot be thought of as universal laws of nature, and, hence, the necessary condition is not met in both cases. More precisely, the maxims cannot be thought of as universal laws of nature without contradiction. It cannot become a universal law of nature to commit suicide with reference to the principle of self-love. This means to see this principle, which is meant to “impel on the furtherance of life,” as the principle to destroy life at the same time (IV 422). Kant here ignores the difference between life in general and the individual life. It is a natural law, for instance, that animals hunt and kill other animals and no contradiction is involved here. The second maxim, Kant goes on, also “must necessarily contradict itself” because it “could never hold as a universal law of nature and be consistent with itself.” Kant’s explication is more consistent this time: “[T]he universality of a law,” he says, “that everyone, when he believes himself to be in need, could promise whatever he pleases with the intention of not keeping it would make the promise and the end one might have in it itself impossible, since no one would believe what was promised him but would laugh at all such expressions as vain pretenses.” (IV 422) Contradiction thus occurs because the maxim is about an action which is possible only if the maxim is no universal law of nature.

The examples Kant refers to in order demonstrate why a maxim cannot be thought of as universal law differ quite a lot from the maxim to increase profits. Yet it is evident that this maxim can be regarded as a universal law of nature if this means that, as universal law of nature, it does not involve any contradiction. It is possible to increase profits if it is a universal law to increase profits, and, thus, no contradiction occurs. This claim rests on the premise that the profit of one party does not represent the loss of another party. This premise is defensible as can be made evident from an interaction paradigmatic for all business, the case of selling a good. Both the seller and the buyer voluntarily agree to exchange goods, or a good, for money because each of them makes a profit. The seller is better off with the money, the buyer is better off with the good. Economics call this situation Pareto superiority; management theory speaks of a win/win situation.

It seems that a maxim can be thought of as universal law of nature, and thereby, the necessary condition for duty is met as soon as it does not violate the principle of

consistency. This is true for the first two examples, and it holds true for the next two. The first of the two following examples is about a person who does not exploit her talents. With regard to the question whether the corresponding maxim can be thought of as universal law, Kant considers it to be evident that the person “sees that a nature could indeed always subsist with such a universal law, although (as with the South Sea Islanders) the human being should let his talents rust and be concerned with devoting his life merely to idleness, amusement, procreation – in a word, to enjoyment” (IV 423). Thus, the third example does not offer anything new and neither does the last example. Kant presents us someone “for whom things are going well while he sees that others (whom he could very well help) have to contend with great hardships.” This person “thinks: what is it to me? let each be as happy as heaven wills or as he can make himself; I shall take nothing from him nor even envy him; only I do not care to contribute anything to his welfare or to his assistance in need!” For Kant, it is again evident that “if such a way of thinking were to become a universal law the human race could admittedly very well subsist, no doubt even better than when everyone prates about sympathy and benevolence and even exerts himself to practice them occasionally, but on the other hand also cheats where he can, sells the right of human beings or otherwise infringes upon it.” (IV 423). Likewise, there is nothing contradictory about thinking the maxim to increase profits as universal law of nature. If it were to become a universal law of nature to increase profits, the human race could subsist. This maxim, hence, meets the necessary condition for being a duty.

It can now be tested whether it also meets the sufficient condition for a maxim to express a duty. With respect to the sufficient condition, Kant presents two examples with maxims, both of which do not meet the sufficient condition. The person who does not exploit his talents “cannot possibly **will** that this become a universal law or be put in us as such by means of natural instinct. For, as a rational being he necessarily wills that all the capacities in him be developed, since they serve him and are given to him for all sorts of possible purposes.” (IV 423) Kant contends that, as rational being, one cannot will to leave one’s own talents unemployed. To be precise, one can leave one’s own talents unemployed, but one cannot will that. Kant is probably right here. As one cannot will to leave one’s own skills unemployed, one cannot will that it becomes a universal law of nature to leave one’s own skills unemployed. This conclusion might be counterintuitive, but it is defensible. In the case of the last example, Kant discusses the maxim not to assist other people. For Kant, it is evident that “a will that decided this would conflict with itself, since many cases could occur in which one would need the love and sympathy [*Teilnehmung*] of others and in which, by such a law of nature arisen from his own will, he would rob himself of all hope of the assistance he wishes for himself.” Kant assumes that everyone in trouble expects other people to help, even those who do not want to help other people. Only if this is true, it is “impossible to **will** that such a principle hold everywhere as a law of nature” (IV 423). If Kant is wrong and those who do not want to help people in trouble do not expect other people to help them when they are in trouble, then it is possible to will a world without assistance. Similarly, it is possible to will to increase profits and, moreover, it is possible to will that this maxim becomes a universal law of nature.

Even further, the more people there are who want to make profits, the easier it is to find business partners and to increase profits. Insofar, the maxim to increase profits also meets the sufficient condition for being a duty.

Is there an obligation to increase profits, and does it have moral worth to increase profits then? This question makes evident that Kant's way of testing falls far short. He does not provide any criterion which would help to decide whether a maxim expresses an obligation. The criteria he provides only help to identify maxims that do not express an obligation. Insofar, there is no Kantian answer to the question whether the maxim to increase profits expresses an obligation and whether it has moral worth to increase profits. Yet it is evident that there is no reason to reject that this maxim expresses an obligation because it meets both conditions that Kant establishes.

Conclusion

To sum up, there is no answer to the question whether there is an obligation to increase profits. This is because Kant defines criteria to identify those maxims that do not express an obligation. He even defines criteria to identify maxims eligible to express an obligation. According to those criteria, the maxim to increase profits is eligible to express an obligation and, thus, to have moral worth. As Kant does not define criteria to identify maxims that express an obligation, however, it is not possible to decide whether the maxim to increase profits does express an obligation. Although this result is unsatisfying, it exceeds all expectations as for purists among interpreters of Kant's ethics, it is unthinkable that profit-oriented action can have moral worth. Those purists are wrong, however. It escapes their attention that, for Kant, profit-oriented action is covered by the categorical imperative as soon as it is also based on respect for the law and, thus, represents an action in conformity with duty. This might be news to most interpreters of Kant's ethics, as many of them do not even consider that, for Kant, overdetermined actions are possible – although Kant discusses them at large as actions in conformity with duty.

Cross-References

- ▶ [Kant and Hegel on Property](#)
- ▶ [The Figure of “Rivalry” and Its Function in Kant’s Ethics](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)
- ▶ [Purpose](#)

Notes

1. Quotations from the *Groundwork* are taken from the translation by Mary Gregor (1998), published with Cambridge University Press in their Cambridge Texts in the History of Philosophy series [11]. Citations refer to the volume and page number in the Academy Edition of Immanuel Kant's *Gesammelte Schriften* (1902 ff), Royal [later: Prussian] Academy of Sciences, Berlin [10].

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Abstract

This essay focuses on the figure of “rivalry” in Kantian anthropological writings, which are mostly not considered in ethical concerns. Even if for Kant “rivalry” does not have the meaning of market competition, it is still *structurally* the same interaction-based figure – comparable to Smith’s “invisible hand” or Hegel’s “cunning of reason.” Thus, although one cannot discuss Kantian analysis of economic acting or doing business, it is possible to discuss the *figure* and *function* of “rivalry” (or competition) in relation to the achievement of earthly morality. To make its systematic role visible, this essay distinguishes strictly – and in accordance with Kant – between the moral “discourse of reason” and the given “conditions of application.” Thus, one can see that Kant was, apart from being a thinker led by principles, also a pragmatic thinker when it came to concrete (political) situations and the question of what to do and what to allow. This essay develops this perspective in three steps, which are followed by a few terse comments for the business ethics debate. First, it outlines the theoretical difference between the a priori justification discourse and the application discourse, which has to consider empirical conditions. Second, it reconstructs the definition of “rivalry” as a consequence of a natural characteristic: it is seen to be a means of nature by which it promotes arts and culture but also coestablishes right. Against this background, it provides a development model which can serve as a dynamic paradigm for application questions. It ends with some comments for the business ethics discourse¹.

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Introduction

Immanuel Kant (1724–1804), probably one of the most important theorists of the Enlightenment, rarely mentioned questions belonging to the real economy. The economy does not play a role either in his so-called critical philosophy – i.e., above all *The Critique of Pure Reason* (1781/1787) [1],² *Groundwork of the Metaphysics of Morals* (1783) [2], *Critique of Practical Reason* (1785) and *Critique of the Power of Judgment* (1799) – or within his non-critical writings, where he comments on anthropological and contemporary political themes. Along with better known essays (so called “*Kleine Schriften*”), published mainly in *Berlinischen Monatsschrift* from 1784, such as *An Answer of the Question: What Is Enlightenment* (1784) [3], also significant are *Ideal for a Universal History with a Cosmopolitan Purpose* (1784) [4] and *On the Old Saw: That May Be Right in Theory, but It Won't Work in Practice* (1793) [5]. There are also the large-scale postcritical studies *Religion Within the Limits of Mere Reason* (1792) [6], *Perpetual Peace* (1795) [7], *Metaphysics of Morals* (1997) [8] and *Anthropology from a Pragmatic Point of View* (1798) [9]. Within all these writings one can hardly find a philosophically systematic discussion of the activities or structures of economic activity, besides the substantial submissions on the status of property in *Metaphysical Foundations of the Theory of Law* and in the *Metaphysics of Morals* (see the contribution by A. Eckl within this section). Consequently one can almost find in Kantian writings nothing that today qualifies as “business ethics.”

However, Kant is assigned a unique position in the current discussion on business ethics. Kantian ethics can be summarized – as action theorists argue – as follows: economic rationality must be clearly limited by morality. In any case, Kant’s ethics are identified with the duty to follow rather the *categorical imperative* than one’s own interests ([10], pp. 1–38, 28, 30). Thus, the various actors from business are called to (also) pursue and enforce ethical goals such as environmental protection, abolition of poverty and child labor laws. Therefore, Kant’s practical philosophy is seen as an instrument to force companies and global players to support the realization of common ethical goals of humankind – even though they operate in a competitive global arena.

Theory strategy here consists of transferring parts of the Kantian ethical discourse of reason (*Begründungsdiskurs*) on empirical *application* problems. Kant’s model should therefore produce specific rules for corporate actions [11]. Recourse to Kant – the defender of modern liberalism *and* modern ethics, which are founded on reason – thus completely legitimates the derived moral rules. In my view this strategy is problematic for at least two reasons. One is that there is a discussion of whether Kant himself took the categorical imperative as a model to directly generate rules to govern any *action* situation and constellation. That seems to be met with scepticism, because Kant insisted on adding an analysis of *general* empirical, i.e., *structural*, conditions to the justification discourse if the question was about *specific* action directives [12–14]. The second issue is that there is no uniform interpretation of how to apply the categorical imperative and also

because there are different formulations, which are purely *formal*. Moreover, it is not quite clear what this position entails: can concrete requirements be justified, or is it instead a model of what *form* rules have to have to *claim* universal validity?

In any case – as said above – economic practices *were not* an object of Kantian criticism, neither in the so-called critical writings of foundation of practical philosophy or ethics nor in the anthropological and political analysis. Although Kant refers in some places by way of example to the behavior of the “respectable businessman” or simply to “businessmen,” there are no passages in which Kant would reject “commercial spirit” or “commercial sense” as immoral. In *Groundwork of the Metaphysics of Morals*, he distinguishes on the basis of the businessman between acting obligatorily (*pflichtgemäß*) and acting because of obligation (*aus Pflicht*) ([2], p. 397). Thereby, he introduces the difference between *reasons* for acting, but not between practices. On the contrary, at one point one can find the following fundamentally positive statement: “Referring to the quality of a human being as being subjected by one’s own reason to certain obligations [...] everyone is a business man” ([5], p. 288). All in all, Kant was probably not concerned with economics as a way of acting or as a practice which forms society because he did not deem either as being destructive for morals or society; indeed, he was well acquainted with Adam Smith’s *Wealth of Nations* (1776), which was published some years before the first edition of *The Critique of Pure Reason* in 1781 [15].

If one does not want to simply apply the Kantian model of reason to empirical issues as outlined above as “applied ethics” and thus imply what Kant would have recommended from a pure reason-led point of view, one has to widen the application discourse to also include an analysis of contemporary empirical conditions. In terms of current *economic* discussions that means, however, taking into account the general situation of competition, which is one specific characteristic of a market economy. Additionally, there is another problem with simply applying Kantian theory to modern economics: namely, if specific actions are demanded for moral reasons, even though these actions might lead to counteractive *effects*. For instance, in a competitive market, business actors who are willing to act in favor of environmental protection could be driven from the market because of the higher costs. The positive effect would then be short-lived or, in the long run, even reversed because actors investing in environmental protection might fall into the worst position of being incapable of acting at all [16].

Thus, the question arises of whether in *economic* contexts the recourse to unconditional compliance with certain imperatives for individual actors is indeed desirable. And if it is not, *in the long run* it is much more appropriate to make common goals reality by not stating them as action-guiding maxims directly, but instead by creating a more sophisticated model governing the market, a model being more differentiated because it includes *systematically current* empirical conditions, although or perhaps because they are still not in accordance with the ideal state. To do so one can use the Kantian oeuvre more often than is commonly thought. To accomplish this, Kant can be consulted not only as a reasoning ethicist (*Begründungsethiker*), but also as a social theorist who seriously contemplates the conditions of application and the enforcement of ethical

principles. This is because he distinguishes between empirical conditions humankind has available – this means, in a broader sense, regulatory concerns – and those to which we are exposed because of our *general nature*, such as “natural human presuppositions.” Kant says human thinking (and hence subsequently human actions) is never determined completely by nature, because there will always be a space by which *thinking* can escape the causality of (human) nature.

Nevertheless, when it comes to the empirical development of humankind, Kant refers to nature in form of “rivalry” between humans and between states as playing an, if not *the*, essential role.³ This figure of “rivalry” is found in various contexts which refer without exception to situations in which Kant analyses them as a specific structure of human interactions. This concerns, first, common “natural human presuppositions” which lead to more or less generally encountered behavior patterns of individuals in interactions with others. Second, this specific structure emerges concerning possible socio-historical changes or ones that have already occurred and that affect humankind. Kant interprets these changes as positive development, as progress, whose “natural” engine is seen by him in this pattern of interaction called “rivalry.”

The interpretation presented will not turn Kant into an economist and certainly not into a business ethicist as it is found, for example, in some recent publications from the USA which compare and relate him above all to Adam Smith [15, 17, 18]. However, the idea of rereading Kant from an ordonomic–ethical perspective seems to me very useful [19]. Without criticizing therefore the point of view of named interpretations, this essay will instead draw attention to the proximity to the fundamental Hegelian idea of development and dismisses Kant – at least in part – from a purely unhistorically understood ethical position. Additionally, it makes clear why it is also necessary to consult Kant’s anthropological writings if questions concerning business ethics are posed, instead of only reading the so-called groundwork for the pure moral philosophy. By focusing on the social theorist Kant who is arguing empirically, the purely individualized, acting-centered perspective moves into the background, leaving room for an expanded, more nuanced perspective, which also involves interaction structures. Nevertheless, this does not agree with the theory-guiding premise according to which possible options for action have always been inevitably determined by social and economic reality. Instead, with this perspective the critical and pragmatic approach of Kant in relation to issues concerning questions of “empirical implementation strategies” for a moral world might become clear. That would be a world which comes closer and closer or more and more similar to the Kantian idea of an endless process of realizing human freedom. As such, the Kantian ideas can be fruitful for business ethics as well.

A Priori Reason Versus Empirical Conditions of Use

Kant strictly distinguishes between moral philosophy based on *theological or empirical reason*, and an *a priori reason*, which derives only from *terms of reason* (*Vernunftbegriffe*). From his point of view, the arguments for an act or social order

should not be dogmatic, empirical or pragmatic, but should be founded only in the concept of freedom or practical reason itself [14]. This implies, moreover, a strict distinction between empirically gained knowledge as a starting point for moral reason – which Kant rejects without exception – and the empirical reality as an area for the *application* of moral principles.

Thus, the factual socio-cultural and socio-historical reality is completely irrelevant when it comes to pure moral philosophy. *Pure* moral philosophy bases morality and morals on the fact that both are consistently thinkable. In a chapter entitled "Methodology" at the end of *The Critique of Pure Reason*, one reads that the philosophy of pure reason is critical philosophy. That is, first, an inquiry into the powers of reason "in regard to pure a priori cognition," or, second, it is called metaphysics as "the system of pure reason – a science containing the systematic presentation of the whole body of philosophical knowledge [...] given by pure reason" ([1], A p. 841/B p. 869). Using "metaphysics," Kant goes on, could also mean the whole system of pure philosophy "and may designate the investigation into the sources of possibility of a priori cognition" ([1], A p. 841/B p. 869), which is *different* from all mathematical or empirical use of reason. The metaphysics of morals, he adds, contains "the principles which determine and necessitate a priori all of one's doings. Now moral philosophy alone contains a code of laws – for the regulation of our actions – which are deduced entirely from a priori principles. Hence the metaphysic of morals is the only pure moral philosophy, as it is not based upon anthropological considerations (empirical conditions)" ([1], A p. 841/B p. 869).

Kant forces us, therefore, to strictly distinguish in theory between the pure, a priori derivable moral philosophy and the empirically derivable anthropology or social theory. The former asks, from a theoretical and logical perspective, for the *reason* and the theoretically consistent *derivation* of the pure moral philosophy from the a priori *concept of freedom*. The latter asks, from an empirical and practical perspective, for the actual conditions of *using* moral philosophy in the light of concrete empirical situations. Therefore, Kant forbids any interference from "outside" when it comes to *reasoning* in moral philosophy. All kinds of laws that do not originate from reason itself (implying that they are *not* born *autonomously*) are called heteronomous and are therefore invalid for the ethical discourse of reason. In *Groundwork of the Metaphysics of Morals*, Kant explains the *concept of duty* which can be expressed only by means of a *categorical imperative*:

And now philosophy seems placed in a very perilous situation, since she is allowed no peg either in heaven or in earth from which to suspend her principles. Now she has to show her integrity, as self-upholder of her own laws, not as the herald of those which some innate sense or guardian nature had whispered in her ear, and which, though better than nothing, never afford statutes of conduct, ordained by reason from a source altogether *à priori*: statutes which have thence alone their authority to command mankind, to expect nowhat from the solicitations of his sensory, but all from the supremacy of the law and the reverence he owes it, or, if he fail to do so, to hand him over to his own contempt and inward detestation. ([2], p. 425–426)

Against the insistence on a priori purity (which implies that only the concept of duty is relevant), one might argue that people do not base their will on free practical

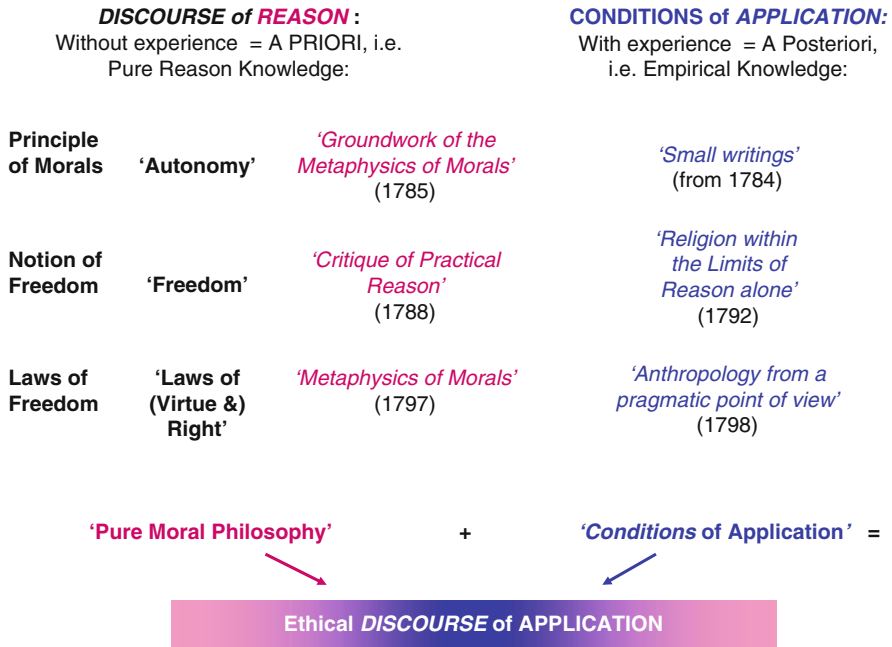


Fig. 17.1 The components of the ethical discourse of application

reason only, but rather on particularistic specific interests, i.e., on inclination. But this is still a *thought experiment* ([12], p. 17), in which Kant investigates whether and how the self-determination of the general rational will, which he designed in the concept of duty, is thinkable! And this is entirely independent of the continuously existing other “determinants” of the will.

The categorical imperative:

excluded from its authority the co-operation of any interest as a spring; an exclusion understood from the very categorical exhibition of it. The imperative was *postulated* as categorical, since without this the idea Duty could not be explained; but that there really are practical sentences containing a categorical commandment, could not yet be proved. (altered from [2], p. 431)

But from Kant’s perspective, to be provable is not even necessary, because it is his intention to show how these sentences are *consistently thinkable* only on the basis of the idea of practical reason or freedom and, according to that, how they might be constructed.

Figure 17.1 shows which of Kant’s writings can be assigned to what kind of knowledge and to what kind of discourse. Furthermore, it shows that the discourse of application has to focus on both sides: on moral philosophy *and* on the conditions of application. Within the domain of reason, practical reason is the only one that is to be questioned. Only in this way is it guaranteed that their laws are actually autonomously

grounded, i.e., derived from the a priori notion of pure freedom, and that humankind itself designs these laws to which it is willing to "submit." At this point, it is therefore irrelevant in what way the a priori reasoning concept of freedom - as well as the law derived autonomously from practical reason (given historically situated people or humankind) - may become at least. Kant asked a different question: namely, how to *justify* morality by *only referring to human reason*. Therefore, he argued against the claims of the Church and of the empiricists. His enemy is not the "empirical" itself, but an empiricist or theological strategy of reasoning.

By distinguishing between pure moral philosophy and analysis of the empirical conditions, Kant insists neither on the power of the a priori over the empirical, nor on a mere reversal of this relationship. Therefore, it would be wrong to say that the conditions of implementation have an effect on the axiomatic status of the law ([20], p. 111). Instead, he insists on their difference and on the causative and orienting function of the former ([2], p. 410). His writings in which the pure moral philosophy is designed have, therefore, a theoretical status different from that of his anthropological and political writings: they do not allow any recourse to empiricism *within the grounds of argument*. This does not mean that empiricism is less important, but only that theoretical reasoning and discourse analysis of the empirical conditions are two different discourses which must be related to each other in an appropriate relationship to constitute the discourse of application. The task is now to determine this kind of relation.

However, the difference between discourse of reason and discourse of application does not correspond to the difference between theory and practice – as Kant emphasizes again and again. Instead, a more constructive step is necessary with regard to the question of how to connect the thinkable with the empirical reality:

Thus not only are moral laws with their principles essentially distinguished from every other kind of practical knowledge in which there is anything empirical [...]. When applied to man, it does not borrow the least thing from the knowledge of man himself (anthropology), but gives laws a priori to him as a rational being. *No doubt these laws require a judgement sharpened by experience, in order on the one hand to distinguish in what cases they are applicable, and on the other to procure for them access to the will of the man and effectual influence on conduct*; since man is acted on by so many inclinations that, though capable of the idea of a practical pure reason, he is not so easily able to make it effective *in concreto* in his life. ([2], p. 389, my emphasis)

But experience includes an analysis of the socio-historical empirical conditions if one wants to know how morality and ethics can be realized. If it is unavoidable, however, to equally consult the current empirical-anthropological present in questions of application; then both of them have to be included within a *model of moral orientation*. Such a model can, in principle, be built on the Kantian discourse of application. It is therefore important to outline empirical conditions which Kant himself observed, and to show how he assessed them. He argues that the empirical conditions also include mechanisms, created by nature, which at least come *close* to what is reasonable in reality. And here, according to Kant, "rivalry" as a pattern of interaction plays a significant role: it is substantially involved in the establishment of empirical social conditions for pursuing one's own purposes and being able to

pursue them in a rational, i.e., free, manner. That needs to be shown, however, in order to be able to outline the development model in the light of this empirical finding.

“Rivalry” in Kant’s Non-critical Writings

One look at the German etymological dictionary of the Grimm brothers tells us that the word “competition” (*Wettbewerb*) is of a younger age: “competition” emerges in the late nineteenth century as a translation of the French “concurrency” and that as a slogan of liberal economic and social teaching. In the 1911 edition, the Grimm brothers defined it as “a struggle of merit in trade and economy, [...] as the relation of such persons to one another, who use any means to aim at an end which cannot be reached by all of them” [21]. In the following years, competition as a social practice gained more and more acceptance in other, not primarily economic social contexts, such as artistic or scientific ones, and in sports, as comparisons of performance or innovations. Currently, “competition” in general has the meaning of achieving a specific purpose or goal, *by several people, ideas or objects* who face each other in a comparative way, with one or a few prevailing as the winner(s), leaving the others behind in relation to the realization of the original purpose. Thus, nowadays, “competition” is by no means limited to standard economic practices. On the contrary, it seems as though the comparison with others has become one of the most common forms of social interaction. Almost everyone is competing with many others to achieve certain purposes in many different areas and contexts. (However, not all parameters that count in competition can be provided by people themselves – competition is also about appearance, origin, gender, etc.)

“Rivalry” as an Empirical “Predisposition to the Good” in the People

In Kant’s anthropological writings, “rivalry” means both diversity and different values, even if not in today’s wide-spun spectrum. The in principle positive, but possibly also negative evaluation of “rivalry” is based on the *quantitative expression* it shows, and which is not bound to those areas where it is desired or allowed. For Kant, “rivalry” belongs to the innate characteristics people come equipped with as members of the human species. In *Religion Within the Limits of Pure Reason* (1792), the section entitled “Concerning the Original Predisposition to Good in Human Nature” distinguishes between three “classes” or “elements” of the determination of human beings: The first is the “predisposition to animality in man, taken as a living being,” the second is the “predisposition to humanity in man, taken as a living *and* at the same time a rational being” and the third is the “predisposition to personality in man, taken as a rational and at the same time an accountable being” ([6], p. 26–27).

The “predisposition to animality” is understood by Kant as “purely mechanical self-love,” which is found in three characteristics: as self-preservation, as breeding and

propagation of the species, as well as for community with other human beings. It requires no reason. Those "predispositions to humanity" which, according to Kant, benefit the development of the species appear as "comparative self-love," in terms of both physics and reason. Here, practical reason is necessary, but not as a driver (for the moral determination of the will), but because the act of comparing itself requires reason. The "predisposition to personality" is defined as the "capacity for respect for the moral law as in itself a sufficient driving force" of the will. Hence, practical reason is required, above all, as the origin and driving force of self-determination.

If we consider the three predispositions named, in terms of the conditions of their possibility, we find that the first requires no reason, the second is based on practical reason, but a reason thereby subservient to other driving forces, while the third alone is rooted in reason which is practical of itself, that is, reason which dictates laws unconditionally. ([6], p. 28)

Onto the first two predispositions can, according to Kant, "be grafted all kinds of vices"; but this does not mean that those vices are innate to the predispositions themselves! Only onto the third one can "absolutely no harm be grafted" ([6], p. 27), because this was the original idea of the moral law and thus the actual personality itself – thus having a quite universal character.

As "rivalry" is an expression of the second predisposition ("comparative self-love"), it can be found as a good expression, i.e., as an inclination, or as a bad expression, i.e., as a vice.

Comparative self-love:

is physical and yet compares (for which reason is required); that is to say, we judge ourselves happy or unhappy only by making comparison with others. Out of this self-love springs the inclination to acquire worth in the opinion of others. This is originally a desire merely for equality, to allow nobody superiority above oneself . . . ([6], p. 27)

However, this sometimes rather peaceful and reflective comparison is "bound with a constant care" that others strive to attain superiority, which implies the unjust desire of wanting to be superior to others. This "unjust desire," which is *caused* by the interaction alone, entails "further hostilities." From a philological point of view, it cannot be decided clearly whether Kant thinks that the initially positively connoted tendency of "rivalry" becomes "jealousy" and "sexual rivalry" *by preventive countermeasures*, or whether "rivalry" itself is already the result of the preventive, anticipatory reaction:

Upon this twin stem of jealousy and rivalry may be grafted the very great vices of secret and open animosity against all whom we look upon as not belonging to us – vices, however, which really do not sprout of themselves from nature as their root; rather are they inclinations, aroused in us by the anxious endeavors of others to attain a hated superiority over us, to attain for ourselves as a measure of precaution and for the sake of safety such a position over others. For nature, indeed, wanted to use the idea of such rivalry (which in itself does not exclude mutual love) only as a spur to culture. Hence the vices which are grafted upon this inclination might be their termed vices of culture; in highest degree of malignancy, as, for example, in envy, ingratitude, spitefulness, etc. they can be called the diabolical vices. ([6], p. 27)

Here, one needs to be clear about which theoretical level Kant places "rivalry" on and which structure he therefore connotes positively: "mutual love" suggests

that “rivalry” can be found on the level of “comparative self-love,” which aims only at the recognition of *equivalence among* others. The order of the sentence and the word “*of such*” indicate, however, that “rivalry” is interpreted as the result of the preventive countermeasure, which aims at *superiority* because of the anxious endeavor of others to attain superiority over us. This would correspond to the game-theoretic model of the *prisoners’ dilemma*, in which defecting is the dominant strategy because of *preemptive* rational considerations [22].

If one tries to clarify this matter by looking at Kant’s other writings, there are indications to be found for both readings: In §71 of *Anthropology from a Pragmatic Point of View*, Kant writes about the “rivalry in fashion things,” another area where people try “to outrival the other.” In §72, “exuberance” is evaluated: if it is tasteful, it is called “luxury,” if not, it is called “gluttony.” Kant initially seems to consider both as unnecessary and bad for society; however, he assesses their respective effects on “welfare” and finds that luxury “is compatible with the progressive culture of people (in art and science)” ([9], p. 249–250) – in contrast to “gluttony.” He also suggests that it is easier for a government to govern its people if it does not use sumptuary law (*Aufwandsgesetze*) to regulate or forbid luxury.

Since opulence can be criticised only in public life, not in domestic life, it must be concluded that the relation of the citizen to the commonwealth as far as the freedom of competition {Wetteifer} is concerned as to the adornment of one’s own person or possession (at feasts, weddings, funerals, and on down to well-mannered behaviour) can only with difficulty, for the sake of the anticipation of the useful, be burdened by sumptuary law. This should be so because opulence still offers the advantage of animating the arts, thereby returning to the commonwealth those expenses which such luxuries may have incurred. ([9], p. 250)

Again “competition” or “rivalry” appears in the context of culture – here, specifically, in relation to fine arts – and it is “rivalry” which is responsible for their vitalisation, even if the price is a luxury granted by the government. Moreover, in *Anthropology from a Pragmatic Point of View*, Kant adds another type of “rivalry”: a type which “is presented by females in order to gain advantage and favor in men” ([9], p. 305). When it comes to the character of women, their property to dispute constantly with each other seems to be a mere result of named “rivalry,” whereas women get on very well with the other sex, i.e., with men. But as Kant regards the tendency to dominate as the ultimate goal of all human beings, this type of female “rivalry” seems to be a means for achieving that goal.

However, for Kant, all these objectives are subjective goals of actual human beings – not objective goals of humankind or of reason. They have been purposefully established by nature to be pursued by individuals. To cite an example, Kant assigns human woman the tasks of conservation, cultivation, and refinement of society, “though this makes it not to morality itself but to what its dress is it, to the civilized decency that is the preparation and recommendation to it” ([9], p. 306). Therefore, pursuing these objectives does not interfere with morality; on the contrary, Kant seems to think that this behavior provides a moral glow which at least helps in preparing real morality ([9], p. 151–152).⁴

Although the lines quoted do not permit one to decide clearly whether Kant differentiates between a good and a bad *goal* for the competitors – the desire for

equality versus the desire for one's betterment in comparison with others – it can be maintained, in any case, that "rivalry" has a *positive connotation* within anthropological contexts. To sum up, "rivalry" is primarily characterized as an idea and as an interactive manner, which is used by *human* nature in the process of cultivating itself. Although it is required to be moderate in order to prevent vices which might arise and prevail in the wake of the "rivalry," "rivalry" nevertheless serves also as a motor of development and advancement – and it is therefore employed to realize the Good as such. In the so called, the sketched predispositions (self-preservation, comparison with others and moral personality) are called to be predispositions to install the Good or to *advance* it:

All of these predispositions are not only good in negative fashion (in fact they do not contradict the moral law); they are also predispositions toward Good (they enjoy the observance of the law). They are original, for they are bound up with the possibility of human nature. ([6], p. 28)

To be "not only good in negative fashion" means, first, that such predispositions do *not* contradict the moral law and do not act against it. Second, this relation is not just one of indifference but instead, each of the predispositions even serves the moral law in its own way, promoting compliance with it as long as the predispositions are used in an appropriate manner. The first, or the "presupposition to animality," because it ensures the preservation of humankind, which therefore (and trivially) is a necessary condition for the possibility of the historical development of morality. The second, or the "presupposition for humanity," serves the moral law because it makes use of "rivalry" to establish a constitutive order of society. Finally, the third, or the "predisposition to personality," serves the moral law because here the idea and basic requirement for any morality, i.e., free reason, can become practical – as free-will-orientating and therefore determining the actions in the sense of freedom.

Thus, "rivalry" as an empirical competitive behavior seems to be not only unproblematic for Kant, but instead even useful when it comes to the production of the Good. In *The Critique of Pure Reason*, Kant distinguishes between the terminology of the "Good" and that of "happiness," the former being an object of pure reason ([1], A p. 548/B p. 576). But in his discussion of the "Highest Good," Kant brings both ends together again. For that "Highest Good" corresponds to the idea that a human being is happy in the same degree in which he or she is acting morally, i.e., in the degree she or he determines her or his acting by pure practical reason ([1], A p. 801/B p. 837, 28, pp. 72–76). The "Good" is therefore *conceivable* for the consistent implementation of morality *and* happiness, which means that acting on purely rational grounds or on grounds of freedom *and* the satisfaction of all our inclinations ([1], A p. 806/B p. 834) is *equally* possible. From an anthropological point of view, "rivalry" is an inborn pattern of interaction within humankind which should not be stopped. It is thus, according to Kant, *convenient*.

What kind of functional role "rivalry" holds in the process of achieving freedom becomes even more apparent when looking at the other incidents of "rivalry" in the non-critical, so-called small writings, where human development

is in question. However, it appears here no longer only as an instrument to add something to private, individual moments of happiness, but as an instrument which is essentially involved in the establishment of a social order based on practical freedom laws. This is, of course, always important for individuals as well, because the social order is at the same time part of their concrete conditions of life and acting. Thus, people are determined by it in large parts of their lives – be it positively or negatively.

“Rivalry” as the Engine of the Progressive Development of Humankind

In *Idea for a Universal History with a Cosmopolitan Purpose* (1784), Kant proposes interpreting the historical course of humankind as rational, purposeful and therefore progressive. With such a “guide *a priori*” – as he calls his proposal – could be given:

a consoling view of the future [. . .] in which there will be exhibited in the distance how the human race finally achieves the condition in which all the seeds planted in it by Nature can fully develop and in which the destiny of the race can be fulfilled here on earth. Such a *justification* of Nature – or, better, of Providence – is no unimportant reason for choosing a standpoint toward world history. ([4], p. 30)⁵

Again, “rivalry” is assigned a systematic function of being necessarily involved in this progress because of codetermining it. First, Kant distinguishes between a general, rational and natural intent on the one hand and potentially unreasonable, particularistic, action-determining intents on the other hand: The “*means employed by nature to bring about the development of all capacities of men is their antagonism in society, so far as this is, in the end, the cause [!] of lawful order among men*”([4], p. 20). The problem of man is that “being in society he wants to have everything only according to his intentions” and thus people expect resistance everywhere – just as they themselves are also inclined to “resistance against others.”

This opposition it is which awakens all his powers, brings him to conquer his inclination to laziness and, propelled by vainglory, lust for power, and avarice, to achieve a rank among his fellows [. . .]. Thus are taken the first true steps from barbarism to culture. ([4], p. 21)

After a short polemic against Rousseau, a conclusion follows: “Thanks be to Nature, then, for the incompatibility, for heartless competitive vanity, for the insatiable desire to possess and to rule! Without them, all the excellent natural capacities of humanity would forever sleep, undeveloped” ([4], p. 21). Kant is thankful to “human nature,” which is understood here as a natural disposition of certain empirically observable behaviors such as “rivalry,” discord and antagonism. These patterns of behavior arise from the wish to dominate others. Moreover, Kant thanks nature because he *considers* this behavior *to be essential* for the progress of humankind. The *empirical* goal of this progress lies in the establishment of a social order founded on freedom. This is what Kant sees as the greatest challenge for all

human beings: to transform society in such a way that it provides the conditions for as much freedom as possible (even for the antagonism!), yet as rigid as necessary by following the rule of Right:

Such a society is one in which there is mutual opposition among the members, together with the most exact definition of freedom and fixing of its limits so that it may be consistent with the freedom of others. Nature demands that humankind should itself achieve this goal like all its other destined goals. Thus a society in which *freedom under external laws* is associated in the highest degree with irresistible power, i.e., a *perfectly just civic constitution*, is the highest problem Nature assigns to the human race [. . .]. All culture, art which adorns mankind, and the finest social order are fruits of unsociableness, which forces itself to discipline itself and so, by a contrived art, to develop the natural seeds to perfection. ([4], p. 22)

Hence, for Kant "rivalry" does not only participate instrumentally in the production of culture and art, it also serves the development of humankind because one of its "fruits" is the social order itself. The civil constitution and the "rivalry" do not appear as enemies, fighting against each other. Instead, the "unsociableness" arising from the knowledge of one's own resistance or that of others is, at the same time, the "cause" forcing itself to constitute a civil constitution as it were to support itself! Thus, for Kant, the just civil constitution and "rivalry" do not only realize *hand in hand* the *telos* of humankind, i.e., practical freedom, but the former appears as an effect of "rivalry" and even depends on it. Of course, Kant speaks of a necessary condition only, and he says nothing about whether he could imagine other ways of realization. But that is not his topic here, because he focuses on the empirical reality which he believes we observe, and on assessing it in relation to the progress of humankind.

In Kant's analysis of intergovernmental politics, which is concerned with the possibilities and conditions of peace (a quite achievable goal for Kant), one can find the same notion of the primary "rivalry." Within this context, it is also called "necessary." In *Perpetual Peace*, "rivalry" appears in the form of war, i.e., as a de facto evil, yet a clearly positive role is attributed to it. In the first supplement, Kant asks for a guarantee of perpetual peace – and finds it again in the artist called nature, which "is capable to create human harmony even against the will of the people and by discord" ([7], p. 360). Against the argument, that world peace could be protected by only *one* ruling government (with a despotic monarch as the lead), Kant turns again to nature, "which wants things the other way round." Although hatred and a tendency for war belong equally to nature, it still does not bring peace by despotic oppression, i.e., "by weakening all forces, but by their balance in the most lively 'rivalry'" ([7], p. 367) and protects it also that way! More specifically, nature unites peoples in the course of human development "through mutual self-interest. [. . .] This is the way of nature to guarantee by the natural mechanism in human nature itself perpetual peace" ([7], p. 368). That does not imply peace with sufficient certainty, but implies peace at least to the extent that everybody is committed to *participation* by nature, as Kant adds.

Kant asks neither for a unique and single common will (which therefore could not be represented by a "good dictator") nor for a common goal of all people.

On the contrary, in order to achieve the goal or the purpose of humankind, not every person should make this goal his or her own purpose, but should in fact continue to pursue his or her own goals, even against each other, shaping more and more the general purpose of “peace” (by “freedom”) *in this way*. Thus, for Kant, not even a common concrete will for peace or freedom is needed to establish it practically: the progress of humankind is not promoted by the fact that we all pursue the same rational purpose of a good will, but obviously by the fact that we compete with each other and fall into dispute:

But now nature comes to the aid of the universal, reason-derived will which, much as we honor it, *is in practice powerless*. And this she does, by means of these very selfseeking propensities, so that it only depends and so much lies within the power of man-on a good organization of the state for their forces to be so pitted against one another, that the one may check the destructive activity of the other or neutralize its effect. And hence, from the standpoint of reason, the result will be the same as if both forces did not exist, and each individual is compelled to be, if not a morally good man, yet at least a good citizen. ([7], p. 366, my emphasis)

This can be interpreted in the sense that the state has to provide the institutional conditions for people to compete against each other – and to not direct their forces against others in a fight. As a result, it looks as if reason alone has prevailed – even if it actually drew and still draws on “rivalry’s” services.

To sum up, “rivalry” is important in two practical respects. First, as an expression of the second “predisposition for the Good,” which belongs to the character structures of individuals and becomes visible within comparative human interaction. Here, “rivalry” plays an essential role in the development of art and culture, both of which can therefore be called effects of these empirically observable predispositions in human nature. Second, another effect of “rivalry” lies in its contribution in relation to the achievement of political order. For it is this structure of interaction that forces people to submit to legal laws of liberty, because this is the only way to hold on to their particular goals and thus benefit indirectly from each other. Thus, “rivalry” leads, in the form of social justice and peace, to a result that was not intended by the individuals acting in the interaction situation called “rivalry.” Thus, it induces not only indirectly culture and arts, but also serves to establish a social order within the laws of freedom.

In conclusion, Kant unequivocally regards “rivalry” as the engine of the development of humankind on its path to a better world – whatever “better” means. “Rivalry” appears as an interaction pattern in which the individuals direct little in their concrete objectives in accord with the a priori moral law, because they have their own advantages in mind when comparing each other – if only not to be at the bottom end. Thus, they indirectly contribute, in a significant way, to implementing morals as a part of the “last end.” Therefore, humanity develops in a positive direction, because the individual, concrete human beings (or states, which Kant designs analogously) compete with each other in pursuing their antagonistic purposes. And only by fighting for equality or superiority do they move to the pragmatic realization that the best way to do so (and to go on with it) is to legislate

reasonable peace laws. Their establishment is based *in effect* on plotlines which have little to do with the action-directing form of the categorical imperative.

Taking these findings as a basis, how can we then understand the relation between "rivalry" and the pure concept of freedom, on the one hand, and its realization as a constitutional order, on the other hand?

Constitutional and Legal Order as an Effect and Condition of "Rivalry"

The suggested aim of the nature of humankind to realize reason or freedom seems to be impossible to reach empirically or directly. Instead, it proves to be rather an unintended result of antagonistic interaction patterns by which various participants are not only sceptical about each other but also about this result. In *On the Old Saw: That May Be right in theory, but It Won't Work in Practice* (1793), Kant explicitly mentions the difference between life plans (and goals) of individuals and of humankind:

If we ask, then, by what means we might maintain and possibly accelerate this perpetual progress for the better, we soon see that this immeasurable success will depend not so much on what *we* do [. . .]. Instead it will depend upon what human *nature* will do in and with us to *force* us onto a track to which we would not easily accommodate ourselves on our own. For we can look only to nature [. . .] for a success that will affect the whole and thence the parts, while on the contrary, the *projects* {Entwürfe} of men start with the parts, if indeed they do not stop there. [. . .] They can extend their ideas to [the whole], but not their influence, chiefly since the project of one man will repel another, so that they would hardly reach agreement on a project of their own free intention. ([5], p. 310)

The "rivalry" or antagonism leads to a situation in which people give themselves laws, but the discrepancy between what they directly want and self-legislation still remains: people do not want to hold on to the law directly, but eventually do so because they realize that this is the only way to pursue their goals. Thus, the rational insight is that people are forcing themselves *to* better pursue their own purposes – here Kant argues pragmatically and not from the standpoint of moral philosophy!

People are giving themselves pragmatically the Right in form of the principle of law. This principle controls the "outer use of freedom," i.e., it formulates the first principle, according to which the maximal freedom of the individual together with others is attainable. From a pragmatic point of view, people submit to it, *enabling* and *protecting* the external use "of their own freedom." "Right [. . .] comprehends the whole of the conditions under which the voluntary actions of any one Person can be harmonized in reality with the voluntary actions of every other Person, according to a universal Law of Freedom" ([8], p. 230, see also [2], p. 430–431). In other words, Kant believes that this principle is needed so that people can use their freedom well. They give it to themselves and they submit to it in order to be, under the condition of their plurality, maximally free. "To be free" implies, in terms of Right, "independence of the compulsory will of another" ([8], p. 237).

Moreover, this empirically well corroborated explanation can be called pragmatic because it is thought of with the *general* goal to be achieved in mind. This implies the pragmatic question of how to realize it in the fastest and most sustainable way, even if it repudiates one's *own particularist objectives*. And here, "rivalry" appears as the best means to achieve the general objective or purpose. And aiming to achieve that objective can – again in a pragmatic way – be justified by the fact that it is itself a condition for making one's own objectives to the fullest extent realizable: people submit to "coercive laws" (of freedom) in order to make themselves able to realize their own goals in a better way. For freedom just means allowing anyone to pursue their interests as long as this does not go against the legal principle, which is *a condition of the concrete realization of every particular project*:

No man can compel me to be happy after his fashion [. . .]. Instead, everybody may pursue his happiness in the manner that seems best to him, provided he does not infringe on other people's freedom to pursue similar ends, i.e., on another's right to so whatever can coexist with every man's freedom under a possible universal law. ([5], p. 290) (see also p. 298 in [5] and p. 230 in the *locus classicus* [8])

But as the antagonistic forces implied by "rivalry" have the benefit of cooperating in the progressive development of humankind, the institutional establishment of the Right appears *at the same time* as its *result as well as its condition* – if "rivalry" should continue to be productive in relation to the development of humankind. In this way, the Right constrains *and* requires "rivalry" which is supposed to take place within the limits of the principle of Right, and should (even must) participate in the progressive development of freedom. "Rivalry" is therefore a concept which in fact *establishes* the reasonable Right, but which empirically also *depends* on it. Nevertheless, the individual actors have a more sceptical relationship with the Right, because "rivalry" involves goals other than *equality*. Equality, however, constitutes the core of the rule of Right, for Right means *to grant the same* to everybody in the sense of adjudging everybody formal equality of *condition* at the level of action:

The civil state, viewed purely as a legal state, is thus based a priori upon the following principles: 1. The *freedom* of each member of society as a *human being*; 2. The *equality* of each member with every other member as a *subject of state*; [. . .]. These principles are not laws given by a state already established, but they are the only laws that make it possible to found a state in accordance with pure rational principles of external human law as such. ([5], p. 290)

The fact that, by their interactive behavior, all people are working together for the reasonable progress of humankind could be interpreted as a jointly produced positive side effect, which none of them intended. Therefore, it is the non-obvious, but still conceivable natural goal of *humankind*, often lying behind the visible, opposing individual actions ([4–6, 8], pp. 310, 371, 378). Thus, Kant gives an obvious answer to the question of how what is ideally and possibly thinkable for humankind will evolve, considering the concrete empirical anthropological "facts": the observable

agent or means is "rivalry." This also indicates that Kant does *not* couple the progress of humankind with the *intention* of improving the world; progress does not necessarily have to be combined with a good individual intention. Instead, he assigns a functional role to ambition and to desire for domination in world affairs, a role which he nevertheless denies both concepts within the discourse of reasoning.

Freedom and equality turn out to be not just a result and condition of empirical "rivalry" – and therefore of the empirical objectives of the people involved – but at the same time, they provide the only possible a priori *reason* of Right. The a priori practical reason of humankind occurs again as the first and last instance in the discourse. It alone legitimizes civil rights, i.e., it justifies the social order, which can be conceptualized consistently and derived from a priori practical reason – as it is freedom.⁶ Hence, there exist, in Kant's thought, both an a priori *and* a legal-empirical freedom and equality: some as pure concepts, the others as empirical results and conditions. According to Kant, empirical observations are not allowed to be used in the reasoning of moral philosophy. However, when used as pragmatic reasons, they seem to be useful assistants for establishing the Right and therefore morals. Thus, "rivalry" systematically lies beyond the reasoning of moral philosophy, and in the core of the practical establishment of the rational: it is its effect and provides its best condition. Practical reason serves the people as well as the development of humankind, by *thinking, designing* and *constructing* (itself as) the idea of freedom, deriving and justifying laws. But when it comes to implementation, the antagonistic "rivalry" takes the lead: it appears as practical reason's empirical instrument, i.e., dedicated by nature to achieve its goals. This does not mean, for Kant, that at some point practical reason as the sole power or the idea of freedom could be "accomplished" empirically. Instead, he designed an asymptotic model in which reality approximates the "purpose of humankind" ever closer without the possibility of reaching it – for systematic reasons.

In the beginning, I drew a parallel to Hegel's system, which can now be articulated better. Kant clearly thinks along teleological lines when reflecting (with an anthropological interest) on the changes, developments and future possibilities of humankind. He classified these changes as a process of increasing the realization of freedom [14], which he thinks will develop "on her own" because nature has given appropriate presuppositions to human beings – in almost the same way as Hegel did some years later. Yet he holds fast to a potential reason, which presents nature with the unattainable goal. Hegel will be the one to reply to Kant, at this point, that he could only *think* the a priori, because his (Kant's) reason was – at this very moment in history – developed adequately to do so. Unlike Hegel, however, Kant held the opinion that the progressive development does not necessarily find the right direction all by itself. That is why he does not simply add reason to empiricism or to human nature, but also opposes them: reason has the task of providing guidance to the development, and it must do more than just reflect or reconstruct its way during its flight at dusk. Therefore, Kant needs to have an answer or at least a different answer when asked how to bond together the two components of the application of discourse – history and the rational ideal – to yield a model for specific applications.

The Idea of Freedom as a Founding Orientation and Limiting Condition of Its Endless Realization

In writing on the *empirical opportunities of the realization* of freedom, equality and peace, Kant distinguishes between the specific objectives of individuals and the purpose of all humankind and places them on two different theoretical levels. The latter is produced *by* the former through the interactive game of “rivalry,” and is realized by way of institutions – as the principle of Right, as civil constitution or international law (which can all be derived from the rational laws of freedom). But at the same time, the institutions also protect the ability of individuals to continue to set and pursue their particular goals. Therefore, one might say that they are established *in order to* make “rivalry” and all other particularistic goals possible. *Empirically*, “rivalry” as a pattern of interaction causes (owing to the nature of humankind) the development of the purpose of humankind as a whole. In this way, Kant mediates between the particular and the general objectives realizing the “idea of freedom” – almost all by itself and without having the whole picture in mind. Does that not seem cynical? For Kant it does not, when one carefully considers the conditions under which the antagonistic interplay of forces can take place. To do so, the theoretical considerations have to be balanced appropriately.

The Difference Between Reality and a Conceivable Rational Ideal

Kant formulates the question of the relation of empirical nature and morals with regard to the achievement of social peace and freedom as follows:

The representation to ourselves of the relation and agreement of these formations of nature to the moral purpose for which they were made and which reason directly prescribes to us, is an Idea [. . .], which is in theory superfluous; but in practice it is dogmatic (e.g. in relation to the concept of duty of perpetual peace using named mechanism of nature), and its objective reality is well established. ([7], p. 362)

Here, the “agreement of nature and reason” itself appears as an “idea” which is called “pragmatic” in practical terms, which means something like “in relation to reality.” “Dogmatic” has the meaning of being “strictly proved from sure principles a priori” ([1], B p. 35) *and* well founded, that is, empirically detectable. Thus, the “ideas” which originally derive from theoretical reason all serve ultimately, according to Kant, “the completion of the empirical employment of reason” ([1], A p. 565/B p. 593), i.e., they describe what the case *might* be if people used perfectly their reason and if their actions were only conducted by reason. Since this will never be entirely the case, because people in fact do not determine their practice only by pure reason, the “perfect use of reason itself” remains “a never-executed, yet-to-follow idea” ([1], A p. 565/B p. 593), even for Kant. Therefore, the notion of a consistent interaction between the purpose of nature and the idea of reason are, for Kant too, included in this type of idea: it may be called the *idea of distance*.

The asymptotic difference between ideal and reality is, however, justified not only with regard to the lack of empirical use of reason by the people, but also systematically. And here it receives a very different quality, as found in *The Critique of Pure Reason* (with recourse to Plato's *Republic*):

A constitution allowing the greatest possible human freedom in accordance with laws by which the freedom of each is made to *be consistent with that of all others* [...] is at any rate a necessary idea, which must be taken as fundamental not only in first projecting a constitution but in all its laws. [...] The more legislation and government are brought into harmony with the above idea, the rarer would punishments become, and it is therefore quite rational to maintain, as Plato does, that in a perfect state no punishments whatsoever would be required. This perfect state may never, indeed, come into being; none the less this does not affect the rightfulness of the idea, which, in order to bring the legal organisation of mankind ever nearer to its greatest possible perfection, advances this maximum as an archetype. For what the highest degree may be at which mankind may have to come to a stand, and how great a gulf may still have to be left between the idea and its realisation, are questions which no one can, or ought to, answer. For the issue depends on freedom; and it is in the power of freedom to pass beyond any and every specified limit. ([1], A p. 316–317/B p. 373–374)

According to Kant, we have to think an irreconcilable distance between what is consistently thinkable and what becomes real, even if this distance does not correspond to a fixed distance. But in addition, this infinitely small distance is also insurmountable, because realized freedom is *by definition* without closure. Freedom is not an achievable state which can be described by a definitional or fixing limit, but it is the becoming itself, which may "pass beyond every specified limit"! Therefore the relationship between idea and reality is not characterized by a forever-enshrined distance. By contrast, this relationship features an asymptotic approximation of the real to the reasonably thinkable in the course of execution through history. Thus, it approximates a freedom that is just not foreseeable, that cannot be limited or caught. For this reason, Kant formulates an imperative that invites one to follow the idea of freedom oriented as a "regulative idea," as an indicator of direction for the empirical people of today in their perpetual process of rapprochement – even if it remains an unattainable point, as presupposed. The given moral reality is an expression of this procedural approach to the moral idea of freedom, which itself is *not* derived empirically. Instead, it only signals to humankind the never-fixable opportunities in and through the rational, i.e., in a practical context: freedom of thought.

But social and individual freedom is, according to Kant, limited by the other human beings, who, during the process of becoming, are not allowed to consider themselves or others as being nothing but a means to an end. Instead, it appeals to submit to the "laws of freedom" *in order to participate in this continuing process by shaping it*. Thus, it is to design a model of interaction that expresses its inner dynamics by which, given the socio-historical conditions, the "greatest human freedom according to laws" will be realized. This model of interaction may, however, *not be meant to be* an easy transfer of fixed rules of moral philosophy to current situations, so the categorical imperative merely formulates the rule encompassing all practical issues.⁷ The distance between ideal orientating reason and the concrete conditions of use cannot and should not be "overcome through assimilation." Rather, this distance is to be obtained within the model, so the

statement of grounds also indicates the direction in which the development should go. Therefore, the analysis of general, structural and empirical conditions has to be interpreted as an extension, and as a request to design a *development model* that just does not try to directly identify both sides, i.e., the current reality and the thinkable ideal. In this way, the question of how to apply Kant's moral philosophy gets a completely different quality than outlined initially. What can such a model look like?

A Dynamic Development Model

As mentioned already, the realization according to the idea of freedom was itself called an *idea*, which is a regulative and orientating idea, in the shape of the Good. In addition, achieving freedom is, for Kant, a never-ending process that can be taken as an imaginary basis of the never-ending story of human development and history. It seems necessary to focus again on the relationship between the idea of freedom and actual reality to point out the *preliminary* and *regulatory character* of the idea of freedom. At the same time, this idea acts as the (at least thinkable) general purpose of the nature of humankind – a goal which becomes unintentionally real through competition – *and* also as an orienting limit for determining the actions of all people. The latter implies, for example, the orientation of the basic structural equality of all people or the “claim on the respect of others” ([12], p. 286), which basically has to orient actions. As a rule of law, this idea describes in a formal way the conditions enabling interaction to take place as a concrete means to realize the process. In this way, law regulates the interactions between people, and it also formulates and provides the institutional conditions of free self-determination.

The relationship between empiricism and the a priori concept of freedom relates to at least two different applications: “freedom” forms the ideological as well as the ideal value, which the empirical progress of, first, the individual (ontogeny) and, second, the human race (phylogeny) asymptotically approaches. The necessary, unbridgeable distance between the idea of freedom and reality is found clearly in both areas, so far as both open up a space between the idea of freedom, the realization of which is thinkable under the conditions of pure reason, and its *actual* realization, which approaches that possibility continuously and empirically. In other words, according to Kant, the gap is to be seen between what practical reason entrusts as a task, namely to think *freely*, because this is its genuine possibility, and the empirical becoming as a convergent relation of distance. But this should be seen in such a way that, on the one hand, the empirical is simultaneously grounded on, limited by and oriented through the thinkable. On the other hand, a constant distance must be maintained which in no way implies conflation. In this sense, one can speak of a distance model, which holds on to the unbridgeable between the idea/ideal and reality (see Fig. 17.2).

Both sides, idea and reality, are thought to be in both respects – ontogenetically and phylogenetically – converging but not congruent, because the latter would contradict systematically the idea of freedom. This is not just because people are always determined in other than reasonable ways, but because there is *by definition* no state in which the maximum freedom would be “reached,” and which therefore

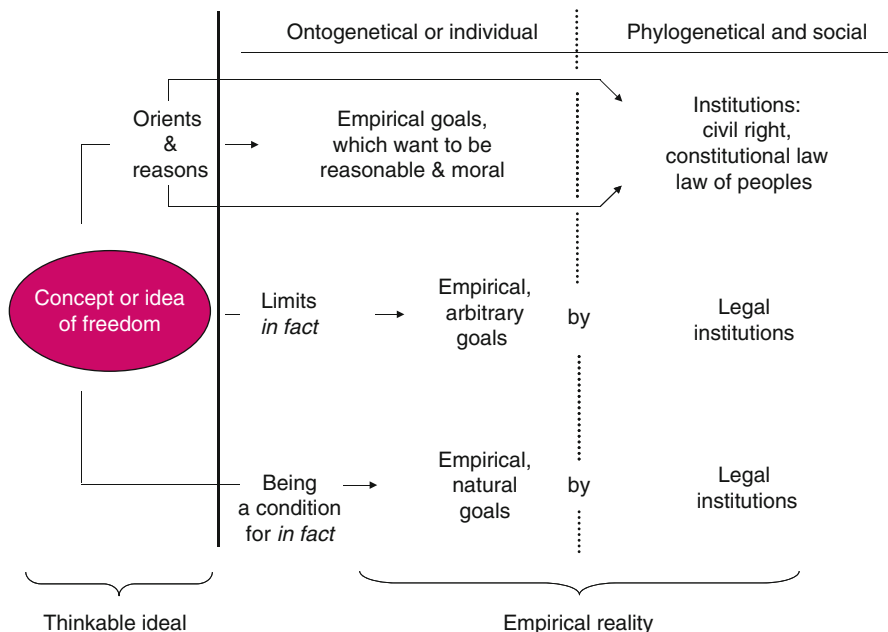


Fig. 17.2 The model of distance between the idea of freedom and the empirical reality

would permit more changes. Exactly in this sense, freedom is not a concept of *understanding* (*Verstandesbegriff*), but is a concept or an idea of *reason* (*Vernunftsbegriff*), denoting the human, wild and illimitable potential of thinking which lies in reason – without aiming at fixing or even defining it. If the term “freedom” is meant to describe an open process, it must be understood procedurally itself – a “property” language normally makes invisible. The conditions for its maximum development, i.e., its maximum determining potential for the design of human existence, however, lie, with respect to society, in the Right and, with respect to the actions of individuals, in the orientation of the idea itself.

Figure 17.3 attempts to dynamize the model of distance which is specified by the dimension of time and which involves “rivalry” as a means of realization. The idea of freedom orients action and interactions by providing the top determining principle. In consequence, the actions can ultimately serve its achievement. This applies to “rivalry” because it promotes the arts and cultivates habits. It may even occur in the form of physical strength contributing to the institutional establishment of the idea of freedom as Right. This does not mean that war can be justified in principle, as a means to progress, let alone as its only means. But it shows that Kant at least did not, from an anthropological perspective, deny the good effects of even the worst “combination” of the forces, although no one intended them.

In terms of time, the idea of freedom orientates us from an ideal standpoint in the thinkable future which humankind is approaching asymptotically. However, it is

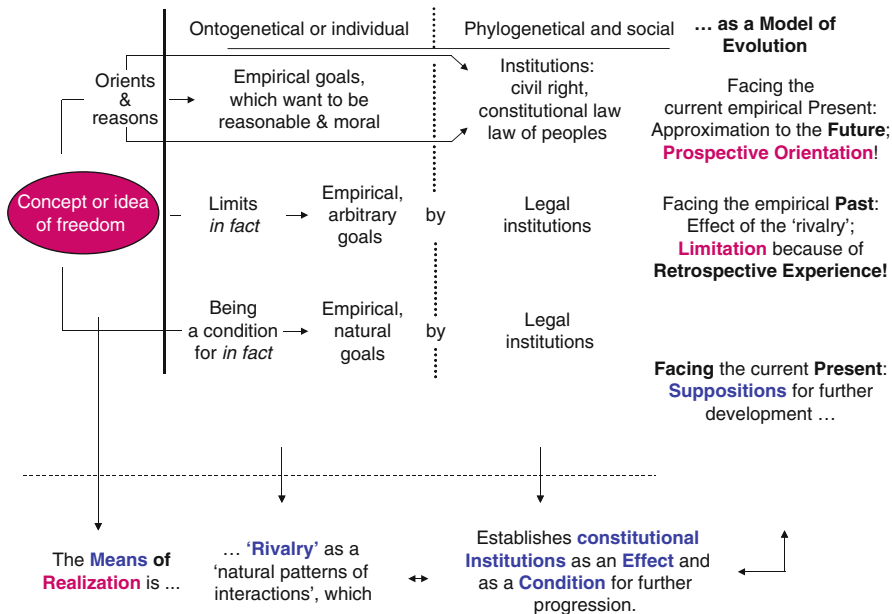


Fig. 17.3 The dynamic model of distance

only “available“ in so far as freedom realizes itself in no other way than by having to escape again and again the present or current reality:

One age cannot bind itself, and thus conspire, to place a succeeding one in a condition whereby it would be impossible for the later age to expand its knowledge [. . .], to rid itself of errors, and generally to increase its enlightenment. That would be a crime against human nature, whose essential destiny lies precisely in such progress; subsequent generations are thus completely justified in dismissing such agreements as unauthorized and criminal. ([3], p. 39)

This can be interpreted in the following way. According to Kant, only a society that has learnt not to hold on to its institutional achievements, but to beat them back continuously, can be called a freedom-actualizing society. In this sense, Kant calls his own age, using a participial construction, the “age of enlighting” (*Aufklärung*) and not an “enlightened age” ([3], p. 40). The idea of freedom is on the one hand the one which orients; and on the other hand the one which realizes itself ‘using’ institutions as means, by formulating constraints to allow maximum social and individual freedom. As a helpful means to establish them, Kant again sees mainly “rivalry” at work. Thus, with respect to war, one can speak of a restriction which had been won from a retrospective point of view owing to existing experiences. Finally, the institutional laws of freedom form the conditions for further development, which will lead to new experiences and therefore to freedom, because of further inventions and achievements.

Perhaps Kant sought to express that thought and the interplay of human beings could be understood rather as an infinite potential and an opportunity, and less as an

annoying limitation of supposed private possibilities. It should be noted also that the "comparative self-love," which expresses itself in "rivalry," depends on others: without a partner, one can hardly make comparisons. Moreover, the "true freedom" lies in its inaccessibility, the constant delay, in the enabling of the New by institutions, and not in its codification and adherence to traditional, possibly obsolete ways of thinking and laws. So that is how Kant can be read as having formulated an imperative to allow reasonable freedom, which implies the fact to be part of humankind. Its telos is, however, the very fact to become more and more free *through* the freedom of thought – and that means to *search for* the distance between ideal and reality and to *invent* the way through the space opened by this difference first – and incessantly.

To gain an idea of the implications this model of distance has in practice, Kant's *Perpetual Peace* can be used as an example.

Model and Practice

In Appendix I, two theoretical sentences are distinguished: "Honesty is the best policy" and "Honesty is better than any policy," the latter of which "is exalted high above every possible objection" ([7], p. 370). Honesty is better than any policy because it represents the ideal to which it is to orient itself, whereas policy is the mere instrument, which is to be employed to get closer to the thinkable. The passage continues:

The Terminus of morals does not yield to Jupiter (the Terminus of force); for the latter remains beneath the sway of Fate. In other words, reason is not sufficiently enlightened to survey the series of predetermining causes which would make it possible for us to predict with certainty the good or bad results of human action, as they follow from the mechanical laws of nature. ([7], p. 370)

As reason *cannot know* what will happen in practice, it should be focused on what is surely known, and that is what reason can only know from itself, *without* the need of empirical knowledge. It would be wrong – according to Kant – to orient oneself on empiricism, *because it is thought possible to lose* the thinkable and make free thought nearly a slave of nature. In particular, one would no longer believe in the possibility of humankind living together peacefully and free. This would also gamble away the chance of a rapprochement – a kind of fatalistic victory of justifying pragmatism, which denies thinking ideals and thus denies exceeding the boundaries of the current reality. Even if the beginning is in fact based on war, it is still better to be geared to the idea of freedom than to submit to empirical laws:

Hence, in the practical realisation of that idea, no other beginning of a law-governed society can be counted upon than one that is brought about by force: upon this force, too, public law afterwards rests. This state of things certainly prepares us to meet considerable deviation in actual experience from the theoretical idea. ([7], p. 371)

Kant makes this difference clear with regard to two concepts which he calls "moral politician" or "despotic moralist," on the one hand, and "moralizing politician" or "political moralist," on the other hand: If there are unavoidable "defects in the political constitution," moral politicians are obliged "to apply their whole

energy to correcting them as soon as possible, and to bringing the constitution and political relations on these points into conformity with the Law of Nature, as it is held up as a model before us in the idea of reason; and this they should do even at a sacrifice of their own interest" ([7], p. 372). But in no case should they insist on *changing everything at once*, because that would be "against any political acumen according to morality." Instead, "at the same time, it may be required of a ruler at least that he should earnestly keep the maxim in mind which points to the necessity of such a change; so that he may go on constantly approaching the end to be realized" ([7], p. 372). In this note, Kant explains the so-called permissive law of reason (*Erlaubnisgesetze der Vernunft*), which permits one to wait for coming changes until the right moment, in particular, when quitting the institutional status quo could result in (self-) destruction. Nevertheless, the postponement is only legitimate if the ideal is to be focused on and not lost. It determines the direction of change and the changes to be achieved. Here, wise action means to decide in accordance with the situation, the actual and ideal way to target resources which can be taken along – this would be the Kantian notion of "sustainability." At the same time, it becomes very clear why Kant was an advocate of reform rather than of revolution: actual changes in social structure and in the (reflective) thinking take time and therefore require reduced speed. This implies patience, but might avoid much suffering.

On the other hand, we find the "moralizing politicians" who speak about the not-right and the not-ideal status quo in a euphemistic way, claiming that people are not able to approach the rational ideal. Thus, they "do all they can to make moral improvement impossible and to perpetuate violations of law, by extenuating political principles which are antagonistic to the idea of right" ([7], p. 373). Not only that, they stick to that position even against their own intention, which is to bring morals and policy in line. Moreover, this example shows that Kant was neither an idealistic revolutionary who believed in direct and immediate changes which were to be implemented because of possible insights of reason, nor an advocate of cementing the status quo as the best of all possible worlds. Kant did not choose between all or nothing, but expressed the need for both: the ideal of free use of reason is *always* to be kept as a track for orientation for any type of law and maxims – even if it is just an infinitely progressive development.

This implies, in practice, not surrendering to reality, but working on it constantly to the point of renewal and development, without losing focus. Thereby Kant is and remains, of course, one of the apologetic representatives of modernity, thus characterized by having raised her own progressive dynamization to necessity and "rivalry" to the natural resource of this process. And here it was his aim to make clear what all the institutional laws and concrete actions must focus on constantly: Do they ultimately contribute to the achievement of greater freedom for all people – or not? But the account of the current status quo and our experience is a necessary condition when the design of specific legislation in the ongoing and never-ending process of change is at stake.

What suggestions can be formulated following that model derived from the writings of Kant for the specific application of business ethics discourse? What can we learn from this idea with regard to ongoing development and with reference to the idea of freedom? And has this still anything to do with a popular ethical self-understanding that counts on conservation and restraining the free forces?

Comments on the Business Ethics Discourse: Do Not Mind the Gap: Develop It!

What do you think changes more easily:

A stone or your opinion about it? (Bertolt Brecht)

In relation to the discussions in business ethics, the dynamized distance model outlined seems to me adaptable at a very basic level: it can be used to structure the relatively new idea and therefore the concept of "*sustainability*" which is still being determined. But before a link can be made between the proposed model and the concept of "sustainability," we need some preliminary observations. At the beginning, poverty, child labor and environmental protection were identified as ethical problems of the economy. At least since Karl Marx, economic theory has responded to these questions – each in an updated form – and has introduced concepts which should help to eliminate these kinds of social problems. Usually, ethicists of different professions do not pose the question of whether to agree with the objectives in principle, but rather pose the question of what means should be used to achieve them. They discuss as ever-promising the means fundamentally creating the economic system, which should serve the world population to achieve these objectives: such different measures as intra- or interstate redistribution, competitive market with or without governmental or state regulation, globalization versus regionalization, economic cycles and other similar topics. Although the experience of the twentieth century has reduced the range of models seriously discussed by economists (a planned economy is no longer seen as a real alternative), major disagreement exists at a very basic level when the *means* of achieving common goals is at stake.

In my view, this dispute is based *also* on another, perhaps sometimes metaphysically driven perspective on the recent development to the present. Thus, in addition to the central question concerning adequate means, a second, more fundamental question can be identified: it is whether the development of humanity *in relation to these goals* should be reconstructed as a historical progression or as a decline, or whether absolutely no development can be reconstructed, but only permanent, non-directional changes. Certainly, these changes are always to be understood in relation to their immediate predecessors, but not as following a single principle ([24], pp. 7–16). If, according to the sketched reconstruction, Kant had been asked the

second question, he would probably have answered without hesitation, at the end of the eighteenth century: it makes sense *to regard* history as a progression – even if we ultimately cannot really know if the world’s course is aligned teleologically.

In relation to the first question, Kant writes that our only available resources to achieve a better world are human reason *and* the natural human predispositions – the latter of which also lead to the interaction patterns of “rivalry.” The economic system is not part of his analysis, yet there is a hint that peace follows empirically not only as a consequence of war, but also because of wish to trade: “The commercial spirit cannot co-exist with war, and sooner or later it takes possession of every nation” ([7], p. 368, also p. 364). This suggests that Kant regarded the “commercial spirit” as another empirical means for improving the state of the world, although he did not consider competition among merchants. Here, war means war between two states which involves restricting or breaking off trade.

Both generally positive assessments of the historical development are taken as premises for the following considerations. They can still be called into question in philosophical discourse, as Kant would claim himself; he turned against characterizing empirical findings and metaphysical interpretations as *unchangeable*. But this means just that these premises have the status of merely arbitrary assumptions, because there are good *empirical reasons* backing them, for instance looking at the number of people who now live in relative affluence compared with the number of some 100 or 150 years ago. Kant would say these assumptions can be accepted when looking at experience and will continue to be accepted until humankind produces better means to achieve its goals, and/or until different interpretations of history prevail. In this sense, even the Kantian model has to be reflected in the philosophical discourse by questioning critically its own effects. However, in the domain of business ethics, it is appropriate to take the status quo seriously as a condition to which thinking and acting always relate. Therefore, it is assumed here that the competitive market economy *serves* in principle as a means of achieving common ethical objectives and does not impede them. After the disclosure of its premises, the much-requested “sustainability” can be linked conceptually to the model of dynamized distance (for “sustainability” in terms of economic issues, see [19, 25, 26]).⁸

The term “sustainability” implies a temporal dynamic dimension, since it seeks to assess the current situation from the imaginary standpoint of a cogenerated tomorrow. It is therefore a self-referential “processuality,” in which the present conditions of thinking and the actions of the future will be the effects of today. As such, they are anticipated, making them a part of the current conditions at the same time. In this *renvoi* game between the present and the future, the question arises how to measure “sustainability”: Is its most important criterion the maximum preservation of that what can still be preserved today? Or is “sustainability” an invitation to codesign what will come? If we compare the verb *to sustain*, as taken from the English concept of “sustainability,” with the German concept of *Nachhaltigkeit* it is obvious, first, that the German concept misappropriates its diversity. Besides “giving power,” “supporting” and “secure,” the English verb

also means "maintaining," "standing up," "substantiating," "bearing" and "suffering" (a loss). At first glance, the English verb seems to identify, as a common denominator of this diversity, the ability to make something or someone persistent, *protecting* him, her or it against injustice or attacks. From this perspective, the focus lies on the continuation of *something* or *someone*; it seems as if the goals are conservation and adherence to what *is* the need to be protected against changes. This can be interpreted as an attempt to produce substantial permanence by defeating changes, and this gave "sustainability" the meaning of conservation by stoppage: its criteria were its ability to preserve.

But if durability is interpreted not as the continuation of *something* that itself is not subjected to changes, but simply as a change, then maintenance would not lead to stoppage, but would only account for the lasting *change*. From this perspective, the meaning of "sustainability" is replaced by one which lies in the paradoxical demand *only he who converts stays true to himself or herself*, commonly ascribed to Hermann Hesse. Given the experience that our world is subject to continual changes, it seems more obvious to interpret "sustainability" in this second sense. With regard to the economy – but also to institutions and philosophical concepts – this implies *continuous innovation*. According to Kant, the concept of "sustainability" may not only imply pure processuality that would accept renewal and development for its own sake, but it must be understood as a teleologically driven development oriented towards the "end of humankind," i.e., enabling freedom for all people. This means that changes should be assessed whether they *serve* or *harm* the improvement of the *conditions* of people, and whether they expand the variety of ways of being human.

These considerations imply the invitation to reflect *permanently*, from the anticipating point of view of tomorrow, on the here and now, and to ask whether the direction is (still) right. In this sense, "sustainability" is to be understood less as a normative concept, but rather as a call for constructiveness, because it is always to design constructively the gap between the ideal and the empirical presence – in the sense of the ideal. To do so, thinking requires time *and* – according to Kant – the incentive to compete for having the best ideas. Here again, "rivalry" (*through* cooperation) serves indirectly the achievement of common goals. The call for permanent reflection, however, implies an impact assessment – whether of theories or of technical or social achievements – and can thus contribute to slowing down a little, since innovations must first be checked in relation to their contribution to the achievement of the ideal before they be put into production.

A conclusion for business ethics can now proceed in the following direction: if the action-guiding maxim is to never abandon the never-ending process of improving, then there is no moment in principle when inventions are perfect. This is valid at least as long as they cannot be said to be used *without problems* by all people in the world. "Sustainability," which focuses on innovation, is thus a call for ongoing reflection on the quality of an invention under the principal point of general readiness to service. Based on the production processes (in a broad sense), such

a concept of “sustainability” implies also that participating employees shall not be degraded to mere means. Work processes must therefore be ideally designed in such a way that everyone can also be considered as an “end in itself” (*Zweck an sich selbst*); if this is not possible immediately, we are to work continually and vigorously on achieving it. This means investing in a very practical sense, for example, in schools, hospitals and the autonomy of employees’ opportunities, and therefore investing steadily in the change, i.e., investing in a change that can help, at best, to reduce the gap between current reality and the ideal.

Finally, from this perspective, companies are assigned the role of *actively* shaping the executive development of the world by using *innovation*. As institutions, they themselves become part of the self-realizing “freedom” and therefore are responsible for the future on the basis of the present. It is therefore a call for *cooperation* with governmental and non-governmental organizations for the innovative design of a future which is and can never be fixed – even if the conditions may limit the scope or extent. This also implies a change in assessment, either because government regulations are no longer perceived as merely *restraining* instruments or the companies are no longer perceived to be restrained: innovations will come about only if they work *together*. It is a question of gaining an enlightened relation to the functional relationships of all actors and of wanting to design the open future from now on. The question companies must ask themselves, like any other institutions, is whether they will remain part of the problem or become part of the solution.

Conclusion

The intention of this essay was to point out that Kantian ethics provides more than just justification which is grounded in pure reason. To do this, it started by sketching the necessity of distinguishing between two kinds of discourse: the a priori justification discourse and an application discourse which has to consider empirical conditions. Subsequently it described the role of “rivalry” in the Kantian anthropological writings, showing that it is understood as a means of nature by which nature promotes arts and culture but also coestablishes the Right and even freedom between peoples. Accordingly (!!!) to that theoretical reconstruction of Kant’s practical writings, a development model was obtained which can serve as a dynamic paradigm for application questions. Using that model, this essay finished with some comments for the business ethics discourse.

To sum up, one can say: To know Kant’s writings in moral philosophy (in a wide sense) is a useful instrument for rethinking again and again the pivotal questions regarding our future. Not only because they postulate an idea of freedom, which consists in being permanently beyond itself, but also because of conceptualizing the inevitable human interdependencies. Human freedom in fact exists in manifold ways. Its imperative says: Establish again and again those conditions which are adequate for the current situation, making plurality and diversity possible and liveable.

Cross-References

- ▶ [Kant and Hegel on Property](#)
- ▶ [Kant’s Categorical Imperative and the Moral Worth of Increasing Profits](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)

Notes

1. I would like to thank Galia Assadi, Lisa Herzog and Ingo Pies for important tips and comments, and Christoph Lütge for his judicious rereading of the translation.
2. The writings of Kant are cited in accordance with the Academy Edition of the Brandenburg Academy of Sciences, i.e., the page numbers refer to named standard publications (from 1900) where possible, the English translations are taken partly from the World Wide Web.
3. The literally Latin–French expression *concursum* can merely be found in Kant’s writings as “assedence or collaboration to an effect within the world of phenomena” ([7], p. 361, note).
4. This “moral glow” is used here for pragmatic reasons, but cannot turn an argument around within the discourse of reason, let alone be used as a justification! See [1], A p. 747/B p. 775.
5. Another short essay shows what such an interpretation of history might look like. In his *Alleged Beginning of Human History* (1786), Kant reconstructs the biblical expulsion from paradise not as a decline, but as the development of the progress of reason. Here, it does not matter systematically whether Kant’s teleological proposals need to be interpreted theologically, because for him, no doctrine of predestination was provable at all. Therefore, he did not ascribe any grounding argument to it (see his rather negative opinion in [7], p. 362).
6. The laws of freedom as the rule of right derive *logically* from the implicit and a priori concept of free reason – being conceivable, rational, organizing principles that will not require empirical grounds ([22], pp. 195–215).
7. Verena Mayer has shown that Kant already saw clearly what Wittgenstein called the “paradox of obeying the rules” (*Regelbefolgungsparadox*). Therefore, the transfer model is to be classified as highly problematic [23].
8. Referring to “sustainability” here, and see especially the texts of talks by Adelheid Biesecker and Ingo Pies, both given on 7 May 2010, and Elena Esposito, given on 5 June 2010, in Berlin, Germany.

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Abstract

Kant's and Hegel's theories of property formulate the fundamentals of two typical ways of interpreting the right of property. This chapter reconstructs their conceptions as opposite but still equally valid answers to an important problem of today's theory of justice (as long as they are limited to their fundamentals). While Kant's conception tries to give a pure justification of property, without considering the historical and social circumstances and their possible consequences, Hegel's concept of property is embedded in a theory connecting the moral and the juridical perspective – and even offering a special theory of civil society as the concept of property's background. This chapter focuses on the characteristics of both their approaches to legitimate property. As regards Kant, this means the notion that property does not necessarily contradict the requirement of compatibility with the freedom of all and must therefore be permitted – as long as this condition is met and the idea of a common will deciding on the legitimacy of property is taken into account. As regards Hegel, it means the notion that the formal or abstract right is not adequate to legitimate property. On the contrary, reference to it alone leads to unreasonableness or injustice, while a reasonable justification of property depends on the dialectical determination of the relation of idea and reality, meaning that the real relations of the civil society must be taken into consideration and that they must be understood as dispositions of reason ruling over the real constitution of the state and thus compensating for the disintegration of civil society.

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Introduction

Throughout history, the right of property has been at the top (or close to the top) of the agenda of progressive and revolutionary forces. The Magna Charta Libertatum of 1215, for instance, already named a triad of goods that should be granted to free men; a triad which was later put into a well-known phrase by John Locke: life, liberty, and estate.¹ In 1215, these claims were submitted to the Crown and its representatives (by a group of barons taking the side of the people) who apparently decided rather arbitrarily whose life, liberty, and property they wanted to take as a whole or in parts. The “Representatives of the United States of America” who signed the Declaration of Independence in 1776 made reference to “certain unalienable rights” and named “life, liberty, and the pursuit of happiness” among them.² A closer inspection of the detailed list of “injuries” the declaration accused “the King of Great Britain” of clearly shows that the “pursuit of happiness” must be understood as a certain right being actively denied by the King’s expropriation of the colonists property: “He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.”³ “Pursuit of happiness” was thus probably supposed to mean the right of free citizens to acquire property and safely enjoy the fruits of their labor.⁴

Similar intentions and experiences must have guided the French authors of the “Declaration des droits de l’homme et du citoyen” in 1791, during the French Revolution, when they chose the right of property to be one of the four main rights the republic government of Citoyens has to grant (article II, right after the declaration that men are free and equal before the law): “la liberté, la propriété, la sûreté et la résistance à l’oppression” (liberty, property, safety, and resistance against oppression).⁵ The French Constitution even asserts the right of property in an outstanding position, namely, at the end of the text. According to its last article, property is supposed to be “un droit inviolable et sacré” (an inviolable and *holy* right, italics by A.E.). The proprietor can of course still be expropriated in conformity with this right but only in case of proven common necessity and under the condition of an adequate compensation.⁶

The “Universal Declaration of Human Rights” of 1948, on the other hand, no longer assigns such an extraordinary priority to the right of property. The Second World War’s example of injustice and barbarous acts being committed against individuals by a dictator and his aggressive subordinates (respectively some dictators) let the granting of other human rights appear to be a more urgent issue. It is therefore almost surprising that the right of property still has a place among the fundamental human rights. Article 17 says: “(1) Everyone has the right to own property alone as well as in association with others, (2) No one shall be arbitrarily deprived of his property.”⁷ The recent expropriation of the Jewish people by the Nazis might have been the immediate reason for this assertion of the right of property, but the claim also had its effect in favor of the anti-imperialistic liberation movements (which were not yet fully successful).

Each time the right of property was proclaimed, it was explicitly or implicitly accompanied by a justification explaining why a proprietor should be protected

against the aggression of a have-not wanting to deprive him of his property. This is where philosophical theories come in. Philosophical theories provide reasons for the establishment of a certain status, and they propose norms political actors can refer to. As regards the right of property, it is easy to see that this normative justification can also be used by conservative forces requiring a justification to defend their property against the claims of progressive and revolutionary forces striving for a better (and better justified) distribution of goods. In this case, the philosophical theories take on a special, ideological function, as they serve to legitimate the status quo of property distribution. No philosophical justification of property is immune from being instrumentalized by the “wrong” political actors. But, in the best case, a philosophical inquiry can clarify and determine the right to property, thus determining the conditions under which we can speak of a legitimated property at a given time and in a given society, so that political forces bringing more justice to this society (and, in the end, to the whole world) can rely on these determinations.

Before we take a detailed look at the philosophical theories of property Kant and Hegel developed, let us concentrate on some points where the question “what is legitimate property” urgently needs an answer today.

It is a well-known fact that, in the world of today, the rich become richer and the poor become poorer. This process has been going on for a long time. Even Hegel is already acquainted with it ([12], p. 389, resp.; [10], p. 220f). The people of today thus have to decide whether they let it go on, try to stop it, or even turn it around, by judging under which circumstances the acquisition and possession of property is just – and when it is not. Is it enough to prove that the property was gained in compliance with the current laws? Or are there reasons or rights transcending the laws of a certain country or state, asserting the justness of compensating for the growing inequalities – and the injustice of not doing so? Meaning that the institution we installed to represent us has to take away some of the *beati possidentes*’ (the lucky owners and winners on the marketplace) property and give it to the less lucky? Quite obviously, we need some kind of “Theory of Justice.” That is why John Rawls’ book received that much attention and even renewed political philosophy. The concept of property must be developed from the standpoint of a theory of justice. Rawls’ focus on the ethical side of the theory of justice, however, prevented him from arriving at a juridical concept of property. It is evident, however, that the theory of justice must be able to say what property can be in a juridical sense, and under which circumstances property can be legitimated (and legitimately defended against the have-not) by the state’s juridical and executive forces. If, on the other hand, someone tried to offer a purely juridical concept of property, a concept not embedded in a theory of justice, the result would be a cynical pseudo-legitimation of the status quo, rendering the well-known and increasing difference between the rich and the poor juridically untouchable. The suspicion of ideology would arise, and the reentry of the question of what is just and unjust could not be avoided.

Another presently pertinent issue is the question of intellectual property. The more the Internet determines the ways of trade, presentation, and communication, the more it becomes necessary to distinguish the products published in the

Internet which are supposed to be protected against misuse or unauthorized commercial use, for example. The economical value of information makes it necessary to decide what kind of information should be protected. The development can also be observed when looking at the modifications of the patent law. A new invention these days is often a fixation of information. The patent commission has to decide, for example, is it possible or right to get the deciphering of the DNA patented? In what sense does the DNA belong to the particular human being it has been taken from, in what sense does the information belong to the scientific institutions which made the research on it possible, and in what sense does it exclusively belong to the particular scientist and his laboratory who accomplished the last step of deciphering and now claim the right to economic exploitation?

A last issue to be mentioned here is the shortage of (and increasing need for) natural resources. Is it necessary to question the private property of potable water springs, when the private proprietor tries to make the most of his monopoly? What kind of property rights do human beings have concerning their own organs? Does it make a difference if they are dead or alive? While the economic issues cannot be solved without a theory of justice, the answers to these questions cannot be found without a theory of personal integrity (both intellectual and physical), together with a theory of death and of the rights a dying or dead person still has.

Kant's and Hegel's theories of property cannot be expected to fully match the theoretical requirements of today's issues. But, in a way, they can still serve as points of reference for a modern determination of property. As different (or even opposite) as they may be, they both attain the highest level of justification of their respective types of property theory. Thus, they formulate the fundamentals of two typical ways of interpreting the right of property, while at the same time, demanding a decision for one or the other alternative. While Kant's concept of property tries to give a *pure* justification of property, without considering historical and social circumstances and their possible consequences, Hegel's concept of property is embedded in a theory connecting the moral and the juridical perspective and even offering a special theory of civil society as the concept of property's background. In the course of this chapter, both concepts will be reconstructed, and their characteristics of legitimation will be focused on. As regards Kant, this means the notion that property is not necessarily contradicting the requirement of compatibility with the freedom of all and must therefore be permitted – as long as this condition is met and the idea of a common will deciding on the legitimacy of property is taken into account (cf. Sects. [The "Deduction" of the Concept of "Intelligible Possession"](#) or the [Argumentation for the "Possibility of Having Something External as One's Own"](#) and [Acquisition in the Natural Condition and Possession Ruled by the Idea of a Common Will](#), especially). As regards Hegel, it means the notion that the formal or abstract right is not adequate to legitimate property (cf. Sects. [The Right of Property Within the Abstract Right](#) and [Modifications of the Concept of Property Still Within the Abstract Right](#)). On the contrary, reference to it alone leads to unreasonableness or injustice, while a reasonable justification of property depends on the dialectical determination of the relation of Idea and Reality, meaning that the real relations of the civil society must be taken

into consideration and must be understood as realizations of reason ruling over the real constitution of the state and thus compensating for the disintegration of civil society (Sect. [The Critique of the Abstract Concept of Property Considering the Real Social Relations](#)).

Property Through the Idea of a Common Will (Kant) Versus Property Through a Dialectical Reason Determining the Reality of the State Built over the Disintegrated Civil Society (Hegel)

Introduction to Kant's Theory of Property

Kant's theory of property is contained in his "Metaphysics of Morals," first published in 1797 and therefore one of his later works.⁸ His earlier attempts at developing a conception of property were only preliminaries – the approach he takes in the "Metaphysics of Morals" is a wholly new one.⁹ While he supported a certain kind of labor theory for the determination of property before (the best-known labor theory of property is the one posited by John Locke), he is now convinced that labor invested in an object alone cannot justify its being the laborer's property. That, however, does not mean that Kant changes sides and turns into a follower of the major opposite theory of the time, which justified property by means of simple occupation. His new approach lays the foundations of a different kind of theory, based on the concept of pure reason. Regarding the opposition of the labor and occupation theories, the consequence is this: A certain part of justification derives from first occupation, but these rights are only provisional. In the end, property cannot be justified in any other way than by referring to a reasonable common will: The occupier is being forced to found (or enter into) a civil condition with legal rights, based on such a common will that allows property and demands the constant revision of a given civil society and state's particular distribution of property. According to this conception, the justification of property therefore does not lie in some past or present activity but in the prospective conformity with an ideal common will and its political realization in the world of all the individual states (and their union).¹⁰

In "The Metaphysics of Morals," however, this is not said in a simple way and not only in the form of such an abbreviated summary either. Maybe the text even shows that it took the author a long time and much work to gain his new perspective on the issue and that he attained it only a short time before. The text is definitely a further example of Kant's habit of very concentrated and condensed phrasing, and its editor made its understanding even more difficult by placing some of the paragraphs in the wrong chapter.¹¹ It is therefore necessary to focus on the thinking, to develop the main thoughts out of the short sentences and to look into Kant's other writings, which complete the explanation of the issue (e.g., "Zum ewigen Frieden," Perpetual Peace, 1795).

To get a first orientation, it might be helpful to remember that Kant, in "The Critique of Pure Reason," showed the concept of practical freedom (founded in the

concept of “freedom in the cosmological sense”) not to be contradictory to the supposition rendering all objective knowing of the natural world possible, namely, that all natural processes are determined by natural causes ([18], pp. B 560–562). The “causality . . . (arising) from freedom” (“Kausalität . . . aus Freiheit”) ([18], pp. B 560; cf. [14, 19], p. 221) needs a separate theory of “that which is supersensible but yet belongs to reason” (“vom Übersinnlichen, dennoch aber der Vernunft Zustehenden”) ([14, 19], p. 206.) a theory of practical reason which shows and justifies the rules of determining practical action in accordance with the idea of universal freedom. Two important treatises expose the fundamentals of this theory of practical reason (Kant’s “Groundwork of the Metaphysic of Morals” and “The Critique of Practical Reason”), but they really are restricted to the fundamentals. Kant develops and explains the “Categorical Imperative,” and he offers several formulas of this main idea (e.g., the so-called “Zweck-Formel”: “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end” (“Handle so, dass du die Menschheit, sowohl in deiner Person, als in der Person eines jeden andern jederzeit zugleich als Zweck, niemals bloß als Mittel brauchst.”) ([16], p. 429; [15], p. 96). And he asserts that the “categorical imperative” discloses to us what the idea of freedom might be (in Kant’s words, the categorical imperative is therefore the “ratio cognoscendi,” that is, the reason of knowing what freedom is) – which is of course the basis of the single moral law expressed in the “categorical imperative” (again in Kant’s words, freedom is therefore the “ratio essendi,” that is, the reason of being, for our ability to determine our will in compliance with the categorical imperative).¹² A theory of property is thus far not included in these fundamental writings.

The “Metaphysics of Morals” first arrives at a concept of property positively, positing the first principles of the supersensible but reasonable world, which are at the same time the first principles of the system (not only the critique) of morals. Starting from these fundamental positive doctrines, the system of morals can be constructed by the addition of concepts and clauses valid in a particular time and society; a task Kant does not busy himself with, however.¹³ Within the framework of this system of morals, Kant distinguishes right and virtue and exposes the first principles of their doctrines. He is convinced that the concept of right and the concept of virtue are two aspects of the concept of morals, united by the idea of freedom: Freedom applied in the external world of action on the one hand and in the internal world of determining the maxims for action on the other. In his presentation of these two aspects, Kant proceeds from the external to the internal realm of freedom (and therefore from a more restricted area to the complete area of morals) because the internal determination of the will also takes effect on the external action.¹⁴ He thus begins with “the universal law of right” (“allgemeinen Rechtsgesetz”) ([14, 19], p. 230f), the “ratio cognoscendi” (reason of knowing) of the freedom of external action. This law is analogous to the “categorical imperative,” the “ratio cognoscendi” of the freedom of internal determination of the will.¹⁵ And (as opposed to the universal law of morals in general, that is, the “categorical imperative”) its formula shows that the ethical determination of action is not taken

into account when the conformity of action with the universal law of right, that is, legality, is considered: “So act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law . . .” (“handle äußerlich so, daß der freie Gebrauch deiner Willkür mit der Freiheit von jedermann nach einem allgemeinen Gesetze zusammen bestehen könne”) ([14, 19], p. 231). The use of the capacity of choice only has to meet the one requirement that the action following from it must be compatible with everyone’s use of their capacity of choice, while everyone remains equally free. The reasons why someone decides to act as he wishes does not make any difference here. In order to guarantee the freedom of all in the external area of action, there must be an effective institution, externally forcing everybody to act according to their duty through “external constraint,”¹⁶ whereas the doing of their moral duty is the individuals’ autonomous, internal responsibility. Property, in Kant’s special sense, is then the first and most important issue “the universal law of right” applies to and which the institutions of external constraint have to secure.

Kant’s surprising focus on the concept of property can only be explained if we take into account that Kant does not think of property as mere property of external things. He does not even speak of property in the beginning but uses another expression, open to take on the usual meaning later on. This expression is “das äußere Mein und Dein,” that “what is externally mine or yours” ([14, 19], p. 245f). The background of this expression is Kant’s understanding of the connection of “what is externally mine or yours” with “what is innately, hence internally, mine or yours” ([14, 19], p. 238). As regards the meaning of “what is internally mine or yours,” the circumscription is easy to decipher. According to Kant, everybody has, “by virtue of his humanity” (“kraft seiner Menschheit”) ([14, 19], p. 238), one – and only one – inner proprium, that is, his or her freedom. And this freedom is not only an abstract quality, but in fact, “the only original right belonging to every man” (“Freiheit . . . ist dieses einzige, ursprüngliche, jedem Menschen, . . ., zustehende Recht”) ([14, 19], p. 238). That means everybody can *claim* that his freedom has to be recognized and secured. Of course, not every kind of freedom can be thus claimed, as Kant immediately asserts: Only the “freedom insofar as it can coexist with the freedom of every other in accordance with a universal law” (“Freiheit, . . ., sofern sie mit jedes anderen Freiheit nach einem allgemeinen Gesetz zusammen bestehen kann”) ([14, 19], p. 238). The connection between internal proprium and external belonging Kant’s circumscriptions suggests makes clear that his theory of justified external acting also views (external) property as a good everybody can claim, regardless of the particular condition or state they live in (i.e., in the sense of a natural law, “by virtue of his humanity”), as long as this claim does not contradict the universal law of right. As we will see, there are some further conditions for justifying the assertion that there must be something that “is externally mine or yours.” But we already understand now why Kant could choose the conception of property as a starting point of his “Doctrine of Right.” “What is internally mine or yours” (freedom) seems to be so important that its importance is transferred to “what is externally mine or yours.” Starting from this point, from the exposition of the “private right,” Kant develops the “public right” and the “right of a state” within

his “Metaphysics of Morals,” instead of doing it the other way round – as Rousseau did in his “Contrat social” (1762), for instance. The justification of the individual’s reasonable freedom is the center of Kant’s thought; the legitimation of the state is derived from it, and the legitimation of property in the sense of natural law depends on it before the state is even considered. That does not mean, however, that the state, realized according to the reasonable concept of it, does not have an important role to play in the assertion of the aforementioned claims.

The Universal Law and the Objects Which Can Be Someone’s Property According to the Universal Law

Right from the start, Kant’s theory of property is essentially a theory of the *conditions* under which it is possible to have property in accordance with the universal law of right. These conditions determine what kinds of objects are comprised in the concept of property. Here, we find another reason why Kant uses a circumscription for property and begins with a clarification of the way “to have something external as one’s own” ([14, 19], p. 245). The common way to have something as one’s own is not the way that can be justified. There is another way, however, which is subject to a set of conditions of natural law. Once these conditions are met, a justification of a particular way of *having something* in a particular time or state can be attained. In order to outline these special conditions, Kant distinguishes the empirical, that is, sensible and immediately perceptible possession of an object in time and space (his examples are the apple in my hand, the land on which I have laid down, cases immediately showing my claim of possession ([14, 19], p. 247f) from another kind of possession. This different kind of possession is not immediately perceptible by others; in fact, it is not perceptible at all but must still be presupposed if we consider the claim’s persistent validity in case of spatial and temporal distance between proprietor and property. We do not believe that the apple and the land cease to be mine when I put the apple down or leave the land. Nor do we believe that the claim on the property, the claim that others aren’t allowed to make use of it as they please (eat the apple and build a house on the land), loses its validity as long as the property is rightfully mine. Kant calls this kind of supersensible possession “intelligible possession,” or “merely rightful possession” ([14, 19], p. 245f), with reference to the distinction of “phenomena” and “noumena” in the “Critique of Pure Reason.”¹⁷ Even though it is not yet justified (or “deduced,” as Kant says), it is already quite obvious that only this kind of noumenal possession and this supersensible concept of property can be of real importance and that only this concept can serve as a basis for resistance against the claim of others trying to restrict my own freedom of using my property.

The special kinds of objects which, according to Kant, meet the requirements of justifiable property according to natural law (or the universal law of right) are particularly useful in explaining the meaning of this supersensible noumenal kind of possession beyond time and space. Kant thinks of three kinds of objects, of which only the first is substantial. It has already been illustrated by the examples “apple”

and “land,” and the continuity of the property relation without any perceptible connection between proprietor and property has been explained.¹⁸ The second kind is abstract in itself: Performances which have not yet been completed but have been promised to another person (or are agreed on by contract) can be possessed by this other person.¹⁹ While the act of transferring the property rights to the performance in question might still be perceptible in a certain sense (maybe it can be heard or read), the obligation established at the same time is already abstract but no less binding. This obligation itself is timeless – the property of the promised performance will end as soon as the promise has been made good on; but as long as it has not been made good on, it exists as property of the other, regardless of time. The third kind Kant names may appear strange to a modern reader. According to his systematical layout, the relation of family members to one another can be a relation of possession, too. In a way, husband and wife “belong” to each other as “what is theirs,” a child belongs to the parents as “what is theirs,” and the servant, too, belongs to the family as “what is theirs.”²⁰ Of course, Kant didn’t try to present all the main characteristics of these relations but only those relevant to the use of choice regarding external action compatible with the freedom of all. That is why he stresses that the relation of possession only means the right of making “direct use of a person *as of* a thing, as a means to my end, but still without infringing upon his personality” (“unmittelbar von dieser Person, *gleich* als von einer Sache, doch ohne Abbruch an ihrer Persönlichkeit, als Mittel zu meinem Zweck, Gebrauch zu machen”) ([14, 19], p. 359). In focusing on what the owner is allowed to do, the universal law of right’s restricting conditions may slip out of sight. The temporary and external use of a person “as of a thing” (during copulation, during education) depends on a free but binding contract; it depends on reasonable regulations guaranteeing the development of reason in a person without full reason. But I admit that I am unable to see how it is possible to consider the relation of family and servant to be compatible with the universal law of right.²¹ As regards our present context, however, this third kind of objects once again illustrates very well what “intelligible possession” is supposed to mean because these relations established by agreement (or assumed agreement) remain what they are, even when there is no physical connection.

The reason why Kant speaks of those three kinds of objects and which leads him to the idea of such a third kind of “rights to persons akin to rights to things”²² – in addition to the well-known sections of “private right,” “property right” (“Sachenrecht”), and “contract right” (“Persönliches Recht”) – is a systematical one. He considers the *relation* between me and a possible external object. This category of “relation” is, according to the “Critique of Pure Reason,” then itself divided into “substance,” “causality,” and “community.” Kant transfers this structure to the particular relation “of myself and the external objects in accordance with laws of freedom”²³ and applies the categorical determinations to characterize the objects. The substance relation then leads to the supposition of a “corporeal” object ([14, 19], p. 247) because of the continual relation of a person to an accidental external physical object. The causality relation leads to the supposition of performances because of the relation of a person disposing of another’s choice, that is, being able to causally determine his choice “to perform a specific deed” ([14, 19], p. 247). And finally, the

community relation leads to the supposition of the family members' choice regarding their "status" in reference to me because of the special relation of reference of me and another's choice, which is unavoidable only when family members are concerned (whose statuses are determined by their relation to the owner of the family members' choice). While we can understand this kind of systematical distinction (and its background), some of the further reflections and considerations in the "Doctrine of Right" do not take full account of the three kinds of objects' differences. The main focus is put on the corporeal objects. Furthermore, the justification of the possibility of having something external as mine uses an argument which presupposes a corporeal object because a corporeal object is the only one for which it is reasonable to consider the possibility of it becoming a "res nullius," an object that "belong(s) to no one" ([14, 19], p. 246; cf. [3], p. S. 185f, 189f; [20], p. 232, n.15). The choice of another person, however, will never become a "res nullius" and neither will the choice of family members.²⁴

The "Deduction" of the Concept of "Intelligible Possession" or the Argumentation for the "Possibility of Having Something External as One's Own"

Kant's justification of the concept of property depends on a single idea, which is at the same time the pinnacle and the most problematic point of the "Doctrine of Right" because the integrity of the whole "Doctrine" depends on its being unquestionable. This idea is classified as a "postulate," which means, firstly, that its content is "incapable of further proof" ("gar keines Beweises weiter fähig") ([14, 19], p. 231). At any rate, there can be no proof in the sense of a proof by theoretical reason referring to the "two pure forms of sensible intuition" ("zwei reine Formen der sinnlichen Anschauung") ([18], p. B 36). And secondly, it means that the content is to be understood as a demand (claim, postulate) of practical reason: A demand that can be met, if a certain process of practical construction is accomplished.²⁵ Here, we are even dealing with *the* "postulate of practical reason with regard to rights" (heading of § 2) ([14, 19], p. 246), saying "that it is a duty of Right to act toward others so that what is external (usable) could also become someone's" ("... , dass es Rechtspflicht sei, gegen Andere so zu handeln, dass das Äußere (Brauchbare) auch das Seine von irgend jemandem werden könne") ([14, 19], p. 252). What this postulate demands is the possibility of "having something external as one's own," and the practical process required is the deliberation on this possibility's realization in accordance with the freedom of all.

There is another version, which is supposed to be equivalent, but in fact is not because the second version is only valid for corporeal external objects, whereas the first version is pertinent to the three kinds of external objects already mentioned.²⁶ Nevertheless, Kant's further argumentation works with and immediately follows this second version, so we have to refer to it first and foremost: "It is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would *in itself* (objectively) have to

belong to no one (res nullius) is contrary to rights” (“Es ist möglich, einen jeden äußeren Gegenstand meiner Willkür als das Meine zu haben; d.i.: eine Maxime, nach welcher, wenn sie Gesetz würde, ein Gegenstand der Willkür *an sich* (objektiv) *herrenlos (res nullius)* werden müßte, ist rechtswidrig.”) ([14, 19], p. 246). This second version already provides a key to the argument Kant is going to make in favor of this postulate.

To prove the hypothesis (of the possibility), he fictitiously assumes its opposite, finds the logical conclusions drawn from it to be absurd or contradictory, and then infers from that result that the opposite of the assumed opposite (i.e., the first hypothesis) must be correct. This kind of proof is called “indirect” or “apagogic” proof. If we apply this sort of proof to our case, it says it is correct to assert that every external object which I (you) want to be mine (yours) can be mine (yours) because the assertion of the opposite would be contradictory in itself. This fictitious opposite is it is not possible that every an external object can be mine or yours. Asserting this would be absurd because it would mean that my use of an object of my choice is rightly forbidden, while the definition of an object of my choice simultaneously declares it to be usable by me ([14, 19], p. 246). In this context, “rightly forbidden” of course means that the action in question, that is, the use of an object of my choice, is incompatible with the freedom of all, while the definition of “object of my choice” is derived from the standpoint of “freedom of choice” (“die Freiheit der Willkür”) ([14, 19], p. 213), that is, the capacity of choice. The absurdity or contradiction can thus also be expressed in this way: “Freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting *usable* objects beyond any possibility of being *used*” (“so würde die Freiheit sich selbst des Gebrauchs ihrer Willkür in Ansehung eines Gegenstandes derselben berauben, dadurch, dass sie *brauchbare* Gegenstände außer aller Möglichkeit des *Gebrauchs* setzte”) ([14, 19], p. 246). As far as corporeal objects are concerned, Kant is able to say that the putting of objects “beyond any possibility of being used” is the same as to “annihilate them in practical respect and make them into *res nullius*” (“diese in praktischer Rücksicht vernicht(en), und zur *res nullius* mach(en)”) ([14, 19], p. 246), that is, to make them an object belonging to no one on principle.

This notion based on the “principle of contradiction” (“Satz vom Widerspruch”)²⁷ is supposed to be sufficient to justify the concept of “intelligible possession” and its “objective reality” (“objektive Realität”)²⁸ in the practical field – which is a reasonable postulate or demand. But, if I correctly understand Kant’s very short exposition, there are two possible objections. The first objection refers to Kant’s own warning against the use of “apagogic” proofs (“apagogische” Beweise) in the field of metaphysics.²⁹ This field, divided into a theoretical and a practical area, is “the domain proper to dialectical illusion” (“innerhalb dem eigentlichen Medium des dialektischen Scheins”) ([18], p. B 820), and here, we cannot “arrive apagogically at knowledge of the truth through refutation of the opposite” (“apagogisch durch die Widerlegung des Gegenteils zur Erkenntnis der Wahrheit gelangen”).³⁰ To avoid the mistakes of Leibniz and Wolff’s ontological rationalism, and to remove any reason for further dialectical illusions produced by antinomies, Kant needs to argue for his “position directly, by a legitimate proof that carries with it a transcendental deduction

of the grounds upon which it is itself made to rest” (“seine Sache vermittelt eines durch transzendente Deduktion der Beweisgründe geführten rechtlichen Beweises, d.i. direct, führen”) ([18], p. B 822). In our case, however, the “transcendental deduction” clearly rests upon a refutation of the opposite.

The second objection is immediately directed at the particular “apagogic” proof described above. This proof is based on the impossibility of turning a thing which is supposed to be usable into a thing that cannot be used on principle (by assuming the opposite of the postulate). This is declared to be absurd and that is why the postulate is supposed to be justified. But if we look at this absurdity more closely, we realize that it only appears if we consider the concerned things abstractly. The rule that a usable thing cannot be unusable (a rule which must hold true for all things that could possibly be owned by someone) is not valid for some things, of which Kant nevertheless claims they could possibly be mine or yours. It is, for instance, not valid for the servant, who must not be a means to the end of the head of a household. The ostensible absurdity is therefore a dialectical illusion in the sense of “The Critique of Pure Reason.” In some cases, things which *can* be used *must not* be used, that is, they should be considered unusable. Every class of possible usable objects must therefore be examined individually. The formal standpoint which does not account for the quality and quantity of the possible objects leads us astray.

Furthermore, we see that the word “freedom” is used twice in the proof’s main part: “If it were nevertheless absolutely not within my *rightful* power to make use of it, that is, if the use of it (object of my choice, A.E.) could not coexist with the FREEDOM of everyone in accordance with a universal law (would be wrong), then FREEDOM would be depriving itself of the use of its choice with regard to an object of choice, by putting *usable* objects beyond any possibility of being *used*” (“Sollte es nun doch rechtlich schlechterdings nicht in meiner Macht stehen, d.i. mit der FREIHEIT von jedermann nach einem allgemeinen Gesetz nicht zusammen bestehen können (unrecht sein), Gebrauch von demselben zu machen, so würde die FREIHEIT sich selbst des Gebrauchs ihrer Willkür in Ansehung eines Gegenstandes derselben berauben, dadurch, dass sie *brauchbare* Gegenstände außer aller Möglichkeit des *Gebrauchs* setzte,” italics by Kant, capitals by A.E.) ([14, 19], p. 246). In order to get a contradiction refuting the opposite of the thesis to be proven, these two uses of “freedom” would have to refer to the same idea of freedom because only then “freedom would be depriving *itself*” (italics by A.E.). This, however, is not the case. The first “freedom” is the freedom of “choice which can be determined by *pure reason*” ([14, 19], p. 213) (and in this case, freedom really is determined by “pure reason”), whereas the second “freedom” is the freedom of choice that is solely determined by the selfish ego’s desire to bring external objects in his possession and use them. Should anyone assert that the second freedom is still the same as the first, that is, that the second freedom is reasonable, the objection must be this has to be demonstrated.³¹ The claim (the second freedom is reasonable) would thus be a *petitio principii*. The result of this consideration is there is no contradiction in the “apagogic proof,” and consequently there is no actual proof. The hypothesis has not been verified; it does not even seem plausible any more, regardless of the fact that it might be proven differently.³²

But whatever may be said against these proofs, the goal of Kant's argumentation is unmistakable. He clearly tries to show that an "intelligible possession" must *generally* be possible, according to reason. It must be possible regardless of the qualities and quantities of the respective external objects, regardless of the manner of acquisition and especially regardless of the condition of the society in which this possession takes place. This general permission of the possession is supposed to be valid in a condition of natural law, and it is a consequence of Kant's systematic realization that moral and juridical problems cannot be decided on the basis of the alternative of duty ("Gebot") and prohibition ("Verbot") alone. In another case in accordance with the categorical distinctions of the "Critique of Pure Reason," the permission of actions which are neither forbidden nor required – ruled by the "lex permissiva" ("permissive principle," das "Erlaubnisgesetz") – seems to necessarily take a third position at the side of duty and prohibition, analogous to the introduction of the category of "limitation" at the side of the categories of "reality" and "negation."³³ And this is indeed a precise account of the one-sided imposition connected with the fact of somebody's claim to have something external as his own and to exclude others from the use of this object. This exclusion is a limitation of the (or a certain kind of the) freedom of others and must thus appear to be forbidden at first sight. After the explanation that it is in a certain sense compatible with the freedom of others anyway, however, it must be considered as allowed. Conversely, the obstruction of this possession is to be considered as forbidden. This does not mean, on the other hand, that the permitted action is required.

The strong claim in this consideration is the compatibility with the freedom of others (in a certain sense), which has to be explained. And no matter how we will judge Kant's explanation of this compatibility regarding the natural condition, this claim of the compatibility with the freedom of others is clearly connecting natural law and every version of positive statutory law in a specific civil society because this compatibility is (in Kant's thinking) the main principle of the doctrine of rights including natural *and* positive statutory right. Almost every further justifiable determination concerning the problem of property, especially those referring to the qualities and the quantities of external objects, is thus accomplished by "a collective general (common) and powerful will" (ein "kollektiv-allgemeiner (gemeinsamer) und machthabender Wille") ([14, 19], p. 256) ideally expressing the compatibility in the form of general laws ruling every issue in detail. The only exception is the question of acquisition, which is already (at least provisionally) answered in the natural condition.

Acquisition in the Natural Condition and Possession Ruled by the Idea of a Common Will

Other than Rousseau and similar to Hobbes, Kant does not imagine the natural condition to be paradisiacal or without depravity.³⁴ It is a fictitious state without rights, in which people are expected to behave according to their natural desires and choices, but to nevertheless be capable of following the unwritten rules of their natural

reason, too. In particular, they are expected to acquire external objects, thus excluding others from using them. Because of the principal permission to have something external as mine or yours, this acquisition cannot be objected to, as long as no one else has claimed the same object before, that is, as long as you are the first to claim it and will therefore not harm anyone else by your acquisition. Of course, the possession will be disputed anyway, as will the general distribution of external objects. Thus, the fiction of the natural condition is already sufficiently determined. It is sufficient to clarify the fact that, in the civil condition, most external objects have already been distributed, meaning they already belong to someone. The acquisition had already taken place in the natural condition, but in this condition, the possession is (and will always be) disputed, too, because of the unilateral character of the acquisition. It is therefore neither safe nor legitimate, although there will be physical means to secure it (strength, power etc.) and also means of fragile justification. The only valid justification possible in the natural condition, however, is, as we already know, the conformity with the freedom of others, and the only justified means to secure property does not consist in overwhelming one's opponent but in institutionalizing neutral authorities who can decide possible disputes, establish a status of common reciprocity and are able to enforce their decisions. That is why Kant is able to make use of this fiction a second time and to find in it the reason to leave the natural condition behind and enter into a civil condition or civil constitution.³⁵ The unavoidable dispute over external objects (because of the limited resources) makes it necessary to establish a state (the security of the internal freedom of course will do, too) and transfer a "provisionally rightful possession" ("*provisorisch-rechtlicher Besitz*") into a juridically justified possession called "*peremptorischer Besitz*" ("conclusive possession") ([14, 19], pp. 257, 267). But it might not be superfluous to once again stress the point that not every (always unilateral) acquisition can be transferred into legitimate property but only those which are compatible with the universal principle of right valid independently of time and condition³⁶—or in other words, which are "in conformity with the idea of a possible united *will*" ("*gemäß der Idee eines möglichen vereinigten Willens*") ([14, 19], p. 258).

The kind of external object Kant thinks of here is once again the corporeal object – and even more specifically land. The justification of acquisition of land might, in a historical perspective, be the most important problem of the philosophy of right as regards property (during Kant's lifetime, the issue is pertinent in connection with the American colonies and their western expansion, but the problem already exists in classical Roman and Greek history, for instance). But that is not the reason why Kant is giving priority to this problem. The transcendental standpoint of the analysis of our human conditions leads to the result that, as far as our external freedom is concerned right at the beginning, that is, the moment we are born, our corporeal body takes up and needs a place in time and space – on a planet where such space is limited.³⁷ Therefore, all human beings are constrained to spatial community. Philosophical consideration must account for that, and it must grant everybody the same right to occupy the space and the time he cannot avoid to claim, although there will necessarily be collisions with others who rightfully claim their space and time, too. Practical reason cannot find reasons for birth privileges, so

the limited resource must be distributed in accordance with the equality of men. In consequence, the fiction that even the land that *can be acquired* through occupation belongs to *nobody* is wrong. The right fiction, compatible with practical reason, must in fact say that a distribution of the limited totality of land in accordance with the criteria of equal rights has to be possible. It would thus be correct to imagine that the limited totality belongs to *all men* or, better, belongs to the fictitious instance of practical reason (*communio possessionis originaria*), which distributes parts of this totality, depending on the claims laid in conformity with the freedom of others.³⁸ Occupation of land is therefore acquisition of land from the community, who is its original owner. Although there is a relation between corporeal objects and their proprietors, a relation of obligation only exists between persons. And because you cannot unilaterally oblige anyone to stay away from the object you claim, it is, according to Kant, necessary to assume a community ruled by reciprocal obligations to which one can refer when claiming something as one's own with the consequence of the obligatory exclusion of others. As we can see, this consideration is valid for corporeal objects in general, not only for the acquisition or distribution of land. That is why "the united choice of all who possess it in common" (die "vereinigte Willkür Aller in einem Gesamtbesitz") ([14, 19], p. 261) must be assumed in all cases of property of corporeal external objects³⁹ but of course, not in case of the property of choice of another person. Conversely, the latter case might make it clearer that a community of persons or a unity of will has to be assumed as a presupposition of the property relation.

While the justified acquisition in the natural condition depends on one being the first to claim the external object as one's own, the more important condition is that, already in the natural condition, the acquisition accounts for the fiction (or the idea) of a community of will ruling the distribution and assertion of property in accordance with the freedom of all. Only if these conditions are met, the claims can be transferred to the civil constitution, where they are secured and the "common and powerful will" is installed to decide conflicts and to enforce justified claims. Every unavoidable conflict is a reason to establish a state and a civil constitution—not merely because it is useful but because reason demands the establishment of relational structures of equal right.⁴⁰ As soon as this constitution has been installed, the questions of justification can finally be answered. Furthermore, the problems of quality and quantity of property can also be negotiated and solved only on this level. Although the acquisition already provisionally determines the quantity and quality of the claimed property, the respective justification depends on the conformity with the freedom of all in a specific civil constitution, determining the rules of quantity and quality in accordance with the detailed statutory laws.⁴¹

Consequences

One cannot be quite sure whether today's Kantians should vote or work for a constitution, making it the government's business to limit the quantities and to decide on the qualities of property, in favor of a compensation of inequalities

among the citizens. While Kant himself didn't entrust the state with the task of promoting its citizens happiness and social welfare (only with the guarantee of subsistence)⁴² because the doctrine of right is not concerned with ethical problems and different ideas of a happy and satisfying life, a Kantian standpoint may still be compatible with the political program of establishing equal chances for individual freedom.⁴³ The "Universal Principle of Right" may not be helpful in determining anything with regard to social inequalities as long as the formal equality of external freedom is given, but since "all Right is to proceed from (the united will of the people)" ([14, 19], p. 313), it is possible to politically decide on ideas which may have compensatory social effects. The fact that reason a priori does not come to material (as opposed to formal) determinations leaves it to the sovereign to make up its mind about the necessary enactment of laws improving the chances of freedom for all and to continuously examine the given status' conformity with the freedom of all.

Introduction to Hegel's Concept of "Property"

Other than Kant's theory of property, which still leaves some room to maneuver, Hegel's theory of property eliminates almost every kind of indetermination. Hegel's concept of property, too, is embedded in a theory of right which ends up in a theory of the state. But Hegel's theory of right and state also takes reality into account and considers the historical development and the present status of right and society as the reasonable counterpart of the development and status of reason itself. That is why the necessary moments of historical development, which Hegel reconstructs in order to understand the present, are at the same time the necessary moments of reason determining this development and realizing themselves in it. There is no escape from the realization of reason; it shows itself in every detail and it determines every part of reality. The obvious existence of opposing forces in this reality, of forces trying (and sometimes seemingly managing) to come out on top of each other and of reason, has to be understood as dialectical reason integrating even contradictory ideas into one absolute idea. Any doubts we may have regarding the reasonableness of reality are therefore not appropriate in view of Hegel's conception of reason and its relation to reality. In determining reality (in case of the theory of right, the reality of the state), Hegel's reason integrates the contradictions corresponding with the opposing forces in reality into its own development. And although it might be difficult to understand the concept of this reason, the program leads Hegel to a reasonable explanation of reality which is still convincing in many cases. By means of Hegel's "Philosophy of Right," for instance, it is possible to see the shortcomings of a mere abstract or formal theory of right and property and to realize the relation of right and society a theory of right and property has to account for – and all this not only by means of abstract concepts but with regard to concepts referring to the historical reality of a civil society still valid in our times. Especially the close interior connection between property and personal freedom the civil society of our present time still assumes is well explained by Hegel's Philosophy of Right. But it is not only explained: The theory even goes so far as to criticize the

merely abstract concepts of “property” and “freedom” and states that it will not do to abstract from the real distribution of goods in the civil society nor from the immorality and dissolution of society’s real conditions.

To approach these aspects, it is best to follow the central thread of the “Outlines of the Philosophy of Right” because, as in all of Hegel’s works, it reflects the notion of *development*. But some general remarks may come first. The “Outlines” were published in 1821 (written 1820).⁴⁴ At this time, Hegel had already written his most important books: the “Phenomenology of Spirit” (1807) and the “Science of Logic” (1812/13; 1816). The “Encyclopaedia” followed in 1830. Like the “Encyclopedia,” the “Philosophy of Right” served as a course compendium, in case of the “Philosophy of Right,” for a course on natural right and the science of state. Hegel had already given lectures on this issue during his time as a lecturer in Jena (1801–1807), and he had continued to do so since. The book is therefore well revised, well connected with the other main issues (i.e., based on the “Science of Logic”), and shows Hegel on top of his intellectual development. At this point, he had the most important effect on the intellectual life of the time. These effects far exceeded those of Kant’s “Philosophy of Right.” One reason for this is the fact that Hegel’s analysis of the civil society also convinced the other theorists of the time (or at least goaded them into opposing the necessary steps Hegel took, as Karl Marx did, for example). Only when the dialectical logic and the speculative theory of nature proved to be incompatible with modern natural sciences, Kant’s philosophy regained some influence and could, in the long run, be established as an alternative in the field of practical reason especially.

To go into details, the central thread of the “Outlines” will lead us first to an understanding of the connection between property and freedom. Hegel explains this connection by defining the so-called abstract right. Moving on to “Morals” and “Ethics” (“Sittlichkeit”), the other parts of the “Outlines of the Philosophy of Right,” Hegel’s *critique* of the merely formal and abstract concept of “property” becomes more and more obvious and is explicitly presented in the end. What is kept of the original connection between property and freedom becomes clear in the analysis of the “civil society,” to which we will restrict ourselves here. There, his critique reaches its highest degree of keenness and objectivity.⁴⁵ To be consistent, these thoughts can be evaluated best in a modern theory of property that takes the given conditions of reality, that is, the conditions of the growing inequality in today’s civil society, into account.

The Right of Property Within the Abstract Right

The first definition of “property” can be found in the first part of the “Philosophy of Right,” entitled “The Abstract Right.” According to it, the right of property and its definition are first and foremost abstractions, made from a later, more complex standpoint of higher concretion. This first abstract definition says that everything which has no “(substantial) end in itself” (“substantiellen Zwecke ... in sich selbst”) ([10], p. 60, [12], p. 106) can be considered as “property.” Persons can

give the thing in question such an “essential end” by putting their will into it.⁴⁶ The thing that has thus become a property has essentially been defined until now by the fact that it has been pulled into the “external sphere” of the freedom of a person, in other words: Into that sphere, persons *must* give themselves in order—in Hegel’s words—“to exist as Idea” (“um als Idee zu sein”) ([10], p. 57, [12], p. 102).

The argument supporting the assertion that only a person can have property, or even that a person *necessarily* has property, thus leads us to a special kind of philosophical justification which has its origins in classical philosophy and which is critically reconstructed by Hegel’s objective idealism. The concept of “idea” is located beyond the difference of theoretical and practical reason. More specifically, the idea is a concretion of theoretical and practical reason, which can and must be differentiated (is differentiating itself), because it is reason itself. Hegel calls the sphere and the method of the idea “logical.” When he claims that the idea of a person implies the realization of their freedom in an external sphere, he does so because he sees it as a specific case of the more general “logical” rule of necessity that an idea implies its realization/externalization,⁴⁷ that is, the “absolute idea” has a complement in the form of the finite existence determined in time and space. This relation between “absolute idea” and finite existence is the model of (and the reason for) the relation between a person and the external object this person possesses. According to Hegel, one only has to name the steps of development beginning with the idea of the person and ending with the “absolute idea” in order to justify this reasoning. This logical “deduction” of property is not a sound proof for the assertion at all, though. The imaginary solid basis Hegel refers to is the speculative heart of the *dialectical* logic.⁴⁸ Hegel had already stated that intelligence (“Verstand”) cannot understand this. On this basis, being and ought are no longer separated. One can see what an imposition this is when looking at the well-known distich in the opening words of the “Philosophy of Right”: “What is rational is actual, and what is actual is rational” (“Was vernünftig ist, das ist wirklich, und was wirklich ist, das ist vernünftig”) ([10], p. 14, [12], p. 24). This famous dictum asserts the identity of being and ought deduced by the dialectical logic in the field of practical philosophy and decries any tentative of changing the status quo as unreasonable and irrational.

We shall restrict ourselves to a reconstruction of the way the concept of a person results from an abstraction and of the reasons for persons to have property. To this end, a short glance at Hegel’s “Encyclopaedia of the Philosophical Sciences” is in order. There, the philosophy of right is developed under the title of “objective spirit” (“objektiver Geist”), as if right, morality, and “ethics” (“Sittlichkeit”) were the objective realities of a spirit, of whom one can only think as “subjective,” creates. It is the concept of the “spirit” which connects its highest and most mediate form of being, namely, its being state, with its simplest form of being, namely, its being a natural person. The latter form is “abstract” because it has not yet gotten any generality through mediation of the others.⁴⁹ Everywhere, the *unity* of this spirit guarantees the *unity* of its real and objective forms of being and particularly the *unity* of the state ([10], p. 273, [12], p. 415). If the development of this “spirit” and its legal and practical determinations are to be presented, one has to begin with the

concrete idea of the state and then continuously move backward from this idea, abstracting from the institutions and structures of the society until one reaches the smallest unity, not yet integrated into society, but *determined to be integrated into society and state*: The unity of the person ([10], p. 228, [12], p. 399). Only on this background can one understand the use of the word “subjective” in the introduction of the “Philosophy of Right.” Here, a “will” (a “free will”) of the spirit is mentioned, which realizes itself in the right and its different forms, that is, develops itself into more and more complex forms, up to the complexity and totality of a state.

Given the concept of “person,” one should of course – also according to Hegel – think of a human individual, but of a human individual only as far as its particular individuality does not come into play. A person can thus be regarded as an individual minus its particularity,⁵⁰ the focus being only on its equality with others. Because these abstractions are, in Hegel’s opinion, at the same time presuppositions of a human individual’s legal capacity and possibility of being integrated into the legal community where property of external things is recognized,⁵¹ one should not demand more of a subject who corresponds to the abstract concept of a “person.” In doing so, one will still not abstain from every demand an individual has to meet if it corresponds to the concept of “person.” In the context of the development of the “spirit” as presented by the “Encyclopaedia,” this concept is not the first in the row. That is why the individuals called persons already meet some demands, namely, that they show the first kind of unity of theoretical and practical “spirit” ([9], p. 300f). If the “spirit” is “person,” it has *determined and realized itself as free* with regard to thinking and volition. One should neither demand more nor less of an “abstract” person.

The “Encyclopaedia” thus leads the way to the notion that a free spirit, which is real and equipped with a will to self-realization, *must have property*: The “subjective spirit” (who precedes the “objective spirit” on the way to the development of the “absolute spirit”) already has a particular property which is systematically connected with legal property. As soon as “thinking” understands that the contents it took for given are in fact determined by itself (that means that these contents are its own), it has taken possession of them. By doing so, the self-determining thinking that understands itself as such “becomes free also with regard to the *content*,” and the spirit in the form of thinking thus passes into the spirit in the form of volition.⁵² Defining a purpose – the hallmark of the will – is understood as self-determination of thinking, more exactly of a thinking that is able to autonomously determine its content as purpose, which has to be reached in reality at the end. As soon as the spirit really arrives at the level where its contents are not only determined by itself but also – as purposes – attained in reality, the concept of the spirit’s “subjective property” has changed into the concept of an objective and real property.

From this standpoint, we can explain the above-mentioned definition offered by the “Philosophy of Right” that property has to be understood at first as property of an external thing, qualified by *material immediacy*: The will reducing itself to its self-relation and therefore having an immediate relation to reality makes a fundamental difference between entities who have the ability of self-relation (persons) and entities that do not (things). In the former’s eyes, the latter become the selfless “given world,” and they realize that their freedom is limited by the

immediacy or *immediate* “givenness” of this world, so that the immediate relation between subject and object is not free. Thus, the subject is the only one who could possibly change this relation into a free relation and arrive at a reasonable relation between subjective and objective world. The subject alone is able to act by defining a purpose and by realizing its freedom – for instance, through the action of taking the external selfless being as its purpose, discovering itself in the form of this external thing and then taking it in possession, in the sense of transferring its own being into the thing’s being.

For the record, we can say: According to Hegel, the reason for declaring that even the most simple external object is one’s own property lies in a subjective spirit’s being a person, who has to make itself objective and realize its freedom in its property. With a view to the integration of the individual into the community of right, we have to abstract from every particularity of the person. We also have to uphold the reasonable demand that the primitive form of a spirit’s reflection must be accepted – the one by which it is reflected through an external object, as it finds itself in this object after having put itself into it. As long as the action serves this purpose, the person’s property is justified. On a certain level of the spirit’s development, its reflections need a material matter they can cling to.

In case of decisions a human individual’s spirit makes, one must, of course, not only consider the person’s self-interpretation. Otherwise, there would be no difference between the right of property Goethe could have claimed to rely on when looking at his collection of minerals (as far as he had put some of his spirit into it)⁵³ and the right of property Charles Foster Kane in Orson Welles’ “Citizen Kane” refers to in calling his huge collection of art his own. Only a little while before he is dying (not earlier!), Kane realizes that he cannot compensate for the deficiencies of his personal development by having heaps of external things. Maybe he even realizes then that his excessive richness does not reflect the freedom of his personality but only the lack of freedom.

Modifications of the Concept of Property Still Within the Abstract Right

To Hegel, however, the definitions of the abstract right (and therefore also the already developed definitions of property) are insufficient. Every further step away from these definitions he takes in the next chapters means that the essential truth concerning property has not yet been presented. The retreat from the first definition of property, and from the abstract relation between person and property as determined by the abstract right, indicates a fallacious, unreasonable thinking of freedom, justice, community, and state – a thinking we might, in the words of Karl Marx, well call “ideological.” Accordingly, it would be valid to say: As far as Hegel affirmatively presents the abstract right, he makes himself an agent of this “ideology.” As far as he criticizes the abstract right through the process of development he calls “Aufhebung” (that means “to keep” as well as “to lift up to a higher

level of thinking” and “to cancel”), he unmasks its one-sidedness, and any reduction to the abstract right – after the full development of the legal relations in the whole “Philosophy of Right” – is shown to be “ideology.”

This particular ambivalence can be observed in the text, too. When Hegel infers from the abstract quality of the definitions of the person that “what and how much I possess” (“*was und wieviel Ich besitze*”) ([10], p. 63, [12], p. 112) is accidental, seen from the standpoint of right, he seems to unscrupulously submit a justification – or even *the* one and only justification – of liberal *possessive individualism*. This justification claims that “equality” of persons against the background of law inevitably includes indifference of the law toward richness and poverty. But at the same time, Hegel makes clear that possessive individualism is not “the real thing” by making and underlining the difference between “property” (“Eigentum”) and “possession” (“Besitz”): Even according to the abstract right, there is a reason for the relation between person and property, only if a *free* will sets up a relation to an external thing, so that it can understand itself as a free and reasonable will—and that means, at this point, a will that does not injure others.⁵⁴ In this case, Hegel speaks of “property” and “private property.” “Possession,” on the other hand, is to be spoken of, if an ego takes a thing “as a result of (. . .) natural need, impulse, and caprice” (“aus natürlichem Bedürfnisse, Triebe und der Willkür”)⁵⁵ and thus realizes its personal particular interests, *without* being willing to limit itself to the realization/objectivation of the free part of its essential being. Thus, while Hegel seems to encourage possessive individualism on the one hand, when he declares that the right is not the appropriate authority to deal with the compensation for an unjust distribution of goods, he rejects possessive individualism on the other, when he exposes possession as satisfaction of a *desire* and assigns such satisfaction only to the “civil society” (“Bürgerliche Gesellschaft”). We can already expect that such satisfaction will appear there as realization of a *false* freedom and that it will be limited by the higher instance of realization of freedom in the state. That is because Hegel already asserts within the abstract right that “the Idea of freedom is actual only as *the state*” (“dass die Idee der Freiheit wahrhaft nur als *der Staat* ist”) ([10], p. 71, [12], p. 124). Not even the realization of freedom through property, which is passed off as reasonable within the abstract right, remains unchanged and valid without limitations against the background of the higher reasonableness of the state – because “the specific characteristics pertaining to private property may have to be subordinated to a higher sphere of right (e.g., to society or the state)” (“die Bestimmungen, die das Privateigentum betreffen, können höheren Sphären des Rechts, einem Gemeinwesen, dem Staate untergeordnet werden müssen”) ([10], p. 61, cf. 85, 102f, [12], p. 108, cf. 157f, 190f). As a critic of the abstract right and the civil society, Hegel becomes a protagonist of limitation of private property, after having at first defended the realization as *not* being a possible object of limitation by the *abstract right*.

The same ambivalence must still mark the first modified definition of property—because it is already given within the abstract right—in the following chapter, “The Contract.” Hegel arrives at this definition by moving on a little bit into the direction of the concrete ethical unity of the state. While the spirit as a free will until now realized its freedom only as a single person, and within its isolated relation to an

external thing, it now succeeds in realizing its freedom through the unity of the wills of those persons who are joined by the contract, that is, the unity of wills of persons in the plural. The *mediation* – reached in a contract – between the first person’s will and that of the second results in a “common will” on the basis of mutual recognition. This leads the way to the following: From now on, “objects” which are less material and immediate can be taken into possession. The concept of “property” has to change accordingly. The “object” which remains identical, which is accepted in the contract to stay the same, and to which the contracting parties keep when they exchange the external and real objects of the contract is the *value* of the different objects.⁵⁶ The concept of “property” therefore comprises everything to which we can ascribe a value, including services and performances (in particular mental performances) – every internal thing, as long as something external corresponds to it and can be considered as being of some value.

In these definitions of property, the “Verdinglichung” (“concretization”), the treatment of something internal and mental as if it was an external thing, is qualitatively justified. Insofar as these determinations of the abstract right give rise only to this qualitative view, cause indifference toward the trend to concretize and make use of more and more of the internal districts, and then cause indifference toward a possible real inequality of the contracting parties, they are apologetic with regard to the relations of the civil society. This inequality is nothing unusual – already for Hegel – when you look at the employment contract by which the work of the employee becomes the property of the employer. On the other hand, Hegel prevents abuse in some important fields through other determinations still within the abstract right: The concretization in an employment contract, for instance, it is explicitly limited by the declaration that everything “constitut[ing] my very own person and the universal essence of my self-consciousness,” like “my personality as such, my universal freedom of will, my ethical life, my religion” (“was meine eigenste Person und das allgemeine Wesen meines Selbstbewußtseins ausmach(t), wie meine Persönlichkeit überhaupt, meine allgemeine Willensfreiheit, Sittlichkeit, Religion”) is inalienable ([10], p. 77, [12], p. 141). In consequence, an alienation within the employment contract is allowed only of “single products” (“einzelner Produktionen”), and one can give to someone else only “the use of my abilities for a restricted period” ([10], p. 78, [12], p. 144f). The implicit account of the quantities, which turn into quality at a certain point, makes unmistakably clear that a merely legal view of the formal, abstract side of the contracts is deficient. The abstraction from the social relation of the contracting parties causes a further consolidation of the already stronger party in reality.

The Critique of the Abstract Concept of Property Considering the Real Social Relations

Following this direction, the most interesting point for us is Hegel’s explicit critique of the abstract right and its definitions of property. He articulates this critique by further receding from the abstraction toward an accomplished concretion of right in the ethical state. Not the definitions of this ethical state in particular deserve our

attention, but the fact that on the way of its development, the reality of the social relations is taken into account—with the object of constructing a legally reasonable system of economy and community. Concerning the abstract right, Hegel criticizes, on the one hand, that there is not yet mediation between abstract right and the moral good and on the other hand, that it has not yet been transferred into the positive legislation of a society and therefore is still without effect.⁵⁷ Until now, it is limited to a demand that shall be satisfied by positive legislation, though it is in fact satisfied by the reasonable state – according to Hegel’s postulate of the unity of being and ought. But in the meantime, the transfer appears – even in Hegel’s opinion – as possibly determined by the somewhat unreasonable power structures of the civil society. That is because, according to the “Philosophy of Right,” it is the civil society that gives itself the legal statutes adjusting to the determinations peculiar *to it* and corresponding with *its* relations of power – depending on the structures which rule *in it*.

This civil society is characterized by Hegel as “system of needs” (“System der Bedürfnisse”), where “the *dependence* of people on one another and their reciprocal relation in the satisfaction of their ... needs” is made “necessary” (“die *Abhängigkeit* und die *Wechselbeziehung* der Menschen für die Befriedigung der ... Bedürfnisse zur gänzlichen Notwendigkeit” gemacht worden ist) ([10], p. 191, cf. 186–189, [12], p. 352, cf. 346–349). But we cannot elaborate on that. The presentation is to be taken as a critique of raging capitalism⁵⁸ – moderated only by Hegel’s admiration for the rational efficiency that distinguishes the individual selfishness’ referring to the general selfishness of the community and its making use of the system of general dependence.⁵⁹

Only the structure of Hegel’s system explains the fact that the civil society has been taken into account at all in the third part of the “Philosophy of Right,” “Ethical Life” (“Die Sittlichkeit”), namely, as appearance and negation of this “Ethical Life.”⁶⁰ The negations represent a necessary moment of dialectical logic; the one which, driven to its extreme, causes the transfer to the negation of the negation, that is—in this case—the positive ethics of the state. There, the reflection of the calculating selfish understanding (“Verstand”) shall have been purified and changed into reason. But Hegel gives the responsibility of the *Administration of Justice* (*Die Rechtspflege*) only to this *negative* form of the “objective spirit,” so that the legislation of the “right in itself,” that is, the abstract right, in particular the right of property is transferred into the legal “protection of property.” ([10], p. 197, cf. 207, [12], p. 360, cf. 371f). This way, the “state based on need, the state as the understanding” (der “Not- und Verstandesstaat”), as Hegel calls the civil society ([10], p. 181, [12], p. 340), constitutes at best the laws which understanding considers to be reasonable, that means: Laws, for which the highest norms are the abstract right’s equality of persons⁶¹ and – by that – the indifference toward the real inequalities of the society. Hegel thus reveals to what extent the positive legislation of a society can support and solidify the system of dependences ruling in it.

The protection of private property guaranteed by the legal system of the civil society logically comprises not only the protection of property of an external thing a natural individual uses to become objective. The philosophy of spirit’s development of the free will led to unities of more and more general and mediate kinds and

already assigned the contract's unified will to a more abstract or to speak with Hegel, a more "concrete" property, namely, the *value* of objects and performances. That is why, once again, another kind of property still has to be determined for "the *actual spirit* of a family and a people" ("*wirklichen Geist* einer Familie und eines Volks") ([10], p. 161, [12], p. 305) – a property in which these unities become objective. Concerning the disintegrated civil society, the unity is now the problem. But Hegel finds it in the form of the dissociated spirit's unity, which makes it possible to speak of *one* civil society, of *one* principle effective in it.⁶² This unity is the reason to form *one* concept for the wealth accumulated by all the individuals and the smaller and bigger societies striving for a certain end.⁶³ This way, the protected wealth belonging to a general unity comprises the private property of land⁶⁴ as well as property of funds, in particular on the side of the businessmen, who transferred the former "value" of a contract into the general means of exchange, the "abstract value" of money.

Hegel thus understands that the civil society increases inequality concerning property and possession, as long as it is "in a state of unimpeded activity" ("sich in ungehinderter Wirksamkeit befindet") and is therefore in want of control.⁶⁵ He also understands that this control can only be expected of a "power," a "public power," ([10], p. 216f, cf. 235–239, [12], p. 348f, cf. 406–411) which has been given to higher legal authority. But, significantly, this thought does not lead him to the demand to include the right of control and limitation of power through possession in the abstract right and thus hand it over to the positive legislation. This way, the citizens of a state would have been able to sue their state for this right, however, immediately they should proceed. Instead of that, Hegel relies primarily on the courts, although they can—as Hegel has it—administer justice only according to the already legislated right of property,⁶⁶ on a strong police,⁶⁷ and on the power of integration into the corporations ("Korporationen"), which leads to ethical life. After all, he is thinking of a kind of control exercised by an organism, in such a way that the power of state alone rules over the individual citizens of the state, like the central nervous system rules over its muscles.⁶⁸ The return to immediacy Hegel's system calls for ends in the biological imagination of a monarch, who is the natural reflection of the "personality of state" and who is allowed to claim a "sacrifice" in cases where the "organic whole" loses its capacity of self-control: The sacrifice of property, yes, even of life.⁶⁹

Consequences

To prevent such injustice, a state's system of right has to guarantee and protect the individual's rights against them being taken away by the government (the German history obliged the German system of right to do so in form of the fundamental law, "Grundgesetz"); and the rights of the state against the individuals have to be limited.⁷⁰ Unlike Hegel can put it, the powerful state's possibility to just take away the individual's right of property must be kept under legal control. For instance, it is necessary to be able to make it a condition (like the German fundamental law, article 14, paragraph 3, does) that the dispossession "for the sake of the community" has an explicit legal basis, which necessarily serves as

a rule for compensation. In the same way, it has to be made possible – again in contrast to Hegel’s doctrine – that the state’s seizing the right of property can be caused *by the citizens*, “from below,” by forming the appropriate political will and by legislating the appropriate laws – with reference to a legal basis (the German fundamental law for instance has such a basis in form of article 15, which discloses – built on article 14.I.2 – the possibility of nationalization of the property of “ground, natural resources and means of production”). Therefore, it is important to read Hegel’s Philosophy of Right not because of its theory of state but because of its demonstration of the effective relations between a constitution and its reality. According to that, we cannot shake off the doubt on whether our state institutions and our laws, including the fundamental law, offer sufficient protection against the consequences of a raging market economy. The social “spirit,” or the understanding of social fundamental laws, must prove to be effective. But that will only happen if the political will can enforce it in the economy and the social order – for which the latter once again requires political education. Independently of the organologic end of the state, and independently of the mythological darkness in which Hegel puts an end to world history, Hegel’s Philosophy of Right is worthy of note because it contributes to our knowledge of the interdependences between right, state, and civil society and thus contributes to our political education.

Conclusion

As we have seen, Kant’s theory of property explains the general conditions which have to be fulfilled if property shall be legitimated property. There is an examination to pass. In general, and in every case of a certain state or time, it has to be demonstrated that the laws including the right of property are in conformity with the idea of a common will. The distance between this idea and the particular version of the right of property will not disappear in reality, and thus the idea of a common will will function as a critical instrument regarding the statutory laws, including the right of property. Kant leaves it open to the political decision of a certain society whether the sovereign takes the laws as adequate to rule the distribution of property in a given situation. Hegel’s theory of property, on the other hand, does not leave anything open. The concept of dialectical reason implies the relation of idea and given reality. We are supposed to understand the given distribution of property, the given disintegration of the civil society, and the abstract laws (including the right of property) as reasonable because the dialectical reason takes shape in all these forms. But, on the other hand, dialectical reason may not be reduced to these forms. It must be understood to dispose of the conditions, to be able to call off disintegration and to build a state and constitution in order to dissolve any division/rupture. Although we cannot accept Hegel’s concept of an authoritarian state, the complex idea of a complex reason, elaborated and explained in detail, discloses the effective relations of idea and reality in general and the particular relations of freedom and property with reference to the person and the relations of the institutions in the civil society. We ought to know all this to get an adequate understanding of the

complex structure of our reality and our society. The right of property thus turns out to have its justification not in a formal or abstract sense but with reference to a particular reality. This is important for us, insofar as this particular reality might be taken as ours.

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Cross-References

- ▶ [Hegel on Modern Economics and Business](#)
- ▶ [Kant's Categorical Imperative and the Moral Worth of Increasing Profits](#)
- ▶ [Property Rights Versus Governments](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)
- ▶ [The Figure of "Rivalry" and Its Function in Kant's Ethics](#)

Notes

1. See, for instance, Articles 28, 30, 31, 39, and 41 of the English translation of the [25] Magna Carta, edited by the British Library (the original Magna Carta in Latin has a continuous text, the clauses are not numbered): http://www.bl.uk/treasures/magnacarta/translation/mc_trans.html. For the phrase cf. [22].
2. The phrasing goes back to Jefferson, and it is debated whether Jefferson wanted to show by this the distance to Locke's thoughts of "life, liberty, and estate" [30].
3. [30], p. 530. Confer the brochure "The Rights of the British Colonies Asserted and Proved" written by J. Otis which is concentrated in the phrase: "no taxation without representation" (cf. [5], p. 537, n. 4).
4. The Virginia Bill of Rights frankly states this *right of property* ("Section 1. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely the enjoyment of life and liberty, which the means of acquiring and possessing property and pursuing and obtaining happiness and safety." In: ([4], p. 70), whereas the Constitution of 1787 renounces to name the different human rights at all, that means renounces to name especially the *right of property* (cf. [31], pp 512–515). The amendments of the Constitution already corrected this in 1791. Regarding the *right of property*, see amendments no. IV and V (cf. [5], p. 528). The opinion of the Authors of the Constitution must be regarded to be close to Locke's opinion of property (cf. [24]). See the interpretation of one of the English editors of the Federalist Papers (especially art. 10), ([1], p. XLIX), and the interpretation of the German editor ([32], p. 27, 35, 37, 43, 543 (n. 62)).
5. Art. II of "Constitution Française," 1791 Septembre 3, in: [4], p. 74.
6. Art. XVII of "Constitution Française," 1791 Septembre 3, in: [4], p. 76. For the rules of compensation, see also amendment no. V of the Constitution of the United States ([5], p. 528).
7. Universal Declaration of Human Rights, Art. 17, in: [4], p. 142.
8. [19] (Reference to certain pages will be given by reference to the edition of the "Akademie-Ausgabe" written in the margin of the English edition). The German text is found in [14].
9. For the history of Kant's conception of property cf. [3], p. 167–201, 167, 185ff, and [2], pp. 272–275.
10. Cf. [2], p. 268; [20], pp. 50–87.
11. Cf. the introduction of Bernd Ludwig to his edition of [23] Kant, Immanuel, *Metaphysische Anfangsgründe der Rechtslehre*, 2. verb. Auflage, Hamburg 1998, which is the first part of Kant's "Metaphysik der Sitten". For the difficulties cf. Brandt, *Eigentumstheorien*, 185f.

12. Cf. [17], j, p. 4, note.
13. Cf. [14, 19], p. 205.
14. Cf. [14, 19], p. 214.
15. Kant uses the word “will” for the capacity of choice which is determined by reason, knowing well that the human capacity of choice is often determined by other forces than reason.
16. Cf. [14, 19], p. 220. Kant’s argument for the necessity (and therefore legality) of this external constraint refers to a theory of opposite forces: if my action is compliant with the universal law, i.e., with the freedom of others, every force or opposition against this action must be contradictory to the universal law, and therefore every force or opposition against this oppositional force, i.e., the external constraint, must be compliant in turn, cf. [14, 19], p. 230f. This theory of oppositional forces goes back to the fundamental insights Kant published in the essay of 1763 “Versuch den Begriff der negativen Größen in die Weltweisheit einzuführen.” The concept of “Realrepugnanz” gave Kant the key to reverse the rationalistic ontology of Christian Wolff and later on build his own transcendental Logic, Ethics and Aesthetics.
17. ([18], pp. B 294–315). This distinction is an old idealistic legacy as the Greek expressions indicate; cf. [27], pp. 507b–509a; [26] 28 B 7, u. 8,34f u. 50ff.
18. Cf. [14, 19], p. 247f.
19. Cf. [14, 19], p. 247f.
20. Cf. [14, 19], p. 247f.
21. Kersting cannot see this, either (cf. [20], p. 320f), although he is willing and able to give an affirmative modern interpretation of the applicability of the first two kinds of objects (cf. [20], p. 265ff, 293–308).
22. Cf. [14, 19], pp 276–284.
23. Cf. [14, 19], p. 247.
24. Cf. [2], p. 260.
25. Cf. [18], p. B 661f; Kant’s use of the word “postulate” is analogous to its use in the field of mathematics, cf. [18], p. B 286f.
26. Cf. [2], p. 260.
27. Cf. [18], p. B 191.
28. Cf. [18], p. B 193f.
29. Cf. [18], pp. B 817–822.
30. Cf. [18], p. B 821. Cf. [8].
31. Kant’s Universal Law of Right features the same difference of “freedom of choice” and “everyone’s freedom in accordance with a universal law” ([14, 19], p. 231). It requires that the first “can coexist” with the second, and says that in case it cannot coexist, the special freedom of choice in question is not right. Thus, the Universal Law of Right requires that the conformity or correspondence has to be demonstrated. The ostensible “demonstration” of the “lex permissiva,” however, not only postulates that the first freedom can coexist with the second, but is right from the beginning, based on the identity of both (“freedom would be depriving itself,” [14, 19], p. 246).
32. These objections are directed at Kant’s proof deliberation for the possibility of an “intelligible possession” on principle, and, as far as Kant’s conception of property is based on this possibility, they are directed at this conception, too. Thus, the difference of “intelligible possession” and “property” that has recently been stressed by Rühl, Ulli F. [29], pp. 68–85, does not make these objections irrelevant.
33. Cf. [18], p. B 106, cf. as regards the distinction of judgments: [18], p. B 95. Cf. [2], pp 241–244, 255–258.
34. Kant’s anthropological considerations come down to the diagnosis that we have to expect and as regards the “formation of the state” account for a “race of devils” (“Volk von Teufeln,” Kant, Perpetual Peace resp. Zum ewigen Frieden, B 61).
35. Cf. [14, 19], pp. 255f, 264ff.
36. Cf. [14, 19], p. 263.

37. Cf. [20], p. 270f.
38. Cf. [14, 19], p. 262f.
39. Cf. [14, 19], pp. 260–263.
40. Cf. [20], pp. 326–332, 341ff.
41. Cf. [20], p. 276.
42. Cf. [14, 19], p. 325f.
43. Cf. [3], pp. 193, 200f; [20], pp. 62–67, 338–343, 375–381.
44. [10], resp. in German: [12]. My interpretation is based on the article “Der Begriff des ‘Eigentums’ in der Rechtsphilosophie Hegels,” in: [6], pp. 161–175.
45. This critique was based on the conviction to know the means for getting over the contradictions of the disintegrated Civil Society. Hegel even believed to see these means in his mind’s eye: the constitutional monarchy of the Prussian state during its conservative period (“Restaurationszeit”) should make this reconciliation possible; yes, it should even have made the reconciliation real. That is why there is no use in having a discussion about the last suggestions Hegel hit upon for the solutions of the social conflicts. In most of the cases, they obviously and immediately turn out to be untenable, even dangerous – of course in particular when the powerful state is propagated (cf. [21]).
46. Cf. [10, p. 60, [12], p. 106].
47. Cf. [11], p. 572f.
48. For critique cf. the author’s article [7].
49. Cf. [9], p. 301f.
50. Cf. [10], p. 53f, 63f, [12], p. 93f, 113.
51. Cf. [10], p. 55, 197f, [12], p. 95, 360f.
52. Cf. [9], p. 287.
53. Cf. [28].
54. Cf. [10], p. 55, [12], p. 96f.
55. Cf. [10], p. 60f, [12], p. 107.
56. Cf. [10], 86, [12], p. 159f.
57. Cf. [10], p. 197–201, [12], p. 360–363.
58. Cf. [10], p. 182f, 190, 220f, [12], p. 341f, 350f, 389.
59. Cf. [10], p. 181–191, [12], p. 340–353.
60. In his interpretation of Hegel’s “Philosophy of Right,” Axel Honneth leaves Hegel’s reference to the “Science of Logic” aside ([13], p. 13). The dialectical basis does not fit the plan to bring the “Philosophy of Right” up to date. To be consistent, Honneth has to find another reason to take the disintegrated civil society into account. The negative moment Hegel assigns to it because of the dialectical development is turned into a positive moment. Honneth explains Hegel’s “System of Needs” to be a system of justified interests ([13], p. 117). In the peculiar area of the civil society, the isolated individuals are supposed to be able to realize their interests and needs, recognizing every other individual as in the same sense interested in the satisfaction of their needs. While this ignorance of Hegel’s speculative basis seems very reasonable to me, the consequence that the critique of the disintegrated civil society becomes weak cannot be very welcome. The status quo of our actual civil society becomes more legitimated, although it requires more critique as it has been “in unimpeded activity” for a long time since Hegel diagnosed its deprivation.
61. Cf. [10], p. 189, 206, [12], p. 349f, 370f.
62. Cf. [10], p. 184f, 221f, [12], p. 343ff, 390.
63. Cf. [10], p. 192, 196f, 224f, [12], p. 354, 359f, 394.
64. Cf. [10], p. 193f, [12], p. 355f.
65. Cf. [10], 220ff, [12], p. 389ff.
66. Cf. [10], p. 208f, [12], p. 373f.
67. Cf. [10], p. 215f, [12], p. 383.
68. Cf. [10], p. 154f, 216f, 234, 265ff, 278f, 285f, 289f, 293f, [12], p. 294, 384f, 404, 442ff, 458f, 466f, 471f, 476ff.

69. Cf. [10], p. 82f, 102f, 264–272, 280–283, 304–308, [12], p. 151, 190f, 442–450, 461ff, 491–494.
70. According to Hegel, the laws of the state basically are the laws which have been legislated by the Civil Society, except that they are now also known as reasonable. That is why the power of legislation in this state, formed after the model of an organism, is restricted to “fresh and extended determination” (“Fortbestimmung”) of the same laws – cf. [10], p. 284f, [12], p. 465ff. The lack of laws able to limit the force of the power of the state against the individuals must attract attention, particularly when one deals with an author who uncompromisingly calls for legislation of reasonable ends – cf. [10], p. 265f, 231ff (footnote) [12], p. 442f, 402–406 (footnote). The efficiency of the “private estate” (“Privatstand”) effecting on the power of legislation by means of the “Estates, as an element in the legislative power” (cf. [10], p. 291 [12], p. 473), is all Hegel intends for this business. But one cannot compare this at all to the concession of fundamental laws. Concerning the right of property, Hegel has neither a rule for compensation in case of dispossession of the individual by the state nor a right of nationalization of possession.

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Abstract

The aim of this chapter is to make use of Hegel's theory about the integral interplay between economics and ethics, which is elaborated in his book *Philosophy of Right* ([1]). Hegel understands the economy to be part of the ideal *ethical state* in which human *freedom* is realized. The chapter focuses on two key aspects of Hegel's understanding: first, Hegel's philosophical interpretation of the economic principles of *needs* and *work* and second, Hegel's ethical criticism of *civil society* (*bürgerliche Gesellschaft*) and of its members (*businessmen* or *bourgeois*) (Hegel talks about economics and uses the term "bürgerliche Gesellschaft," translated into English as "civil society." In this chapter, I use the terms "civil society," "business society," and "business estate" interchangeably.). Hegel's ethical criticism of business men who are only interested in profits and who do not respect social values is more relevant today than ever.

Introduction

Hegel's theoretical project is to preserve the ideals of human freedom in society, and his theories should be read with an understanding of the economic conditions of his time at the beginning of the nineteenth century. Hegel experienced the industrial revolution in England as well as the political revolution in France. These political events changed the social and the economic life in Europe and are still influential today as globalization and economization impact almost all spheres of social life.

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Hegel anticipated the impacts and reflected on the ethical consequences of both European revolutions. Therefore, looking back at Hegel's ethical arguments is meaningful for our understanding of social development today.

Reference to Hegel is especially important in modern business ethics. Business ethics sees itself as a modern scientific discipline, concerned with applying philosophical principles to business dilemmas. Business ethics is a broad subject, dealing with issues such as the interplay between moral truths and economic necessities. Searching for philosophical support modern business ethicists refer to the philosophy of Hegel, who uniquely integrated economics and ethics in a modern sense (for a book-length treatment of this problem, see [2]). However, while Hegel's ethical principles provide no answers to current economic and social issues, they offer a horizon for their consideration. This chapter focuses on two key aspects of Hegel's claims: first, Hegel's philosophical interpretation of the economic principles of *needs* and *work* and second, Hegel's ethical criticism of *civil society* (*bürgerliche Gesellschaft*) and of its members (*businessmen* or *bourgeois*). Before these core issues are discussed, I briefly review the basic assumptions of Hegel.

The Basic Idea of Universal Freedom and Morality

The idea of individual and political freedom is expressed in Hegel's conception of the will. The individual is a human being if he instantiates the personal will. An individual is completely determined in all respects: in his arbitrary will, drive, and desire, as well as in relation to the immediate external existence. "I am finite, yet totally pure self-reference, and thus know myself in my finitude as infinite, universal, and free" ([1], Sect. 35). This kind of self-reference implies that the individual is able to distance himself voluntarily from any desires and to understand himself as free from finite limitations. In doing so, the individual sees himself as a part of a higher, metaphysical freedom of the universal, infinite mind. According to Hegel, the infinite mind is an absolute idea: It exists as an objective truth and is transcendent. The structure of the infinite mind is explained in detail in Hegel's metaphysical deduction and logic (for a book-length treatment of this problem, see [3] and [2]). The infinite mind is free and his freedom is the universal freedom. This freedom is an absolute value (*absolute subjectivity*). The idea of universal freedom of the infinite mind is conceived in human thinking. The individual is not capable of capturing the universal freedom, but he can be aware of it. Individuals can refer to the universal freedom and develop their arbitrary and subjective will to the universal free will.

According to Hegel, the individual is not capable of reaching universal freedom alone: The individual refers to himself as a "concrete," finite, particular being with an arbitrary will and, at the same time, as an "abstract," infinite being with universal will.¹ His human will is such that, on the one hand, it aims at the universal good, while on the other hand, it is the particular will of pursuing arbitrary *needs*. The arbitrary is a contradiction in itself, because it is subjective and therefore random. An arbitrary or a particular is the opposite of universal. Thus, there is a conflict

between universal and particular will, and Hegel believes that in the content of the universal will, the individual can find universal *freedom*, happiness, and self-realization. Hegel's ethics is thus a theory of freedom, and it is based on a radical difference between arbitrary and universal freedom. In this struggle, Hegel gives priority to universal freedom, which is an essential assumption in Hegel's conception (see [4]).

But how can the individual refer to the content of the universal will and to his freedom? Hegel suggests that the individual can be aware of universal freedom in a stepwise way: He realizes this freedom as self-knowledge and will, and he goes through an educational development process. In this process, the selfish individual develops a universal moral will without abandoning the subjective particularity of the individual will, according to Hegel. The individual refers free to a universal will without being coerced. The universal will is concretely realized as the spirit that prevails in the community.² In the realization of his own freedom, the individual achieves the universal freedom of the general spirit of the community and both individual and universal spheres are united. They interpenetrate in a lived system of morality, which is speculatively founded and has its real existence in the moral ideal state.

According to Hegel, the idea of *universal morality* exists as a general practice in the community on the one hand and more specifically as self-consciousness of its members on the other. Universal morality is the content of both the general rights and the personal duties in the community. The identity of rights and duties appears as a moral attitude of individuals toward the moral state. It is an individual virtue that motivates the fulfillment of duties for universal purposes. This basic attitude of individuals toward their universal duties is the virtue of *righteousness*, which is the basic principle of Hegel's political virtue ethics. For example, the right of legal possession of property is at the same time the duty to be a legal person and to respect others and their property. The concept of private property is derived from the concept of the personal free will: The person is free to decide which goals to pursue; therefore, he gives himself an external sphere of freedom, which is speculatively justified, and this must consist in private property (see [5], p. 581). Property rights are means of realizing human freedom: Human freedom requires that a person is able to express himself in the external world and to develop an individual life plan.³ Individuals, who respect each other and recognize one another as private owners, do not necessarily maintain market relations to one another. Respecting private property is a virtuous disposition and is not determined by the market and the business advantages from the exchange, but rather by the freedom of the will and its expression.

Summarizing Hegel's assumption of freedom, we can say that Hegel believes universal freedom is concrete and has a real existence in human thinking: It exists as a spirit that prevails in the *ethical state*. In that sense, the ethical state is the objectification of the metaphysical idea of goodness and universal *freedom*. The ethical state is the concrete "reality of the moral idea" ([1], Sect. 257). The general right (e.g., property right) in the state is an objectification of the idea of freedom (*objective spirit*). Hegel's ethics is thus an ideal theory of the moral state, in which

universal morality and subjective freedom are included and realized. One essential part of the ethical state is the economic sphere of needs and work, which is explained in the following section.

The Economy as a Sphere of Needs and Work

In his chapter “The system of *needs*” (PR Sect. 189–208), Hegel explains his understanding of economic relationships in the modern economy of his century. The *needs* are grouped together in a system because they produce a legitimate commonality among otherwise independent individuals, according to Hegel. In the apparent arbitrary *needs*, the economy discovered interestingly valid general rules of behavior. The market allows all individuals to pursue and to achieve all their own interests and desires. Such behavior leads not to chaos, but on the contrary to efficiency. Hegel acknowledges the thoughts of Adam Smith and refers to the modern economics, especially to the basic idea of reproduction and refinement of needs, and the consequent division of *work* for the satisfaction of needs. The result of the division of work as a modern economic principle is an interweaving of the work and needs of different types of people among themselves. The particular need of a particular individual becomes a social need because the public works for his satisfaction (*socialization of needs*). By working for his own needs, one individual works for the needs of all by producing the social product by which one can satisfy his own particular needs. The diversity of products and services for the particular *needs* is only possible if all members of the community work for the needs of all. In this sense, the economy is an essential sphere of social needs and work, and the free market is a social institution that provides benefit to the participating member. It provides interdependence of the pressure of particular needs, and it requires the recognition of the work performance of others.⁴ According to Hegel, such interdependence and recognition are associated with *freedom*, but this kind of freedom in the economy is not sufficient for the highest form of freedom. In the sphere of needs and work, the individual cannot achieve universal freedom. According to Hegel, man is limited first by the external nature and second by the work performance of others. It is to these limitations of the true freedom that I turn now.

The limitation of freedom by external nature is given because natural resources are limited and the needs of individuals are unlimited. The individual believes that the satisfaction of his needs depends only on his own arbitrariness – he is free to do what he wants. But human needs are not only natural needs to support life. In their reproduction and abstraction, needs go on in the unnatural imagination. The man who peruses primarily his natural needs will never be free because he cannot realize the boundary between imaginary and natural needs. On the contrary, because of his infinite desire for luxury, he enlarges his dependence on external things. Adopting the arguments of Rousseau, Hegel criticizes the idea that acquiring unnatural luxury (solely satisfaction of natural needs) can ruin many people financially and spiritually. Hegel recognizes that luxury consumption has a positive economic

consequence as well – it increases the demand for refined products, which can lead to more investment and employment. However, he does not share the optimism of the modern economists of his time and does not believe that the employment effects of the luxury consumption are great. He taunts the reckless extravagance and the artificial dependence on external things because this dependence is the opposite of true and universal freedom.

In addition to the limitation of freedom resulting from human needs, Hegel develops a second line of argumentation: In the economic sphere, the individual is limited by the work performance of others. Hegel discusses *work* as a feature of the modern economy in his papers from 1805 to 1806 and fully elaborates on the idea in the *Philosophy of Right* [1]. According to Hegel, human work is a way to educate oneself and to find self-realization. Education means to understand foreign opinions and go after them. Education through *work* has a theoretical and a practical aspect. On the theoretical level, education consists firstly in the improvement of working methods and the invention of new technologies to simplify and humanize work, an achievement which people can be proud of. Secondly, as the individual weighs the plethora of products and services available to satisfy his interests and needs, he calculates and develops a mental quickness in grasping economic contexts. Practical education consists in the daily learning of skills in society. Through work, people learn to respect nature and other people, and they understand the inherent limitations of their opportunities.

For Hegel, work is more than a subjective habit of occupation; it is a personal development of society – working for social needs (as a result of the division of work), people learn to respect the interests of the public. Only against this background of work as a personal development in society can Hegel partially justify the luxury consumption of the rich, as noted above. He says the rich should not give the poor money, but instead should ask for their work. In this way, the rich open up the education of the poor with work. Working as education and self-realization is a thought that is current today. In their constant repetition of certain work processes, people come up with ideas to improve production. Through such thoughtful and educational work, they help to humanize and facilitate heavy physical work. The machine makes human work easy indeed, but also dull, according to Hegel. Through their own work, individuals cannot create a whole product, overlook the whole power of their work, and fully enjoy their own activity. They lose themselves in mechanical activities. Hegel recognizes the educational and intellectual advantages of the division of work, but he also highlights the ambivalence of the socialization and division of the work: On the one hand, the work is humanized, and on the other hand, it makes people more dependent on others and the work performance of others. According to Hegel, education and self-realization cannot be achieved through mechanical work, but through intellectual self-development that leads to *freedom*.

The economic principles of the satisfaction of needs and the division of work are necessary and worthy of recognition. They are the basic principles of the social institution of the *free market*. Hegel considers the free market to be a human institution where the work and the demand for the purpose of the satisfaction of

needs meet. He sticks to Adam Smith's self-adjusting, natural equilibrium between supply and demand. Recognizing the classical equilibrium of the competitive free market, Hegel insists on the essential role of the *ethical state* as the "reality of the moral idea" ([1], Sect. 257) to guarantee the necessary conditions for the function of business and of social care. Thus, and before the economy can function on its intrinsic dynamics, at least two conditions must be guaranteed by the ethical state: First, every market participant should have confidence in the market and believe that he will not be cheated and can freely participate. Second, the necessary infrastructure should be provided as a basic condition of the economy (e.g., maintenance of roads and communication). Both conditions are tasks of the state and cannot be met by the business itself.

The first condition relates to the administration of justice – the formulation of and compliance with applicable law in the state. Every citizen has the right to stand trial, but also the duty to bring other citizens to justice. The state administration of justice provided by the law in the business estate is a prerequisite because it prevents the market participants from being defrauded and protects the interest of various *estates*, avoids collisions between the interests of different estates, and strengthens public confidence in business. Also creating confidence in the condition of the market is state control of the food sold on the market. The goods are not offered for a single customer but for everyday consumption by the general public. Therefore, a responsible institution is needed. The consideration of the health risks in the marketplace is not limited to economic reasons. It is a lot of *work* for a particular individual to control the goods, and it requires special skills and time to examine the goods themselves, which is why an individual leaves that task to the public institution. The promotion of confidence in business is a function of the state in another aspect as well: The people invest their income in the market, thus increasing demand and securing work, and must be confident that they can achieve a secure long-term income from investing. If by their international trading activities single companies or whole industries destabilize a country's job market, then there must be a parent institution that looks after such tendencies. A particular investor or single consumer cannot oversee and monitor the business activities of whole industries and can therefore be deceived in his confidence.

The state has the general task of protecting market participants from deception, maintaining public goods, and guaranteeing the function and efficiency of the market because all of these conditions are necessary for achieving *freedom*. In this way, the free market is efficient and leads to more interdependence: People are free to pursue their own interests, to satisfy their *needs*, and to develop social skills. The free market provides *freedom* of choice, and such freedom is not the highest form of human freedom according to Hegel. One cannot refer to the free market without referring to its foundation – freedom. The satisfaction of *needs* is not self-sufficient for human freedom, because these needs are arbitrary, ambivalent, infinite, and unstable. Human beings need a higher form of freedom and intellectual reasoning, according to Hegel. They need a higher sphere of social life, where they can achieve the universal form of freedom. This is the sphere that Hegel calls the ethical state as an ethical ideal. From the perspective of the higher

sphere of the *ethical state*, economic principles of needs and *work* can be ethically reflected. They are recognizable, but they are still different from the political principles of the ideal ethical state. Therefore, economic principles should not interfere with the general principles of the moral community.

In considering economics, Hegel prefers the term “*Staatswirtschaft*” (state economics). Including the state in the name emphasizes more strongly Hegel’s project to integrate economics as part of his political ethics. Economics as an empirical science receives an inferior position in Hegel’s conception of the ideal ethical state. Nevertheless, there are two arguments for the importance of economy that make this concept relevant today: First, the role of economics is essential because economics makes concrete empirical groundwork for the conception of the society and the state. Second, state intervention in the economy is strongly restricted: It is allowed only in exceptional cases, namely, when the equilibrium of the market mechanism fails in a collision of interests of producers and consumers and unrestricted demand requires a governmental intervention. This thinking is alien to classical economic theories, such as those of Adam Smith, who argues that the function of the state should be restricted to the “minimal state.” However, Hegel is skeptical about the capability of the market to self-regulate and maintain natural equilibrium. Unlike Adam Smith, Hegel does not consider the market a natural mechanism that would emerge without state intervention. Hegel teaches that the market is primarily a human institution that needs oversight in order to guarantee the freedom of all.

Hegel’s teachings are relevant today and are reflected in the modern neoliberal movement (see [6], pp. 71–88). Instead of maintaining that the market is a natural system of needs, the neoliberals (e.g., Simons, Hayek et al.) argue that the free market is a burdensome, fragile human institution. In the free market, goods are sold at competitive prices according to the equilibrium of supply and demand. This mechanism allows people with power to maximize profits and excludes some people without power. Neoliberal economists advocate the external support of the free market in order to bring it closer to the ideal competitive market, where property, necessary public goods, and the welfare state are ensured. This argumentation demonstrates the modern inherent connection between economics and ethics, which is crucial to Hegel’s understanding of economy.

Hegel develops a second line of argumentation for the integration of the economic sphere on the practical level: He focuses on the attitudes of citizens within the economy, a topic discussed in the following section.

Ethical Criticism of the Business Estate

The ethical criticism of business follows from the idea of *freedom*. The individual realizes his subjective freedom in various spheres of social life: as a caring member of a family, as a working member of *civil society* (business sphere), or as a member of the community (state). In all spheres of social life, individuals *work* to accomplish necessary work, to secure satisfaction of needs and freedom of all.

Working for the community, the particular individuals should be able to rely on the community to ensure equitable treatment. This treatment is not the case in the sphere of business: The business sphere is not in a position to deal with this concern. The social welfare function is contrary to the functional principles of business because business is directed only to increase the private well-being of particular members and the economic gain. Many of the vulnerable members of the business sphere are fully excluded from the socioeconomic life. The result is they are deprived of the opportunity to realize their individual freedom and social recognition through work. Because of these inherent contradictions in terms of freedom and values – Hegel calls it a “dialectic of *civil society*” ([1], Sect. 156) – business will never be rich and wise enough to care for all of its members and to ensure the freedom of all. In business, the subjective freedom of the members cannot be achieved; it can only be realized in the ethical state, according to Hegel. Therefore, business and the ethical state must be distinguished in terms of functions in society and values of individuals.

For Hegel, this designation is not the separation of different groups of people, but rather the assignment of different functional principles, purposes, and virtues of various social groups. What Hegel has in mind is an integration of different spheres of social life to realize the *freedom* of all (see [7], p.193). Individuals, seen not only in terms of their activities and particular *needs*, but also in terms of their moral values toward the community, are distributed among a range of different social functions, denoted in Hegel’s *work* by the term “*Stände*” (*estates*). Estates are groups of individuals who have common purposes, interests, skills, and overall similar characteristics of life, all of which maintain a similar education and culture (see [8]). Hegel’s division into estates takes place in an ethical way and is not determined by economic arguments. He divides people in the community into those who fulfill themselves in the political sphere and achieve true freedom and those who belong to the community only because of their private advantages and particular satisfaction of needs. The latter group of members is not free because they cannot find the free self-fulfillment and freedom in the community. They obey the general customs not freely but only because it increases their profit. They experience the community as limitation of freedom and not as the sphere of freedom. This attitude is specific for the members of the business sphere.

Hegel divides the state in his *Philosophy of Right* ([1]) into three main categories or estates: the estate of the statesmen (*Staatsbürger*), the estate of the peasants, and the estate of the businessman (*Besitzbürger* or *bourgeois*). The estate of the statesmen takes over the tasks of general government of the organized community. The statesmen should serve only the general interests and do not perform their private business affairs to support their lives (see [1], Sect. 205). The statesmen are any responsible citizens, including policemen, judges, and scientists, who fulfill state duties for the public purpose. They are free because they decide to consciously serve the state and in so doing find universal freedom and self-fulfillment. The peasants work for the satisfaction of physical needs and the preservation of the physical life of all members of the community. They are not free because they

serve the general interests only indirectly. Their self-determination toward the state is a naïve, immediate confidence in the community. The estate of the *businessmen* is divided into three sub-estates: the artisan, the manufacturers, and the traders, whose common purpose is gain.

The artisan transforms raw material and adapts it to human needs. Insofar as the artisan experiences independence from nature, he is nevertheless dependent on others who buy his products. The manufacturer primarily uses a machine for his work to facilitate the *work* of his factory workers and to produce larger quantities for larger markets. Today, we would call him entrepreneur. The trader uses money as a medium of exchange for products. He does not aspire to accumulate wealth, but instead to circulate it because he can maximize profit in this way. The win is the indefinite addiction and expanding trade across the national borders. The artisan works for the satisfaction of the needs of his customers, the manufacturers work for more general requirement, and the traders exchange the produced goods for money. The result is an economic network in which each one is dependent on the others (see [1], Sect. 204). This situation mediates their interests: Because everyone cares for himself, he also takes care of others: If someone spends money for his needs, he requires his contractor to be diligent and gives him the possibility of self-realization through work by relying on him.

Based on this commitment, people can maximize their own utility and the utility of others at the same time. This is in line with the classical economy. Hegel argues that this general utility is the case when the virtuous individuals in business fulfill their duty toward business, obey to the formal property rights, and therefore ensure the constituents of the business and society. In exchange, a business has a duty toward its members to ensure their free self-realization through work and to enable them to participate in the socioeconomic life. Hegel believes that this exchange between business and its members is difficult. He argues that the basic principle of mediation of business interests is not stable if it is based on private, random, and arbitrary needs and desires. A business is not reliable because not all members can benefit from the advantages of, for example, the promotion of skills, education, health care, and judicial systems. A business robs many of its members of the self-conscious life and the possibility of self-fulfillment through meaningful work. Left to itself, a business cannot guarantee the intact supply of all members with essential goods and work. On the contrary, a business throws people under its economic principles and polarizes them into rich and poor, according to Hegel. The greed and selfishness of the powerful, rich businessman causes social distress, a division of society into the misery of many and the luxury less. This result prompts a strong ethical criticism. During his lectures on the *Philosophy of Right*, Hegel explained each section, which is briefly summarized here, since they clearly underline the ethical criticism:

The business estate has attained in modern states against the other *estates* a great importance, but it should be appreciated not as high. The business estate is characterized by greed, excess and immensity of the pleasures to be bought by wealth. The assets owned by the citizens are so unsafe against waste that it can't contribute to the general wealth. ([9], p. 520)

Hegel's ethical criticism of the selfish businessman is very strong in his earlier writings in Jena (see [2]). In his *Philosophy of Right* [1] and in his last book, the third edition of the *Encyclopedia* of 1830, Hegel avoids sharply criticizing the selfishness of *businessmen*. He objectively recognizes the necessary role of the economic principle based on selfish purposes in the sphere of the business. He argues that the individual has a space for self-fulfillment in business, but it is too narrow for his full individual self-fulfillment and *freedom*. One example of self-determination is an individual's freedom to choose membership in an estate, even if this choice is often determined by circumstances outside the person's control (see [1], Sects. 206, 299). In principle, the individual is "determined by his own activity, diligence, and skill to be a member of one of the moments of the *civil society*" ([1], Sect. 207).

This self-determination of members to choose an estate and thus to be a part of the society emphasizes the modern aspect in Hegel's conception compared to Plato's (see [10]). Hegel's idea of self-determination is based on the moral conscience or the *righteousness*. The virtue of righteousness is defined as loyalty toward the estate and the state. The members of the business estate take over general obligations toward the estate, which leads to the fulfillment of their professional honor in the estate. Participating in the estate at the same time promotes the common interests of all members and partially distances it from selfish desires. The membership of *businessmen* in the estate has two effects: First, it stimulates the public interests of the otherwise mechanical business society, and second, the selfish individual can find both his subjective satisfaction and honor by fulfilling general duties. This fulfillment is only formal, because it is created without the true moral attitudes of the members. By participating in the estate, businessmen pursue only their private interests, desires, and affairs: They follow their obligations toward others and the estate only for that reason. Nevertheless, Hegel maintains the principle of individuality consistently and addresses his ethical criticism not to selfish individuals (*bourgeois*), but to the business estate as a whole. He requires a public need for power over the business estate to monitor the performance of duty toward their vulnerable members and enforce the law. This requirement takes place in an ethical way because Hegel insists on freedom: The members of the business estate should be able at the same time to confidently realize their freedom as self-fulfillment and the freedom of all in the society through their work.

The business estate, concerned solely with economics principles, does not guarantee this monitoring requirement. Hegel sees the solution to the conflict between universal *freedom* in the *ethical state* and the particular, private interest in the business estate in the creation of social institutions, which promote the freedom of all. This task requires an institution that mediates between the extremes of unrestricted arbitrary selfishness and government regulation of business. The mediator is necessary because extremes can easily turn on one another and thus paralyze market dynamics. Therefore, the market should be neither regulated nor uncontrolled. Hegel calls this mediating institution the *corporation*. The corporation is specific to the business estate. It represents the common interests and welfare

of the individuals in an estate. The purpose of the corporation is not only the formation of a sense of common interests but also the recognition and enforcement of the general interest of the business estate in the state.

The Corporation as a Self-Governing Body of Civil Society

The corporation is in Hegel's conception a way to self-manage the economy, a cooperative that brings together its members in various industries around a common professional purpose. Hegel refers to the term corporation in its original sense as any group of people who joined together for a common purpose. Common parlance now generally reserves the term corporation for profit-making, business organizations. In Hegel's theory, the individual members represent private economic interests, but these have grown into a shared and common interest. To achieve personal recognition and honor, individuals organize themselves into corporations, an undertaking that is contrary to their selfish interests. The notion of the personal respect allows us to understand markets as possible institutionalizations of this specific kind of recognition (see [5]).

In a corporation, *businessmen* in the organized estate can more easily claim their interests against the state; therefore, the corporation provides them an advantage over unorganized members. The corporation represents the professional interests of the businessman in the state. In exchange, the state should treat all individuals as members of various *estates* with respect for the corporation. This thought is current today. Particular individuals should not be at the mercy of the state. The corporation protects individuals from state authority.

The duties of the corporation are the protection of the public and the business itself from the monopoly of business; the limitation and control of production, particularly of food; and the development of infrastructure, among others. However, for Hegel, the main task of the corporation consists of promoting the theoretical and practical education of its members because doing so leads to freedom. The members select the corporation on their own terms, learn trades and skills, and get different privileges and honor. In a corporation, an individual attains a certain status in recognition of his efficiency and also the honor of volunteering to *work* for the disinterested, general purpose. By subordinating private interests under the public interests of the *corporation*, people develop a "corporation spirit" or "*esprit de corps*" ([1], Sect. 289). This corporation spirit is available to any member of the corporation and is independent of the members' personal economic situation. In order to fulfill its duties, the corporation must collect contributions from its members. The rich members should pay a higher amount for the membership than the poor. The corporation promotes not only solidarity among members but also the virtues of *righteousness*, true recognition, and honor. Hegel recognizes that the corporation constrains liberty in the marketplace, but he is convinced that a society based solely on market principles leads to a greater evil. Neither the totalitarian dictatorship of the state over the economy nor a planned economy is an option for Hegel because it does not preserve the subjective interests and freedom of all.

Hegel's solution to the conflict of universal and private interests of business society is the corporation's self-regulating function, which partially takes over duties in a business context and in the moral interest of the state. The corporations should be represented in the state and participate in governance. The delegation of representatives of various economic groups to develop the state governance and legislation is necessary (see [1], Sect. 308).

Hegel does not justify the individual right to participate in all organized groups in society with the democratic constitution of the state, but rather with the supreme duty in his ethical principles, which is the membership in the ideal state and the realization of freedom (see [1], Sect. 258). This obligation is abstract for *businessmen*. They experience membership in a concrete corporation more closely than in an abstract ideal state. They are more likely to fulfill their duties toward a professional corporation than an ideal state. When businessmen engage in the public, they should do this first in the estate, where they are familiar. Because businessmen do not understand the affairs of state, they should not directly participate in the government productively (extreme lobbying), but they are always free to contribute to the shaping of public opinion.

Despite the recognition of the corporation, Hegel bounds its role and function, since it consists of selfish businessmen. The selfish owner-members understand the primacy of general interest indirectly: They are more inclined to connect their public duty with private interests. The corporation is a place of "little passions and imaginations" ([1], Sects. 287, 288, 289), according to Hegel. Therefore, it may be that some *businessmen* involved in the institutions of the estate do not distinguish between private and political interests. Despite his misgivings about the "state capacity" of businessmen, Hegel provides them the opportunity to cooperate in a number of political functions of governance. The *corporation* has to assist the government in controlling violence of state authorities "from below." This control is especially necessary in determining an abuse of positions. This abuse is the case when people pursue private business at the public's expense. The corporation will monitor that statesmen do not isolate themselves like the aristocracy and transform their special status as an instrument of profit and domination over others. Rather, the behavior of statesmen must be a model for how to proceed in dealing with state interests. In addition, the corporation has an advisory role in the legislature. Although the highest state officials are able to determine what is best for people even without this advice, hearing the views of a corporation makes sense in urgent or special cases, since its members are also experts on various sectors and represent a large professional group.

The business, organized for itself and represented by corporations, shows that in this advisory role, a corporation can exhibit goodwill for the general public and that it is not contrary to interests of the government. In fact, corporations are mediators between the *ethical state* and the business estate because they represent moral functions in business without being state institutions. The problem remains, however, as already explained, that people who represent the "private matter" of business and at the same time participate in the legislative process present a conflict of interest because businessmen in general have no direct sense of community.

Hegel would accept modern lobbying and the support of business in general, but he would doubt the self-limiting ability of a business representative. The idea of the participation of the business estate in the legislative affairs of the state is still controversial today. The modern criticism is that businesspeople determine the affairs of the state. Lobbyists perform exceptionally effectively, so that often questionable deals between the government and business result. Other modern aspect of the Hegelian criticism is the social behavior of statesmen, a critical and very relevant point today. Modern members of a parliament receive income from industrial companies, so they are not independent, and mix private and political interests. Furthermore, politicians are engaged to support projects with particular businesses and after their political career receive attractive positions in the same company, a process which is often criticized today. The current statesmen, the politicians, should act in a responsible way to secure the *freedom* of all and not to secure the private interests of a privileged minority.

Conclusion

The economic system requires a normative justification to a higher principle. According to Hegel, the business sphere is a “battlefield of the individual private interest of all against all” ([1], Sect. 289). This conflict explains the necessity of lifting the economic system into a higher, more rational sphere. That this sphere is the *ethical state* follows from Hegel’s philosophy of the *objective spirit*, which is a result of metaphysical logic he develops. The ambivalence and contradictions of the business sphere are justified only because of the theoretical determination of the moral state. Regardless of the metaphysical foundation of Hegel’s moral state, it is hardly reasonable to interpret the consequences of his program for today’s conditions. Hegel’s solution to the ethical relationship between business and state remains controversial. Despite such problems in the Hegelian concept, it serves as a very suitable foil for the criticism of the current field of the business ethics and for gaining new insights in their development (see [2], p. 219).

Today, critics speak of “economic cynicism” ([11], p. 27) when economists claim to establish their own ethical principles and standards for business and to reflect on them. According to Hegel, economic principles are recognizable only in the sphere of *needs* and *work* and should not be applicable in the community in general because they do not secure the *freedom* of all. Hegel’s objection to the modern political economy of his time is not out of fashion today. Hegel does not reject the free market economy and the growth it generates, but he criticizes the growing tendency toward polarization of society into a few rich and countless poor. Hegel does not advocate slowing the general growth trend of an economy through governmental action, but argues those responsible to assume moral responsibility for the consequences of economic expansion. This requirement is in compliance with the ethical duty of a business toward impoverished people in facilitating a dignified, confident, economically secure life. Hegel doubts the voluntary duty of the rich economy because the social duties are contrary to the principle of a business estate, and he therefore calls for state protection.

Institutions as self-governing bodies of a business should protect the interests of all members of the business, including the interests of the impoverished ones. Through recognized *work*, individuals should attain their dignity and self-confidence in business. Education should be supported because it promotes the virtue of *righteousness*. This righteousness is the loyalty to institutions and the social norms as a basic moral attitude of *businessmen*, which motivated them to performance of duty toward the community. Righteousness also means to not blindly follow institutional norms because doing so brings a personal advantage, but to voluntary and actively shape and create a political and economic policy framework in which individuals can move freely. Hegel's demands of social care and the creation of conditions for virtuous education can certainly be addressed to business and key decision makers in the political and social state today.

Hegel's ethical criticism of business men who are only interested in profits and who do not respect social values is more relevant today than ever. The current economic crises are partly attributed to irresponsible and selfish economic actors. Political systems have the difficult task to create institutions that promote socially desirable behavior of economic agents – a modern project, the philosophical foundation of which goes back to Hegel.

Cross-References

- ▶ [Hegel and the French: Economical Philosophy Instead of Ethics](#)
- ▶ [Kant and Hegel on Property](#)

Notes

1. Some researchers speak about *eudaemonic* will in the same sense (see [6], p. 41).
2. Ver Eecke calls it the paradox of the will and freedom: the will restricts itself to the moment of dissipation and is free at the same time (see [6] p. 40).
3. Hegel's theory also has several shortcomings: The expression of one's self is a relevant moral consideration, but it is not the sole reason for granting property rights with respect to that object (see [12], p. 326).
4. These arguments are elaborated in the writings of the Scottish economists, especially Adam Smith. Hegel based his philosophical reflections on these writings (see [13]).

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Hegel and the French: Economical Philosophy Instead of Ethics

20

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Abstract

The reception of Hegel has become decisive for French postwar philosophy. Due to the issues of the time and under the influence of other thinkers such as, first and foremost, Nietzsche, but also of Heidegger, Husserl, and Freud, this reception unearthed some completely new aspects of Hegelian dialectics; aspects so strikingly original, one can virtually speak of a specifically French Hegel. The work on economical questions has been under a strong Marxist influence from the very beginning, but quickly emancipated itself from Marxist presuppositions. Nor did this “philosophy of economy” submit to the mode of functionalist analysis but, just like Hegel himself, pursued its own approaches to a political economy; approaches which, also like Hegel, were less inspired by moral philosophical considerations than by an examination of the “economy of reason.”

Introduction

This chapter begins with a presentation of the main features of Hegel’s philosophical economics, already reflecting the future reception in France in its thematical accentuations. The second part reconstructs Hegel’s effect on French philosophy in the context of its autochthonous, contemporary questions. The object is not so much to set factual or communicative misunderstandings off against each other in order to save a possible true Hegelianism from obscurity but to carve out the lasting creative impulses – and those that still have to be actualized in the future. On the

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whole, this Franco-German discourse on economy is more strongly marked by challenges to thinking than by moral ones. The philosophical contribution to an Enlightenment of economy is thus being developed hand in hand with the importance of the economical for the concept of reason.

Hegel and Economy

The Economy of Reason

What and how does Hegel think about economy? In order to clarify this point, one must neither let economics in the tradition of Adam Smith dictate one's concept of economy, nor let moral philosophy determine the forms of critical reflection of a given economical practice's ethical shortcomings. Hegel was not only familiar with the more recent theoretical approaches of his time but also with the traditions of philosophical economics. It was Aristotle's political economy, in particular, that provided essential guidelines for his own thought.

Whoever consults traditions of philosophical thought in search of new ways to change things for the better in the field of economy always does well in not letting ready-made concepts block these ways from the start. This especially holds true for Hegel, who would not let anyone else dictate how he was to conceive economy. The question, what economy actually *is*, is thus automatically raised. Likewise, in searching for an ethos of economy, one must neither presuppose a predetermined concept of economy nor an otherwise consolidated conception of ethical norms or procedures.

For each subject he addresses, Hegel gives an account of how philosophy can deal with it at all – and how it might even be best suited to deal with it. The question of a “philosophy of economy” is therefore at the same time the question of the concept of philosophy as a whole, as well as the question of an “economy of reason.” What is rational? And which form of rationality best fits the specific *nomos* of economy?

Without a doubt, opportunity is the epitome of economical rationality. Aristotle had already remarked, however, that opportunism turns into its opposite, into misuse, in a closed system of instrumental rationality and speculation on utility (cf. [5], NE I, 1 1094 a). He solved this aporia by expanding the concept of opportunism in order to include, for example, a speculation on happiness; a speculation on something useless and purposeless, therefore, which – nonetheless and even precisely for this reason – represents a *conditio sine qua non* of successful social economy (cf. [35]). Opening up this dimension of speculation on opportunity, however, also requires a transcending of the instrumental type of rationality (cf. [5], X, pp. 6–9). Instead of determining a specific type of economical rationality and then trying to remedy the aporias deriving from it by means of moral investments, Aristotle therefore relies on the power of knowledge. He counts on thinking's ability to transcend its limits for the sake of knowledge and to transform itself into a new form of reason where the necessity arises.

Quite similarly, Hegel does not base his concept of economy on a specific, universally valid type of rationality. Confronting formations of reasonableness with themselves in such a way that the aporias and contradictions of those formations become visible, letting emerge a new form of reasonable thinking, acting, and perceiving by way of a reconciliation of reason and unreasonableness – that is precisely what Hegel’s dialectics amounts to. Following Aristotle, Hegel brings into play the *metamorphic* element of an economy of reason, which is an essential trait of the form of his analysis of social economy on the one hand and shapes social economic rationality as such on the other.

The Global Economy

Reason, however, is not only concerned with reason. For Hegel in particular, rationality is not only a question of the correct instrumental use of the powers of understanding. Instead, he holds that there is a more or less successful unity of self-consciousness and the world’s appearance. Reason only embodies its reality as reason of the world, not just in people’s heads. A horizon exceeding a mere social or cultural concept thus opens up to the rationalization of economy. The economical finds its place in the domain of human interaction, market economy, maximization of utility, and appropriation of nature, but also in being as such, for example. Economy is, as it was for Plato (cf. [34], pp. 93–96; [61], *Timaeus* 27d–34b) and later for Bataille [9], not only economy *in* the world but economy *of* the world.

When, for example, Hegel begins his *Science of Logic* with the examination of *being*, which, hardly even mentioned, already starts to dissolve into *nothingness*, when this nothingness then reveals being as everything and ultimately finds itself in *becoming* (cf. [40], I, 1 A–C, pp. 82–115) – who would not see a productive economy of logic being at work there? One could of course try to reconstruct the dialectics of the *Phenomenology of Spirit* in terms of causality. With equal or greater right, however, one could also find an economy at work in it: What does – or doesn’t – the spirit gain, as a realization of perception and action, and in what way does it gain it cf. Chap. 2.7? All of its developments, going from “sense-certainty” ([41], A I, pp. 82–93) to “self-consciousness” ([41], B IV, pp. 137–178) and “reason” ([41], C (AA), V, pp. 178–324) and finally to the “spirit” knowing itself ([41], (BB) VI, pp. 324–495), are the results of successful or unsuccessful speculations on something, on some kind of proceeds, and therefore entail a certain return. What emerges as “world” from all this is not pure objectivism, not only a world in itself, but also a world for those whose world it is.

This is of particular importance for the development of economical reason as well. For Hegel, economical reason is not characterized by a primarily mathematical and causal-mechanical rationality, in which human motivations only appear as functional factors of an autonomous system of rationality – a system operating without regard to the way people think themselves and their relation to *their* economy, and which is consequently nothing but *the economy tout court*. Hegel

does not see the autonomy of economy as definable by a purely functional law but only through the inclusion of that which is currently being sought to integrate into the theory design of economics under the name of behavioral economics.

Due to the global concept of reason, economy can thus not simply be presented as an economy of product allocation, drawing on the price mechanism as its most relevant regulatory instrument. Rather, it also has to take into account a product in many ways defying purely market-based forms of calculations, but which cannot be excluded as simply pre- or an-economical for all that. This product is the world as such, or rather the transformation of a natural supply of being into the emergence of a world. Economy is therefore not only the art of exploitation of natural and worldly resources but at the same time an economy of world creation. Plato, by the way, had already delineated economy in this same cosmopolitical dimension (cf. [61], *Timaeus* 27d–34b).

The Good Person and the Economy of Profit

Aside from those extensive dimensions, economy as economy of the world also features the intensive dimension of an economy of life. In its theoretical models, modern economics systematically presupposes an individualism whose origins are not further reflected upon, because they are of no real relevance for the design of these models. This individualism does have its history, however. It is not a natural property of humankind. Where, for example, people are primarily somebody's subjects, or where all their wishes and wants are firmly and functionally tied to the reproduction of family, tribe, or species, purely self-interested ambition does not have any actual value – neither for themselves nor for the general economical activity.

People's attainment of independence, their becoming free subjects, able to decide for themselves what they want, seems to be owed to the termination of such serfdom as a result of a history of *political* emancipation. According to Hegel, however, this individual freedom already develops by way of a certain *economical* speculation, as a result of which the independent consciousness separates itself from the dependent one. Both, however, initially refer to one another in mutual recognition, each being what it is through the other one, in such a way that "the *menial consciousness* is the independent consciousness's *truth*" ([41], B IV. A, p. 152). But what triggers this dialectics between lordship and servitude? Well, "for servitude, the lord is the essence" ([41], B IV. A, p. 152). The servant thus does not only have an external relation to his lord. Rather, servitude has "*experienced* [this lordship as its] *essence in itself*" ([41], B IV. A, p. 153). "This consciousness was not only anxious about this or that thing, nor about this or that moment, but about its whole essence; it felt the fear of death, the absolute master" ([41], B IV. A, p. 153).

Hegel then goes on to develop how the trembling endurance of this fear of death brings about a liquefaction that already is "the simple essence of self-consciousness" ([41], B IV. A, p. 153). But only "in serving does it *really* accomplish" this dissolution and "sublate its attachment to natural existence in all its *individual* moments" ([41], B IV. A, p. 153). Fear of death ties life to natural existence. Life then means self-assertion, however. It becomes a permanent struggle for survival.

Death is the master of this unfree and menial life. In other words, life is this life's price, at least in the form of the development of autonomous individuality. Only in taking the risk of not only unconsciously submitting to this absolute power but of feeling it in the "fear of the lord" ([41], B IV. A, p. 153) can this life be liberated from such servitude to its conservation. This means, however, abandoning one's self-assertion and risking *this* life, which disappropriates everyone precisely to the extent to which one clings to it. According to Hegel, this happens in the form of labor, but only in as far as this labor is productive and does not itself only consume life (cf. Chap. 2.8). Sovereign individuality thus owes its reality to an elementary economy of life. Only he who thus risks his self-assertion may win *himself* – in a freedom only now endowing him with his life.

This economy before economy, if you will, is not only a kind of backstory, however, becoming irrelevant as soon as it attains the result of sovereign individuality's existence. Firstly, concrete individuation remains a continuous challenge, as it is not a disposable possession. Secondly, where people do not know how to win *themselves*, everything else is lost and vain. Thirdly, the overcoming of the paradigm of self-assertion is crucial for the economical horizon of speculation. As long as all wishing remains subsumed under the norm of self-preservation, economy cannot get beyond the zero-sum game of a purely reproductive order. The possibility for wishing to overcome and sublimate *being* (that which is and has been) in favor of the realization of fantasies about what could be then does not exist. Strictly put, where there is no way for something that does not exist to come about by way of wishing, the above-mentioned freedom does not exist, the freedom whose "reality" is the foundation of both the democratic rule of law and of a modern economy which is not an economy of reproduction but an economy of growth – or, more to the point and according to its own idea, an economy of profit.

What Hegel does in *Phenomenology of Spirit*, particularly in the chapter on "Lordship and Servitude" (which was to become so important for post-Marxist French philosophy), can with some right be read as a discussion of the ways of development of the idea of the *good person*. For in whichever way the spirit unfolds itself for itself and regarding the world, the way man thinks himself is inevitably embedded in it. And Hegel's views on man's development are equally positive and optimistic as those regarding the spirit's self-fulfillment (or self-appropriation, in economic terms) in the world. Contrary to common opinion, the *good person* is, in this phenomenology of its genesis, a moral issue only by way of exception, namely, in the chapters on "The Moral Worldview," "Dissemblance," and "Conscience. The beautiful Soul, Evil and its Forgiveness" ([41], (BB) VI. C a–c, pp. 442–494).

Moral issue or not, however, an economical reading of Hegel here finds the fundamental way in which the realization of the idea of the good person determines what economy is and can be. The possibility of transforming the zero-sum game of a mere economy of redistribution (which cannot be overcome by a reproductive order of life) into an economy of profit depends on it. And what is more, the possibility for an economy in the strict sense of the term to emerge depends on it, too, an economy, which is not only lawless and power-based disposal of resources but functions in accordance with an innate *nomos*.

Ethical Life and Morality

One would thus have to look at Hegel's philosophy as a whole in order to fully extrapolate all the dimensions of his concept of economy. When he decidedly and explicitly addresses the subject of economy, however, it is a very particular kind of economic activity. This takes place in the *Philosophy of Right*, more precisely in its third part, on "*Ethical Life*" ("*Sittlichkeit*," [42], Sect. 142–360). According to Hegel, the existence and historic establishment of legality is the primary systematic condition for the existence of that which has come to be known as *economy* in modern times. He embeds this economy in the interdependency of politics, quite in accordance with the classical model of philosophical economics in the tradition of Aristotle (cf. [4], I, pp. 2–12). Economy therefore appears, eo ipso, as political economy.

For Hegel, this particular form of economical activity is already a form of ethical life, which, as a whole, consists of the family (cf. [42], Sect. 158–181), the civic community (cf. [42], Sect. 182–256), and the state (cf. [42], Sect. 257–329). This ethical life, however, is not the same as morality. Hegel defines ethical life as the "unity of the subjective and objective good in and for itself" ([42], Sect. 141 Addition, p. 290). And this good is "the essential universal of freedom" ([42], Sect. 141, p. 286), meaning it is not any particular kind of moral norm, hierarchically superior to freedom, but rather the successful unfolding of freedom by the people, regarding the people and the world. According to Hegel, then, that which is and must be the point of departure for any ethics is also the meaning, the substance, and the end of any endeavor to achieve the good; for where there is no freedom but only the reign of necessity, the power of fate, or pure causality, an ethics cannot even be conceived of. Freedom itself is "the good," not something else under whose rule it would attain its legitimacy.

In ethical life, the "merely *intended* good and the equally abstract subjectivity merely *intended to be good*" ([42], Sect. 141, p. 286), on the one hand, and the merely objectively universal right on the other mutate to become the concretion of these pretensions. "Neither right nor morality can exist independently. They must have the ethical as a pillar and as a foundation, because right lacks the element of subjectivity, which in turn is the only thing morality has, so that neither has any reality by itself" ([42], Sect. 141 Addition, p. 291). Ethical life therefore begins, where moralizing ends. This, however, is precisely how it helps to bring morality into its own, as long as morality does not insist on playing off the *ought* against *being*. Ethical life, as Hegel understands it, thus is not an ideal, morally valuable state of individual and collective behavior but transformational instead. It is "the *idea of freedom* as the living good, [. . .] – the concept of freedom, that has become the existing world and the nature of self-consciousness" ([42], Sect. 142, p. 292).

Following Hegel, then, any attempt to change the economy for the better, to make it "good," by combining functional rationality and normative business ethics (and therefore by balancing market and morality), must immediately be discarded. But economy as such is a part of *this* ethical life and must neither be described

in merely mathematical terms nor in merely objectively functionalist categories in compliance with a causal logic, but only in terms of the political economy of “ethical life lost in its extremes” ([42], Sect. 184, p. 340).

Desire and the “System of Needs and Wants”

This specific form of economical activity as part of ethical life emerged as the history of mankind had attained a specific way of life; one in which the existence of the *citizen* for the first time ever made it possible to speak of “human beings” in a real sense, as Hegel asserts, following up on Aristotle’s notion of man as *zoon politikon* (cf. [42], Sect. 190, p. 348). This *civic society* organizes itself economically, as a *system of needs and wants*. Its precondition is the replacement of the originally superordinate primary system of the bonds of kinship by the polis (cf. [42], Sect. 182, Addition, p. 339). Where life still takes place in a system of families, tribes, or clans (as was the case in the so-called palace economies of the pre-political Homeric era or at the height of feudalist Europe’s Ancien Régime), there is neither a civic society nor a system of needs and wants.

According to Hegel, the civic economy’s pivotal point in this system is neither the market (even though he does not at all underestimate its historic importance) (cf. [42], Sect. 247, p. 391) nor money, neither lack nor production, but its desire, for one cannot speak of an economy where there can be no wanting or wishing. It appears as an art of desire and its satisfaction. The precondition for human desire to become the reason for civic society (and for satisfaction to become its end) is that it is no longer exclusively integrated as a function of the species’ biological reproduction and no longer subsumed under the necessity of self-preservation (cf. [42], Sect. 181, p. 338). People appreciate it as such. They have discovered its productive force, which greatly exceeds the reproductive function of self-preservation, and no longer fear it. At the same time, this liberation is the precondition for the development of an autonomous economy, following its own immanent laws. In its difference to the *Reich*’s, the *oikos*’ or the *Empire*’s family-dynastic system, this form of economy can only exist in the “state,” in the sense of *polis* or *res publica*, and is therefore a genuinely political economy, an economy of democracy.

In civic society, the freedom of desire takes on the form of needs and wants. Needs and wants are neither the only and authentic form of desire nor a biological trait of human beings. A hungry person, for example, does not experience this hunger, as *having* the need for nourishment. If one *does not hunger*, maybe even to the point of being overcome by apathetic lethargy, but *has* the need to eat, one has already formed a certain *conception* of one’s condition, in which the actual distress has already been somewhat sublimated. Needs and wants are thus an artificial form of appearance of lack, as well as of the nature of man and life.

If desire takes on the form of needs and wants, this implies a certain distancing from themselves on the part of the citizens, who *have* these needs and wants and can therefore deal with their desire as they see fit. At the same time, those needs and wants are also dissociated from the individual and may therefore take on all kinds of

shapes. Thus, they can be created and instrumentalized in order to make a profit (cf. [42], Sect. 191 Addition, p. 349). The fact that the citizen *has* needs and wants is an existing personal wealth in itself, even though they demand work to be done, because they still need and want to be satisfied. And this work can increase infinitely because the needs and wants realize their independence of their master as an uncontrolled multiplication (cf. [42], Sect. 190, p. 347). Desire in the form of needs and wants is thus free to the same extent that it is unfree. And man realizes himself in the satisfaction of his needs and wants to the extent that he alienates himself from himself in it. Therefore, Hegel holds, the reification of desire in needs and wants implies an amalgamation of arbitrariness and necessity, of measure and excess (cf. [42], Sect. 185 Addition, p. 342, Sect. 187, p. 343).

Understanding, Its Discontent and Knowledge

Classical economics as designed by Smith, Say, and Ricardo is considered the science of this civic economy of desire, the science that “in the infinite multitude of details [. . .] finds the simple principles of the matter, the understanding operating in and ruling it” ([42], Sect. 189, p. 347). “This bustling of arbitrariness [. . .], this seemingly dispersed and thoughtless multitude is bound by a necessity that emerges all by itself. Discovering this necessity is the task of economics – a science that honors thinking in finding the laws for a mass of coincidences” ([42], Sect. 189 Addition, p. 347). It thus seems that, in this type of regulative rationalization, the economy is already in the best of scientific hands.

But this “reconciling element,” this “appearance of reasonability, inherent and active in the matter,” is, at the same time, “the field where understanding, marked by subjective ends and moral opinions, vents its discontent and moral fretfulness” ([42], Sect. 189, p. 347). The antagonism of market and morality opening up here, Hegel asserts, is not a factual one. To him, it is rather to be found in economical understanding as such, in an understanding that objectifies itself in the simple principles of the matter on the one hand, and which experiences a subjective discontent with this circumstance on the other. The moral discontent is thus already part of the problem and, to Hegel, even more delegitimized than neutral know-how. It is but an indicator that something is not right. Therefore, he himself does not follow the path of a moral criticism of economy but sticks to the explication of economy (cf. [63], p. 36).

The Philosophy of Economy

What kind of light can the philosopher bring into the matter, however, if economical understanding has already determined the principles, and morality does not count for much? And how should Hegel be read? Firstly, one must take care not to be seduced into a judgmental reading – neither by such concepts as *selfishness* ([42], Sect. 183, p. 340), *excess* ([42], Sect. 185 Addition, p. 342), or *arbitrariness*

([42], Sect. 189 Addition, p. 347) nor by the appearances of bourgeois economical activity, which, from a moral point of view, must seem quite abominable in itself. Hegel speaks of a “spectacle [. . .] of debauchery, of misery and of the physical and ethical corruption shared by both” ([42], Sect. 185, p. 341). He thus takes an esthetical perspective on social economy and interprets it as a drama; for this, ethical corruption has its inherent necessity as part of an economy of salvation, if you will (cf. [42], Sect. 185, p. 341).

Even in the form of an “ethical life lost in its extremes” ([42], Sect. 184, p. 340), the *system of needs and wants* is part of the historic and systematic self-realization of the good and of the development of freedom. In civic society, ethical conventions are no longer just means to peacefully organize a situation (or even to make it more agreeable) based on something else – for example, on nature, family, or just brute force. Instead, and for the first time ever, ethical life becomes civic society’s foundation of existence. Precisely for this reason, its essence manifests itself as economical, and not in the forms of politeness, virtue, personal disposition, and the normative idealism of an ethics wanting to begin only where economic materialism ends. Civic society has to be able to afford itself.

Ethical life is thus a generator of real life at the beginning of the development of civic society’s substantial essence. At the beginning of this process, the ethical presents itself as unethical, and the unethical as ethical. The transformation of the unethical into the ethical *is* ethical. This requires a representation of the unethical that includes the power of its refinement. For what is supposed to be the meaning of an ethical life unable to transform its opposite into itself just because, investing all its power in rigid rejection, it is unable to even recognize it.

What does this mean for the economy essential to ethical life? It means that the economy’s *nomos* can never be realized in simple processes of distribution, transaction, allocation, or maximizing of utility and profit, as they are subject to the paradigm of quantitative increase. Its realization can only succeed in the form of metamorphic transformations.

Hegel himself already takes a first step in outlining civic economy. His account already breaks with bourgeois self-perception. He does not present economy as an externalized, functional, and systematic objectivity but as a human economy, continually making obvious what the society expects itself to endure. If, with more than just a theoretical interest, the civic society was capable of reflecting itself in its *system of wants and needs* as Hegel extrapolates it, it would inevitably be pushed beyond its own limits.

The metamorphic approach becomes systematically visible in the civic rationality’s differentiation into *effective and governing understanding* on the one hand and the *active appearance of reasonability* inherent in it on the other. In light of this differentiation, the conflict between market and morality appears to be a problem of knowledge and thinking that can neither be solved with the instruments of understanding nor with an ethics informed by the stipulations of prudence. Even if the subjective fretfulness of moralizing based on an individualist ethics could overcome the immanence of this system, however, it would probably still shipwreck on the economical force of the system of “all-round entanglement of

mutual dependency” ([42], Sect. 199, p. 353). And there is a further problem: trying to deal with the more alarming economical realities as they appear to theory and practice of economical know-how by adding meta-economical norms means recognizing the validity of “Verstandesdenken” (understanding thought), the prevalent type of rationality in the economy. Behind the back of all good intentions, this kind of economical know-how is thus asserted as being without any alternative. Hegel therefore takes a different approach: Instead of speculating on a normative superstructure, he speculates on a metamorphosis of this way of thinking. “Hegel and Smith are using different concepts of economy” ([63], p. 34).

As much as *understanding* may be able to show how everything is mutually dependent, it will never be able to comprehend the independent element active within. This is the point where it falls back on the famous metaphor of the *invisible hand*, borrowed from religious tradition. It understands causality, but, Hegel writes, it can only see freedom and autonomy as a kind of *necessity that occurs by itself*. Where *reason* enlightens the world of understanding, however, “Verstandesdenken” can be transformed into reason. All that was understood by understanding, and all that was misunderstood in the functional and regulatory abstractions it objectifies itself in, can then be reformulated in another way. Just as Hegel does not describe needs and wants as a natural fact, but as a *social* formation of *desire of desire* (cf. [42], Sect. 194, p. 350, and [33], p. 58) and of its suffering and enduring, an enlightenment of reason does no longer presuppose the facticity of the civic economy’s appearances but reveals each one of them as being founded in a particular notion.

Accordingly, the site of *economy* is not an abstract causal mechanics but world history (cf. [42], Sect. 341–360, p. 503ff). Civic economy is based on various historic preconditions and therefore is in no way history’s last word. “By its own dialectics, civic society is being pushed beyond itself” ([42], Sect. 246, p. 391). Due to its speculative energy, the economical development builds up a *dramatic* dynamic, incomprehensible to a functionalist analysis of its laws. Other than Marx, however, Hegel refrains from making concrete predictions about the civic economy’s future. And wisely so (cf. [42], end of the preface, p. 28), one is tempted to say with today’s benefit of hindsight. Today, we know to what extent the system of needs and wants was then only at the very beginning of its historic unleashing, and its end is further out of sight than ever, as it seems to have absolutely no alternative at all.

Instead, Hegel expands the horizon civic economy exists in beyond the concepts of a purely market-oriented perspective. For example, he leaves open the difference between realization/fulfillment and alienation (cf. [42], Sect. 198, p. 352f). And he takes the contradiction of exponential enrichment and pauperization seriously, instead of one-sidedly counting on the positive effect of either austerity or enrichment. He does not envisage the disappearance of poverty all by itself but expects an “infinite increase of dependency and misery” to go along with the “multiplication and specification of needs and wants, means and pleasures that [. . .] has no limit” ([42], Sect. 195, p. 351). Even if it were possible, then, to mitigate or even eliminate traditional forms of poverty and existential misery by way of a general participation

in the processes of enrichment, this would still continuously conjure up new kinds of lack, of impoverishment of human life, of extortion, and of coercion – as we today know much better than Hegel could have ever predicted.

Additionally, Hegel puts the difference between appearance and truth into play, seeing – just as Luhmann ([53], p. 177ff) would later do – an essential but clandestine trait of economical rationality in it. This difference “hides the [presupposed] strict natural necessity” so that “man positions himself in relation to *his* [necessity], meaning a general opinion and a self-made necessity” ([42], Sect. 194, p. 350, cf. Sect. 190 Addition, p. 348).

The State and the Metamorphosis of Self-Interest

Instrumentally rational economical opportunism finds an additional perspective in Hegel’s specific differentiation of state and society. To him, the state is not an intrinsically an-economical and merely superordinate authority; it is a constitutive element of economical activity. Where states do not exist, neither does the unleashed individual desire whose imaginative power is the foundation of economic freedom’s prosperity, nor does the dynamic unfolding between individual self-interest, multiplication of needs and wants, and the sum of individual activities. For Hegel, the relationship of state and society is not one of subsumption but of development and transformation.

“Civic society is the tremendous power seizing man” so that “everything he is, he is through it, and everything he does, he does by it” ([42], Sect. 238, S. 386). Compared to this tremendous power of all-round entanglement of mutual dependency, it appears to be somewhat “arbitrary [...] to be a member of a state” ([42], Sect. 258, p. 399), while the state appears to be “concerned only with emergencies and meeting the requirements of understanding” ([42], Sect. 183, p. 340). Where “the interest of the individuals as such is the final end to which they are united” ([42], Sect. 258, p. 399), the state only works as an external authority, drawing on nothing but people’s acceptance of its necessity for its legitimacy. It is indispensable because it is needed for the regulation of everyone’s personal realization of freedom. Other than that, it does not mean a thing – or is even, latently or openly, rejected as a foreign, patronizing an intrinsically illegitimate power. Things would be better if it were not necessary and could be dispensed with.

Where the pursuit of egoistic ends turns everything and everyone into an instrument to achieve these ends, Hegel writes, this same selfishness takes on a life of its own as a system – in opposition to everyone else *and* sucking them up at the same time. The individuals’ freedom to make their desire and their most personal affairs their final end can thus not yet get over a mere addiction to itself. And as long as the individuals identify themselves and their desire with this selfishness, this freedom as such cannot be realized. It pairs up with the dependency of everyone from everyone. The ideal of economic success and the richness of successful self-realization is then no longer the satisfaction of wants and needs but the greatest amount of independence and of unhindered enjoyment of such antisocialness.

The state is the reason for this fatal circumstance, not the *empire* or the *imperium*, mind you, but the *res publica*, the *polis*. Only the polis opens up a world beyond the closed sphere of family life marked by patriarchal power, maternal law, and dynastic serfdom, a world that, by means of individual human rights, puts an autonomous ethos into force and puts people in relation to one another in the form of citizens, who are at first just as selfish as they are self-reliant and independent (cf. [42], Sect. 181, p. 338, Sect. 182, p. 339). *Citizens* only exist through each other, in the *polis*, not by way of reproduction of the species in the bosom of the family. Civic society is therefore an effect of the realization of the idea of the state and in no way its cause. And this also holds true for its specific economy, bound by internal laws. Otherwise, the economy would simply be determined by an anomic power of disposal over natural and human resources.

In light of this breakdown of the problem, the state, reduced to an instrument for the regulation of a general framework, does not offer a real solution for society's contradictions. According to Hegel, it rather fulfills itself in a politico-therapeutic process. The civic society's immanent dynamic eventually leads to a point where the "immediate ethical life" is mediated into the state, the *res publica*, as an effect of the "division of civic society," and the state "reveals itself as being its true reason" ([42], Sect. 256, p. 397), for it "is the ethical idea's reality" ([42], Sect. 257, p. 398) and therefore "the reality of concrete freedom" ([42], Sect. 260, p. 406). It has "the will as its principle" ([42], Sect. 258, p. 400). Desire is its original reason and the reason of its development. Accordingly, the state only exists as long as it is desired. Necessity alone is not a sufficient foundation for it. The state is the institutionalization of the desirable's emancipation of that which exists. It is a speculative, not only a regulatory authority, a perennial gamble on its future, on what desire will become.

Hegel does not conceive freedom as being subsumed under the individual citizens, who then make it the instrument of pursuing their selfish ends, thus enslaving and consequently losing it. For Hegel, freedom is free. "Freedom, [. . .] whether man knows it or not, [. . .] realizes itself as an independent force, of which the single individuals are mere aspects" ([42], Sect. 258 Addition, p. 403).

But how can the state's externalization from civic society and the citizens' externalization from their state be sublated? Well, as selfish as the citizens may be in their actions, they always transcend themselves in them as they make use of others. And, according to Hegel, they not only do this out of necessity but want to do it. It is thus a reduction – and an excessive one at that – of individual freedom to realize oneself in nothing but selfishness. Free will is expansive; it wants to "get over itself" and wants to break its own limits. "The will's activity" is "the sublation of the contradiction of subjectivity and objectivity" ([42], Sect. 28, p. 79). And "The idea of the will is *the free will, that wants the free will*" ([42], Sect. 27, p. 79). Or, as Hegel elsewhere puts it: "Self-consciousness achieves its satisfaction only in another self-consciousness" ([41], B IV., p. 144). Hegel thus concludes: "*Unification* as such is itself the true substance and end, and the individuals' purpose is the leading of a universal life; the substantial and universal is the origin and the result of their particular satisfaction, activity and comportment" ([42], Sect. 258, p. 399).

With this integration of the *res publica* into the economical horizon, the social economy – in accordance with its reason, desire – transforms itself into a sort of *political erotology*. While this notion might remain rather latent in Hegel’s own work, it has very instinctively been grasped by his readers in France cf. Chaps. 2.5–2.8. The scope of economical speculation exceeds the necessary or desired maximization of utility and profit to include a dimension of freedom that cannot be comprehended by utilitarian and instrumental thinking. Political economy acquires the chance for a sovereignty of desire in the face of the power of needs and wants. For, where needs and wants utterly dominate those who have them, civic society dissolves into a sort of slavery that will sooner or later create the tyrants it then requires. Additionally, political economy even integrates the possibility for supra-individual and metaphysical/mystical dimensions of happiness into its “product range”: “The state is the spirit that is in the world and realizes itself in it with ‘consciousness,’ whereas it only realizes itself as sleeping spirit in nature. [...] it is God’s way in the world that the state exists; its reason [Grund] is the force of reason realizing itself as will,” as Hegel emphatically puts it ([42], Sect. 258 Addition, p. 403).

With this kind of utopical, metaphysical republicanism, Hegel is far ahead of his times – and probably even ahead of ours, too. He redefines the divine in republican terms. Freedom, as the god of *democratic economy*, may well be an attractive alternative to the apotheosis of an *invisible hand* that, due to irresistible market mechanisms, leads all things toward a good defined by these same market mechanisms. In the forming of the political will modern parliamentarism stands for, and which is not only a means to an end but also the fulfillment of every end’s pursuit (cf. [72]), this *invisible hand* would probably be better off with a head after all. Wherever its contradictions may push civic economy to neither the satisfaction of moral needs and wants nor theoretical efforts of rationalization alone will be of much effect. The common ethos only finds its opportunity in the happiness of being able to make history.

Hegel in France

The Arrival

Hegel made his entrance to the philosophical discourse in France relatively late (cf. [60], p. 7, [3]). When he finally did, however, it was with such a force that the (in some parts groundbreaking) achievements of French thinking could not even be imagined to have happened without Hegelian dialectics. Even the most insistent efforts to “escape Hegel” by overcoming the “Hegelian self-evidence” ([28], p. 369) so as not to be “taken in by Hegelian discourse” ([28], p. 370, cf. [2]) remain indebted to him.

At the beginning, however, the reception of Hegel’s philosophy in France was facing a number of obstacles. While it did have some importance in the nineteenth century’s socialist movement, its influence abruptly ended in the aftermath of the

Paris *commune*'s collapse in May 1871 (cf. [46], p. 37f); the general anti-German sentiment after the defeat in the Franco-Prussian War further contributed to Hegel's image as Prussian state philosopher. This socialist tradition, however, was to be of great importance for the interpretation of Hegel in France later on, and the critical discussion of Marxism is a central theme in the history of French Hegel reception.

As late as 1930, however, Hegel was still widely unknown in France (cf. [50], p. 226). Translations were scarce; writings such as the *Science of Logic*, the *Philosophy of Right*, and the *Phenomenology of Spirit*, which were to be of great importance later on, were not available in French. Furthermore, Hegel's terminology and his systematic linking of logics and history were met with much reservation on the part of an academic discussion strongly oriented at Cartesian and Kantian traditions, as well as on the example of mathematics (cf. [60], p. 7). Hegel soon moved into the spotlight, however, and he did so with lasting effect. Especially, the translations of his earlier writings – the *Phenomenology*, the *Philosophy of Right*, and the *Philosophy of History* in particular – became rather important. In these early writings, French readers saw the possibility to open up the Hegelian system that seemed to be so closed in itself. This crucially helped along Hegel's success in France, to a point where it reached beyond a purely academic discourse of philosophy and its history and also generated some politico-polemical force (cf. [32], pp. 19–31).

Thus, as soon as 1947, Merleau-Ponty could state: "Hegel is at the origin of everything great that philosophy has accomplished during the last century [. . .] – he established the effort to study the irrational and integrate it into an expanded reason, which still is the task of the century" ([58], p. 109f). This did not change after the first generation of Hegel readers' excitement turned into an equally forceful opposition and rejection among the second one (cf. [69], p. 10ff). "I know [. . .] that our whole era is trying to escape Hegel, be it in the fields of logics or of epistemology, be it with Marx or with Nietzsche. [. . .] But in order to really escape Hegel, one has to know [. . .] which parts of our thinking against Hegel might still originate from Hegel; one has to fathom to what extent our attack against him is in fact his own ruse, behind of which he is still lurking," ([38], p. 52) Foucault cautioned in his inaugural lecture at the Collège de France in 1970. His words carried all the more weight, as he himself quite resolutely tried to overcome Hegelian dialectics in *Les mots et le choses* [37] and in *Histoire de la folie* [36].

Epochal Catastrophes and the Problem of Logocentrism

While Marxist criticism of political economy defined the first approach to Hegel, the interpretation of Hegel – and French philosophy in general – after the war was also strongly influenced by Kierkegaard, Husserl, Heidegger, and particularly by Nietzsche's criticism of civilization. Furthermore, the interdisciplinary integration of psychoanalysis, as well as of ethnological and sociological research, became defining for French thinking. Above all, however, two historical factors provided the background for the particular way of thinking in France. The first one consists of

more recent historic developments: On the one hand, there was the more or less consciously witnessed demise of Europe's civilizatorian arrogance in the battles of material and the blood sacrifices of World War I (including the genocide of Armenians) – and, shortly afterward, in the even more traumatic abysses of fascism, World War II, and Holocaust. On the other hand, there were the inhuman horrors of Stalinist gulags and, later on, the catastrophe of the Vietnam War. The end of colonialism, which took a rather fatal course for France in some ways, also played an important role; just think of the wars in Algeria, or of the one in Indochina, which only later became the American Vietnam War. All of this seemed to announce the end of the European universalism of reason and called the habitual euro- and logocentrism of European philosophy and intellectual history into question.

The second historical factor is the collective memory of the French Revolution in 1789, constitutive for the French's image of themselves and the world. It documents the possibility of radically speculating on a fall in the market, in order to find solutions for present problems in epochal change. In light of this memory, it seemed to be within the realm of possibility to expose oneself to an "experience of the absolute difference" ([28], p. 387) and to find one's salvation in the drama of a "sublation of economy" ([9], cf. [28], p. 397ff), instead of continuously investing all forces into the evolutionary development and optimization of given conditions of life.

The catastrophe of civilization in the first half of the last century not only brought about the loss of innocence of politics, morality and economy. It did not only mean the end of the previous certainty regarding the progress of enlightenment and increasing historical humanization. For many French philosophers, writers and artists the European history of reason as a whole was called into question. The European project of rationalization could no longer be continued as before. "Thinking must be buried alive" because it "is devastating," as Bataille suspected ([7], p. 242). Philosophy therefore no longer finds its meaning in efforts for further optimization of rational competence but in the radicality with which it manages to criticize this rationality and really "make a difference." It must "step out of the philosophical logos and think the unthinkable" ([28], p. 402).

Marxist materialism and psychoanalysis (cf. [51]) increased awareness for the bourgeois high culture's *underworld* and the European history of decline, which had been covered up by the bourgeois society's general optimism of profit and growth. The influence of sociological research provoked insights into the latent effects of repression and exclusion generated by the generalization of reason (cf. [36]). Ethnology had acquired a new sense for the archaic and offered the chance to take a virtually naïve and primitive look on modern civilization in order to see what cannot be seen from within it, out of its own perspective (cf. [14, 25, 56]). In order to confront the monsters reason *only* gives birth to in its sleep – as El Greco still thought he could hope – other resources such as the writings of de Sade (cf. e.g. [18]), Cocteau's *Theatre of Cruelty*, and the kind of thinking associated with surrealist art, were also put to use (just like the latter also made use of Hegel: cf. e.g. [65]).

Without sources of this kind, after all, "*the impossible*" ([28], p. 397) could hardly have been made possible; the impossible task, that is, of discovering a new

thinking of thinking, beyond the thinking conditioned by the history of rationalization, down to the core of its logic and efficiency, of its self-regulation and legitimation. For to recognize thinking as such to be a problem and to still want to tackle and solve this problem by way of thinking – this project indeed demonstrates an enormous trust in the possibilities of reflection and knowledge, but is also an aporetic imposition. In a series of methodological revolutions, from *phenomenology* (cf. [54]) and *existentialism* (cf. [67], p. 57), over *structuralism* and *post-structuralism* up to *deconstructivism* and *postmodernism*, French philosophy thus engaged in the intellectual experiment of a savage thinking (cf. [25, 26, 52]) – in order to develop new, dramatic ways of thinking between rationality and irrationality, mind and sensuality, between crime and the good, and finally between *nomos*, rule and order on the one side, and all kinds of anomalies and perversions on the other (cf. [13]).

The Overcoming of Dialectics

In this topically and methodologically provoking environment after World War II, Hegel's philosophy finally began to make a significant but also a very unconventional impact. More than almost anything else, it seemed to hold the answers for the questions of modernity. On this same background, however, it was also subjected to a reading that made previously unstudied aspects and potentials of it visible and productive – even though this reading was rather unscrupulous in its hermeneutics at times (cf. [69], p. 10).

It started with thinkers like Jean Wahl (cf. [20], pp. 77–89; [71]), Maurice Blanchot (cf. [39], pp. 65–76), Jean Hyppolite ([44], cf. [43], pp. 91–104), Alexandre Kojève (cf. [33], pp. 49–31; [48]), Louis Althusser [1], Alexandre Koyré [50], Eric Weil (cf. [6], pp. 105–112), and later Sartre [66–68], who were already dealing with existential questions and were also already more or less cured of any naïve and untarnished optimism of reason due to their work on Nietzsche, Marx, Kierkegaard, Husserl, and/or Heidegger. They were the first to discover the very vital and concrete sense of the drama of happiness *and* unhappiness, reason *and* unreasonableness of real-life hiding behind the façade of Hegel's allegedly abstract and historically optimistic system. Wahl and Hyppolite, for example, found crucial impulses for their ontological diagnoses of existence in the unhappy consciousness's tragic experience of disruption (cf. [45]); for Weil and Kojève, Hegel's concepts of satisfaction and recognition were particularly significant; and Koyré's discussion of the concept of time focused on the primacy of the future as the speculative reason of all efforts to attain satisfaction.

Due to his propagandist and class struggle-oriented verve, as well as due to the glamorous *radical chic* of his circle (cf. [33], p. 49ff), Kojève's approaches most certainly had the most profound impact on the ensuing period. In his reading of Hegel, the internal perspective on the subject's inwardness which particularly marked Wahl's thinking was expanded to include its political dimension. Hyppolite's logic of the unsubtly differential structure of self-consciousness

was transformed into the possibility of historical self-transcending. Kojève saw the key to man's historical emancipation in the dialectics of lordship and servitude, which became downright synonymous with Hegelian philosophy in France (cf. [60], pp. 10–14).

“One cannot read Hegel, unless one does not read him” ([19], cf. [63]). Blanchot's seemingly paradoxical sentence vividly illustrates the kind of intellectual experiment French philosophy engaged in when confronting Hegel. It did not only treat his dialectics of contradictions as an object for thinking but imposed it on itself. These philosophers allowed themselves to be seized by the contradictions of comprehension and noncomprehension, of thinking, and of thoughtlessness. Only through non-comprehension did Hegel seem comprehensible to them. The belief in the disposability of a pre-stabilized intellectual sovereignty, against which nothing in the world could resist and which let absolutely everything seem thinkable, was shattered. On the other hand, however, Blanchot's sentence also documents the emancipatory and nondogmatic encouragement to think for oneself that can arise from Hegel's philosophy. One does not really understand what Hegel has to offer when one submits to his logos word by word. Only in freeing oneself from what there is to read in Hegel's texts through new and original thinking can they be understood. This very point, however, sometimes gives rise to the question whether that which the French think they understand under the name of Hegel is indeed still Hegel or not. But, of course, the philological way of reading is neither the only possible one nor always best suited to understand and make productive what a philosophical writer asks us to think about.

Thirdly, Blanchot's sentence already indicates what was going to come after the first, emphatically affirmative phase of Hegel's reception in France. The second generation, from Sartre and Merleau-Ponty to Foucault, Deleuze, and Derrida, was more and more characterized by efforts to distinguish themselves from Hegel. While for Koyré and Kojève Hegelian dialectics seemed to contain the most stable philosophical foundation for emancipation and freedom (cf. [60], p. 14) possibly conceivable, the next generation saw its pretension of totality to be a perfidious method to annihilate the exact same freedom it promises (cf. [21, 28, 29, 55, 66–68, 71]). Everything it gets hold of is immediately dissolved into the prison of a monistic universe. For, in all of Hegel's differentiations – for example, of consciousness's or spirit's metamorphoses – one thing always remains the same, unshakably unharmed by any of these transformations: dialectics itself. Especially Foucault thus discussed, in *Histoire de la Folie* ([36], cf. [60], pp. 151–305), a dogmatics of reasonability and truth pretending to dialectically integrate madness, unreasonableness, and dreams, while *in truth* excluding and gagging them by forcing on them the categories of a consciousness that is virtually awake all of the time. The success story of dialectics thus simultaneously appears to be one of its decline – increasing knowledge pairs up with an increasing obfuscation (cf. [60], p. 19); the liberation by the forces of reason leads to a prison of this very reason.

Thus, for Foucault, just as for Deleuze and Derrida, the attempt to think the irreducible difference of something wholly other than reason became

paramount – against synthesis, in which they saw less of an actual comprehension than of subjugation, subsumption, and occupying appropriation. Foucault knew, however, that using the concept of difference meant using a concept that was more lastingly effective in Hegel’s philosophy than in almost every other one. And Derrida, to discharge this difference, pronouncedly included – *almost* in the style of Hegel – the possible impossibility of the unthinkable in his deconstructivist systematics (cf. [30]). For Deleuze, on the other hand, the necessity to work through Hegel in order to arrive on the other side seems to be done away with right from the start (cf. [69], p. 16). But as different as his thinking appears to be from Hegel’s, to comprehend, for example, his discussion of myth and schizophrenia of the economy (cf. [25]), few things are better suited than a decent experience in Hegelian thinking. In these developments, then, Hegel seems rather to be liberated from the prison of a certain Hegelianism than rendered obsolete.

On the Relation of Existentialism and Economy

In general, economical considerations are a determining factor of French postwar thinking (cf. on Sartre: e.g. [70]). But just like the economics of Hegelian philosophy largely remains a research desideratum, so does the economics of French philosophy as it developed under the influence of Hegel’s thinking. Even though the research on the *French Hegel* (cf. [16, 31, 47, 60, 69]) does reflect the intrinsic economical aspects of thinking as exposed by Blanchot and others, their relevance for the concept of economy is not being tapped (exceptions: cf. [23, 24, 27, 28, 30, 57, 62]). Other aspects are in the foreground, particularly the concept of philosophy and questions about the constitution of reason and rationality themselves.

And that is so in spite of the fact that the existentialist approach is genuinely economical, no matter if it features Sartre’s or Kojève’s Marxist coloring or not. Existentialism is all about the questions of an “Economy of Life” ([28], p. 380). Therefore, the economical is a characteristic element of Hegel’s reception in France. In confronting aporias of human self-creation with the help of Hegelian concepts like unhappy consciousness, satisfaction, or freedom, one inevitably finds oneself facing an economical provocation. And these aporias seem to arise on a regular basis, whenever the dialectics of gaining self-consciousness is not only abstractly thought about, as if it were but an interesting object of cultivated thinking, but with the intention of *existentially* putting something into the world and into its own with one’s self, something that exists only in the case of success and that can be taken as one’s own (cf. [39], p. 67). This is no longer just a power game for recognition but a speculative investment in the form of abandoning what one believed to already have, in order to win something in which one may possibly have a hard time recognizing oneself.

Blanchot gives a good example when, inspired by the chapter on *Absolute Freedom and Terror* in Hegel’s *Phenomenology* ([41], (BB) VI. B III., pp. 431–441), he remarks about the revolutionaries Robespierre and Saint-Just

that they did not act “like living people among living people [. . .], but like creatures bereaved of their being, like universal thoughts, like pure abstractions, judging and deciding” ([17], p. 310). This depicts a horrible economy of privation, as thinking seizes the power over life, or as the result of an effort to take possession of life by means of thinking. According to Blanchot’s and Hegel’s analysis of the French Revolution, this seizure of power in the name of absolute freedom – and therefore of a freedom trying to escape its economy – costed the lives of many others before its truth was objectively executed as the “freedom of the cut off head” ([17], p. 310), as the “freedom of suicide” ([39], p. 68).

Today, one would surely want to see an effort of coming to terms with some bizarre psychological problem in this interpretation. A coming to terms, moreover, with a distant past, in which the unreasonableness of individual pretension of reasonableness sucked up a whole culture. A coming to terms, however, that does not contribute much to the clarification of an economical formation of rationality. But such a psychologization places the internal economy taking place in the relation of life and its rationalization outside of the ambit of economy. Even though economy is an unconditional part of human self-realization, it thus takes on the form of a rational system, external to individual reason. In the light of an “economy of reason” ([28], p. 382) as developed by Blanchot (following Hegel), one has to wonder, however, if such an externalization of economy, self-evident to the dominant form of contemporary economics, does not systematically operate the *assertion of reality of an abstraction* – just like those described by Blanchot. For in this system conception, the realization of human self-consciousness is simultaneously objectified and obstructed. *Reason*, introduced by Hegel as a transformational expansion of *understanding*, thus turns against *understanding* in Blanchot’s adoption of Hegel’s approach.

Transformations of the Concept of Economy

The economics intrinsic to existentially inspired philosophy (cf. [11] and [67]) lives on in this approach’s ensuing structuralist and post-structuralist transformations, up to Derrida’s deconstructivism. Wherever cultures of rational and transrational or physical-metaphysical relations are addressed, the question of these constellations’ “mode of movement,” of their significations and structures, plays a crucial role. The post-structuralist confrontation of the totalitarianism of discriminating logocentrism and substantializing naturalizing normativisms also puts latent or open equalizations of logics and causality up for discussion. In light of such a problem awareness, it does not seem convincing that it is still customary in the economics to speak of *mechanisms* when talking about the modes of movement and operation of the studied universally valid laws of market transactions. But how can the movement creating and dissolving structures be described, if not as causally mechanic? Deleuze and Guattari, in their examination of *Capitalism and Schizophrenia* [25], and also Derrida in *Donner le temps 1: La fausse monnaie* [30] develop specific economies as an a-mechanistic mode of movement *in nuce* – and

come up with a new concept of economy in the process (cf. [34], p. 83f). Few things are more clearly responsible for the enduring incommensurability of the economics developing in French theory on one side, and Anglo-American mainstream-economics and ordoliberal approaches in Germany on the other. While the latter presuppose certain factual conditions, French thinkers put such factual presuppositions up for discussion (cf. [34]).

The economies often to be found in the developments of French philosophy do not only spring from the confrontation with the dominating economical theory and practice. The economical axioms often derive from totally different questions, having little to do with the political and economical developments of industrial society and its succeeding forms. They were consequences of philosophical thinking's internal conversation itself, of the work on an economy of reason. When expressly addressing questions of social economy, French philosophy accordingly did not submit to the functionalist and causal-analytical standards of contemporary economics. Instead, they preferred to develop their own philosophical conception of economics, including its own paradigmatics. In view of growing doubts regarding the economics' capability (cf. [64]), their results are among the most forward-looking available today. Just like Aristotle, these discourses do not reduce the whole economical field to utilitarian considerations (cf. [28]), monetary economy, and the market. Here, economy is always political economy, in an extensive and intensive cosmopolitical relationship of human development and world creation. And it does not only move about in a pre-stabilized system of rationality but always leaves room for a dialectics of reason and irrationality, logos, and myth, being and nonbeing.

The cultural formation of economy is another feature affecting methodology beyond the contextual horizon of the economical appearance. Thus, in opposition to the causally functionalist paradigm of interpretation, existentialism already introduces the concept of the tragic Foucault would later reincorporate in his own way (cf. [45, 49, 59]; [60], p. 19f, 138ff). In the works of Deleuze/Guattari and Derrida, the drama (cf. [25, 30]) shapes their specific hermeneutics and presentation. And Bataille adopts Nietzsche's model of a *gay science* in order to follow the traces of economical phenomena otherwise remaining in the dark. The logos putting trust in laughter also plays a decisive role in his examination of Hegelianism (cf. Chap. 2.7).

The Humanization of Economy

French philosophy influenced by Hegel does not, however, bother all that much with moral remonstrances regarding the excesses of economy's dominant form. Nonetheless, the economical, in all the various kinds it exists in, is being subjected to a thorough humanization. Modern economy does of course already claim to be humane: in its utility, in the freedom it has made its principle, in the right it grants personal self-interest, and in the general wealth it generates. Dangers to humanity are continuously being corrected by sociopolitical cushioning of unequal participation

possibilities, by environmental policy, ethical codes, etc. It serves people – that is where its humanity lies. Critical minds, on the contrary, see people as being in the economy's service and believe a moral corset to be necessary in order for the economy to live up to its claim. Its still being there, with no end in sight, however, is clear proof of the acceptance it still enjoys, even if this should only be due to the supposed lack of an alternative. Thus, people serve the economy and work with its innate laws, and the economy serves them. This circulation of utility suffices. The more deftly one knows how to make use of it, the larger the advantage that can be gained out of one's own service to it.

In contrast, philosophical humanization consists in leading economical theory and practice out of the abstractions of scientifically objectified rationality and mathematical function analysis of the conditions of production, allocation, and utility maximization and back to the concreteness of its origins in human desire, in human self-realization, and in the self-shaping of reason. It thus no longer appears as a system, theoretically existing in and by itself, in its own rationality, and independent of actual individual participation – as a ready-made system, therefore, in which the individual utility maximizers only then play a part, according to their respective possibilities and decisions. While the universal code of self-interest operates an abstraction from the manifold shapes of human individuality, a philosophical perspective comprehends economy as such as consisting in and arising from human participation in it, and vice versa. In doing so, economy is not being traced back and attributed to forms of conscious or unconscious inwardness. It does, however, no longer appear as an external systematic space with numerous possibilities of personal appropriation but, wholly rearranged, as an economy not of understanding but rather of the soul (modeled after Hegel's concept of the world-soul) – that is, an economy of the self-motion emerging in the interplay of self and world.

In the functionalist perspective, economics shares with business ethics morality, this kind of humanization seems dysfunctional, of little use and impractical in dealing with the hardships of necessity. To someone taking this perspective and concerned with people's needs and legitimate wants to be able to make a reasonable living, to know how to save themselves from losses, and how to successfully get ahead in life, this kind of philosophy of economy might seem to be a cynical luxury for sophisticated elitists who do not have anything else to worry about.

Functionalist analysis, however, knows the difference between the wrong and the right calculation of proven and unproven assertions, and it knows *reality* – it does not know the differentiation of reality in appearance and truth introduced by Hegel. And this difference is hard to avoid for philosophy; even where, in well-founded self-limitation, it shies away from saying anything definitive about “the truth.” Thus, under the paradigm of functionalist calculation, one might distinctly observe economic growth – for example, with regard to the GDP. From the perspective of philosophical enlightenment, however, Baudrillard summarizes that we are “no longer in a period of growth, but in a situation of excesses. We live in an affluent society, where everything keeps growing and can no longer be measured according to its own aims. Excess develops uncontrollably, without

regard for its actual purpose, and its consequences grow larger as its reasons disappear” ([15], p. 38). Everything growth was originally meant to be useful for, now serves the end of growth itself. Functionality and dysfunctionality became indiscernible.

Another good reason to think beyond a functional analysis of economy resulted from the French discussion of Hegel’s dialectics of lordship and servitude. There were not only critical confrontations of existing power relations, and few have lastingly given in to the hope that the proletariat would sooner or later realize this dialectics’ emancipatory effect. The indifference of lordship and servitude, of necessity and freedom, inherent in the logics of functionalist causal analysis, however, was no acceptable solution either. Instead of all this, the concept of sovereignty moved into the center of attention. This is particularly true for Bataille (cf. [28]).

George Bataille’s Concept of General Economy

Bataille is certainly a key figure of French philosophical economics – he opened up crucial perspectives for it. According to his belief, no concept of world economy, understood as general economy (cf. [28], p. 396f), can be obtained from partial and limited business studies or national economics. The basic problem is that “economy is never seen as a ‘general phenomenon’ [. . .] Economics contents itself with the generalization of an isolated phenomenon, it limits its object to actions undertaken with a particular utility in mind, namely the utility for the homo oeconomicus; it never considers the dynamics of energy not limited by any particular end: [. . .] For living matter as a whole, the energy on the earth is always excessive. One always has to reflect this in terms of luxury, every difference is always only a difference in the way of wasting riches” ([9], p. 61).

A difference thus opens up between economics as a social science and the economy of the world – and, as Bataille asserts, the latter cannot be explained with the former. With the opening up of this world’s economical, cosmopolitical horizon, the focus is also put on different concepts; concepts that must seem all but accursed (e.g., “waste”), or at least irrelevant for the constitution of the system (e.g., “excess”), to a partial economy. The concept of luxury plays a crucial role in all this. Excess, otherwise relevant only through advantageous reutilization and reinvestment, finds its true purpose and meaning. This purpose lies precisely in the freedom of purpose of a purpose fulfilled; a freedom of purpose that thus finds itself reintegrated into the horizon for economical speculation. In this way, economy is liberated from the shackles of an otherwise universal utilitarian paradigm. Not only misery, lack, or similar restrictions determine the norms, while all other things are only resources that can be used to turn the misfortune of universal coercion and existential extortion into a more or less profitable economical activity – for this activity could then not promise more than a comforting compensation of the basic ill. It would be but a machine of perpetual reproduction of coercions.

Instead of projecting only the art of permanent, successful dealing with emergencies into the world’s nature, as suggested by evolutionism, Bataille sees the

exuberant expenditure of a creative energy at work in the unfoundedness and freedom of purpose of the world's existence. This notion of the *general economy* of an originally fortunate world also has consequences for his idea of man: "Man is not just an isolated creature, claiming the living world's and other people's part of the sources of energy. The living matter's general procedure of exudation (of waste) also seizes him, and he cannot escape it [. . .]. If he denies this, as suggested time and again by the consciousness of the misery and neediness characterizing the isolated creature (who forever lacks resources, who is constantly being compelled), this denial does not change anything about the general movement of energy: it cannot unlimitedly accumulate productive resources. In the end, it must slip away and be lost to us like the river in the sea" ([9], p. 61).

This extensive side of general economy is complemented by the intensive dimension of an integration of the manyfold erotological internal economies of human suffering and desire (cf. [12]). Bataille takes up the desire Hegel supposed to be the origin of economy in the civic society's *system of needs and wants* and then unfolds and differentiates it into its many shapes. While Adam Smith fixed economy to the rational-utilitarian concept of *homo oeconomicus*, an entire culture of life is being depicted here; a culture that stops at nothing, not at love or sexuality with all its perversions and particularly not at death. Bataille reconstructs the life economical effect of different forms of dealing with mortality. For in the face of this dramatic loss of life, all human self-appropriation regarding the world and one's own life seems to experience its ultimate powerlessness and futility; here, at least for the individual, every effort to gain something out of life seems to be smashed into pieces with metaphysical force. The scope of Bataille's discussion of this phenomenon reaches from tabooization and repression, over sublimation in physical reproduction or ideological eternization (e.g., in systematic constructions of the supra-historically, eternally human, particularly ill suited to comfort the a-dynastical *bourgeois* and citizen), up to murder as an attempt to master death in being the doer instead of the victim – an attempt that can only achieve a delay of the inevitable, however.

This losing bargain of life seems to render all our daily struggles for self-preservation and particularly any form of profit seeking, utterly ridiculous. Instead of advocating a stoic fatalism, or an economy of sullen damage compensation, Bataille seeks the options that might still lie in this fateful power of death, beyond this ultimate mockery reducing all speculations on utility to a mere sweetening of the time preceding the final disappointment. On the one hand, this leads him to make a plea for a life of "*relentless expenditure*" ([28], p. 393), for abandoning the fixation on individual self-assertion against loss. On the other hand, where there is a limit, there is always the possibility of redemptive transgression. He therefore does not one-sidedly subsume all of economy under concepts of appropriation and profit maximization. For him, the (supposed or real) excesses of economic speculation therefore do not trigger any regulative or normative reflexes, but rather provoke a perspective of ecstatic-eschatological delimitations and of the reintegration of metaphysical dimensions into the concept of economy – for example, in the "experience of the sacred" ([28], p. 378). As much as Bataille here, at the latest,

seems to take his leave from economical realism, as much potential is to be found there, both for the comprehension of the concept of speculation and of the “real value” of money. For economical speculation and money both have real meaning for modern societies that exceed their mere instrumental character by far.

“Hegelianism Without Reserve”: Sovereignty

Hegel was not the only influence on Bataille, of course, but he did play an important role. In his famous essay *From restricted to general economy. A Hegelianism without reserve* ([28], pp. 369–407), Derrida retraced the conclusions Bataille arrived at in his “endless discussion with Hegel” ([28], p. 372). At the same time, this essay is somewhat representative of the French Hegel discussion’s general tendency and gives a pretty good idea of Derrida’s own economical approach.

Bataille, too, rather sticks to the *Phenomenology of Spirit*, instead of the “aged Hegel’s” system ([11], p. 524, cf. [28], p. 372). “The system is nullification” ([7], p. 71, cf. [28], p. 372). Following Koyré and Kojève, the dialectics of lordship and servitude is a crucial point of contact, “the central point of Hegelianism, according to Bataille” ([28], p. 374). In presenting this dialectics, Bataille argues, Hegel himself gets caught in a “menial attitude” ([28], p. 384) that does not risk life. This makes dialectics a work on truth (cf. [28], p. 376f), and turns “work” into the “meaning’s meaning” (cf. [22] too; [28], p. 384), consequently robbing work of its meaning by making it an end in itself.

In order not to lose his mind and go crazy (cf. [7], p. 71 and [28], p. 372) out of “fear of an irretrievable expenditure,” Hegel fled into a “submission to the evidence of meaning,” Derrida asserts ([28], p. 377). “The concept of *Aufhebung* (according to Hegel the speculative concept par excellence, and, in its untranslatability, exclusive property of the German language) is ridiculous as it denotes the busyness of a discourse laboring for the reappropriation of all negativity, and doing everything to turn the stake in the game into an investment that is supposed to completely *amortize* the expenses” ([28], p. 377f).

Economy begins in the mind thinking about the economy of the world. And Hegel’s reason, thus the reproach coming from both Bataille and Derrida, refuses to relinquish what it lives from, namely, its having a meaning. Everything else is subjected to dialectics and thus to negativity, to an “ars moriendi” – only reason itself rejects what it imposes on everything else. Neither Bataille nor Derrida, however, would suggest to just abandon reason in the face of such a disaster. On the contrary, it has to be freed from its own logocentrism – and thus saved from making itself lose its mind, from robbing itself of its freedom in misdirected appropriation.

If reason, amortizing its stake in this way, absolutely insists on its self-assertion, “the economy of life restricts itself to preservation [. . .] and reproduction” ([28], p. 376). Thus, “Hegel abolished the stroke of luck” ([8], p. 133, cf. [28], p. 385) and “laughter is absent from the Hegelian system” ([28], p. 377). It is “of no use to a ‘philosophy’ that ‘is work’” ([28], p. 377). Only in the “laughter about the philosophy (of Hegelianism)” ([28], p. 370), in which “meaning entirely

disappears” ([28], p. 377), reason finds its freedom. When reason no longer clings to itself, but wastes itself instead, when the work of reason – or, more to the point, reason as work – ceases, then its true creativity and productivity will unfold. It is then no longer a part of a “restricted economy” ([28], p. 405) but opens it up to become a general and political economy. For then, it introduces sovereignty into the economical game. It manifests in the form of an “energy surplus” which “can only be wasted randomly, without any meaning.” This useless and meaningless waste is “sovereignty” ([7], p. 283). This sovereignty, that Bataille distinguishes from lordship as servitude’s opponent ([28], p. 374) then becomes the reason for work, for all the restricted economies and for democracy. It *is* freedom.

One may doubt whether this “laughter in [Hegel’s] philosophy” is in fact as “out of place” ([28], p. 378) as Bataille assumes; it is clear, however, what Bataille and Derrida are getting at. They are aiming at an art of thinking, capable of transcending the servitude of life and of self-assertion, in order to render essential dimensions accessible to the comprehension of economy – dimensions otherwise remaining inaccessible both theoretically and practically. Bataille knew, however, to what extent even this *overcoming* of the Hegelian economy of thinking remains indebted to Hegel. Hegel “did not know in what extent he was right” ([10], p. 36; cf. [28], p. 382). And Derrida agrees, with similarly iridescent assertions: “Hegel saw this without seeing it, and he showed it by hiding it. One thus has to follow him to the extreme, up to the point where one has to agree with him against himself” ([28], p. 381). And Derrida concludes: “Reason’s sleep may not be reason fallen asleep, but sleep in the form of reason, the vigilance of Hegelian logos” ([28], p. 370).

Conclusion

Pragmatism and the Tragic

Surely, Bataille and Derrida showed and were characterized by an artist’s – possibly even a subversive, surrealist artists (cf. [33], pp. 50, 59, 61) – perspective on economy; much rather than by a pragmatic one, each day facing new problems that must be solved, and having to be able to handle the things it encounters. From such a pragmatic viewpoint, their mental acrobatics might seem impractical – or even the superfluous luxury of frivolous bohemians, scandalous in the face of everyday woes. But the economy of democracy also affects those who are not on the payroll of economical activity. It is also the business of those who do not define themselves through their function in this activity. And they, too, have something to say, and precisely from this perspective they can make an important contribution to the comprehension of the economy they are a part of.

For what has proven its worth to the pragmatic, and seems rational with regard to market economy because it works, can have totally disparate and irrational results in other respects. The necessary pragmatic opportunism and the pressure to keep things running at all costs virtually force one to close one’s eyes to the possibility of all this having long become insufferable, to the possibility that we are only managing a catastrophe and a misery that could

only be corrected by abandoning this kind of pragmatic heroism. Thus, any society having a sufficient number of people blessed with such artistic sense, any society that listens to these people when they actually accept the kind of responsibility *they* have, can count itself lucky. It is not a pragmatic but a tragic responsibility to sharpen the senses for misery and to find the language for the unbearable and the incomprehensible. It is the tragic responsibility to let a desirable future arise from the logics of fear and misery, on the cliffs of whose overpowering sensuality all reason is threatened with shipwreck – even if this future would bring something unheard of.

French philosophy is not fixated on an attempt to create a meta-historical, universal concept of economy, which would make *this* economy's rationality an inescapable prison – and which, to them, would be irrational and totalitarian (cf. [35], p. 112ff). From this spring various forms of epochal differentiation of an economy of economies and of metamorphoses of economical thinking and action's levels of expectations. Cruelties rendered categorically inaccessible and taboo to the circulation of rationality because they have systematically been shifted from their original sphere, into the area of the irrational and the jurisdiction of morality, are to be freed from these same taboos. Instead of aiming at the economical influence's containment from a moral philosophical perspective, those philosophers set out to find the real limits of economy, its beginning and its end, and to find rationality in places where it will shipwreck or has already shipwrecked, the catastrophe being covered up with a camouflage of economical rationality.

What is economy? How can there be economy? Is there any economy? Or is economy really that which we already believe it to be? Where such questions are being asked, a dialectics of economy and non-economy is automatically opened up. Thus, Bataille addresses the sublation of the social economy's instrumentally rational activity in the attained end. For the economy's utility remains unfathomable, where one cannot think the attainment of ends (cf. [9]). In asking for the origin of economy, Derrida, too, encounters the "an-economical" ([30], p. 17). One can hardly seek the economy's origin and primary energy without admitting the possibility that it might not exist at all. Baudrillard examines the consequences of the repression of death in economical systematics and cannot help but suspect that we have established an an-economical illusion of economy in its place (cf. [14]). And when Deleuze and Guattari reconstruct the archaics and genealogy of economical formations, it appears, in method and contents, as if reason, a dreamwalker in the nights of history, releases itself from its usual fixation on the daylight of constant vigilance (cf. [25]). Derrida, once again, endeavors to develop categories for the determination of the economy's *nomos* that would liberate it from its Babylonian imprisonment in mechanist metaphysics. In doing so, he discovers the Dionysian element of "chrematistic delirium" ([30], p. 203) without which there can be no economy – and thus once again comes close to Hegel, namely, to his dictum about the Bacchic delirium of truth, whose every limb is drunken (cf. [41], Preface, p. 46). This does, however, put the general, dominating fixation on causal reconstruction of economical functionality up for discussion.

French philosophy thus does not oppose economy with an ethos. Rather, it develops the economy's real or potential ethos, as well as the economy itself, in light of its ethos – just like Hegel and, before him, Aristotle comprehended economy as the forming of a material and political ethical life. One may not want to accept every idea in Hegel's reception or in economical thinking, but Hegel's differentiation of economical thinking between understanding analysis and enlightenment of reason has doubtlessly been an immense inspiration for the French. This also holds true for the French claim on metamorphosis instead of accumulation, in order to find a way out of *common physical and ethical corruption* (cf. [42], Sect. 185, p. 341). And, conversely, the French have made dimensions of Hegelian dialectics of reason productive for further development of *economical reason* that would still be covered up by darkness were it not for their emphatic confrontation with Hegel's power of persuasion.

Cross-References

- ▶ [A Marxist Ethic of Business](#)
- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Aristotle and Business: An Inescapable Tension](#)
- ▶ [Aristotle on Character Formation](#)
- ▶ [Hegel on Modern Economics and Business](#)
- ▶ [Kant and Hegel on Property](#)
- ▶ [Life](#)
- ▶ [Purpose](#)

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Part 5

A Marxist Ethic of Business

J. Angelo Corlett

Abstract

This chapter seeks to clarify the nature of Karl Marx's views on a variety of related concerns, including the matters of rights, responsibility, punishment, compensation, alienation, and exploitation in capitalist societies. In clarifying such matters, it is hoped that what Marx might say about business ethics will come to light.

It is one of the peculiar ironies of history that there are no limits to the misunderstanding and distortion of theories, even in an age when there is unlimited access to the sources; there is no more drastic example of this phenomenon than what has happened to the theory of Karl Marx in the last few decades. There is continuous reference to Marx and Marxism in the press, in the speeches of politicians, in books and articles written by respectable social scientists and philosophers; yet with few exceptions, it seems that the politicians and newspapermen have never as much as glanced at a line written by Marx, and that the social scientists are satisfied with a minimal knowledge of Marx. Apparently they feel safe in acting as experts in this field, since nobody with power and status in the social-research empire challenges their ignorant statements. – Erich Fromm [1].

Marxism sees history as a protracted process of liberation – from the scarcity imposed on humanity by nature, and from the oppression imposed by some people on others. Members of ruling and subject classes share the cost of natural scarcity unequally, and Marxism predicts, and fights for, the disappearance of society's perennial class division. – G. A. Cohen [2].

Marxism is not one theory, but a set of more or less related theories. – G. A. Cohen ([2], p. 155).

The language of moral rights is the language of justice, and whoever takes justice seriously must accept that there exist moral rights. – G. A. Cohen ([2], p. 297).

This chapter is dedicated to Gerald Alan Cohen, whose work on Marx has deeply influenced my thinking on Marx.

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Introduction

Given the considerable corpus of Karl Marx's writings, what might one inspired by the writings of Marx think about business, especially business within the framework of a capitalist society? This chapter answers these and related questions by exploring how Marx's and Marxist conceptions of ownership of the means of production, alienation, exploitation, responsibility, punishment, compensation, and environmental responsibility pertain to the arena of business in a capitalist society such as the United States of (North) America.

Some clarification is in order concerning the interpretation of Marx's work. In congruence with the above epigraph from Erich Fromm, the words of Marx have very often been "systematically distorted" [3] "with propaganda of every kind" [4] – both from alleged supporters and detractors of Marx. One thing often overlooked or ignored is the fact that Marx was first and foremost a philosopher in the Socratic sense. His doctoral dissertation at the University of Jena was on ancient Greek philosophy [5]. So it is reasonable to assume that he was well acquainted with the depiction of Socratic dialectic as it is presented in Plato's dialogues [6]. And so it is of little surprise that we find Marx writing in a way that often exhibited some of the trademarks of Socrates' way of doing philosophy [7]. Marx questioned everything pertinent to his inquiries; hence, the title of one of his essays was "For a Ruthless Criticism of Everything Existing" [8]. To Arnold Ruge, he writes of a "*ruthless criticism of all that exists*, ruthless both in the sense of not being afraid of the results it arrives at and in the sense of being just a little afraid of conflict with the powers that be." From this set of claims, Marx reasons that "I am not in favour of raising any dogmatic banner. On the contrary, we must try to help the dogmatists to clarify their propositions for themselves" [9]. He once stated that he was "not a Marxist," implying that he did not think in a way that sought to rigidly systematize his ideas in a way that did not always leave them open to criticism and revision. As G. A. Cohen astutely observes and as quoted in one of the above epigraphs, "Marxism is not one theory, but a set of more or less related theories" ([2], p. 155). Marx was, in short, a fallibilist, epistemically speaking. This may explain why he revised his thinking on numerous occasions. What many of his critics wrongly construe as contradictions in his thought and what several alleged supporters see as Marx's once and for all answers to this or that issue fail to understand that Marx was not a thinker who sought to provide a kind of doctrinal account of matters social, political, and economic. Rather, he was searching for the best answers to certain important problems. "And since philosophy of the analytical kind is particularly good at correcting misconstrual, . . . it follows that it can be a potent solvent of at least some ideological illusions. It can be used to expose conceptual misapprehensions which strengthen the *status quo*" ([2], p. 291). It is with this in mind that I offer herein a Marxist account of various issues related to business. Marx's critique of capitalist business enterprise is moral in content. Contrary to what some have argued, [10] most of what Marx writes about capitalism just does constitute a moral critique of capitalism at its very core.¹

Marx engaged himself in the analytical philosophical enterprise of normative ethics, for he sought answers to the questions of how we ought to live our lives, and why.

One example of how badly Marx has been misunderstood pertains to his discussion of rights. It is commonly thought that Marx's critique of capitalism was so radical that it rejected rights *per se*.² Much of the basis of this interpretation of Marx and rights is found in *The Jewish Question* and in *The Holy Family* wherein Marx writes:

...the so-called *rights of man*, the *droits de l'homme* as distinct from the *droits du citoyen*, are nothing but the rights of a *member of civil society*, i.e., the rights of egoistic man, of man separated from other men and from the community...

Liberty, therefore, is the right to do everything that harms no one else. ... It is a question of the liberty of man as an isolated monad, withdrawn unto himself.

But the right of man to liberty is based not on the association of man with man, but on the separation of man from man. ...

The practical application of man's right to liberty is man's right to *private property*.

None of the so-called rights of man, therefore, go beyond egoistic man, beyond man as a member of civil society, that is, an individual withdrawn into himself, into the confines of his private interests and private caprice, and separated from the community, ([9], pp. 162–164)

...the universal rights of man...are nothing but the recognition of the *egoistic civil individual* ... that the *rights of man* do not, therefore, free man from religion, but give him *freedom of religion*; that they do not free him from property, but procure for him *freedom of property*. [16]

Curiously, both detractors and proponents of Marxism share this interpretation of Marx on rights, perhaps explaining why it has been challenged only once in recent years [15]. Law is, on Marx's view, what confers rights on those who have them, including the rights that empower capitalists to gain and remain in power over the means of production. And it is the state that controls the law. Thus, it is by legal right that capitalists possess and wield their economic power, and what flows from it.³ Opponents of Marx's critique of rights argue that Marx's rejection of rights demonstrates the inadequacy of Marxism given the importance of rights, while most Marxists adopt such a stance on rights because they believe it is the proper "Marxist" position on rights in light of some of the critical comments Marx makes about certain rights, namely, the "rights of man." This doctrine about Marx on rights has been so widely accepted by both opponents of Marx and his supporters alike that it has become common to distinguish between capitalist and Marxist political theories and societies as being those which support rights, in the former case, and those which reject rights, in the latter case. Perhaps Cohen's words about ideologically driven interpretations and reasoning are pertinent here:

...the truth is that class interest generates ideology precisely by instilling a propensity to errors of reasoning about ideologically sensitive issues. Class interest could not in fact be the immediate source of the ideological illusions from which even reflective thinking suffers, for an illusion will not gain a grip on a reflective mind in the absence of some form of intellectual malfunctioning. ([2], p. 290)

However, this common misconception about Marx and rights must be exposed and rejected in favor of a charitable reading of Marx on rights. In short, Marx's

critique of capitalism in general and even of certain rights in particular themselves implies a set of rights – both individual and collective. ([15], Chaps. 5 and 6, see also [2], p. 297). And it is precisely these rights that form the basis of the Marxist thoughts on the ethics of business contained in this chapter. Furthermore, Marx himself made statements that cannot reasonably be interpreted as a denouncing of rights. For instance, in *The Holy Family*, he and Engels write that while the “rights of man” are not intrinsic to humans, “Fourier’s assertion that the right to fish, to hunt, etc., are inborn rights of men is one of genius” ([16], p. 88). Moreover, in his *Critique of the Gotha Programme*, Marx clarifies that it is notions such as civil right in capitalist society that is problematic as “obsolete verbal rubbish” and “ideological nonsense” [17]. But this hardly condemns all rights on Marx’s account. In fact, there is very good reason to think that Marx’s critique of capitalism implies rights of certain kinds that distinguish Marxism from capitalism. On this alternative interpretation of Marx and rights, Marx implicitly supports negative rights such as the right to not be exploited, alienated, and the right to not be forced to sell one’s labor power or to have one’s labor value taken from them without voluntary consent [15]. For those who are incessant and even unbending in their clinging to the notion that Marx condemns rights per se, there are passages such as those found in his discussions of the right to freedom of self-knowledge and of the press:

The first essential condition of freedom, however, is self-knowledge, and self-knowledge is an impossibility without self-confession. ([18], p. 132)

What a difference there is between a judge and a censor!

... The judge judges my act according to a definite law; the censor not only punishes the crime, he *makes* it. If I am brought before the court, I am accused of disobeying an existing law, and for a new law to be violated it must indeed exist. Where there is no press law there is no law which can be violated by the press. The censorship does not accuse me of violating an existing law. It condemns my opinion because it is not the opinion of the censor and his superiors. My openly performed act, which is willing to submit itself to the world and its judgment, to the state and its law, has sentence passed on it by a hidden, purely negative power, which cannot give itself the form of law, which shuns the light of day, and which is not bound by any general principles.

A censorship law is an impossibility because it seeks to punish not offences but opinions, because it cannot be anything but a *formula for the censor*, because no state has the courage to put in general legal terms what it can carry out in practice through the agency of the censor.⁴

Accordingly, these Marxist thoughts on the ethics of business shall discuss what Marx or a Marxist might or should say about business within capitalist societies. Marxian concepts of exploitation and alienation are explored insofar as they illuminate a Marxist perspective on business, including what ought to be done with regard to severe harmful wrongdoing in the business sphere. While it is not the purpose of this chapter to address whether or not the moralist perspective on Marx’s critique of capitalism is more plausible than a nonmoralist reading, it is assumed herein that Marx’s critique of capitalist is precisely moralistic and that it provides the basis for a moralistic stance that a Marxist might reasonably adopt concerning business.

Prior to addressing the various major concerns of this chapter, it is important to outline what in general a Marxist approach to business ethics would look like, and

why. First, given the plausibility of at least much of Marx's criticism of capitalism, it would seem to follow that a purportedly adequate and comprehensive approach to business ethics which fails to take into account at least some of what is foundational to Marx's philosophy can hardly be taken seriously. For it would demonstrate a fundamental ignorance of certain well-respected principles of political philosophy that cut to the core of capitalism. An approach to business ethics that unintentionally omits a significant consideration of Marx's critique of capitalism is simply incomplete. But an approach that knowingly does so is not only incomplete but represents the height of philosophical and ethical arrogance! What business ethics needs is not more of the ethicist's new philosophical clothes, presented in the biased, cold-war garb of anti-Marxist assumptions heaped one upon another. There is no room for theoretical presumptuousness in serious discussions of business ethics.

But given the importance of a Marxist approach to business ethics, to what precisely would such an approach amount? There are several points to be made here which demarcate a Marxist approach to business ethics from other major competing approaches. First, a Marxist approach would not require the elimination of all forms of business enterprise in favor of some antibusiness utopian social ideal. Marx himself deplored utopianism, as we know from his harsh criticism of the "critical utopian" socialists and communists [19]. However, Marx did not reject as morally problematic businesses per se. While his blistering critique of capitalism was descriptive of many of the sorts of ways in which capitalist businesses functioned, it was normative in the manner in which it suggested to us how business ought not to be conducted. Thus, in general, Marx's critique of capitalism serves as a moral challenge to capitalist business practices. And a Marxist approach to business ethics will seek to accurately describe various workplace contexts in order to then provide a moral critique of uniquely capitalist forms of business. So while capitalist claims to superiority reign supreme in countries such as the United States of North America, a Marxist approach to business ethics will seek to undermine such claims by exposing the basic flaws in the ways in which capitalist business enterprises tend to operate. In this manner, a Marxist approach to business ethics serves as a moral gadfly to capitalism.

A Moral Critique of Capitalism: A Class-Based Condemnation of Use of Workers as Mere Means to Capitalist Ends: Exploitation and Alienation

As Cohen states, "Marx defined the proletariat as the producer who has (literally or in effect) nothing to sell but his own labour power. He inferred that the worker is *forced* to sell his labour power (on pain of starvation)."⁵ According to Marx, ". . . the energies and faculties the worker uses when laboring" are her "labor power." Moreover, "the value produced by the worker over and above that represented by variable capital is called *surplus value*. The ratio of surplus value to variable capital is called *the rate of exploitation*."⁶ It is commonly Marxist to argue that Marx's

critique of capitalism includes the basic idea that capitalist forces of production (privately owned and controlled by the capitalist class) force workers to sell their labor power from which the capitalist class extracts a portion of labor value (*surplus labor value*) which properly belongs to workers. Furthermore, “For Marx, the central episode in the genesis of capitalism is a dual severance of the labourer from his means of production. Gone are his intimate control of and by them, and his rights over, and duties to, them.”⁷ Under capitalism, moreover, the worker’s labor power confronts her as something foreign to her because it is possessed by the capitalism who has extracted surplus labor value from the worker’s labor power. The worker’s labor power is not fully one’s own as it was under precapitalist economic structures. As Marx argues:

...the capitalist is merely capital personified and functions in the process of production solely as the agent of capital – in its corresponding social process of production, pumps a definite quantity of surplus labour out of the direct producers, or labourers; capital obtains this surplus labour without an equivalent, and in essence it always remains forced labour – no matter how much it may seem to result from free contractual agreement.⁸

For the proletarians, on the other hand, the condition of their life, labour, and with it all the conditions of existence of modern society, have become something extraneous, something over which they, as separate individuals, have no control, and over which no *social* organization can give them control. ... ([20], p. 79)

Capital is increased as workers are homogenized across production lines, and increased levels and kinds and amounts of surplus labor value are extracted from workers’ labor power. As Cohen puts it: “Capital steals and shrinks each person’s laboring power” ([2], p. 198). In the process, the specialization and hence special value and need of each worker are reduced – even eliminated – so that workers are easily replaceable and expendable. However, as Cohen incisively points out: “People want belonging *and* freedom, integration *and* independence, community *and* individuality, and when capitalism sacrifices the first member of these and like pairs, it concurrently enfranchises the second” ([2], p. 197). He continues:

It is a familiar social criticism of capitalism that it fosters production for production’s sake, not for the satisfaction of human need. Yet it is an equally familiar social ideal that labour should be performed as an end in itself, not as a mere means to acquiring goods external to it. ... Under capitalism’s production for production’s sake, people produce only for rewards enjoyed outside the production process. Under communism’s production servicing human needs, they find productive activity itself rewarding.⁹

On the other hand, in a Marxist society, what each person does is something she wishes to do, and she is thoroughly engaged in what she is doing and enjoys doing it.¹⁰

This is the heart of the charge of capitalist exploitation of workers’ labor power and value. And it is precisely this exploitation that eventuates in workers’ alienation from the product of their labor, from one another, and from themselves. And it is furthermore morally unjustified that the forces of capitalism exploit and alienate workers, as such treatment uses them as mere means to the ends of capitalist profits. This implies, in a Kantian manner, that if it were the case that capitalism would use workers as means, but not as mere means, to capitalist profits that such productivity

enjoys at least a Kantian support, morally speaking. But then, it is incumbent on one to show how it is possible that business might use workers but not as mere means. I believe that this is precisely what Marx's critique of capitalism has in mind. For it is not business enterprises per se that Marx condemns, but the manners in which capitalist ones exploit and alienate workers to such an extent that they are used as means only, rather than as ends in themselves consonant with Immanuel Kant's "end in itself" or "humanity maxim" version of the Categorical Imperative.¹¹ This is not to say that Marx explicitly argues in a Kantian fashion, but that Marx's ethic of business implies a Kantian one in at least this limited respect.

But Marxism also charges capitalism with destroying human creative potential, whereas communist society encourages human flourishing, "in which the free expression of the powers inside each person harmonizes with the free expression of the powers of all."¹² This idea is found in *The German Ideology* wherein Marx states that in a communist society, there are no painters but those who engage in painting among other activities. Yet communism's reduction of the interests of the self to the interests of others seems problematic for the same reasons that utilitarianisms in one way or another wrongly subsume individual interests under considerations of social utility [23]. This in turn violates the moral wisdom regarding the separateness of persons, a long-standing objection to utilitarianisms ([23], pp. 23–27, also see [24]).

Collective, not Private, Ownership of Means of Production

While there has been much debate about the particulars of Marx's ideas of the labor theory of value, exploitation, etc., one thing remains clear: "Marxists and quasi-Marxists should address themselves to the crucial question, which is whether or not private ownership of capital is morally legitimate."¹³ It is a well-known idea of Marxism that Marx repeatedly condemned the capitalist or private ownership of the means of production. And since capitalist business enterprise is based on such privatization, it would appear that Marx must, as he does, condemn capitalism at its base. However, what is perhaps less understood is Marx's reason for the privatization of the means of production. A lesser-known passage from Marx reveals that he respected the indigenous rights to land and its resources. In Part VIII of *Capital* ("The So-Called Primitive Accumulation"), Marx writes:

We have seen how money is changed into capital; how through capital surplus-value is made, and from surplus-value more capital. But the accumulation of capital pre-supposes surplus-value; surplus-value pre-supposes capitalist production; capitalist production pre-supposes the preexistence of considerable masses of capital and of labour-power in the hands of producers of commodities. The whole movement, therefore, seems to turn in a vicious circle, out of which we can only get by supposing a primitive accumulation (previous accumulation of Adam Smith) preceding capitalist accumulation; an accumulation not the result of the capitalist mode of production, but its starting point.

...The capitalist system pre-supposes the complete separation of the labourers from all property in the means by which they can realize their labour. ...The process, therefore, that clears the way for the capitalist system, can be none other than the process which takes

away from the labourer the possession of his means of production; . . . The so-called primitive accumulation, therefore, is nothing else than the historical process of divorcing the producer from the means of production.

. . . these new freedmen became sellers of themselves only after they had been robbed of all their own means of production, and of all the guarantees of existence afforded by the old feudal arrangements. And the history of this, their expropriation, is written in the annals of mankind in letters of blood and fire.

. . . The expropriation of the agricultural producer, of the peasant, from the soil, is the basis of the whole process [of so-called primitive accumulation].¹⁴

These passages from Marx challenge the moral foundations of capitalism insofar as capitalism such as that found in the USA is based from the start on immoral expropriation of lands from their indigenous peoples. How, under such circumstances, can the capitalist means of production be justified given that it is based on the violent theft of land and minerals which form the foundation of capitalist wealth and the capitalist means of production? Thus, the very idea that capitalism is founded on some notion of primitive accumulation is a farce.

Cohen's discussion of original acquisition of private property under capitalism is telling here. Whereas Robert Nozick famously argued that private property is held justly insofar as it came into being justly and insofar as it has been transferred justly from each holder of it until the present day [26]. Thus, it is the moral pedigree of a holding that makes private property, in any particular case, morally just. Yet Cohen raises doubts concerning whether or not private property actually arises in capitalist societies in congruence with the Nozickian principle of just acquisitions, transfers, and rectification. For the probable fact of the matter is that, under capitalism, private property was either initially taken by force or fraud, or at least the chain of transfers involved fraudulent or violent takings of private property from another, such that capitalism is unlikely to be founded on a morally just acquisition or transfer of private property ([2], pp. 253–254).

But what is true of capitalist private property in general seems very much the case regarding various specific instances of capitalism. Consider US capitalism. If it is true that capitalist privatization of means of production somehow (in this way or that) violated, say, indigenous rights to territory and its resources, then this would imply that capitalist ownership of the means of production that is located on such lands and making use of such resources lacks a moral foundation because it is a form of theft in violation of the principle of morally just acquisitions and transfers [27, 28]. But of course, this same reasoning would apply to any form of ownership of the means of production, as collectivist forms of ownership of the means of production enjoy no special exemption from the stated principle should they violate it. Similar reasoning condemns British capitalism, of course ([2], p. 302).

Note that this line of argument differs from Cohen's in that while he in the end faults capitalism because it violates the notion that ". . . property is theft, theft of what morally speaking belongs to us all in common,"¹⁵ my argument does not make this collectivist assumption. For Cohen's claim would violate the claim that, say, indigenous peoples have rights to their lands over against any other peoples' claims to it, which implies at least a kind of meaningful control over the resources on and in the land that might serve as a means of existence for peoples. Indeed, Cohen's view

would end up in effect asserting nonindigenous rights to indigenous lands by way of the Lockean proviso, so long as such lands were shared in peace and harmony. But my indigenous Marxist view recognizes and respects indigenous rights to their lands in light of the principle of morally just acquisitions and transfers.

While it is not logically impossible that capitalism be founded on the illegitimate acquisition or transfer of lands in order to build its wealth,¹⁶ history demonstrates that it is typically the case that capitalism does not exist absent such illicit takings. And it is land that is necessary for capitalism to begin and then to flourish. Without it, capitalism has no access to the cornucopia of natural resources required to build and sustain capital. Moreover, it is capital that makes it possible to extract labor value from workers, workers who are, on Marx's view, coerced to sell their labor power which creates the value of their labor. Thus, the extraction by capitalism of workers' unfreely sold labor power and the value that results therefrom is dependent on capitalism's source(s) of illicitly acquired land. But the acquisition of such land, as we see, is typically gained by the capitalist illicitly, thereby morally tainting it and raising questions of whether or not capitalists have acquired such land, the basis of their wealth, in morally appropriate ways.

So the basic Marxist response to capitalism is (or ought to be) that it permits the private ownership of the means of existence which no one has a moral right to own. Thus, capitalism rests on an unjust foundation. So Marx advocates the righting of wrongs in a socialist state. As Cohen puts it: "it is rectifying violations of rights, violations inherent in the structure of private property" ([2], p. 299).

Responsibility, Punishment, and Compensation for Harmful Wrongdoing

It is one thing for a Marxist to criticize capitalism from the standpoint of the socioeconomic classes that are created by a system that exploits workers and forces them into deeply alienated lives. But a more thorough Marxist approach to business ethics will be one that is fundamentally political in the sense that it will seek to provide thoroughgoing criticisms of how capitalist business enterprises, say, in the USA, constantly engage in exploitative and otherwise wrongful behavior both domestically and globally. For instance, US imperialism has become widespread during the past century or so, and this leads to analyses of the USA that render it highly morally problematic, whether it concerns the incessant assassination attempts (and some successes!) of independent heads of state such as Fidel Castro or covert military operations in various regions of Central and South America, invasion of sovereign nations such as Iraq and Afghanistan, the support of Israel knowing that Israel oppresses Palestinians, morally questionable military involvement in Vietnam, [29]. Korea, Colombia, Nicaragua, etc.; these and various other actions of the USA and or some of its US supported businesses such as Halliburton and Occidental Petroleum, while they serve in various and sundry ways certain economic interests of its overall capitalist system, do not enjoy the support of venerable principles of just war.

In significant part, terrorism against the USA and its allies has arisen to combat US imperialism, and the USA perceives that it is then forced to defend its capitalist interests against an increasingly powerful foe that seeks to destroy the USA in large part for the substantial harms that it has wrongfully wrought on others.

Equally vital is a Marxist approach to business ethics' exposure of how capitalism tends to reduce or eliminate human responsibility to the extent that persons are not able to be held accountable for their actions, inactions, or attempted harmful wrongdoings. Assumed here is that a morally viable socioeconomic structure will maintain and strengthen the free activities of humans. But when exploitation and alienation run rampant throughout a system of living, such factors can and often do reduce or even eliminate legitimate expectations that count toward a person's moral accountability for her harmful wrongdoings. This is because determinism, whether social, economic, political, etc., vitiates claims to liability responsibility. And what is required of a good and decent society is that its adult constituents be morally responsible agents, ones that can in general be legitimately held accountable for their harmful wrongdoings and for their good actions as well.

Marx's words on punishment are not many, but as with his words on rights, they must be taken in context so as not to be stripped of their context and made into doctrines that do not represent his considered judgments on matters. Although Marx states that:

From the point of view of abstract right, there is only one theory of punishment which recognizes human dignity in the abstract, and that is the theory of Kant. . . . This theory, considering punishment as the result of the criminal's own will, is only a metaphysical expression of the old *jus talionis*; eye against eye, tooth against tooth, blood against blood. . . . [30]

He questions whether Immanuel Kant has it right in assuming that criminals truly act out of freedom of the will *in a capitalist society*. If they do not, then punishment of them is unjustified. Since on Marx's view sufficient unfreedom exists in capitalist society, criminals who act under such conditions should not be punished, given that punishment is only justified to the extent that criminals act freely in doing what they do to wrongfully harm others. While the Marxian argument here might be extended to apply to all societies, this one limits its application to capitalist ones only. Thus, a Marxist approach to the ethics of business would seriously consider the unfreedom that exists throughout capitalist societies and argue that this unfreedom vitiates ascriptions of voluntariness to criminals such that they ought not to be punished. At the very least, such criminals ought to have their punishments mitigated in proportion to the actual voluntariness that accompanies their criminal activities [31].

But more might be said of a Marxian position on punishment for crimes in a capitalist society. If it is true that capitalists, or those who own the means of production, sometimes also commit crimes, it is unclear that they generally lack voluntariness sufficient to mitigate or excuse their criminal actions, omissions, or attempted crimes. If this is true, then a Marxist ought not to condemn punishment

per se, just as she ought not to condemn rights per se. Rather, punishment is reserved in a capitalist society for those who sufficiently¹⁷ satisfy the conditions of criminal liability sufficient to punish them in proportion to their harmful wrongdoings. And such punishments might range from a few years in prison and all that genuine incarceration (hard treatment) entails, to execution for crimes that illicitly take the lives of others – perhaps even nonhumans and in cases of massive environmental damage.

Moreover, insofar as capitalist enterprises are supported by their governments (and vice versa), government officials should not be permitted to evade punishment insofar as they are responsible for harmful wrongdoings. For instance, those public officials responsible for starting and continuing an unjust war or invasion and occupation of a sovereign nation wherein significant killings of humans transpires must be punished in proportion to their levels of responsibility for those war crimes [32].

A Marxist Approach to Business: Environmental Concerns

Environmentalism seems not to have been a major concern of most in Marx's day. Thus, it is no surprise that Marx had nothing significant to argue about such matters. But this hardly suggests that one cannot tease from his writings something of a Marxist ethic of the environment. Whether it is the Exxon oil spill disaster in Prince William Sound, Alaska, in 1989, or the British Petroleum oil explosion and spewing of oil into the Gulf of Mexico in 2010, a Marxist can have much to say about who or what ought to be held accountable for such disasters, and why. In either case, such an approach must grapple with the problem of whether or not collective responsibility for such environmental disasters is local or global, that is, delimited to those most directly responsible for the disasters, or broadened more generally to include the populace who in some sense create the demand for the "oil rush." Of course, a Marxist will want to delve more deeply into the matter and ask whether or not the forces of capitalism have themselves created in people the perceived need for oil, or whether or not the need is not only perceived, but actual – emanating from the people themselves. For, it is answers to these sorts of questions that lay the beginnings of legitimate ascriptions of responsibility for environmental disasters. Is the moral liability delimited to those executives making decisions about how to maximize profits that in turns endanger the environments in which they function? Or is a shared responsibility [33] for such damages? Is it only individual actions, omissions, and attempted actions that are to be held accountable, or is there a collective responsibility [34] for such harmful wrongdoings?

Furthermore, a Marxist approach to the ethics of business might well address human overpopulation as it relates to the idea of equality. And on this point, Cohen is again of rather critical assistance. "Starving people," Cohen argues, "are not necessarily people who have produced what starving people need; and if what

people produce belongs by right to them¹⁸; . . . then starving people who have *not* produced it have no claim on it” [36]. Now as Cohen ingeniously explains, this:

. . . forces a choice between the principle of a right to the product of one’s labor embedded in the doctrine of exploitation and the principle of equality of benefits and burdens which negates the right to the product of one’s own labor and which is required to defend support for very needy people who are not producers and who are, *a fortiori*, not exploited. ([36], p. 108)

When those who suffer dire need can be conceived as those coinciding with, or as a subset of, the exploited working class, then the socialist doctrine of exploitation does not cause much difficulty for the socialist principle of distribution according to need. But once the really needy and the exploited producers no longer coincide, then the inherited doctrine of exploitation is flagrantly incongruent with even the minimal principle of the welfare state. ([36], pp. 110–111)

And what Cohen reveals about these Marxist principles, seemingly assumed or even adopted explicitly by many cosmopolitan liberals, concerning states appears to apply globally. Given the various global environmental crises, it is far from obvious that material consumption will be matched by material production such that cosmopolitan ideals of global equality can be realized without posing serious problems for the deservedly well-off. This poses the problem of good Samaritanism which states that there are duties of assistance to endangered strangers, but that such duties hold only to the point at which those assisting others are themselves placed at genuine risk of their own well-being [37, 38]. And it is an empirical question as to how much worse off the better off must become for the cosmopolitan ideal of global equality and redistributive justice to be deemed unreasonable. Cohen states the difficulty in cautionary terms:

When aggregate wealth is increasing, the condition of those at the bottom of society, and in the world, can improve, even while the distance between them and the better off does not diminish, or even grows. Where such improvement occurs (and it has occurred, on a substantial scale, for many disadvantaged groups), egalitarian justice does not cease to demand equality, but that demand can seem shrill, and even dangerous, if the worse off are steadily growing better off, even though they are not catching up with those above them. When, however, progress must give way to regress, when average material living standards must fall, then poor people and poor nations can no longer hope to approach the levels of amenity which are now enjoyed by the world’s well off. Sharply falling standards mean that settling for limitless improvement, instead of equality, ceases to be an option, and huge disparities of wealth become correspondingly more intolerable, from a moral point of view. [36], pp. 113–114

In the end, the demand for equality is fraught with complexities that cannot be plausibly solved by the presumption of pretheoretical intuitions about the injustice of the acquisition of wealth *per se*. For many of those who are well-off are such largely because of their own hard work and have not become well-off at the expense of others, undeservedly. Thus, to insist as many cosmopolitan liberals do that the well-off have a moral duty to the poor or needy to relieve their poverty or need is itself presumptuous absent a sound argument in favor of the idea that the well-off indeed have a duty that corresponds to the right of the worst off to make them better off. This is true especially in light of the fact that moral intuitions vary greatly on this matter. Thus, sound argumentation must win the day rather than mere intuition.

Objections to a Marxist Approach to Business, and Replies

There might be several concerns raised about the Marxist ethic of business that has been portrayed herein. While some might issue from a Marxist perspective, others might be raised from a standpoint critical of Marxism in general. I shall consider those most germane to the narrower task of this chapter, as such matters have larger implications for political philosophy more generally. Nonetheless, I shall consider some of the most pertinent concerns that might arise for this Marxist ethic of business without treading too far into the terrain of political philosophy more generally wherein such matters have been taken up with far more rigor.

First, it might be argued that the moralistic conception of Marx's words against capitalism is itself mistaken, as is the above understanding of Marx's critique of rights. Rights, according to Marx, are grounded in law which is that system which protects the power of the bourgeoisie have over proletarians. Thus, rather than serving as protections of persons, rights actually oppress them under capitalist rule. So the appeal to rights as a particularly Marxist concept is wrongheaded and misunderstands the radicality of Marx's critique of capitalism.

In reply to this standard Marxist construal of Marx's attitude toward morality and rights, it might be argued that it ignores several considerations that point in the direction of the interpretation of Marx on morality and rights set forth above. To repeat, Marx condemns morality that protects the illegitimate interests of the capitalist class insofar as such interests oppress workers. Likewise, he condemns what are referred to as "rights" insofar as such so-called rights oppress workers. For any system, legal or moral, that would eventuate in the oppression of workers is morally unjustified. Yet not all claims or interests that are said to amount to rights are oppressive of workers. And it is precisely those rights that Marx would and does support, either explicitly or implicitly in his critique of capitalism.

Second, it is common to associate unionization of workers with Marxism in that Marx was a founder of the very first working persons' union: the International. Yet the history of unionization in the USA at least is rife with problems. Not only are unions often corrupt, but they often promote mediocrity, underproductivity, and slothfulness among workers. Public employee unions, for instance, have also been accused of greed in their seeking what is good for themselves while city, state, and federal coffers run dry, helping to cause economic disasters throughout the USA in particular. Hence, it might be argued, Marxism is problematic to the extent that it inspires unionization of workers and this sort of result.

In reply to this criticism of Marxism, it must be emphasized that nowhere in Marx's works does he excuse or promote underproductivity and anything akin to it, and he certainly does not support corruption of any kind. Indeed, in a letter to Arnold Ruge on July 9, 1842, Marx writes that "Mediocrity should no longer enjoy the privilege of immunity" ([18], p. 390). That unions have often developed into corrupt organization that promote and almost espouse underproductivity does nothing to refute the relatively honorable origins of some such organizations. For they were necessary in order to combat extreme cases of exploitation of workers who had no benefits and no workplace rights, very low wages, etc.

Indeed, Engels graphically captures the plight of workers in nineteenth-century England when he writes:

... Murder has also been committed if society places hundreds of workers in such a position that they inevitably come to premature and unnatural ends. The death is as violent as if they had been stabbed or shot. Murder has been committed if thousands of workers have been deprived of the necessities of life or if they had been forced into a situation in which it is impossible for them to survive.¹⁹

Practically speaking, it seemed that unions were required to combat certain excesses of capitalism. But this hardly justifies saddling Marx with the corruption of unions or any other faults they might have. There is nothing that prevents unions from being organized and functioning in morally legitimate ways that promote hard work, efficient and high levels of productivity, while punishing laziness, corruption, and other forms of abuse among management and workers. And this is certainly not incongruent with Marx's critique of capitalism. For among other things, Marx espoused both rights and responsibility of workers.

Third, I have eluded to the idea that a Marxist can hold to the idea that it is not logically impossible that capitalism be founded on the illegitimate acquisition or transfer of lands in order to build its wealth. This is not the same thing as stating that a Marxist would approve of such capitalism. Rather, it is to admit that it is not logically impossible for capitalism to be founded on a system that does not exploit others, alienate them, and violate the principle of morally just acquisitions and transfers. And it is here where my version of Marxism differs from the typical interpretation of Marx's critique of capitalism.

Even if it were true that Marx explicitly endorses the idea that it is logically impossible for capitalism to have a morally just foundation, that would in no way demonstrate the truth of the proposition in question. The fact is that it is easily imaginable that capitalism of one recognizable form or another to be founded on the free relinquishing of workers' labor power in order to achieve a common good, such as social solidarity, and that capitalism would indeed provide such workers with other viable and available options in order to prevent worker unfreedom. And this is true even if it is assumed that "... private ownership by one person presupposes non-ownership on the part of other persons"²⁰ One key philosophical issue here is how "capitalism" is defined. Is it defined in terms that make it intrinsically morally problematic? Or, is it defined in a more morally neutral way? If the former, then the definition begs the moral question against capitalism. Yet this would appear to conflate the question of the definition of "capitalism" with the question of its moral status. So it would seem that the more appropriate manner by which to define "capitalism" is in a way that leaves open the question of its moral status. This implies that even if it were true that every form of capitalism to date is morally problematic, it is still possible, under some scenario, that a form of capitalism satisfies the conditions both necessary and jointly sufficient to render it morally acceptable at least to some meaningful degree. The idea here is that there might, for all we know and being sensitive to Marx's critique of actual capitalisms, be a form of capitalism that is not

founded on the inappropriate acquisition or transfer of the means of production or land, does not necessarily exploit workers, alienate them, or create and sustain conditions of worker unfreedom. But precisely, what are the conditions that, to the extent that they are satisfied, would make capitalism morally justified?

Conclusion

In sum, Marx's critique of capitalism has been subjected to various interpretations, not all of which are charitable or responsible. His critique can be seen as one that has clear moral content either explicitly or implicitly, respects moral and some legal rights, and might even allow for the possibility of a form of capitalism that escapes his blistering criticisms. This of course begs the question of what sort of capitalism, if any, might be able to evade the Marxian critique?

First, it could be a capitalist socioeconomic system that is not founded on an immoral taking, acquisition, or transfer of land. Or, if it is such a capitalism, it would also be one that provides reparations for such takings to those from whom the lands are illicitly or their heirs, compensation that is in proportion to the actual values of the lands and resources therein along with the values of the lives illicitly taken in the process of taking the lands.²¹ Second, it is one that disallows workers' being exploited and alienated in the senses described above. Third, it is one that respects the moral rights that workers have qua workers. Fourth, it could be a capitalist system that disallows wars to be fought when they are driven by private capitalists' interests. If private business seeks to war with other countries or nations, then they themselves must fund those wars without assistance from the government or the people, unless the latter groups willingly and freely contract with capitalists to do so. It must never be the case that private capital would both have a finger in starting a war because it stands to profit from the war and have the war effort funded by public funds, and then reap any profits from the war efforts. If proletarians are to fight in the war, they must be paid well by capitalist monies if capitalists are starting and sustaining the war for their own profits. It must never be the case, as is often the case with US wars, that the working class both funds and fights wars of capitalist aggression.

Whether or not Cohen and others are correct in thinking that it is a necessary condition of a Marxism that it stand against a class-based society, it might still be an open question of whether a Marxism can embrace a form of capitalism that satisfies these conditions, along with it being a class-based society. In other words, can a class-based society exist "from the ground up" insofar as it does not violate workers' rights as valid claims or interests? Or, is it a necessary condition of capitalism that it functions as Marx describes?

Cross-References

- ▶ [Fundamentals of Discourse Ethics](#)
- ▶ [Hegel on Modern Economics and Business](#)

- ▶ [Kant and Hegel on Property](#)
- ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
- ▶ [Purpose](#)

Notes

1. Cohen, [11, 12]. See also [13].
2. Buchanan [14]. For a critique of Buchanan's interpretation of Marx and rights, see [15].
3. Cohen ([2], p. 9), where G. A. Cohen also states of Marx's view: "...that the given capitalist enjoys the stated right because it belongs to a structure of rights, a structure which obtains because it sustains an analogous structure of economic power."
4. Marx and Engels ([18], p. 166). Also see pp. 349–351 for Marx's further explicit support of freedom of the press, and p. 327 for his explicit support of individual freedom of expression. In case Buchanan and others who still think that Marx condemns rights per se, perhaps they ought to consider Marx's statements that "The press is the most general way by which individuals can communicate their intellectual being. It knows no respect for persons, but only respect for intelligence. . . . Everyone must *have the right* to read and write" (p. 177). For those who require more evidence that Marx does not condemn rights per se as Buchanan argues, it is wise to consider Marx's words on "Communal Reform and the *KÖLNISCHE ZEITUNG*" wherein he argues that the very separation of town and country implies an inequality of rights, which is bad, implying that Marx believes in the equality of rights at least in such contexts (pp. 266–273). It is helpful to read Marx carefully without a biased, ideological eye that would uncharitably turn his complex and sophisticated arguments and analyses into straw.
5. Cohen ([2], p. 255). Moreover, he writes: "Let me then propose that a worker is forced to sell his labour power in the presently required sense if and only if the constraint is a result of standard exercises of the powers constituting relations of production" (p. 258). And while there is an objective sense, Cohen argues, in which workers under capitalism are forced to sell their labor power, ". . . *each is free only on condition that the others do not exercise their similarly conditioned freedom*. Not more than one can exercise the liberty they all have. If, moreover, any one were to exercise it, then, because of the structure of the situation, all the others would lose it" (p. 263). Cohen refers to this as workers' "collective unfreedom" under capitalism (p. 264). So Marx's concept of capitalist exploitation derives its negative moral content from the fact that there is collective unfreedom of workers in capitalism in which workers are forced because of circumstance to sell their labor power to one capitalist or another, as the case may be (p. 265). So while some individual workers can escape the proletarian class, not all can no matter how hard they try, which results in collective unfreedom for the workers as a class (p. 265). Also see pp. 267 f. Thus, "If it is plausible to say that capitalism *makes* most workers incapable of being anything else, then it is false that most workers are free, *in sensu diviso*, not to be proletarians" (p. 279).
6. Cohen ([2], p. 211). See Chap. 11 of Cohen's book for a fine discussion of the Marxist concept of the labor theory of value and its related concepts.
7. Cohen ([2], p. 191). Also see [20], where it is said that workers "work under definite material limits, presuppositions and conditions independent of their will."
8. Marx ([21], p. 819). Also see [2], p. 193f for commentary and analysis.
9. Cohen ([2], p. 200). Cohen cites both *The Grundrisse* and *Theories of Surplus Value* on these points.
10. Cohen ([2], p. 205f). Cohen cites *The German Ideology* on this point.
11. Kant I ([22], p. 429): "Act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as a means."

12. Cohen ([2], p. 137). Cohen adds that in its exclusive emphasis on the creative aspect of human nature, Marx neglects “a whole domain of human need and aspiration. . . he failed to do justice to the self’s irreducible interest in a definition of itself, and to the social manifestations of that interest” (pp. 137–138). See also pp. 139–141.
13. Cohen ([2], p. 238). Cohen also states: “. . . capitalism is just if and only if capitalists have the right to own the means of production they do, for it is their ownership of means of production which enables them to make profit out of labour, and if that ownership is legitimate, then so too is making profit out of labor. The key question, then, is whether capitalist private property is morally defensible.” Yet “. . . all, or virtually all, capitalist private property either r is, or is made of, something which was once no one’s private property, since (virtually) all physical private property comes immediately or ultimately from the land, which was there before any people, hence before any private owners of it, were” (p. 301).
14. Marx [25], pp. 667–669. Also see Chap. XXVII where Marx discusses the forcible expropriation of peoples from their lands and their means of production by capitalism. The moral implication here is obvious, namely, that Marx believes it is morally wrong for capitalism to expropriate means of production and their material bases from those to whom they belong, and that this appears to be part and parcel of capitalism’s *modus operandi*.
15. Cohen ([2], p. 302). Cohen also states that “. . . the socialist objection of justice to the market economy is that it allows private ownership of means of existence which no one has the right to own privately, and therefore rests upon an unjust foundation” (p. 298).
16. This claim runs counter to a strict Marxist view, which admits that “. . . Marxists do not believe merely that this or that capitalist society, or even every capitalist society, is unjust because of its particular origin. Marxists believe that capitalism as such is unjust, that, therefore, there could not be a just formation of capitalist private property, and that thesis requires moral rather than historical argument” (p. 302). Cohen is correct that such a strong Marxist claim about the logical impossibility of a morally just founding of capitalist private property: it requires a special defense as neither the claim nor its defense is found in the writings of Marx.
17. “Sufficiently” in that responsibility and its constituent conditions admit of degrees.
18. “The great cry of world Justice today is that the fruit of toil go to the Laborer who produces it” [35].
19. Engels [39]. Cited in [40].
20. Cohen [2], p. 293, citing from *Capital*, Vol. 3
21. For an example of how US capitalism faces reparative justice in light of its illicit and violent theft of American Indian lands, see Corlett [27], Chap. 8; [28].

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Part 6

**Contemporary Continental Philosophy and
Business Ethics**

Mollie Painter-Morland

Abstract

Business ethics has made great strides in terms of studying ethical decision-making in corporate contexts, but questions could be raised regarding its ability to ask critical questions about the ontological assumptions upon which many of its theories and initiatives are built. Ontology is about the nature of existence, and as such, it has to do with how we live and understand “life.” In this chapter I draw on the perspectives of certain Continental philosophers to propose that “life” can be understood as material forces and flows. Such an understanding of life has specific implications for speaking about “ethics.” In order to understand these implications, we have to embark upon an ontological interrogation of our understanding of identity, agency, and organisation, all of which are central issues in the field of business ethics.

Introduction

Over the past 30 years, business ethics has evolved as an academic field of much substance and significance [22]. While some researchers focus on explaining the ethical dimensions of business organizations, others are more interested in providing guidance on how to stimulate moral development of those within organizations, and controlling behavior. While ethical control is just one of the perspectives on business ethics, it could be argued that, in recent years, it has become one of the most prominent. The need to correct moral failures, or to prevent them from happening in the first place, have become the predominant concern of many business ethicists. In fact, multiple ethical failures in the business and corporate governance realm in recent years prompted more stringent control measures in many countries.

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The question that has to be posed is whether business ethics has diagnosed the problem correctly, and chosen the right approach to address these problems. The kind of research that is interested in providing those in business practitioners with ethical guidance, or stimulating the ethical development, focuses on the individual decision-makers involved, rather than on trying to understand the nature of capitalism, and the broader impact of business on our lives as such. Part of the problem may be that capitalist business practices inevitably imply or support a very specific conception of life, but this is hardly ever made explicit. We shall see that within business, specific assumptions are made about human motivation, well-being, behavior, and institutions. In fact, business ethicists are in fact already implicitly addressing ontological questions such as “life,” “existence,” or “being.” In this sense, business ethics is a study of “life.” It is therefore important for business ethicists to critically reflect on how we come to know anything about our world, ourselves, and our business activities in the first place. In trying to understand “life,” certain epistemological questions emerge: can we develop a clear picture of ourselves, our world, and the people and things in it? What resources do we have to explain human motivation and agency? How are we as human beings related to the animate and inanimate entities that are part of what we perceive as “reality”? All these questions may seem abstract, but in fact they lie at the heart of our understanding of ourselves, our capacity for action in the world, and for normative discussions about the kind of life we want to lead.

Continental philosophy can play an important role in acknowledging and challenging at least some of the assumptions that lie hidden in the way business ethicists address the above questions. In the first place, Continental philosophers emphasize the fact that “ethics” always involves a critical questioning of practices. Therefore, instead of attempting to improve the status quo, the insights of Continental philosophers can help us understand and challenge the implications of those assumptions that are embedded within accepted business practices. Secondly, Continental philosophers offer a critique of an overreliance on science’s capacity to procure objective truth. Within business ethics, this may allow us to critically evaluate the preoccupation with the quantitative methodologies that have come to dominate the business ethics literature. A third and very central contribution that Continental philosophy makes to our understanding of business organisations is the way in which it allows us to identify and engage with the dynamics of power and influence that are inherently part of all institutions. This allows us to reconsider assertions around agency and freedom that are often uncritically accepted within business ethics literature. A number of twentieth century and contemporary continental philosophers, especially those drawing on the insights of Friedrich Nietzsche, consider the body and its various forms of vitality as central to understanding human agency, instead of relying on the rational pretensions of the disembodied transcendental subject. Continental philosophy therefore significantly broadens our understanding of “life.”

In this chapter, I argue that an alternative understanding of “life” as material forces and flows opens new possibilities for speaking about “ethics.” On an ontological level, it helps us to better understand identity, agency, and organisation.

Within the field of business ethics, it sheds new light on central topics within the field, such as moral decision-making, “ethics management,” “corporate governance,” and “sustainability.”

The Relationship Between Capitalism, Agency, and “Life”

Within much of business ethics, there is an interest in research that could help us understand how individuals make moral decisions, and beyond that, how we could enhance their moral development or moral imagination. In fact, in his survey of business ethics as an academic field, Rossouw [22] points out that the purpose of business ethics teaching is to enhance cognitive, behavioral, and managerial competences. He plots many of the presuppositions of these competences, and it becomes clear that though it has many advantages, it also falls short in certain areas, especially when it comes to the interplay between tacit organizational influences and individual responses to moral dilemmas. The reason for this limitation may be found in the assumptions around individual moral agency upon which some business ethics research still rely. Many business ethicists often assume an isolated rational decision-maker who has the time, resources, and inclination to step out of the messiness of organizational life to weigh options and take the best rational course of action, which also accords with this person’s commitment to moral principles. The question that needs to be posed is: does this kind of decision-maker in fact exist?

Within the twentieth century Continental philosophy, there have been multiple attempts to deal with the disillusionment in the transcendental subject of Enlightenment thought. The view of human beings that emerged as ideal within Enlightenment thought privileged rational, principled thought and behavior. During and after the two World Wars, many philosophers were preoccupied with understanding how these “rational” human beings could have perpetrated the evils that occurred in the first four decades of the twentieth century. A number of alternative views of human agency emerged, and though I will not go into too much detail here, it is important to consider how these perspectives informed our thinking about ethics in general, and business ethics in particular. The various perspectives on our human agency can be briefly described as phenomenological, existentialist, psychoanalytic, and poststructuralist. These perspectives are all in some way related to one another, yet display slightly different ontological and epistemological assumptions.

From the phenomenological perspective on agency and epistemology, philosophers argued that the structures of our human consciousness determine how we come to understand and engage with the world. These structures, which Edmund Husserl called eidetic structures, give us a kind of direct access to the world. From this perspective, though “life” is something that each one of us grasps independently, recognizable structures of consciousness that we share with others emerge. The insight that each one of us has a very specific access to the world relates to another important school of thought. Though existentialism has its roots in earlier periods of Western thought, it gained momentum in the twentieth century when

there was a specific interest in the protection of individuality and freedom. From an existentialist perspective, the individual's capacity to give shape to his/her own individual life is what is important. Here, Jean Paul Sartre was one of the most important exponents. Over the years, certain misinterpretations of existentialism led to a kind of individualist preoccupation with shaping one's own "life." We see remnants of this in the self-help culture that persists in many contemporary societies, and the self-disciplining that takes place within many institutions [1].

What however became apparent in the fields of psychology and sociology is that human beings are often unaware of the forces that shape their individual paths. The discovery of the unconscious and subconscious factors that influence us led to the psychoanalytic approach to agency, in which Freud and Lacan are central figures. The unconscious and subconscious were however not the only factors to consider in understanding ourselves and our relation to the world. Poststructuralist philosophers, such as Jacques Derrida [11], made us more aware of the way in which our use of language shapes our capacity to make sense of the world. Poststructuralists urge us to recognize the fact that we cannot assume a strict correspondence between the words we use and ideas we have, and things and events in the world. All concepts are shaped in relation to one another and to the time and space within which they are employed. This "linguistic turn" in the twentieth century was very influential, both in the Analytic and Continental traditions, but soon, critics started arguing that in this preoccupation with language structures and speech acts, something important is lost, namely, our embodied existence in the world, which goes far beyond nominalism.

Until recently, these insights had not made significant inroads into business ethics (as pointed out by [4, 12, 18]). Many business ethicists operate on the assumption that the self-serving, rational, *homo economicus* is still alive and well, but some authors, like Pirson and Turnbull ([20], p. 103), have recently argued that a different perspective on human beings emerges from science. They argue that we should understand the individual as a *zoon politicon*, a relational (wo)man, who materializes freedom through human values. In the light of this contention, Pirson and Turnbull ([20], p. 103) argue we may do well to revisit our assumptions about "rational agency" and decisions based on utility. It is in this respect that the late twentieth-century continental thought is very helpful.

In this chapter, I focus on the contributions of Gilles Deleuze and Felix Guattari. These two authors stand in a close relationship to the phenomenological, psychoanalytic, and poststructuralist thinkers of the twentieth century, but also depart from them in important ways, specifically when it comes to Deleuze and Guattari's insistence on acknowledging the importance of the material aspects of our existence. Some critical management theorists (see the work of Linstead and Brewis [14]; Thanem [24]; Lawley [13]; Sorenson [23] and Linstead and Pullen [15]), have explored the implications that Deleuze's thinking could have for organizational thought, but its implications for business ethics have not been explored in depth. In what follows, we hope to further this interrogation.

Capitalism from Deleuze and Guattari's Perspective

It would not have surprised Karl Marx and Friedrich Engels that capitalism is, and will most likely remain, in a state of crisis. In the *Communist Manifesto* Marx and Engels warned: "All that is solid melts into air, all that is holy is profaned, and man is at last compelled to face with sober senses, his real conditions of life, and his relations with his kind." In fact, one may even contend that "crisis" is an inevitable side-product of the "melting" and sublimation that takes place through capitalism's endless invention, reinvention, and abstraction of value. From Deleuze and Guattari's perspective, this could be explained by understanding what they call "desiring-production." They use the neologism "desiring-production" to denote this concept of desire infused with production, which creates and sustains social practices and institutions. Moving away from the psychoanalytic preoccupation with desire as a response to lack, Deleuze and Guattari insist that we should reconceive desire as a productive force, which constitutes all reality, including social reality.

Within the process of desiring-production, social orders, or "territories," are formed and reformed on a continual basis. Another way to describe this process is in terms of territorialization, deterritorialization, and reterritorialization, all of which always presuppose each other ([10], p. 244). Deterritorialization is the possibility of change and transformation that is an inherent part of any territory. From Deleuze and Guattari's perspective, we can witness the effect of capitalism's deterritorialization of social value, and its decoding and recoding of valuation in the pursuit of endless growth and a useful reappropriation of surplus. For example, due to the reckless behavior of financial organizations, we nowadays witness the deterritorialization of social values such as trust or authority. The erosion of trust is undoubtedly one of the reasons why so many people have joined the "Occupy" movements in New York, Chicago, San Francisco, London, or elsewhere.

It is important to understand that deterritorialization is always at work in capitalism. How does this play itself out? To say that capitalism is characterized by "constant deterritorialization" would mean that capitalism typically disrupts some of the coded societal orders upon which our sense of self and security has been built. Some examples that Deleuze and Guattari mention are: the deterritorialization of wealth through monetary abstraction, the decoding of the flows of production through merchant capital, and the decoding of States through financial capital and public debts. As such, it would seem that capitalism frees up our coded existence and creates new possibilities. However, this is not where the process ends. Capitalism replaces "codes" with "axioms." This axiomatization empties flows of the specific social meaning that codes conveyed, and replaces it with a structure within which everything can be made equivalent based on its monetary value. The example of prohibitions around sex can be used to explain this. Within a socially coded system, the prohibition on sex before marriage is something that signifies the stability of family life and procreation in society. Within a capitalist system, sex becomes a commodity to be sold or to be used to sell other commodities or services.

Industrial capital leads to the conjunction of all the decoded and deterritorialized flows in taking control of production and driving it toward creating a surplus value. This surplus has to be sold and this can only happen if our desire can be directed at some new kind of “value.” The problem is that production of surplus value leads to a system in which “money begets money” ([10], p. 227). The belief that profit is valuable in and of itself starts to function as an axiomatic universal truth, which structures everyone and everything in its path to perpetuate this truth. In this process, “value” no longer refers to any actual valuable “thing,” but becomes something with a substance, life, and motion all of its own. “Value” no longer designates the worth of commodities, but enters into relations with itself. Under these conditions, capitalism functions as a diachronic machine, that is, a machine operating over time, that organizes all the decoded flows for its own purposes. In the process, some of this coding becomes axiomatic and the functioning of the system mechanistic. The profitability of the firm and its relationship to the market and with commercial and financial capital requires more and more surplus value to fuel its pursuit of value for the sake of value. In this process, both physical labor and “knowledge capital” (specialized education and information) become part of capitalism’s operations.

The implication of all of this for corporations is that it is precisely capitalism’s facility for decoding and unleashing flows, and its tendency to pursue value for the sake of value, that put the corporate entity itself at a constant risk. Because the criteria for anything of value is more value, entities that were created for the purposes of value generation, like corporations, have no inherent right to existence. In fact, since these “entities” have been produced merely as a means to an end, they can easily be replaced. As Ian Buchanan explains, Deleuze and Guattari’s analysis of the life of capital allows us to appreciate the precariousness of corporate entities. By seeking out more profitable investment vehicles and lucrative opportunities elsewhere, capital thrives even when giant companies like Microsoft do not ([3], p. 57). What we have to understand to get a sense of the precariousness of entities in a world characterized by advanced capitalism is that the kind of connections that are made to facilitate desiring production can be largely virtual in nature. There is no need for a real product, or even for real people producing something, in order for value to be created. Companies such as Facebook and YouTube trade on their “cultural value” and do not seem to need mediation through commodity production. There of course comes a time when these start-up companies are bought by larger corporations, making their owners substantial profits, but as such, this merely starts the cycle of seeking surplus value all over again.

Could this view of corporations as dispensable profit-making machines have underpinned the downfall of big corporations like Enron and the broader global financial crisis a number of years later? Their executives did seem to be driven more by the need to uphold the perception of profit-making capacity than with the creation of real commodity value. But even if one did believe that corporations are mere profit-generating machines with no value in and of themselves, they do have implications for real human beings. Within business ethics, there has recently been more acknowledgment of the interdependence between corporations and

the individuals that are linked to them. The financial crisis that erupted in 2008 brought capitalism's inherent contradictions into sharp relief – in its preoccupation with creating more and more surplus value, that which is in fact valuable to “life,” such as jobs, lifesavings, and stability, were lost. What we need to acknowledge is that ironically, capitalism will inevitably fail to contain and productively direct the flows that its “melting” of value perpetuates. Hence, capitalist organisations will always inevitably be leaking, oozing, secreting. In response, more managers are produced, that is, selected, trained, remunerated, and eventually replaced to contain and direct the flows. In the process, a certain kind of subjectivity emerges, but not the kind of human subject who can creatively question or ethically challenge evils. Instead, it is unfortunately the kind of person who passively perpetuates the axiomatic truths upon which capitalism's continual melting processes depend.

Agency from Deleuze and Guattari's Perspective

Drawing on Deleuze and Guattari [9], we have come to understand capitalist “life” as flows on a plane of immanence. It is important to understand that immanence here refers to the multiple different ways of being that one encounters in one's material interactions with other entities, whether they be human, animate, or inanimate, in the world. “Life” is therefore not something grounded in some unshakeable foundation, nor is it explicable on the basis of some kind of essence. Instead, the forms, structures, and concepts that make up our reality are the emergent products of couplings with people, objects, and institutions. “Life” does not operate according to hierarchical structures or clear-cut categories, even though these attempts at control are bound to remain part of our reality. Life's movement is fluid, and hence unpredictable, unmanageable in terms of traditional “management theory” or “ethics management” initiatives. In what follows, I look into what it means for the typical research projects and interventions that we encounter within business ethics, especially in its preoccupation with influencing human moral agency.

Deleuze and Guattari offer us another perspective on who/what human agency is. In Deleuze's description of the individual, the notion of an “integrated, unitary self” is brought into question. It is only through a thousand little witnesses that contemplate within us that the self can become an “I” ([7], p. 75). In Deleuze and Guattari's description, agency is the side-product of the couplings that are part of our desiring production. Deleuze and Guattari ([9], p. 90) describe “agencement” as follows: “We think the material or machinic aspect of an assemblage relates not to the production of goods but rather to a precise state of intermingling of bodies in a society, including all the attractions and repulsions, sympathies and antipathies, alterations, amalgamations, penetrations, and expansions that affect bodies of all kinds in their relations to one another.”

It is in his “Postscript,” that Deleuze [6] draws out the conclusions of capitalism for our subjectivity. As subjects, our bodies are tied to capitalism's machinery. While

capital is free and independent, material flesh and blood bodies are not. The instrumental, organismic functioning of individual bodies within this mechanistic environment is inevitable. This is facilitated by increased abstraction that characterizes capitalism, also in terms of the importance that “intellectual capital” has gained salience within contemporary knowledge economies. We see that even social capital has become virtualized. All these processes lead to a dematerialization and disembodiment within capitalist society. In his “Postscript,” Deleuze describes the emergence of DIVIDUALS instead of individuals. The notion of the dividual refers to an embodied subject who is endlessly divisible through capitalist codes, patterned modes of operation, samples, and data representations, all of which characterize modern technologies of control. Since the embodied subject couples with certain technologies, he/she can be guided through various modulations. Capitalist organizations are designed to move the dividual successfully through its various modulations: training, self-improvement, salary, and reward based on merit. Another important characteristic of DIVIDUALS is that they are pitted against one another, which makes coupling with others impossible, and as such, makes *agencing* impossible. Deleuze explains that the man of control is undulatory. Deleuze [6] explains that the woman/man of control is undulatory, she/he is always surfing, going with the flow.

What seems clear is that we are always in the process of organizing and being organized in our interactions with each other, and with the animate and inanimate world. As such, we need to develop a different perspective on “organisations.” We may have to rethink “organisations” in terms of the “organising” that is always already at work. Our focus on “organisations” as entities often glosses over the fact that institutional life is in fact the result of ongoing processes of organising, division, and formation. This understanding places notions such as “organisational structure,” “control mechanisms” into a new perspective. Through organisational controls and information technologies, we are changed in a way that may foreclose important capacities for agency. We are again faced with a paradox: in an attempt to control people’s behavior, or prevent unethical behavior, we may be robbing them of the capacity for ethical questioning and moral responsiveness. This has been a critique that some business ethicists who draw on the continental tradition have launched against codes of conduct and other ethics initiatives in organisations (See in this regard [2, 17]).

Deleuze and Guattari use biological concepts to make a distinction between two ways of looking at the world: from the perspective of the “arboreal root-tree,” linear cause and effect relationships and dialectical structures provide a neatly organized perspective on the world, whereas from the perspective of the “rhizome,” entities and events are more intricately related. In fact, Deleuze and Guattari’s description of the rhizome provides an account for the fact that there are strange connections between events, people, and objects. From Deleuze and Guattari’s point of view, root-tree structures and rhizomes always coexist within any given social order. As such, there remains room for hierarchy, even though Deleuze and Guattari would caution against the axiomatic overcoding that capitalism tends toward ([10], p. 227). If overcoding sets in, human beings, as well as the animate and

inanimate world becomes tied into mechanistic processes, which undermine the productive and creative flows, or life-affirming forces.

Deleuze and Guattari help us understand how social orders come into being and how our agency is shaped in and through it. The ongoing organizing that is taking place within societal structures, and therefore in all organisations, makes “morality” a moving target, to be approximated through rhizomatic tracing rather than accurate mappings. In terms of ethical decision-making, this robs us of transcendental principles or rational protocols by which to procure sound ethical decisions. As such, it challenges business ethicists to reconsider their main interests in shaping individual moral decision-making, or at least urges them to substantially retool in order to successfully pursue this agenda.

Redefining Ethics as a Revaluation of What is Life-Affirming

As the discussion of territorialization and deterritorialization above indicates, Deleuze and Guattari draws our attention to the fluidity of our world, and the fact that our reality is constantly being produced and reproduced. There is therefore no foundational structure that underpins our thinking about and interactions with the world. Though Michel Foucault ([10] p. xiii) called *Anti-Oedipus* a book of ethics, Deleuze and Guattari can hardly be described as traditional ethicists who offer us moral guidelines or methodologies. Instead, they see ethics as a response to the world that is not based on any transcendental force or set of abstract principles, but rather involves a very practical engagement with empirical relationships. From this perspective, our moral decisions are not based on some abstract principles or some foundational truths, but instead on an ongoing evaluation of material concerns. Drawing on Nietzsche, Deleuze [8] insists on the importance of ongoing revaluation in order to embrace what is life-affirming. No one definition of what is “life-affirming” exists. Instead, it requires constant rearticulation by all those involved. However, this is not an argument for relativism. When we embrace the relational constraints that emerge out of the couplings of which we are part, the “life-affirming” criteria can function as a very powerful force for ethical questioning and action.

Following Nietzsche and Spinoza, Deleuze encourages us to reject the “sad passions” and experiment with the kind of relations that create life-affirming possibilities. In fact, it is in Deleuze’s own texts on Nietzsche (Nietzsche & Philosophy) and Spinoza’s Ethics [5] that we find the clearest articulation of what Deleuzian “ethics” looks like. Nietzsche was clear in his insistence that all valuation is a response to our embodied existence in the world. In fact, by making the embodied roots of our moral concepts clear, Nietzsche was also an inspiration to the later poststructuralists. Deleuze draws on Nietzsche to make it clear that our “moral agency” is an unconscious response to our embodied practices and preoccupations. Similarly, in drawing on Spinoza, Deleuze steers clear of any transcendental inspirations for an ethics. His kind of ethics entails an immersion in life, where “good” and “bad” are assessed in relation to specific bodies in interaction with one

another. From this perspective, there is in fact no longer any distinction between “ethics” and life ([5], p. 130). In his discussion of Spinoza’s *Ethics*, Deleuze ([5], p. 33) explains that “there are always relations that agree with one another.” There is no evil (in itself), but there is something that is bad for me in relation to someone or something. An object that decomposes my body, is bad, and one whose relation agrees with me, is good. The example that Deleuze uses is the effect of poison on the body – it is quite clearly life-denying, and therefore bad. This may seem like quite relativistic criteria for good and evil, but in fact, it involves quite firm relational constraints. One can clearly see how the environmental damage that a corporation can create can have life-denying effects on a variety of stakeholders with whom it is in interaction. But in order to understand other “life-denying” effects, we could also consider the kind of couplings that individuals enter into at work. Could some of these relationships have a poisoning, or life-denying effect? In what follows, this perspective may allow us to rethink the concern for social and environmental responsibility and sustainability within business ethics.

The “Life” of the Inanimate World

A common misconception is to define the inanimate world as lifeless. In terms of Deleuze’s geophilosophy, we can argue that the inanimate world displays very specific forms of agency that we have to take into account in our consideration of environmental responsibility and sustainability, more broadly construed. Too often, the inanimate world is portrayed as the passive object of man’s activities. This in turn gives rise to instrumental thinking, as is evident in the preoccupation with developing the “business case for sustainability” within the field of business ethics. From this perspective, environmental responsibility, sustainability, and corporate social responsibility must always be motivated by illustrating how these initiatives will enhance the profitability of corporations. The intrinsic value of the environment, of human beings, and of animals, are therefore decoded and recoded in terms of its profit-generating capacity. What Deleuze and Guattari help us see is that the inanimate entities within our environment clearly have the capacity for agency. A steep rock-cliff that plummets hundreds of meters into the ocean clearly communicates to anyone standing on its precipice: “Go no further!” The dead-blind-mute tick can quite clearly detect the source of its food as it moves past its body and quite accurately launches itself in the right direction. This clearly disrupts the typical hierarchical structure that the distinctions between man, animals, and plants often imply and allow us to think about all entities, and ourselves, on a plane of immanence, where different possibilities can emerge. In our everyday life, we are involved in couplings with other human beings, but we are also in interaction with inanimate and animate entities that can have an equally profound effect on the “ageing” capacities that we have. In fact, Deleuze and Guattari would argue that the best way to experience life in all of its immanence is to experiment with different kinds of “becomings.” In their analysis of “becoming-animal,” they do

not suggest that we mimic animal behavior, or try to cerebrally understand animals. Instead, they suggest that we allow ourselves to be affected in the way that animals may be affected. In fact, “life” becomes the capacity to affect and be affected. This would mean that environmental responsibility and “sustainability” are not some initiatives that we decide upon in relation to nature as an object, but instead the co-contamination of affects between us and nature. It changes the way in which we perceive the world, the way we understand ourselves in relation to it, and our capacities for living in interaction with it. In fact, the notion of “environment” as something external to and separate from us disappears, and we become capable of a more affective interrelationship with nature and with other human beings.

Conclusion

From the perspective of the twentieth century continental thought, “life’s” materiality shapes who we become as agents in the world. If we therefore want to understand “ethics,” we need to understand who and what we interact with, and the social orders that are created in the process. Within the context of business ethics, this precipitates a critical questioning of the capitalist practices that we participate in, and an understanding of how the coding and recoding of value in and through these practices also change us as human beings. We also have to stop thinking about ourselves as entirely separate from the animate and inanimate world, as it is through our interactions with these entities that “life” as we know it emerges.

This may allow us to reconsider new buzz-words such as environmental responsibility and sustainability from a more integrated perspective – we are who and what we are as human beings because of our interactions with all other entities, whether they be human, animate, or inanimate. This may increase our motivation to take good care of all of them.

Cross-References

- ▶ [Aristotle on Character Formation](#)
- ▶ [Hegel and the French: Economical Philosophy Instead of Ethics](#)
- ▶ [Purpose](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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Abstract

In this chapter the main point will be to indicate the contribution continental philosophy offers to the practice of ethics. Here I will consider the potentially abstract sounding concept of “the other,” which has been particularly important in continental philosophy in recent years.

Introduction

As most people have some preconceived ideas about what it means to speak about “the other,” and in order to clearly present the case for looking at the Other reasonably, I will attempt to provide a clear, if necessarily limited, introductory picture. I first establish what this term “the other” represents in the tradition of orthodox Western thinking, and what we may consider for this chapter to be conventional business ethics. I then review some Continental thinkers based mainly in phenomenology, who suggest that consciousness is experienced in the first person and not as a purely objective or quasi-scientific rational experience. In particular I consider strands of the work that has developed from Kant through Husserl and Heidegger to Sartre. I then introduce the radical interruption suggested in the work of Emmanuel Levinas, and offer some considerations what business ethics can learn from Levinas. I finally consider some consequences for conventional business and ethics following on from Levinas’s radical and controversial approach applied to three well-known theories from business ethics.

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Conventional Business Ethics

Philosophy from the analytic tradition overwhelmingly informs the mainstream orthodoxy of business ethics. Indeed, in beginning with such an analytic perspective, I am suggesting a natural starting point for understanding the subsequent development of objections based on continental philosophy, and in particular that of Levinas. These objections lead to a confrontation, or at least offer a number of potentially constructive challenges to the legitimacy of globalized business, with which I conclude the chapter. I take the term “analytic” to name this approach on the basis that traditional Western philosophy may be characterized as an approach which seeks to insure – for example, in knowing what may be right or wrong, good or bad – that any process of reasoning is correct or certain in determining whether a statement is or can be reliably true.

In this pursuit of reasonable truth, Aristotelian logic and the laws of thought are generally invoked as establishing what something is: its identity, or its ipseity. That is to say – tautologically of course – that something is what it is [2]. In Plato, we find clear strands of rationalization for alternative claims about being and not being; about that which is me as a discrete individual, and that which is not me or is other than me, and the two entities are completely separate and distinct [22]. Such are the building blocks of what develops, in the analytic tradition, as the problem of the self as a rational individual among other rational individuals. This apparently reasonable binary of what is “me” and what is other or “not me,” creates an epistemological and conceptual paradox for analytic philosophy that continues to flourish under the exigent spotlight of reason. Such is exemplified, if not determined and foreclosed, in Wittgenstein’s consideration of the basis of one person’s potential for knowledge about another person’s experience [30], or in Nagel’s exploration of the incompleteness of objective reality under what he sees as the force of realism [20]. In these reasonable circumstances, what can I actually know with certainty about the impact on another person of one of my particular actions?

One clear signature event of such paradox arises in a *Discourse on Method* [4]. I choose this example as it is continuously critically scrutinized in the phenomenological work that we will consider in the next section. Descartes’ so-called Cogito offers a perfect speech act of self-referenced, analytic knowledge: I think/I doubt, therefore I am. No outside, “other” reference is apparently necessary or sufficient to this rational orthodoxy. “I am” is a conclusion based on a single predicate, so is not even logical by the aforementioned Aristotelian rules which require two, consistent predicate claims in order to develop a third claim according to logic or reason. Nonetheless the Cogito is held by some to be a founding metaphysical principle of modern philosophy. While Descartes asserts the individual subject as a possibility after centuries of scholasticism, his subject, or self, constructs its own reality for itself. Anything other – anything outside of me – is merely an object outside the subjective self. In such a paradigm, “the other” – anything beyond the mental sense processes of the self is the categorical object of my subjectivity. The analytic self only ever employs self-referencing reason or rationalizations to understand, reduce to meaningfulness, or make sense of, all the sense-data it encounters from the objects outside the apparent control of its own mind.

Even by analytic standards, this leads to an essential if limited mode of reasonable understanding. In promoting the mind/body, subject/object dichotomy or binary, so memorably and so effectively, Descartes bequeaths us a set of oppositions in endless conflict. Such a framework, for all its rational, logical sympathy, leads only to continuing structural problems for Reason. It is entirely possible that such may be one of its purposes, although Descartes only alludes to such a seemingly perverse possibility in passing. Otherwise, and notwithstanding, the Cogito has since its origin prompted almost uninterrupted and inconclusive discussion.

When it comes to mainstream business ethics this binary- or dichotomy-laden structure seems to lead to no less confusion than it might elsewhere. Robert Solomon [28] suggests that in the context of business we are offered two broad approaches to dealing with others. In either case we can be informed by a wide range of opening positions: a sense of social justice, clear religious principles, or simple economic determinism concerning the objective other. For Solomon, we tend to take a principled approach and would thus be likely to follow a set of ethical rules, such as proposed in the UN Global Compact, which determine how we behave ethically in respect of “the other(s).” Alternatively, we take rather a consequentialist approach based on the ethical utility of our actions with “the other(s).” According to Solomon, this leads to business ethics as a field – indeed, as all other such fields of human activity such as sports, the law etc. – which is reasonably adjudicated for ethical behavior either deontologically, or on the basis of an ethical principle, in advance of an action; or consequentially, which is to say on the basis of the outcome of the action and after the event. Such a structure of rational judgments applied either in advance of an action being taken and/or after an action leads to some categorical shortcomings as implied toward the end of the preceding paragraph. How may we certainly say what is right or not without being “in” the phenomena of the moment when an action occurred?

Continental Perspectives on the Other

The continental position is generally agreed to start in the work of Immanuel Kant, who has much to say about others. In particular, indeed categorically, for Kant we should treat others always as an end in themselves, and never as a means to an end only [13]. But this treatment is still something that we – as individual subjects – can achieve through the use of our own reason alone. Later continentals take on Descartes directly and appear to be more concerned than he was with the human subject, with identity, and with the experiences of self and others. This is an approach that considers our capacity to make sense of our experiences of phenomena. Husserl [11] proposes that our experience of the world is simultaneously an experience of others and that such experience of “the other” cannot be verified. For Husserl this problem of an irreconcilable other is not about the truth, as for the analytics and Descartes in particular, but rather a problem concerning all knowledge about the world.

From this problematization of subjective being and the other, Heidegger proposes a constitutional understanding of otherness and others by casting being as primordially, being-along-with “the other.”

Understanding of Being already implies the understanding of Others. This understanding, like any understanding, is not an acquaintance derived from knowledge about them, but a primordially existential kind of Being, which, more than anything else, makes such knowledge and acquaintance possible. ([10], p. 161)

Sartre also sets out from the Cogito. Basing his theorization on an extensive discussion and critique of “the other” in the work of Husserl and Heidegger, Sartre presents “the other” as necessary to our knowledge of ourselves: “an indispensable mediator between myself and me...I recognise that I am as the Other sees me” ([26]; p. 246). Deconstructing this inescapable relation with “the other,” Sartre asserts further that it is understandable as “a relation which I call being-seen-by-another. . . .the Other is on principle the one who looks at me” ([26], p. 281). For Sartre, this “look” points to a profound problem. Despite this rational and attractive theoretical innovation, “the look of the other” becomes marooned on the reef of a self-referential and unverifiable subjectivism.

On the basis of the above characterization of traditional and analytic approaches to “the other,” further argumentation is provisionally brought to a close. In the analytic tradition “the other” is seen alternately as a real object or as an other mind. Thus, by the terms of analytic philosophy, it is unknowable, because not least, it cannot be empirically verified. From a continental perspective, while the problems are considered to be different the use of reason leads to a similar nullity.

It would seem to be conventional for Western philosophy or knowledge to take the view that when a well-established theory is shown to be wrong there is something wrong with the world, as Thomas Kuhn suggests [14]. Here I will try to keep an open mind about the world and rather seek to indicate some problems with rationalism and its dualisms as the basis of all this theorizing. Such has been implicated in organization studies:

Since the Enlightenment, thinkers have progressively differentiated humanity from the rest of nature and have separated objective truth from subjective morality. . . .The organic, biotic, and intersubjective moral bases of organizational existence, we submit, have been neglected or repressed in the greater portion of modern management theory. This exclusion has resulted in theory which is at best limited and at worst pathological. ([8], p. 896)

A pathological distrust of rationalism is a feature of critical approaches to “the other” leading to an effective separation. This separation is a structural fallacy in mainstream business and the ethics that are associated with it:

Isolating “social issues” as separate from the economic impact which they have, and conversely isolating economic issues as if they had no social effect misses the mark both managerially and intellectually. ([6], p. 80)

It is only as the result of successive and repeated failures of economic market models that we have even begun to voice a challenge to the ideology of financial market capitalism.

The Ethics of Emmanuel Levinas

For Levinas this type of fallacy is fundamentally a problem for the entire Western tradition of knowledge. Levinas offers a radically different take on the solipsistic or self-referring “problem” for analytic, and indeed much continental philosophy. He sees it as a reductive and tautological practice. Where the Cogito so clearly places the subject at the center of a self-referential, rational process, this relies upon “the essential self-sufficiency of the same, its identification in ipseity, its egoism. Philosophy is an egology” ([19], p. 44), egology being knowledge based on the explicitly individualist process of personal understanding, or reasonable thinking.

For Levinas “the other” is neither a object bestowed with blunt reality, nor another subject that I can encounter phenomenologically. It is presented, or presents itself to me, in the form of the “face” of the Other. This face of the Other “transcends all phenomenality and beingness and is, in this sense, invisible.” ([21], p. xi). Knowledge of the Other cannot be reduced or totalized to a theme or a referent. Such a practice is the project of rationalist ontology, in which the alterity of the Other is destroyed or reduced to “the Same.”

Levinas offers us a way of sidestepping or overstepping this reduction, and suggests adopting an affective, engaging, and sensual approach to the Other. He “invites us...to phenomenological contemplation of the greeting, the face (more particularly the gaze or the smile), the caress or sexuality” ([3], p. 210).

There are some points of proximity with strands of Heidegger and Sartre, for example, such as the indispensability of the Other. But this Other is not an object of contemplation or reflection. In Levinas the Other is presented imperiously, and irreducibly as the beginning of being:

I am not merely the origin of myself, but I am disturbed by the Other. Not judged by the Other, but condemned without being able to speak, persecuted. ([15], p. 94)

Equally, and more importantly for our considerations here, the Other is what calls me to responsibility and, moreover assists me to escape from the prison of my individual selfhood [18]. Responsibility for the Other comes before my personal freedom. This responsibility is not irreducible, that is, the “good” cannot be reduced to a categorical generality: “the Good does not give itself to freedom: it has chosen me before I have chosen it. No one is good voluntarily...no one is enslaved to the Good” ([16], p. 117).

For Levinas, the Other exacts my passivity, in which my prior self-assurance and certainty is shaken off. The Other requires my act or my gesture of substitution. The Other overwhelms me; demands that I take the place of the Other, that I rescue the Other.

I am responsible for the Other without waiting for reciprocity, were I to die for it. Reciprocity is his affair. It is precisely insofar as the relationship between the Other and me is not reciprocal that I am subjected to the Other; and I am ‘subject’ essentially in this sense. ([17], pp. 98–99)

In the context of such a simple presentation, the Other becomes the origin of all my spontaneous and phenomenological moral action. The effect of such radical remodeling of epistemology is to completely undermine the mainstream view of business ethics. The orthodox, deliberate, and rationalized morals of Western philosophy become alternately insignificant or vacuous. In a confrontation with the Levinasian Other, mainstream business ethics becomes a tautological reduction or theme – a commercial capture of ethics.

Business Ethics with Levinas

A number of scholars have identified business ethics issues based on Levinas's Other which raise problems both for the mainstream project of conventional business ethics and for business itself. For example:

It makes no sense for me to 'choose' to respond ethically to the Other. The ethical is that which opens me to the Other, which goes beyond avoidance of the Other or recognition of the Other as the Same. The ethical exceeds calculation of advantage, of expectation of reciprocity and of reasons for its existence. ([12], p. 227/228)

In such a construction of the Other, how can the responsibility to others (a range of business stakeholders) be construed outside of any direct face-to-face encounter? The bleak response of John Roberts is that in such a position, the Other is categorically occluded from economic relations and that thus "corporate ethics can be seen as no more than an empty, if productive, construction of ethical appearances" ([25], p. 251). More extensively argued and considering the phenomenological Other, business ethics becomes "an essentially self-preoccupied concern with being seen to be being ethical" ([24], p. 125). Such concerns for appearances may be managed at the level of corporate appearances and presentation "leaving corporate conduct completely untouched, save perhaps for a more easy identification of staff with the now 'ethical' corporation." ([24], p. 125). Formally and definitively "the corporation, conceived as an entity, is a purely imaginary phenomenon; it has no sensibility and in this sense is incapable of responsibility." ([24], p. 125).

Teri Shearer [27] reconsiders the epistemological consequences of Levinas. She argues that "economic theory creates a social world in which alterity is discursively erased; in the economic social world there is only one subject position, and a world of objects on which the subject acts" ([27], p. 558). Within the discourse of mainstream business and economics, she argues, accountability toward the Other is eliminated and instead replaced with the economic agent seeking to maximize their self-interest. Against this, Shearer concludes, Levinas's grounding of ethics in the encounter with the Other repudiates the imperialism of economic theory for two reasons:

First, in Levinas's metaphysics, the Other confronts the self as a non-reciprocal subjectivity whose very being forbids the commodification and objectification of the economic relationship. Second, this non-reciprocity instates an asymmetry in the self-other relationship that subordinates the self to the Other and hence permits the Other to make claims on the self.

This latter consequence is crucial because it disrupts the self-interested intentionality that defines the very being of the economic subject, and supplants it with a compulsion or imperative that is irreducible to the instrumental motives of economic man. ([27], p. 570)

Translating the possible consequences of such an interpretation we are heading in the direction where neoliberally rationalized markets – the paradigm of *pax mercatoria* in which contemporary business ethics discourses take place – are a regime of irresponsible enslavement for all actors. Business ethics as such is not reducible to a code or an instruction to behave ethically to the Other. Business ethics constructed around the analytic epistemology of the self-oriented individual, whether based on idealizations of duty, utility, freedom, or equality is not ethical at all.

Other commentators have translated such meaninglessness, arising from the individual nature of responsibility for the Other, to render the corporation constitutionally impotent in regard to responsibility:

Levinasian ethics is an ethics of endless responsibility for the Other and for justice. Our . . . claim is correspondingly that such a responsibility cannot be contemplated by a corporation. Corporations lack the bodily subjectivity that is the precondition of a Levinasian approach to the Other; only humans can act ethically and because corporations are not humans, it is impossible to speak of corporate ethics ([3], p. 217)

Elsewhere, in more recent theoretical deconstructions of Levinas's responsibility, Dag Aasland [1] offers to accommodate the Other within the traditional libertarian maxim. As Aasland explains it, "To Levinas both freedom and the dream of freedom is something that is experienced within the frame of the restraint it implies to be responsible for the other" ([1], p. 39).

To the extent that *pax mercatoria* is about to make the unfortunate errors that (other) totalitarian regimes have made previously, Aasland concludes that Levinas does not propose a means of applying ethics, only a means of understanding it through the Other. He directs us to Burggraeve, who also finds that economic freedom presumes a self-centered understanding of reality.

Business ethics, in the sense of ethics *for* business, illustrates this: its perspective is that of an 'enlightened self-interest' where the constraints that are put on the individual, thanks to the ability to see the unfortunate consequences for oneself, postpone the 'war', in a direct or metaphoric sense of the word. . . This enlightened self-interest forms the base not only of the market economy, but also of a social organization and manifestation of human rights, and even of some ethical theories. It is a calculated and voluntary renunciation of one's own freedom in order to obtain in return security and other common goals. ([1], p. 88/89)

Aasland concludes that academics and managers tend to be caught up in structures of power which make us violate others despite our wishes. Citing Levinas, he reasons that this is

exactly why the only way to put ethics into practice requires that these consistent structures are revealed as serving the interests of the self and then, after being called by the Other, to make efforts to change these structures, if not more than just a little bit, in the direction of always more justice ([1], p. 90)

Naud Van der Ven [29], following an exhaustive discussion of Levinas's epistemology, revealing the structural shame of rationalism, and considering the

primacy of the encounter with the Other, suggests that this critical Other must be accepted “as the final basis of truth and meaning” ([29], p. 109).

Levinas’s Challenge

This line of argumentation might then authorize what I will reassert is Levinas’s fundamental challenge to orthodox positivist determinism or rationalism as a single epistemological basis for the “rightness” or legitimacy of contemporary commerce.

Turning to the operable potential in the field of business ethics for this phenomenological Other, Levinas offers very little by way of practical direction. To reflect on this for a moment, the intense consideration or awareness of responsibility to others is not conducive to most multinational business. Most corporate managers would find somewhat wanting an “after you, Sir” attitude as the sole basis of a program of global business ethics or corporate governance. It is on this entirely reasonable basis – the lack of a performative set of instructions required by those who operate the gulag of positivism – that most practitioners, as well as many mainstream business ethics scholars, will dismiss Levinas and the inconvenient consideration of other people’s needs.

Let us conclude by briefly addressing three theories considered to be among mainstream orthodox business ethics from an analytic or reasonable perspective. I am thinking of those of Milton Friedman, R. Edward Freeman and John Rawls. Each author has suggested a way of coming to terms with a legitimate (if conflicting) way of mediating the world of business.

Necessarily painting with a broad brush here – and as each author has provoked a wide array of commentary already – I will categorize the world of Milton Friedman [7] to take no consideration whatever of others in a Levinasian or even continental sense. For Friedman, the world – which either is, or should be, entirely free (within reason) – is made up only of other individuals all of whom have been given the chance to optimize the profits of some commercial venture within the rules of the game. It would not be possible, ethically, to even consider others as objects: let alone reduce or totalize them to categories such as managers and owners.

In the case of Freeman [6] and his voluntary pluralist stakeholder paradigm, this is already much more open to others on the face of things. Indeed on the basis that this is a dangerous socialist concept, Friedman condemns Freeman for undermining the principles of freedom with the idea that a manager should consider others. I do not seek to repeat the various individualist versus pluralist arguments here; the point is that even the norms of stakeholder theory are accessible by analytic reason, and not by reference to a radical phenomenological responsibility to the other. What would it be like to have infinite responsibility to the stakeholder as Other?

Finally, in Rawls [23] we find a genuine rational attempt to bring liberty and equality together on the basis of principle rather than mere utility, through the application of a regime of consensual social justice. For Levinas, this would again result in an unethical totalization of all others as a bland similitude – how

could we ever reasonably know what would be fair, even with such rules? What plethora of individual other exceptions would there be?

But howsoever these three conventional approaches may inform ethics and the ethics of our organizations, they would each be likely to be more rather than less complex. This, at least on the face of it, is a failure for phenomenology from the analytic perspective. From the perspective of a phenomenologist this failure is reflected in the incompleteness of business ethics and management to appear to be ethical.

The anomalies that continuously arise may be characterized in the following surreal reassurance from Mr Ian Greenwood (Chair of the Trustees of the West Yorkshire Pension Fund, a UK institution managing some £9billion in assets), when he said: “Trustees would be failing in their primary role if they allow issues of ethics to cloud their investment decisions” [9]. Can this person mean what he is saying? Or whatever does he mean by such a claim? While we may by now be thinking that phenomenology has challenges for conventional business ethics, so – surely on this basis – does the behavior of institutional shareholders?

In this situation, as someone who believes that continental philosophy and phenomenology have something to contribute to every individual manager in today’s complex and precarious world, I venture to suggest that the propositional nature of Levinas’s revelation of the Other requires only a tentative tone in the direction of a practice of ethics at work. Such a tentative approach proposes a strong contrast to the strident tone adopted by the standards of mainstream business ethics as found in such normative formulations as the highly regarded standard of the UN Global Compact. Levinas offers us perhaps only a single idea of ethics, “the idea that it is possible to do otherwise than setting oneself before others” ([1], p. 80).

Imagine, as a manager, how such a focus would change your outlook on the needs of each of your employees or coworkers; your apperception of the Other as a competitor or a supplier (or an employee of a supplier); your responsibility to the Other as an individual consumer? Such particular, other-focusing – leaving aside irrelevant totalized considerations such as time or the demands of economic performance – would surely completely change the careless nature of barbarous global commerce?

Each of the commentators in the section above makes observations, which have consequences for business ethics – or, at least, for the ethics of business. These consequences suggest either remedial or radical change in the relationship between business and society, based on responding to the needs (or demands) of the Other: for more transparency in corporate reporting; for a complete rethink of market economics; for more personal and directly interactive human relations; for greater and more particular responsibility from each and every individual manager. Rarely does a commentator offer any direct practical experience with the Other – by way of example or insight into using this Levinassian idea of ethics – as the basis of seeing or imagining how work might be different. To go beyond this – in the terms of the epistemology revealed – may be to reduce business ethics once again to a self-defeating theme as revealed by authors as distinctly mainstream as Peter Drucker with the assertion that “there is neither a separate ethics of business nor is one needed” ([5], p. 200).

Conclusion

Most business ethics, whether as the complacent nihilism enacted by Mr Greenwood above, or otherwise, can obtain enormous value from the concept of the Other. By entertaining the possibility that their distant practical actions can and do have an ethical effect on the Other; by being open to the possibility that the Other will demand consideration, individual and in particular self-interested managers may find the moral strength to adjust or vary their otherwise entirely self-referenced, economically determined behavior. From Levinas' exposition of the nature of our individual responsibility to the Other we find the beginnings of an argument which invariably undermines the fundamental legitimacy of business as upheld to be correct by twentieth century free-market idealists in general and by Western democratic neoconservatives in particular. This is of huge potential significance to those far-sighted individuals searching for an alternative or diversely focused market logic.

The phenomenology of the Other makes it possible to challenge selfish modes of industrialization. For example, one could challenge in an evidently resource-challenged world the utterly reckless and irresponsible use of something as inherently valuable to life as water and power without any constraint; one could challenge plans to push up unsustainable cities or produce pointless carbonated drinks. Just because there is an outdated, intellectually flawed, constitutional, or common-law basis for so doing does not need to mean it is responsible, nor that it reflects any ethical relation to or with the Other.

Cross-References

- ▶ [Hegel and the French: Economical Philosophy Instead of Ethics](#)
- ▶ [Life](#)
- ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
- ▶ [Purpose](#)

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Abstract

In this chapter, the notion of “purpose” is discussed. It is shown that it has a long tradition in Western philosophy and that it also plays a crucial role in business ethics. Without “purpose,” or concomitant, notions such as “goal” or “result,” human rationality seems to be at risk. This, however, is not to suggest that we cannot be critical about the way this notion functions in philosophy and society.

Introduction

The word “purpose” stems from the old-French “*porpos*” (aim, intention). “*Por*” means “forth” or “forward,” and “*pos*” stems from “*poser*,” which means “to put” or “to place.” This etymology suggests that whenever a subject has a purpose, something is placed *for* him or her. Here, we have to take the preposition “for” in the temporal rather than spatial sense. The purposive subject thinks of the “something” that seems to be waiting in the future as a possibility that might occur. This “something,” which did not happen yet, is somehow believed to be capable of determining the subject’s actions. From the fifteenth century onward, people begin to use the expression “*on purpose*” to indicate that a *person* might have done something “by design.” Whenever people do something on purpose or by design we have unshakeable proof of their intelligence. Since animals are not considered to be intelligent or, what amounts to the same, to have personhood, people have been very reluctant to ascribe to them the capacity of design. This is not to say, as we will see, that people do not ascribe purpose to nature. On the contrary, in a variety of traditions throughout history – most notably, the Greek and Christian tradition – the purposiveness of everything in the world is

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taken for granted. However, it is not related to human beings, but rather to divine intelligence or to some other supra-natural transcendence. In the Greek and Christian tradition, human beings are oftentimes seen as the only mortal species capable of having an impact on that “something” that is placed for them or, perhaps better, that they actively place for themselves. An ass or a flower will always mature in ways that are more or less like any other member of their species. Human animals, however, are believed to be capable of escaping such a fixed “destiny.” Conscious design is believed to offer such an escape.

In other words, we are the most purposive animals in the world. Unlike other animals, we have our own “ends,” “aims,” or “goals.” Not to have these defies our intelligence and personhood, it defies what it means to be human. In fact, this seems to be so obvious that hardly anybody feels the need to ask anymore what purpose really means or represents. But what does it really mean to place something in front of you? What does it mean to have a purpose, to be purposive? In this chapter, a brief overview is provided of what philosophers such as Aristotle or Kant had to say about these questions. In this sense, the chapter resonates with the other chapters on these philosophers in this volume. Yet, some critical questions will be asked about the necessity of purpose. The central question in this chapter is whether we can conceive of a business ethics that does not abide to the logic of purposiveness.

On Purpose in Business Ethics and Purpose of Business Ethics

The questions asked above resonate in a variety of ways with business ethics. Its researchers are *interested* in a world which claims to be result-driven or result oriented. The end or goal in this particular world is to achieve “satisfactory” or even “excellent” results. Indeed, to this world applies what the French philosopher Michel Serres [1] not long ago referred to as the fundamental “narcotic” question of our time: *Qui va gagner?* Who will win?

Arguably, business ethicists are stunned by this question as well. They quite rightly take it for granted that business is a result-oriented activity and that the desired result is generally something referred to as “profit” or “shareholder value maximization.” The *goal* or *purpose* of the business ethicist is then to help business practitioners to focus on different, less economically inclined or money-driven goals. Hence, business ethics imposes rules where money seems to be the only ruler. The discussion business ethicists want to start is not about whether goals are necessary, but about what kind of goals are necessary. Sometimes this discussion is taken as a criticism of what is argued to be the narrow-minded focus on money in international business. It can also be taken as a criticism of the idea of economy as such. After all, what would be the purpose of economy if money is not the sole ruler? For some commentators, economy should provide people with the opportunity to become wealthy; for others, economy should provide protection for as many people as possible. But no matter what kind of goals you phrase, economy cannot evade the idea of a monetary result. If business ethics would really push through the idea that money cannot be the sole ruler, they would lose any credibility in the business world. Most of them know only too well that

they can only survive economy's result-driven world if they surreptitiously or even openly accept what they seem to criticize: financial results. In the end, they must succumb to the temptation of hard results and hence they start claiming that ethics will pay too. The logic of purpose inevitably drives them into this direction. Not to have a financial purpose is ridiculous and senseless in the economic world. It is the single most important goal. It is the goal overarching all other goals. This is why, ultimately, business ethics is compelled to make the argument that goodness pays or that profitability is good. If one, as business ethicists usually do, accepts the idea that economy or business has a purpose one cannot but accept the irrefutability of this logic.

To put it differently and perhaps also somewhat more provocatively, what would a business ethics look like if it jettisons not just the idea of profitability (something which cannot do it if it accepts the logic of purpose in the world of business) but the idea of purpose as such? What if purpose or purposiveness is a concept that undermines rather than reinforces moral behavior? What if we would, like Serres, call for a cold turkey that allows us to evade this stunning idea of purpose? This is the admittedly outrageous question we will take up in the present contribution, but it is a question that we will only approach very obliquely, that is to say, not so goal oriented.

On the Nebulous Origin of Optimism in Business Ethics

The injunction to think without purpose or result is so provocative for it apparently invites us to defy reason. To see why this is the case we need to discuss the concept of “teleology” (“telos” = goal, purpose; “logos” = knowledge, doctrine). An explanation for a person's behavior is teleological when it refers to the goal of this behavior. This goal is seen as something which explains this behavior in the sense that it is believed to cause it. For example, if a man's goal is to lose weight, this goal might be said to cause the fact that he is racing on his cycle now. If a business man is obsessed by making a profit, this might be said to cause the fact that he did not abide by the law or that he turned out to be a bully for his employees. Whether the causal link is as clear in the second case as it is in the first case is difficult to tell since this depends on what we know about the particular situation.

The learned term philosophers have used to describe the type of cause we have just discussed is “*causa finalis*,” which is commonly translated as “final cause.” Philosophers who believe that there are final causes in nature and that such causes are not just the figments of the human mind are referred to as “*finalists*.” The first philosopher who explicitly adheres to a form of teleology is Diogenes of Appolonia (fifth century B.C.) who we should not confuse with his more notorious namesake Diogenes of Sinope who lived and died a 100 years later. In a fragment delivered to us by Simplicius, the man from Appolonia writes the following:

... [I]t would not be possible without intelligence (*noièsias*) for [the underlying substance, i.e. air] so to be divided up that it has measures (*metra*) of all things – of winter and summer, of night and day and rains and winds and fair weather. The other things, too, if one wishes to consider them, one would find disposed in the best possible way. (*quoted in: Kirk and Raven, p. 440*)

In what seems to be a perfect anticipation of Leibniz's theory that we live in the best of all possible worlds, Diogenes argues that the basic substance (*archè*) of reality – in his case it was air, but that should not really concern us here – must contain intelligence, perhaps even a divine intelligence. Without such an agent, Diogenes argues, we cannot explain why things are so neatly divided as summer and winter, night and day, or rain and wind and fair weather. It must have been the regularities of the seasons that impressed the philosopher. Whence the idea of *measures*, an idea already important to Heraclite who did not, however, go so far as to explain *all* events by the presence of intelligence. Diogenes did. Kirk and Raven observe that for him “every natural event was evidently due directly to the intelligence of the pure form of the basic substance; and thus occasional local anomalies, which were permitted in the systems of Anaximander and Heraclitus, providing they were eventually corrected and counterbalanced, should not really take place.” (Kirk and Raven, p. 441) We submit that this ancient, half-forgotten fragment already evidences what drives the teleological *Weltanschauung*: a concern with regularity, a concern with measurability, a concern with plan and design, but also a concern with symmetry and beauty. Teleology's proclivity to aesthetics, Nietzsche [2] would argue many years later, is the basis of its unflinching optimism, a point to which we will have to come back. No matter how many anomalies appear, the supporter of teleology will dismiss them as exceptions which lack purpose. No matter how strong the irregular winds of chance (*tuchè*) are, he or she will always fervidly retain hope that they might be thwarted by proper measurements and intelligence.

On Why Business People Are So Prone to Line Their Pockets

Socrates is the first philosopher who tried to phrase a coherent argumentation around what Diogenes only intuited. In Plato's dialogue *Phaedo* ([3], pp. 100b–102), he makes an apparently straightforward distinction between mechanistic and final explanations, a distinction that would fatally determine all intellectual and academic endeavors in the Greek-Christian millennia to come. Mechanistic explanations merely try to explain phenomena by describing matter, movement, and the laws governing both. Final explanations, on the other hand, generally involve the notion of a “form” or “idea” which explains why certain phenomena do or do not occur. Socrates' example is very confusing or complicated even though he presents it as something which is pretty much self-explicatory: the fact that one man is taller than the other is related to the fact that he participates in the idea of “tallness.” Similarly, the smaller man participates in the idea of “smallness.” So, the idea or form of tallness and smallness causes the differences between both men. The idea functions as a final explanation for a particular matter of fact. The problem is, of course, that A may be taller than B but smaller than C, an objection Socrates shoves under the carpet by arguing that A may be simultaneously participating in both tallness and smallness. It just depends on the situation in which he finds himself. And here again, we bump into a complexity that we, for the sake clarity, want to avoid.

However, for us, it is important to understand that Plato comes up with a causal explanation that we nowadays would not easily accept. The classic example of mechanistic causality is the billiard ball which moves because it has been pushed by another billiard ball. Would he have known billiards, Socrates would no doubt reject this and would make us believe that the movement is caused by the pocket in which the balls are supposed to end. It is as if the pockets mysteriously – that is to say, nonmechanistically – cause the movements on the baize. This not what many people nowadays would like to believe. We have now come to appreciate mechanistic causes more than final ones, at least when we are talking about fairly nondescript and organic objects such as billiard balls. When we are talking about a human realm such as business, however, many people are perfectly willing to argue that refillable *pockets* are causing certain behaviors. Yet, they seem reluctant to accept that those who have these kind of goals are just like billiard balls.

On the Notion of “for the Sake of Which”

Even though we should not assume that Aristotle knew more about billiards than Socrates did, he is generally believed to have given a decisive twist to the discussion about teleology. There must be some force in nature which takes care that everything will be arranged in a good way. This force is not in some ideational realm as Socrates or Plato believed, but in the nature of things themselves. In other words, things try to achieve particular aims that are given with their own nature. Biological organisms, for example, are naturally inclined to develop themselves to maturity or adulthood. This mature or adult state is the aim or “*telos*” of their development. More precisely, it is that “for the sake of which” (*to hou heneka*) the organism developed in a particular kind of way. Aristotle argued that this “*telos*” is needed as an explanation for the development of these organisms. Even though Aristotle is at pains to show that mechanical causes are necessary, he agrees with Socrates that final causes are much more important. “The origin of something is nature and not its matter,” he explicitly writes in *De Partibus Animalium* ([4], p. 642a17). It is crucially important to understand that for Aristotle this “*telos*” has a place in nature. It is the essence of each single organism, and he adds that if scholars do not give a place to this end or goal in their explanations of why living creatures developed in a particular kind of way, “they do not say anything about nature at all” ([4], p. 642a16). Not to talk in terms of *telos* is, for the Aristotelian mindset, just as much as for the contemporary business man, simply unreasonable. We need goals in order to make sense of the world.

However, the notion *to hou heneka* seems to be defying reason for another, more paradoxical and complicated reason. To see what is at stake here, it is important to understand that the maturity “for the sake of which” an organism is progressing to its final “form” is both that to which the process is directed and that which directs the process. (Analogously, profit can be seen as that to which organizational processes are directed and that which directs them.) The reasonability (*logos*) and goodness (*agathon*) of this *to hou heneka* is precisely the mystery that a mature

plant is somehow in the seed and that an adult man is somehow in the infant. Maturity and adulthood are therefore not emergent properties but are, right from the outset, steering the entire process. They make the process intelligible for intelligent people. (Again, following this logic: the possibility of profitable results is all that is needed to render the very idea of a corporation intelligible.)

In the *Nicomachean Ethics*, it becomes clear that the “*telos*” of a human being consists in rational activity for it is reason that sets him apart from all the other living creatures. *Theoria* or rational contemplation is the highest goal for human beings ([5], p. 1177b20), but Aristotle is clever enough to point out that such is not available for all human beings. The *bios theoretikos* or *vita contemplativa* is understood by Aristotle as what engenders happiness, but for most people *bios praktikos* or *vita activa* is all that is possible. Nevertheless, Aristotle has great expectations of intelligence and in order to give it its central place, the world as such is rendered intelligible by bestowing it with an all-encompassing purposiveness. In other words, the *telos* that is the end of the process and that steers the process works as an intelligent force. For Aristotle, this force is an immanent finality, but the Christian tradition after him posited a transcendent intelligence behind this immanent finality.

The irony of history is that, in modern times, people became again much more interested in mechanical causes than in final causes. The danger that lurks behind this shift is that the world may become a place of chance and contingency, something referred to by Aristotle as “*tuchè*.” Perhaps this threat is why so many scientists and academics could in the end not resist the temptation to assume that there was an intelligence behind the mechanical world even though that intelligence did not work as a final cause. The theory of immanent finality developed by Aristotle was thus rejected and replaced by a transcendent finality (sometimes referred to as the “clockmaker,” “God,” or “benevolent genius”). Yet, even nowadays, the Aristotelian worldview has not entirely disappeared. In biology, one might argue that the very idea of the genome or DNA seems to assume some sort of immanent finality. But again, this is an issue that does not concern us here.

On Purposiveness Without Purpose

The temptation behind all teleology is that entities in the world – organisms, objects, and organizations alike – can only be explained by some end they should have. What counts for the entity as such also counts for individual behavior. Living and nonliving entities are designed, either by a transcendent or an immanent finality, in order to achieve this end. If there is no end, the world becomes incomprehensible. Immanuel Kant has provided us with what is widely seen as the most extensive and coherent discussion of teleology in modern philosophy. He did this in a book about aesthetics called *Critique of Judgment* (1790). In this text, Kant wants to reconcile teleological explanations with mechanical explanations. He clearly does not jettison teleology as such. He actually argues that organisms can only be understood by human beings from a teleological perspective, but unlike Socrates and even Aristotle he does not privilege

teleological explanations over mechanical ones. Here again, we will not go into this discussion at any length, but we will go into some detail when it comes to Kant's very specific understanding of purpose or end.

In section 10, entitled *On Purposiveness in General*, Kant [6] defines an end (*Zweck*) as "an object of a concept in so far as the concept is seen as the cause of this object." Purposiveness (*Zweckmäßigkeit*) is the "causality of a *concept* with respect to its *object*." These definitions are not easy to understand and this problem is aggravated by Kant's apparently incoherent or paradoxical use of words like *Zweck* or *Zweckmäßigkeit*. What is clear, however, is that Kant understands end and purposiveness in terms of concepts. He makes it clear, right from the outset, that his definitions are transcendental, that is, not empirical. Here, this means that end and purposiveness are in our mind as concepts, and not somewhere else (e.g., in the true nature of things). We "think" ("*denken*") of ends, and we do it as soon as we think the object itself as a consequence of what we are thinking. Here, you can easily imagine an artifact such as a painting: the artist thinks of what she wants to create, makes a concept of it, and this becomes her end. It is the end that she wants. She desires it. More generally, *will* is the ability to act according to the representation of an end.

What we learn here is that ends are not only related to concepts, but also to will and desire. Indeed, it is extremely difficult to think of a painting without thinking of the artist's will and desire. However, Kant opens up the possibility to think of purposiveness without a will, a purposiveness that escapes concept and thought. When we judge something as good, we clearly have a concept in mind of what it means to be good. When we judge an organism as healthy and mature, we have a concept in mind of what it means for this particular organism to be healthy and mature. But what happens when we judge the beauty of, for example, the artist's painting? Do we have a concept in mind when we enjoy a painting, a particular kind of music, or a landscape that we see while walking? Do we need such a concept in order to judge whether what we perceive is beautiful? Reasons and principles, Kant [6] points out, will not help us to form a judgment about whether a piece of garment, a house, or a flower are beautiful or not.

On the one hand, our judgment seems to be entirely dependent on how we see the object, as if our pleasure in seeing a thing of beauty depends on our senses and nothing but our senses; on the other hand, when we finally judge that an object is beautiful, it is as if we feel supported by what Kant refers to as "a general voice" and we subsequently expect nothing less than the support of everyone. So, if a person tells a friend that Bach is beautiful, he will feel insulted if this friend would not acknowledge this. The point here is that this would hold even when this person cannot exactly define a rule or criterion why Bach is so excellent. Kant claims that even though our judgment of beauty is without concept, this does not entail that we refrain from making a general claim on the general validity of this judgment. Since it is without concept and since ends are clearly linked to concepts, the question then becomes what beauty is. After all, we saw that in our tradition the idea of of purposelessness does not seem to make any sense at all.

According to Kant, we cannot dispense with teleology when we are discussing nature or ethics. Without the assumption that there are ends, science and ethics

would be completely unreasonable. However, this does not seem to hold for aesthetics. Somehow, it seems to be very difficult to link beauty to teleology. Beauty, Kant famously declares, is “purposiveness without purpose” (*Zweckmäßigkeit ohne Zweck*). This definition, however, has led to many misunderstandings. It is as if Kant wants to safeguard the domain of aesthetics from means-end schemes, from result-driven orientations, and so on. But it is also clear that there is still the idea of purposiveness. Does he want to have his cake and eat it?

On the Idea of Free Beauty

To disentangle the paradox here, Kant makes a distinction between objective and subjective ends. Objective ends can be phrased as concepts and hence formulated in terms of rules of guidance. When business ethicists urge managers to write down a code of conduct, then they can follow some well-defined steps that will allow them to create such a code. This is not the case with subjective ends. An example of a subjective end is pleasure or happiness. So, if the same business ethicist urges managers to feel pleasure or to become happy, then it will be much more difficult to formulate rules of guidance. Why would that be the case? The answer here is disarmingly simple: with respect to pleasure or happiness, people do not have the same opinion about what these notions might amount to, but with respect to “codes of conduct” people do have more or less the same idea. We can ask a musician to play Bach for us and then she will work according to some concept in her mind, but when we ask her to create pleasure or happiness among her audience, things will become much more difficult.

Now, Kant adds to his definition of beauty that it is purposiveness without objective or subjective ends (purposes). It is not objective since it creates feelings of pleasure and even lust, but these feelings somehow transcend the subjective too since we hear (according to Kant at least) this “general voice” whispering in our ears that others should experience the same pleasure or lust as well. In the sense that it has an effect on us, we might argue that beauty transforms us – but we hate it to see that others are not transformed in a similar kind of way, that others do not have the same taste as we do.

While this explains why beauty is without purpose, it does not yet explain why Kant still clings to the idea of purposiveness (*Zweckmäßigkeit*) when it comes to beauty. He clearly believes that there is something that beauty should do: it should bring pleasure to our senses, our reason, our imagination. This can be seen as an end, of course, but it is an end which is completely vague and general in the sense that it can be achieved in many different kind of ways. There is a difference between the task to create a pleasurable garden and the task to create a garden and a particular kind of style. In the latter case, one needs to abide by certain rules that will help you to create such a garden; in the former case, however, you are free to do whatever you like. In this way, and this is the crucial point here, Kant [6] allows for some sort of imagination. Somehow, beauty should be free from rules, restraint, and so on. So, not only parrots and birds of paradise, but also the foliage

on wall-paper or on painting frames and most music do not allow to be subordinated to a concept and are therefore denying the idea of work, task, or assignment. That is, they deny the idea of purpose.

On the Morality of Purposelessness

Why didn't Kant allow for a free morality analogously to his idea of free beauty? In section 87 of *Critique of Judgment* [6], he advocates the idea of a moral teleology. What we find in the world, he claims, is a physical teleology, but what we find in ourselves is a moral teleology which is a priori given. Here, Kant grapples with the relationship between laws and rules on the one hand and freedom on the other. Happiness (*Glückseligkeit*), he argues, is the highest good we can aim for, but in achieving it, we are restricted by "the objective condition of the correspondence of man with the law of morality (*Sittlichkeit*)". In other words, it is the law that provides us not only with an objective goal, but also with the dignity (*Würdigkeit*) that is needed to achieve it. Indeed, to live without a goal is not only unreasonable, but also without dignity.

Nietzsche believed that, on the level of organic life, Kant is right in the sense that he makes clear that purposiveness only lies in *our* idea of the world. It is not in the world as such. He may be wrong, however, when it comes to phrasing the kind of purpose *for the sake of which* everything lives. Life as such does not have a purpose. That is, if it has a purpose it is the most elementary of all: bare survival. But for human beings such a kind of purpose does not have, at least not from a Kantian point of view, any value or dignity. In the twentieth century, philosophers like Hans Jonas [7] would contest this idea: for him, survival *is* the ultimate value. For Jonas, to allow for this is the only way to bridge the perennial gap between "*is*" and "*ought*," or between ontology and ethics.

Nietzsche is adamantly clear that purpose as such is a fake concept. Neither did he believe in the distinctions such as mechanical and teleological, or subjective and objective goals. Such distinctions just tell us something about how *we* want to organize the world. On the other hand, he is clearly of the opinion that for a human being to be without purpose is simply stupid. In other words, we should face the idea that life is stupid and that our brains which allow us to endow it with some purposiveness are perhaps the stupidest entities in the world. This, however, is not to say that we should not have a purpose. No matter how illusory any purpose is, it may not be unwise to have them. Purposiveness presupposes intelligence. Nietzsche does not object, but he would add that intelligence is probably the greatest illusion.

So, in the end he believes in purposes, but in purposes that are completely illusory. Great purposes, he argues, will and *should* in the end lead to a person's own downfall. This is perhaps what only true men of genius can strive for. They never think in terms of consequences, calculations, or results. The only thing they care for is change, innovation, and transformation. These words indicate the boundaries of *their* morality. A moral person does not think in terms of consequences or teleology. He shies away from dignity and purpose. This is not

to say that his acts are inconsequential, it is rather to say that he chooses to *not think in terms of consequences*. This is his dignity. To be sure, such a dignity can be dangerous and stupid, but it is what morality, purposeless morality at least, implies. No law, no rule, no project, no Kantian issues at all here: just allow for the fact that your actions may have outcomes that cannot be anticipated at all. This entails an entirely different, non-teleological, imaginative, and perhaps even a reckless kind of optimism.

Conclusion

Where do all these reflections leave the above considerations on happiness? Should we really aim for it albeit within the boundaries of human dignity and reasonability? We are not going to answer these questions here, but wonder how they might resonate in the field of business ethics. Is profitability in business what is happiness in Kantian ethics? That is to say, is it what firms should aim for albeit with some dignity? Can we interpret the entire endeavor of business ethics as a way to bring dignity into a field that has so many difficulties to uphold its indelible illusiveness? It is tempting to think this. It would provide business ethics with a more or less robust *raison d'être*: what we do teach to managers and CEOs is to become profitable and yet not to lose dignity. But what we do not teach them is the morality of purposelessness, the morality of those who do resist the narcotic idea of victory and profitability, or the morality of aesthetics if you like.

Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Aristotle and Business: An Inescapable Tension](#)
- ▶ [Kant's Categorical Imperative and the Moral Worth of Increasing Profits](#)
- ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
- ▶ [The Figure of "Rivalry" and Its Function in Kant's Ethics](#)

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Abstract

In this chapter we explore the relationship between business ethics and faith. We show how business ethics is largely motivated by a now shattered faith in the capitalist entrepreneur. But this does not mean that business ethics is faithless. The shattered faith in the capitalist entrepreneur has made way for a number of newly created figures and concepts, including social entrepreneurship, corporate social responsibility, and responsible leadership. The belief is that these figures and concepts are capable of correcting business' dark sides, without disrupting the faith in business itself.

Introduction

The field of business ethics has a growing interest in continental philosophy [15] and continental philosophy has a growing interest in faith ([1]; [10]; [27]). However, this does not mean that business ethics has taken an interest in the topic of faith as discussed in contemporary continental philosophy. We will argue that this is unjustified.

Business ethics is rooted in various forms of faith and continental philosophy is a valuable resource in showing how faith operates within business ethics. In particular, the birth of business ethics as a discipline is motivated by a shattered faith in capitalism and its personification in the figure of the entrepreneur. With the

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development of the field of business ethics, faith today resurfaces in different ways in order to restore faith in the redemptive possibilities of business. These forms of faith are visible in pleas for corporate social responsibility, corporate citizenship, ethical leadership, and other important themes within business ethics.

Walter Benjamin highlighted the role of faith in historical materialism (Marxism, at the time) in his “Theses on the Philosophy of History” [6]. Benjamin gives us the image of a puppet that appeared to be able to play chess. A system of mirrors and strings concealed the fact that a small hunchback, who was an excellent chess player, sat beneath the table and guided the puppet’s hand:

One can imagine a philosophical counterpart to this device. The puppet called “historical materialism” is to win all the time. It can easily be a match for anyone if it enlists the services of theology, which today, as we know, is wizened and has to keep out of sight. ([5], p. 245)

Here Benjamin lets historical materialism be defended by theology in disguise. In this chapter, we will let the reader recognize hidden dwarfs as important, yet mostly unrecognized, players in business ethics, and we claim that business ethics can only be properly understood by taking the hidden roles of faith into account.

Within contemporary continental philosophy, theology is no more a hidden dwarf, but rather a rising giant to the extent that one can talk of a “theological turn” in contemporary continental philosophy. This turn has been debated in the social sciences and in cultural studies in the last decade, driven by prominent thinkers like Giorgio Agamben [1], Alain Badiou [2], Jacques Derrida [11], Jürgen Habermas [4], Peter Sloterdijk [19], Gianni Vattimo [24] and Slavoj Žižek [27].

Business ethics has, under the impression of the last four decades of scandals and crisis induced by a raving capitalism, lost its faith in the figure of the entrepreneur as being capable of ensuring the best of all possible worlds. Business ethics as a field now seeks to restore the possibility of believing in business by putting faith into newly created figures and concepts including corporate social responsibility, responsible leadership, and social entrepreneurship.

The Political Economy of the Market and the Rise of the Capitalist Entrepreneur

The German political philosopher Carl Schmitt has his own version of Benjamin’s puppet image, when he famously claims that “All significant concepts of the modern theory of the state are secularized theological concepts” ([18], p. 36). According to this thesis, even the most enlightened and liberated concepts from political theory would be haunted by a theological dwarf: secularization only removes theological motives from sight. This insight is also largely valid for management and organization studies (see [22]). For example, Martin Parker [16] has traced modern organizational hierarchies back to the hierarchy of the angels, as described in the late fifth century theologian Pseudo-Dionysius’ book *Celestial*

Hierarchy. In a similar vein, the Italian philosopher Giorgio Agamben points to angelology as the antecedent to all theories of management:

Long before the terminology of civil administration and government was developed and fixed, it was already firmly constituted in angelology. Not only the concept of hierarchy but also that of ministry and of mission are... first systematized in a highly articulated way precisely in relation to angelic activities. ([1], p. 158)

While the connection between angels and bureaucracy may appear abstract, it is part of a system with important political, philosophical, and religious implications. In this system, an important relationship is established between the theological notion of God and the economic notion of the market (and its protagonist, the entrepreneur) to which we will now turn.

The relation between faith-based institutions and the economy has always been a central matter of dispute, struggle, and war. In early Christianity, Jesus famously exempted the shopkeepers from the temple square. A related, pivotal moment in this history came about under the European reformations, centered on the Protestant reformer Martin Luther. Luther's hatred of merchants and bankers was severe, as he did not see much of a distinction between how the Catholic Church had corrupted the believers and how emerging capitalism was corrupting the same believers, now as economic agents, by dragging them away from God. The Church had been turned into a market, in which you could buy yourself out of damnation through indulgence, and Luther saw profiteering as nothing else than a systematization of this practice.

Two and a half centuries later, in 1776, Adam Smith, a Christian philosopher and economist, published *The Wealth of Nations*, in which the capitalist market is described in ways quite like the ways Luther would describe God: as a beautiful, balanced being, capable of distributing goods and providing for its actors [20]. The difference between Luther and Smith is partly inspired by another reformer, one who had a lasting impact on the Scottish enlightenment and on Smith, John Calvin (1509–1564), who intercepted the tradition and redefined Luther's less urbanized interpretation of Christianity. While Luther mistrusted the upcoming bourgeoisie, Calvin saw in it a coming stronghold for the gospel, and allowed Christians to lend money and take interests. One paradoxical product of this is that faith in the providence and faith in the market become isomorphic. In Benjamin's words, "Capitalism has developed as a parasite of Christianity in the West... until it reaches the point where Christianity's history is essentially that of its parasite – that is to say, of capitalism" ([6], p. 289).

This, of course, is far from what Calvin had intended. Calvin's theology implies an idea of God as a constant re-creator of the world, which brings with it the doctrine of providence. The world is a beautiful system, through which God's creative power constantly shines. It shines, however, in a way that does not allow us humans to see, perhaps even fathom it; God's actions are hidden. This is the first injunction of what Smith was to later make into a powerful concept, the concept of the invisible hand. When Smith picks up this notion it allows him to conceive of the world, that is, specifically, the market, as a beautiful machine which turns all the

individual vices into a collective virtue. This construction was firmly based on Calvin's theology and, moreover, allowed the believers to enter the market with a clear goal. On the market it would, according to Calvinism, be revealed, but not decided, who was redeemed. This decision lay safely, following the doctrine of predestination, with God. However, success on the market signaled that you were one of God's chosen, a motivational force famously explored and analyzed by Weber in *The Protestant Ethic and the Spirit of Capitalism* [25] in which he identifies the Calvinist spirit of capitalism as the driver behind the Northern European rational pursuit of gain in wealth. This progressive political theology opens a new vista for the most decisive figure in the modern West, that is, the entrepreneur. While faith in the transcendent deity is transformed into faith in the invisible hand and its encompassing wisdom, the entrepreneur is the figure that both draws on this faith personally, but also comes to represent and embody the object of that faith.

This move can be seen in the field of entrepreneurship studies, which has constructed a narrative around the entrepreneur that bears a deep resemblance to the way the creator operates in early Semitic and, later, Christian mythology. The discourse on entrepreneurship is not just dominated by fairy tale constructions, but indeed installs the entrepreneur as a savior of the world [21]. Not only is the entrepreneur installed as "our" savior, but it is argued that the act of saving rests on the act of creation. That is to say, the entrepreneur is kept alive through our faith in his creative powers. The entrepreneur emerges, as does God in Luther's theology, as a *deus absconditus*, that is, a hidden God. The entrepreneur now embodies, on the one hand, the Judeo-Christian myth of creation where creativity is a mystical gift from above and, on the other hand, the figure of Goethe's Faust, who sees no limit to the expansion of his knowledge even when it costs him his soul. This endows the entrepreneur not only with exceptional and superhuman powers, but also with the qualities of a vexed and potentially totalitarian version of Nietzsche's superman, a term which actually originates from Goethe's Faust: an ability to set one's own rules (values), different from the rules of ordinary people.

Popular management literature, bearing titles such as *First, Break All The Rules* [7] frequently builds upon this image. The list of these especially gifted persons who transgress moral and bourgeois boundaries is long. It might begin with the CEOs of Enron, of Union Carbide, of British Petroleum and it may end deep within our own, hidden dream of becoming that eminent cosmological exception to human fragility and mortality that finally will relieve our anxiety.

This way we eventually lost our faith in the character who took over God's place in the social imaginary. With Faust, the perfect figure for capitalism had finally come into being – the ruthless, self-legislating, and endlessly competitive social character, the Citizen Kane of modernity, the entrepreneur. However mythical, this character produces quite real and evident actions. But his powers, the mystery of his creative genius, are veiled. The entrepreneur is the savior of the moderns, yet they do not know how they are saved. He actually often appears in guises that resonate with his theological forebears. Sir Richard Branson's Virgin Airlines fleet in the air is connected to his venture capital organization also named Virgin. This gigantic company gives birth to numerous companies each year, signaling an immaculate

conception of novelty surpassed, perhaps, only by the Immaculate One, Mary, herself. All of these effects may be measured, modeled, and so on. Yet, the source of this brilliance is hidden from our sight, and we do not become Sir Richard just by reading his autobiographies – aptly named *Losing My Virginity* and *Screw It, Let's Do It* – just as we do not become gods by contemplating holy scriptures. But by recognizing the glory of the entrepreneur, we uphold the theological dwarf, namely, the savior, whom he embodies.

Business ethicists do not embrace this image of the capitalist entrepreneur. Indeed, the development of the field of business ethics is largely motivated by a shattered faith in this character, following a range of corporate scandals in which bankers, accountants, and other organizational figures demonstrated their entrepreneurial skills in less beautiful ways. The field of business ethics, despite its diversity, is bent on the construction of alternative faiths that offer a remedy to the loss of faith in the entrepreneur.

Responses to the Shattered Faith in the Entrepreneur

Business ethics has responded in three ways to the shattered faith in the capitalist entrepreneur. The first is a continued effort to celebrate the entrepreneur by making the case that the entrepreneur is essentially a moral character. To the extent that we have witnessed unethical business practices, entrepreneurship cannot be blamed for the simple reason that morality comes with the character or deeds of the entrepreneur. In this response, the role of faith remains unchanged. We keep believing in the miraculous powers of the market through the figure of the, now morally grounded, capitalist entrepreneur.

This first response claims that there is something about the figure of the entrepreneur that makes it an inherently moral character, or more generally, that there is something in business that ensures its morality. We see this in the idea that there is something about the rule-breaking behavior of the entrepreneur that implies moral qualities. Teal and Carroll, for example, have tested the hypothesis that the entrepreneur “may exhibit higher levels of moral reasoning” since he breaks with the norms of society ([23], p. 229). In a similar vein, Clarke and Holt conclude that “what is ethical in entrepreneurship is . . . preserving the capacity for self-legislation” against orthodoxy or the norms of community ([9], p. 328). In both examples, the potential dangers of rule-breaking or transgressive behaviors are turned into an ethical principle that seeks to restore our faith in the entrepreneur as we know him.

A somewhat different version of the same position is Carr’s suggestion that “enterprise is by its very nature ethical” ([8], p. 7). For Carr, it is not so much the rule-breaking nature of the entrepreneur that makes him ethical, but a “manner of living” that is needed to make small business successful – a way of living that was, according to this writer, promoted by Margaret Thatcher’s “profoundly ethical” reforms in the 1970s and 1980s ([8], p. 14).

Here faith in business and the capitalist entrepreneur is continued, but now with a more explicit argumentation for the inherent ethical nature of business. The business scandals of the 1990s and 2000s, or the financial and ecological crisis,

are not waved away as a threat to our faith in business as personified in the capitalist entrepreneur. None of this can be his fault, as his character or his enterprise guarantees “ethical business.”

The second response to the shattered faith in the capitalist entrepreneur does not see the entrepreneur as an ethical character or business as having sufficient redeeming resources in itself. On the contrary, it recognizes that the market, if left alone, has undesirable consequences. For this reason, business and entrepreneurship must be infused with an ethics from the outside. This, therefore, is the task of business ethics: to correct the “natural” course of the market by bringing in ethics. In this perspective, the capitalist entrepreneur is not to be dispelled with; he is here to stay, but he does need help from some metaphysical friends. In other words, business ethics now puts its faith in, often well-established, metaphysical systems that the ideology of the capitalist entrepreneur claimed to be able to live without.

A variety of these metaphysical friends have been proposed. Well-established ethical theories, such as virtue ethics and deontology, are frequently brought in as useful helpers within business ethics. Bass and Steidlmeier [3], for example, have argued that leadership must be infused with Western ethics, including deontology and utilitarianism, so that it can save us from contemporary organizational and societal problems. In other cases, scholars argue for the importance of grounding business in Christian or communitarian values. One study that explicitly seeks to add external morality to the capitalist entrepreneur is Post [17], arguing that entrepreneurship can only live up to its potential if it is based upon “the philosophy of global corporate citizenship,” which is defined as a philosophy in which concern for the community comes before concern for the corporation. By infusing such a “noble” philosophy into enterprise, entrepreneurs transcend the utilitarian logic that is promoted in a capitalism that lacks a metaphysical friend. With a sense of higher purpose, however, we can become like the bricklayer who thought themselves to be building a cathedral instead of just a wall ([17], p. 148). Here, belief is the defining difference that recreates the wall (i.e., business as usual) as a cathedral (i.e., a religious/cosmological whole which is much larger than the sum of its parts).

As indicated earlier, the entrepreneur has not only become identified with a certain belief system, but emerged at the same time as the figure that should finally relieve the downsides of this system, firstly economic scarcity. Yet, as it becomes evident that the created wealth is distributed via a set game that creates more and more inequality and environmental disaster, the role of the entrepreneur is, in the third and final response to the lack of faith in the entrepreneur, transformed. The “social entrepreneur” must overcome capitalism, at least symbolically, and even become a new messianic figure. As Murtola aptly puts it, entrepreneurship is then “seen as the good that has fallen and that needs to be restored to its proper place (society, not economy)” ([13], p. 129). This faith in the entrepreneur amounts to a vision of capitalism absorbing – if not absolving – itself in the process, as it does not replace capitalism with something else, but incorporates it into a much larger vision of virtue and societal redemption.

One example is 2006 Nobel Peace Prize laureate Mohammad Yunus who, in his acceptance speech, expressed his unhappiness about the “one-dimensional” conception of entrepreneurship that postulates profit making as its single driving force.

Such a conception, Yunus argued, is not just a simplification needed to grasp complex social reality; it also lies at the root of legal frameworks and practices which “insulates the entrepreneurs from all political, emotional, social, spiritual, and environmental dimensions of their lives” [26]. By reconceptualizing entrepreneurship in a broader way, Yunus sees an opportunity to “change the character of capitalism radically, and solve many of the unresolved social and economic problems.” The not so happy continuation of Yunus’ entrepreneurial endeavor, following alleged malpractices around Grameen Bank’s microcredits, confirms rather than annuls the thesis of the ethical entrepreneur as savior. It is, as Girard [12] has explored, necessary to regularly symbolically sacrifice the one that was elevated to a godly level, in order to restore society’s central structures.

The social entrepreneur is not the only figure who is elevated to this position of savior within the field of business ethics. One can also observe it in the frequent, but rarely explicit, assumption that “responsible” or “value-driven” leaders are capable of saving us from any kind of problem, or in the celebration of whistleblowers who are also valued for their messianic qualities.

Conclusion

In Žižek’s view, religion has in the current global order two possible roles: “therapeutic or critical”: “It either helps individuals to function better in the existing order, or it tries to assert itself as a critical agency articulating what is wrong with this order as such, a space for the voices of discontent – in this second case, religion as such tends toward assuming the role of heresy” ([27], p. 3). One may speculate that faith in business ethics predominantly plays the role of, staying with Žižek’s terminology, the therapeutic: it soothes the real functioning of business with various idealized conceptions of it.

This role of faith in business ethics is akin to what Nietzsche saw as a quite modern version of faith, not in a transcendent and furious God, but in a God that, “when a people [or a scientific field like business ethics] is on the road to ruin; when it feels its belief in a future, its hope of freedom vanishing forever” has to “modify himself” ([14], p. 19). This God then becomes “forever moralising, he crawls into the heart of every private virtue, becomes a God for everybody, he retires from active service and becomes a Cosmopolitan” ([14], p. 19).

We see a likeness to the immanent God of business ethics: a privatized, benign, moralizing character, shaped and molded along the ideals of human cosmopolitanism and methodological individualism: loved by all, feared by none. Business ethics has proven to be a revolution to business, but a revolution that has come with an outdated theology, namely, a weak, humanistic version, a “secularized” – and mostly impotent – theology.

Rather than contemplating corrective figures such as the responsible corporation, the ethical leader, the courageous whistleblower, and the social entrepreneur, the future of business ethics may be more promising if it could give form to the second, “critical,” deployment of religion that Žižek talks about – a heresy within and against the present soothing faiths of business ethics. In this direction, contemporary continental philosophy may offer an important source for

inspiration. Many contemporary philosophers such as Agamben and Badiou have recently begun to point out how “theology,” for example, the theology of Paul, may become a much stronger ally than one that just offers cultural soothing of a business logic like that in the financial system. Following this trajectory, business ethics may come as a revolution with a reformation, that is, a reformation of what it considers to be true. Instead of offering a partly reconstructed belief bearing on humanist/communitarian values to the shattered belief in business itself, business ethics may be able to turn theological insights against the different forms of faith that at present dominate the field of business ethics.

Cross-References

- ▶ [A Conceptual Framework of Business Ethics in Islam](#)
- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Daoism and Business Ethics](#)
- ▶ [Imitatio Dei and Jewish Business Ethics](#)
- ▶ [On Yijing as Basis of Chinese Business Ethics and Management](#)

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Part 7

Discourse Ethics and Business

Katja Thierjung

Abstract

In formulating a critical social theory, Jürgen Habermas endeavors to find a framework for evaluating the problems of a modern, globalized society and finding a substantial opportunity to overcome them. That framework also addresses, of course, questions relating to business and problems in business ethics. In this chapter, the building blocks of the critical social theory will be converged with the help of Habermas's works. As a basis, Habermas developed the *Theory of Communicative Action*. It serves as the foundation for developing his discourse ethics, which in turn are enhanced and implemented using the legal philosophy in discourse theory. The implementation possibilities of discourse ethics will finally be evaluated with the help of two fundamental paradigms from interaction economics.

Introduction

In formulating a critical social theory, Jürgen Habermas endeavors to find a framework for evaluating the problems of a modern, globalized society and finding a substantial opportunity to overcome them. That framework also addresses, of course, questions relating to business and problems in business ethics. In this chapter, the building blocks of the critical social theory will be converged with the help of Habermas's works: The first section will begin with a reconstruction of the Theory of Communicative Action and the social concept built upon it in order to explore Habermas's critical approach to social theory. The second section follows with a presentation of discourse ethics. With regard to his moral theory, Habermas views himself as having two tasks: On the one hand, philosophical theory must

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release its claim to what is, ultimately, metaphysically founded knowledge. Ethics are therefore no longer a matter of strict knowledge that is binding to all. On the other hand, Habermas simultaneously does not want to fall into relativism. In discourse ethics, Habermas believes to have found an alternative to cognitivism and relativism. The third section centers on the implementation of discourse ethics. This concretely deals with the application of norms and with the implementation of norms within a modern social context. Habermas develops for this a two-level society concept, which is intended to be tailored to modern circumstances by linking paradigms of communicative actions and systemic functional relationships. His link is the rule of law intended to mediate between lifeworlds and the social subsystems of capitalism and modern government machinery. In the interest of proposing a solution, he reconstructs the principles of a democratic state with the rule of law using concepts from discourse theory. Finally, the fourth section will make an initial analytical evaluation of the implementation possibilities of discourse ethics with the help of two fundamental paradigms from interaction economics.

The Foundations of Discourse Ethics: Communicative Action

Habermas's aim is to use the "Theory of Communicative Action" to win a moment of critical unconditionality against relativism without falling into the problems of traditional metaphysics in its continental manifestation. To do so, he hopes to build upon an immanent rationality he sees formed in empirically founded knowledge from contemporary theories. When doing so, Habermas assumes that a significant degree of rationality has already materialized in the world (see [1]). Reconstruction of this rationality is assessed according to coherent viewpoints of coherence and can claim neither exclusivity nor ultimate justification (see [2]). Simultaneously, Habermas disputes the fundamental assumptions of ethical relativism.

In order to immanently justify a comprehensive rationality concept, Habermas refers to, above all, Speech Act Theory: What is decisive for him is the experience that argumentative speech has in unifying consensus-creating power without having to revert to physical force. This moment of consensus via discourse and without violence is the fundamental building block of all of his philosophical endeavors. Habermas references the works of Ludwig Wittgenstein and his concept of rationality: Every act of speech implies one or multiple claims to validity that have to be justified using arguments. These arguments and their consensus-creating function are, for Habermas, evidence of a rationality that is anchored in the essence of normal speech. The Theory of Communicative Rationality focuses on the nature of this rationality. Also, the Theory of Communicative Rationality investigates the formal properties of methods for justifying claims of validity that agents capable of speech and action use in their speech (see [1], p. 28).

Since linguistic processes for agreement are an opportunity for action coordination, Habermas recognizes the ability of subjects to come to an agreement as being a significant element for a society to function (see [2], p. 68). Claims to validity

made during verbal negotiations are based on an evaluation of the situation. When pertaining to the order of interpersonal relations, statements are made with a claim to correctness. Statements of this kind express a norm, i.e., a certain imperative. The criterion for decidability is acceptance of the validity and/or justification. Statements of this kind are based on the mutual social world as the totality of legitimately regulated interpersonal relations (see [3]). This consent to or denial of the claims of validity presented in the discussion constitutes the basis for an agreement to a situational interpretation and therefore the possibility of cooperative action. Habermas then states that there are two possibilities for attaining consent to claim to validity.

There is teleological or “strategic action” (see [1], p. 131): Teleological action is performed by an agent that, above all else, is attempting to realize an objective that has already been sufficiently defined with precision. Thus, agreement motivates the interlocutor, empirically, i.e., with a threat of sanctions or with a perspective for reward, to initiate mutual action toward an objective that has already been indicated. Coordinating action under these circumstances depends merely on the interests of those involved, i.e., on the question of whether the benefit calculations of the individual agents match or not (see [2], p. 144).

By contrast, the objective of “communicative action” is an entirely different mechanism of action coordination. The opponent is rationally motivated to consummate a subsequent action. The objective is rationally based agreement in the assessment of situations and the expected consequences from actions, such that there can be internal coordination of action plans. According to Habermas, this happens due to the force of the illocutionary binding effect of a speech-act offer. Habermas traces this binding force to an internal relationship between claims to validity and grounds. If an agent enters into an agreement and takes a position toward the claims to validity of a speech act offer, then this position will fundamentally have “*a moment of insight*” (see [4]) in the eyes of the subject, as claims to validity cannot be accepted or denied in agreement-oriented actions without grounds. Habermas also calls the “moment of insight” the “forceless force of the better argument” or also “affection via grounds” which strongly shows the “rational side” to Habermas’ theory (see [5]). However, this moment, i.e., the rationally motivated acceptance of a speech-act offer, is not based on the actual validity of what was said but rather on the guarantee that the speaker assumes for his statement. In the event of statements with a claim to truth or correctness, the speaker will indicate grounds that will assume a guarantee for the statement. In these two cases, claims to validity can be submitted discursively (see [2], p. 69).

Habermas further states that communicative understanding is largely based on having a mutual lifeworld. This makes it possible for participants to revert to mutual background knowledge in their communication. Most arguments intended as a foundation for claims to validity in discourse are generated from this background knowledge. Each communication participant is a member of the lifeworld that is subconsciously present for him for the current setting. If the communication partners share a similar lifeworld, then most of the communication processes will be unproblematic as they can revert to the same patterns of interpretation. Thus, it is

not necessary for each individual situation to be renegotiated in full detail. Should, however, an argument be rejected by an interlocutor as being invalid, then the horizon in which that argument is embedded becomes problematic. This questions the claim to validity, and the grounds for its foundation are requested. In such cases, there is need for agreement with regard to current possibilities for action. However, it is not the entire lifeworld that is questioned here, but rather only a section relevant to the situation. The content of the lifeworld can never be entirely comprehended by the actor anyway. The content is not conscious, but rather, it is merely an unproblematic background that can become relevant in sections depending on the situation. If the same lifeworld is shared, then action coordination will be more successful. Thus, the lifeworld plays a large role when individual subjects are intended to be socially integrated into a society (see [4], p. 189).

Discourse Ethics: The Process of Moral Argumentation

In his works *Moral Consciousness and Communicative Action* and *Remarks on Discourse Ethics*, Habermas explains the methodology for transcendental argumentation and the foundations for discourse ethics. In doing so, Habermas assumes that rational agreement is based on certain requisite conditions. These conditions have already been set before any act of communication and must be accepted exactly when a human, a speaking entity, enters into a communication process with another speaking entity in the interest of action coordination. Since this objective is inevitable for every entity capable of speech and action, there is a “transcendental necessity” [6]. *Transcendental* does not mean that the general pragmatic preconditions for communication represent obligations in the moral sense of natural law: A transcendental argumentation always refers to the requisite conditions for the possibility of something. Thus, Habermas is always searching for the “general preconditions (...) under which our daily communicative practice *has always* taken place (...)” ([2], p. 141). With transcendental argumentation, Habermas embeds practical discourse as a form of agreement into the interrelations of communicative action. He bases this on communicative reason, which he believes can be easily presupposed to the extent that we, as speaking entities, are reliant upon verbal agreement in general. This transcendental necessity simply does not allow any discourse participant a choice other than to accept the conditions of communicative action a priori. Whether they are actually observed, from an empirical point of view, does not play a role. Indeed, Habermas is not naive in this point and is very critical toward the potential ability to realize a rational agreement process. However, there is a legitimacy in supposing a rational outcome if the conditions are nearly fulfilled (see [2], p. 162, [7]). If one engages in communication, one must assume that there is at least a possibility for rational agreement in order to act coherently. Thus, the argument of transcendental necessity is based on the coherence of a speaking entity with the conditions of its nature. In this manner, Habermas circumvents the burden of proof of ultimate justification for basic ethical norms and avoids the problems that an ethical cognitivist has when

wanting to deductively justify basic ethical norms. Habermas executes this argumentation chain with reference to Karl-Otto Apel. But in contrast to Habermas, Apel does, however, attempt to maintain a claim to ultimate justification using transcendental pragmatics. While Habermas does build upon Apel's conception, he wants to liberate the approach from its heavily cognitive content. To do so, he refers to the change from the paradigm of the philosophy of consciousness to the philosophy of language. According to Habermas, one cannot identify statement truths on the analytical level of language pragmatics (see [2], p. 90ff).

Habermas relies on the "weaker assumption of a claim to validity *analogous to truth* (. . .), ([2], p. 66)" which only inquires about the form of arguments that can claim validity as justifications for norms. Claims to correctness are therefore no longer reduced to claims to truth. With this concept, Habermas can avoid an anticipatory judgment of the credibility of diverse claims to validity and leave judgment to the respective interlocutor. There is no longer a duty to assess the content of good grounds. Habermas does not anticipate the outcome of rational discourse. The discursive submission of claims to validity alone determines the view of the world (see [6], p. 130ff).

However, Habermas formulates the legitimacy procedure for testing action norms. These can only claim legitimacy among those affected after submitting the claim to validity in discourse under transcendental rules. The "normative" content of discourse rules may not be equated to the obligatory content of interaction norms. The general pragmatic prerequisites to legitimate discourse are not a part of an ethical program for determining action obligations. Rather, the pragmatic prerequisites merely spell out the exterior framework for an argumentation practice in which the moral rules of human action can be tested. The normative orientation is a matter of the discourse; discourse ethics only explicate the formal rules for the dispute. The results of a practical discourse are therefore rationally motivated and can be suggested as the expression of a justified and well-founded consensus. Thus, Habermas shows himself opposed to the view of relativism. As such, Habermas is skeptical of the view that moral questions can be rationally decided at all. It is not, however, the philosopher who makes the decision, but rather the respective discourse that is governed by rules of argumentation. Habermas's principle of discourse ethics is as follows: "Every valid norm would meet with the approval of all concerned if they could take part in a practical discourse" ([6], p. 12).

To spell out rules of discourse, Habermas deliberates the conversational situation that would have to exist in order for the forceless force of the better argument to come into consideration, i.e., in order for communicative action to be conducive. These unavoidable general argumentation prerequisites, which have to be pragmatically assumed by the participants prior to entering discourse, are, above all, based on the principle that all participants are viewed as "free and equal in a cooperative search for truth" ([6], p. 61). The underlying concept is based on the symmetry conditions and reciprocity expectations of communicative action in general. This includes, for example, the principles of openness, of equal participation, of truthfulness, and of unconstraint. The path to demonstrating performative self-contradictions shows that each one of these conditions is unavoidable in attaining

the communicative action's objective of agreement via good grounds and only via the force of the better argument. Thomas McCarthy interprets the discourse preconditions as the exclusion of deception and self-deception, of consciously strategic action and subconscious communication contortions. In any case, those wishing to justify norms must accept these procedural conditions. This means that the unavoidable argumentation prerequisites are not met if, firstly, certain participants, topics, or contributions are not admitted or, secondly, when consent or denial is forced due to sanctions or suggestions (see [6], p. 161ff).

These rules can be bundled into Habermas's *Universalization Principle*: "Every valid norm must satisfy the condition that the consequences and side effects that foreseeably occur from its general compliance can be accepted unforcefully by all who are affected to satisfy the interest of every individual" ([6], p. 12). The Discourse Ethics Principle stipulates that norms can be justified. The universalization principle handles exactly this prerequisite. Therefore, it does not stipulate any normative content for the respective argumentation; rather, it sets the framework conditions for the exchange of claims to validity during discourse (see [2], pp. 76, 103).

Habermas characterizes the moral viewpoint of discourse ethics consistently with tradition as being the standpoint from which an especially high degree of impartiality in judgment, and therefore justice, can be guaranteed. However, he contradicts tradition by opposing the construction of a neutral observer and perspective distance. For Habermas, all moral phenomena are allowed into a daily practice to which we only have access as participants. Thus, the philosopher does not have exclusive access to reason. Rational decisions can only be made in discourse through discursive submission of claims to validity. Therefore, it is not possible for an individual to replace discourse with a monolog or with a dialog with an ideal discourse partner. By contrast, discourse opens up the opportunity to test the ability to generalize action norms by truly addressing all conflicting needs and interests of all discourse participants. This makes it possible to make mutual criticisms on interpretation perspectives in action situations and on the appropriateness of articulating needs. According to Habermas, moral conflicts cannot be solved "in everyone's interest," i.e., abstractly and without actually integrating the participants. Therefore, discourse transferred to the inside can serve a substitution function but cannot be an equivalent for real discourse. All who are affected must participate in order to rationally decide whether it meets mutual interest. Thus, Habermas also provides his universalization principle with a setting that guarantees the integration of all participants; in this manner, monological application is barred. The impartiality of the judgment is ensured from the viewpoint of the participants themselves (see [2], p. 156, [6], p. 76ff).

Habermas justifies this procedure using the lifeworld concept: Moral values are a part of a horizon of subconscious knowledge to which nonparticipating third parties cannot find hermeneutic access. As a result, the construction of a neutral observer falls short of its objective, as the observer does not have access to the lifeworld moral concepts of those affected. In discourse, it is possible for an individual to break through the limits of that individual's own concrete lifeworld and relate to a mutual "moral point of view" ([2], p. 174) with the others. In the

general pragmatic prerequisites for argumentative communication, Habermas finds a viewpoint that interaction participants always assume if they act communicatively at all. This is based on the structure of communication itself and not on a contextual principle that could be found independently of the individual communicative process. Therefore, a moral viewpoint can be accepted even if the discourse participants have deviating value concepts. Discourse ethics thus search for a point with precedence over all controversies, and all subjects have to accept this when acting communicatively. Habermas believes to have found this point in the reciprocity arising from free acceptance in coming to an agreement. Habermas supports this line of thought using above all else the works of Theodor W. Adorno on “intact intersubjectivity” and George Herbert Mead’s concept of “ideal role assumption” (see [1], p. 523f).

An ideal form of reciprocity requires the concept of a universally imagined, rationally motivated mutual understanding as reference point. The discursive testing of norms therefore continues to correspond to the intuition that moral statements not only claim validity for individual persons but also imply a sense of “self-transgression” ([6], p. 157). In discourse, the limits of a particular lifeworld are penetrated, be it in a family, a city, or a nation. Thus, validity is not put on level with social acceptance. Impartial judgment of the interests of all affected cannot be reduced to an equally distributed chance to assert their own interests. In order to avoid acceptance and power claims becoming identical, norm acceptance may not be robbed of its cognitive meaning. Habermas does not place consideration of this meaning into the hands of philosophers, but rather refers to “a *discursively* ascertainable, i.e., *cognitively* tangible interest visible from the participant perspective (...)” ([2], p. 84). The “validity” of moral principles is ensured mildly by the respective mutual acceptance of good grounds. The construction of a universal, rationally motivated understanding in turn requires an ideal communication community incorporating all subjects capable of speech and action that aims to attain that understanding in rational discourse. This conceptualized liberalization of restrictions in social space and in historical time is intended to serve as a guide for a discourse that does not exclude any participants, topics, or contributions. If followed, then it can be conjectured that a rational decision will be reached. The meaning of this ideal entirely corresponds to the Kantian “Idee” in the sense of constant convergence. Like Kant, Habermas refers to the example of physics, which also works with a contrafactual assumption that one can come as close as one prefers to ideal sizes. Even if this concept remains purely regulative, the claim to absoluteness in ethical norms in traditional universal ethical theories is ultimately replaced without, however, simultaneously falling into relativism (see [6], p. 155ff).

The result can claim the assumption of rationality, but no more than that. Furthermore, a selective, discursive agreement on norms in coexistence implies a time and knowledge index. Even if all argumentation prerequisites could be fulfilled, there can be no certainty that the result will withstand every future criticism. That is why the formulation of rights and obligations cannot claim “absolute validity” as the result of nonviolent discourse. Habermas dubs this the “fallibilism” integrated into discourse theory.

A further significant element of the ethics conception in Habermas's discourse theory is the differentiation between ethical and moral questions or norms and values that he lays down in *Remarks on Discourse Ethics* and then further develops in his work *Between Facts and Norms*. Habermas differentiates between two potential perspectives. While ethical questions implement the individual answers for attaining a good life, ethics factor this out completely and focus on the aspects of justice. In *Between Facts and Norms*, Habermas assigns to the two perspectives their own discourse type by applying the discourse principle to the respective subject matter, thereby inferring the matching argumentation rules (see [8]).

1. Values incorporate questions of identity and self-image, i.e., ethical questions cannot generally be answered in a manner that is obligatory to everyone. The self-image of a person or a community as a whole is shaped with the help of strong evaluations. The perspective of ethical questions is egocentric for the single individual or ethnocentric with regard to a culture. The mutual lifeworld constitutes the horizon within which new mutual action possibilities are elicited for the future. Decisions of this kind not only lead to actions but also affirm our identity and form the foundation for the lifestyle shared between agents. This does not, however, mean that rational answers for these questions would be impossible or that they would not be accessible to any kind of objective observation: The conscious decision of who I want to be can be measured against the benchmark of an authentic lifestyle. However, the validity of an ethical statement in relation to the specific life plan must be relativized and can claim binding force only toward persons of a specific origin. While cultural values and ideals do carry a claim to intersubjective validity, they do so only within the same culture group. Feats of abstraction in this area are also not at all possible in their totality. Only individual norms and actions that have become problematic can be questioned within the self-evident context of the respective lifeworld. A socialized subject cannot question the life form in which its identity has been formed in its totality (see [6], p. 35ff).

Ethnic-political questions are answered in ethical discourse. Today, in our life form, the respective answers are expressed within the legal framework of a modern life form. In this case, the "democracy principle" intervenes, which above all else is intended to avoid violent conflict by establishing a procedure for legitimate legislation. This principle is based on a viewpoint different than that of ethical discourse. The legality of the rules is inquired. In these discourses, the justification for rules is based on the identity of a surrounded community. This justification needs only to be recognized by the respective members, as they are based on shared traditions and strong valuations (see [8], p. 198). Should these ideals and strong evaluations themselves be questioned, then the arguments brought forth in discourse can only be based on historically derived clarifications from one's own self-image or on claims to an authentic lifestyle. Uncircumventable differences in interests can only fall back on rational equalization, which, however, has to materialize under fair negotiation conditions. These fair compromises should be able to secure "the integrity and equal coexistence of life forms and world interpretations" ([6], p. 166). Here, the democracy

principle indicates how the formation of opinions and of will should be institutionalized, namely, via a system of laws securing equal participation in the process of legislation. To do so, the democracy principle explicates the conditions for equal participation in discursive formation of opinions and will, i.e., the external institutionalization.

2. According to Habermas, the question of norms is categorically different. The universalization principle spares questions of good life and is only applicable to practical questions that can be debated rationally, specifically with a chance for consensus. Moral questions do not concern preference but rather the grounds for the intended validity of action norms. The objective of moral considerations are to think about norms according to which we want to coexist and through which action conflicts can be regulated in the mutual interest of all. This question separates itself from the horizon of an ethical lifestyle and demands a judgment under the viewpoint of what *everybody* could want mutually. The moral viewpoint is based on impartiality above all else, which should rule in assessing questions of justice.

Moral questions are decided using the moral principle as an argumentation rule in moral discourses. Here, the discourse principle assumes the form of a universalization principle: The normative viewpoint expresses itself in the aspiration to have coexistence regulated in the interest of all. While, according to Habermas, moral questions can only be decided upon in a discourse that actually happens, all discourse participants do have to project a communication community without borders if they want to claim validity and rationally justify that claim in discourse. The reference is always humanity and/or “presumed republic of world citizens” ([8], p. 139). This moment, which transcends experience, is decided by the moral justification practice of social conventions. In order to secure an impartial judgment, it can no longer refer solely to the context of the respective life form (see [6], p. 124).

The Implementation of Discourse Ethics

Habermas works in detail on the implementation of discourse ethics in a modern society. As a foundation, Habermas’s statements on the individual implementation difficulties in discourse ethics with regard to cognitive and motivational problems should be discussed first (see [1], pp. 225–366, [2], p. 127ff). Both problem forms originate from the application of abstract norms on distinct individuals in different situations. Since individuals are overwhelmed with solving the consequential problems alone, they have to be solved via a social order. To do so, the conditions of a modern society according to Habermas are stated. They are decisive for designing a social order with regard to the assertion of moral consensus. Responsible for this are rationalization processes, which lead to a redesigning of society and allow the difference between a modern and premodern society to emerge. Finally, Habermas’s ideas on the relationship between ethics and law based on the lifeworld circumstances of a modern society will be presented.

In a lifeworld in which justice questions are not separated from the questions of good life, moral judgments are only made in concrete contexts. This can be drawn from the certainties of a given life form. This means they have the advantage of a direct action-motivating force. If, however, the questions of justice are separated from the ideas of a good life, then distance from the concrete context is introduced and, therefore, distance from the corresponding lifeworld background. Moral questions aim at general answers distanced from the individual case that can be solved using the background knowledge of the lifeworld. As a result of the practical deficit, a difficult mediation problem generated between general and formal principles on the one side and morality on the other (see [6], p. 42). There are two problems relevant to the implementation question: cognitive and motivational.

The *cognitive* problem originates from the application problem of norms and action forms that have been legitimately grounded according to the procedure of discourse ethics. Here, the limits to discourse ethics can be seen, as they do not directly stipulate what the correct action decision in an individual case under given circumstances. The logical argumentation role of the universalization theorem is restricted to justification discourse. In order to determine the correct form of action in an individual case, it becomes necessary to bar a further argumentation step after the first of the norm justifications, namely, the question of application. To do so, the distance from the context must be reversed again. Even if the universalization principle has already been set aside as an argumentation rule for the results and consequences of general norm compliance for the benefit of each individual, it is impossible for all consequences of potential applications of a norm to be taken into consideration in justification discourse. Neither time nor knowledge is such that all situations could flow into the justification. In order to legitimately apply a norm, another discourse has to be held, namely, application discourse. In it, the norms and obligations, which are initially an unquestioned part of lifeworld knowledge, play the role of grounds. The principle of appropriateness assumes the role of the universalization principle. It cannot be assumed that the idea of impartiality has been satisfied until both discourses have been held, and therefore, both principles have been applied. In application discourse, it is no longer the general validity of the norm that is of significance for each individual and its interests, but rather the effects from general compliance with the norm in a certain situation. The situational circumstances give the norms' implementation concrete form (see [6], p. 139).

In the case of a norm collision, the relationship and, above all, the differences between abstract justification and concrete application discourses become particularly clear. In application discourse, what counts are the circumstances of the situation to which a certain norm is being applied. They determine the consequences of general compliance or noncompliance with the norm in this specific situation. These consequences are then illuminated from the perspective of those affected and their interests. However, the other norms that fall behind the norm being applied to the specific situation do not per se lose their general validity which can only be questioned in justification discourse. Observing the individual situations and application discourse makes it possible to give a certain form to the disordered batch of applicable norms justified during justification discourse.

By following the principle of appropriateness, Habermas is hoping for a coherent order, which, of course, experiences a change in relations with each new situation.

The *motivational* problem is found when justification questions are detached from context and answers then lose the action-motivating force previously yielded from the self-evidence of the lifeworld. There is merely a chance to generate rational insight into the morally “right” action and to hope that it is followed. Habermas knows that, above all, the question of motivation is a decisive point in moral theory as this motivational problem of anchoring moral insights includes the question of the ability to implement ethics. In order to solve the problem, rationally motivating insights have to be remerged with empirical stances. Habermas attempts to solve this problem by connecting an interest-based perspective with a moral perspective. McCarthy interprets this as locating the objective of discourse in a consensus on the interests that can be generalized. The model does not intend to exclude individual desires, needs, wishes, and interests; rather, it intends to subject them to rational aspects during discourse. Discourse therefore ensures, on the one hand, that all affected interests are integrated. Individual interest is accounted for by the nonreplaceable consent of each individual. On the other hand, the egocentric perspective has to be overcome via discourse and the universalization rule in order to attain violence-free agreement as the objective of agreement. By connecting the consent and integrating the others in the discursive process, it becomes possible to attain agreement reflecting the interests of each individual without renouncing social relationships. A moral that is stipulated abstractly and without a reference to the empirical world cannot emerge at all (see [6], p. 72, [7], p. 372).

When an ethical principle has been accepted by all participants in discourse, discourse ethics do not claim that this ethical principle has action-regulating force. Habermas even establishes that the requirements placed on the discourse participants are extremely high. The following question is posed: How might moral insights and empirical interests fit together? With Habermas, the problem of weakness of will refers to a broad field of external conditions that must be fulfilled before it becomes “reasonable” ([6], p. 136) to adhere to valid moral judgments. For Habermas, “ethical” means “generally reasonable” anyway. If a certain situation demands a decision that will have a sacrifice regardless, then that sacrifice is not ethically made according to Habermas, but rather voluntarily provided by the discourse participants. Habermas also bases this on there being no interest in dilemma situations of this kind that could be generalized. Therefore, there is also no corresponding norm that everyone would consent to in rational discourse. That is why the weakness of will should not be understood as a negative attribute in the traditional sense (see [8], p. 148). In this context, he also refers to the relationship with socialization processes, identities, institutions, and normative contexts. For when the social context is such that motivation usually places the actor in opposition to his own interests on good grounds, then it cannot be expected of him to give preference to insight. This reasonability condition ensures that compliance with moral commandments is not only of mutual interest but that they also do not demand an unreasonable sacrifice from the moral actor. Habermas knows about the impossibility of lastingly positioning the force of moral insight against

empirical interests. If the conditions named are not fulfilled, then the procedure of discourse ethics can only ensure that the principle accepted in the discourse can only play the legitimate role of justification for a certain action in an action conflict.

The subjects are ultimately overwhelmed alone with the two consequential problems of distancing in reason-based ethics. Therefore, structures must be available in the lifeworld that ensure the social and moral integration of individuals. Habermas therefore drafts a societal concept for implementing discursive ethics in a modern society with the paradigm of rule of law as its objective. In order to justify this, he clarifies the conditions for modern societies. Habermas described the progression from a premodern to a modern society in the "Theory of Communicative Action" as a rationalization procedure. This leads to new conditions under which a mutual understanding of ethics can be developed. Modern societies, namely, show the characteristic that ethical background knowledge is increasingly questioned rationally and negotiated via communicative processes. Individuals, however, are overwhelmed with the resulting tedious communicative coordination work. Therefore, an additional mechanism has formed in modern societies intended to relieve communicative processes. This mechanism ensures the coordination of systemic action consequences. Habermas develops a two-level society concept with that basis. He conceptualizes modern society as a lifeworld and a system simultaneously. The socially integrated lifeworld is responsible for symbolic reproduction, while the functionally coordinated system and its subsystems from capitalism and the modern state apparatus are responsible for material reproduction (see [1], p.198, [4]).

As a result of the two different social integration principles, two subsystems stand in irresolvable tension: Democracy is reliant upon legitimization of political objectives by the collective, thereby remaining dependent upon the lifeworld context and agreement-oriented negotiation. The coordination principle for determining aims is built upon the social integration mechanism. Since, however, capitalism can be entirely decoupled from the lifeworld using the symbolic medium of money, action coordination is performed solely via systemic relations and strategic action dominates in order to guarantee the success of indicated objectives. Based on the principles of democracy, modern societies claim primacy of socially integrated action areas over objective system relationships. Lifeworld members confirm or correct values consensus in social discourse. The state should assert this value consensus against business. This task is based on, above all, market failures qualified as such by the lifeworld. The states should hinder or mitigate crises and compensate for undesired side effects on the lifeworld. Here, Habermas refers, above all, to the equalization of economic inequalities and the arrangement of labor and social laws (social safety net and compensation for disadvantages from structurally weaker market positions, such as employees, tenants, and customers). The authorization of functional necessities of systemically integrated action areas should be questioned via agreement-oriented action of lifeworld members. Capitalistic momentum can only be implemented to the extent it is accepted by lifeworld deliberations. Against this background, we can understand Habermas's description of fundamental tendencies within advanced capitalism and his criticism of the consequential disempowerment of democratic institutions and processes (see [4], p. 505ff, [9]).

However, Habermas also establishes that systemic structures have an evolutionary entitlement, particularly when involving material reproduction. Lifeworld considerations therefore should also not intervene in systemic relationships: The economy, for example, may not be controlled via the symbolic medium of power. Above all, Habermas sees the precedence of private investments as an important element in the independence of an economic system. State control should only cover the framework conditions governing economic transactions between private companies. The organizational form of the capitalistic economic system must remain untouched. Furthermore, the structure of this economic form may not be changed: While social policy should compensate the extremely disadvantaged and dampen uncertainties, it may not touch “the structurally unequal property, income, and dependency circumstances (. . .)” ([4], p. 511).

The exchange relationships between system and lifeworld, however, are not, according to Habermas, compromised by the processes of bureaucratization and monetarization’s intervention in the lifeworld. The purely perfunctionary action is no longer limited to subsystems alone but rather stretches to cover public and private areas of life. According to Habermas’ evaluation, the increasing expansion of perfunctionary action orientations beyond the borders of subsystems affects undesirable developments. Pathologies are triggered by replacing communicative action with systemic control mechanisms in symbolic reproduction (socialization, cultural reproduction, and social integration). Specifically, in relation to the symbolic medium of money, there is a monetary renaming of objectives, relationships, and services. Life areas cannot be “technically reorganized” without consequences, i.e., subjected to perfunctionary action. These functions can, at most, be technologically expanded with regard to communication, organizationally mediated or rationalized. The expansion of the “monetary-bureaucratic complex” ([4], p. 516) becomes a hazard for agreement potential and consensus chances in the private and public spheres. Habermas calls the penetration of system-integrative mechanisms into communicative action areas the *colonialization* of the lifeworld or the *Technical Reorganization of the Lifeworld*. Habermas takes this concept from Niklas Luhmann who notes that the rational interior structure of agreement cannot be reproduced in an exchange process with symbolic media, as experiences and actions will not be verbalized or understood [4, 10].

Since there is entitlement for both integration mechanisms in a modern society, although they compete with one another, the task arises to assess the balance between the requirements of a lifeworld’s moral consensus and the subsystems’ functionalistic imperatives in a modern society (see [4], p. 350). In order to establish a compromise, Habermas searches for a communication medium that allows mediation between the system’s claims and those of the lifeworld. In his work *Between Facts and Norms*, he attempts to reconstruct the right to a medium of this kind (see [8]). Resolution of tension becomes possible because this right has a distinct compulsory and simultaneously binding moment. Furthermore, law receives its legitimization via a discursive practice in which the members of a society agree upon the fundamental questions of coexistence. Discourse connects the legal code to the medium of common speech, thereby connecting it to the

lifeworld. The simultaneous threat of external sanctions and the supposed legitimization of a rationally motivated agreement make legitimate implementation possible. This gives law an expectation-stabilizing effect, and it can assume the function of securing social solidarity when social rules can no longer secure integration via communicative processes. On the other hand, law is what makes it possible for the controlling media of money and power to set up markets and organize a state authority, as the operations in these areas are realized in forms of law. As a result of this function, law must place the messages of the lifeworld into a form that remains understandable for the specialized codes of the controlling media of money and power.

The historical rationalization process that elevates modern society from premodern society has made rule of law both possible and necessary. With legal discourse, the moral consensus for the legal community can be adjusted and placed into a form for institutionalization. Rule of law is also a model for how humans can legitimately govern their coexistence using law as the foundation.

Critical Appraisal and Suggestions by Interaction Economics

Considering the effects from international functional interconnections, such as international financial and commercial crises, and also global risks, such as climate change, worldwide migration, and epidemics, a justified question poses itself regarding the extent to which discourse ethics represent a theoretical concept that helps to counteract global challenges. This particularly applies with regard to a sustainable future perspective for global business ethics. Karl Homann's interaction economics should help here to illuminate certain theoretical modules.

One significant element of interaction economics is the differentiation between framework rules of action and actions within framework rules. This relationship can be clarified using modern economic processes. The starting point for deliberation is the competition in a market economy. An individual cannot, against the background of competition, be forced to allow himself to be exploited due to his own ethical conduct. If ethical concepts are not (yet) anchored in framework rules, then competitors are not subject to the same action restrictions. In a case like this, it is expected that society finds framework rules under which an individual does not constantly have to infringe upon his own interests in order to maintain ethical norms. Homann expands this concept to the systemic forces of capitalistic rules. For its implementation, ethical norms must be imposed upon all actors via action restrictions. The state must also ensure that ethical behavior does not lead to the economic ruin of a company. Ergo, the implementation of ethical norms should mainly occur by creating mutual (legal) rules. If no tribute is paid to this insight on systemic forces, then the conditions of a modern society are continuously ignored. In this context, Homann calls for the omission of appeals for ethical behavior if that behavior leads to systematic disadvantages for individuals. Ethical rules that "should" be adhered to can only be implemented if action restrictions are adjusted correspondingly. However, actors are called to collaborate in creating the

framework rules. According to Homann, an individual has a moral responsibility not only to follow the framework rules but also to participate in creating those rules (see [11, 12]).

In a second step, Homann applies this concept to social interactions as a whole. The underlying method for this is the *prisoner dilemma* and, in a more general sense, the concept of dilemma structures. The individual constellations of interests and the resulting outcome are reconstructed from game theory. The prisoner dilemma explicates the situation that interests are such that none of the benefits calculated by the participants could be fulfilled optimally. Under the stipulation of teleological action, the prisoner dilemma cannot be overcome without changing the framework conditions (see among others [13]). With the help of this concept, the structures of interactions can be analyzed. All interactions can be represented in dilemma structures if one assumes that each action situation has mutual and conflicting interests simultaneously. If there are no effective behavior conceptions, and therefore no stable behavior expectations, then dilemma structures will lead to a “social trap” [14]. Joint cooperation will not occur due to rational fear of exploitation. The dilemma consists in this event being Pareto efficient for all participants. The sole chance for overcoming or rather suspending these dilemmas is for institutions to create a reliable behavior obligation via incentives and sanctions. Setting up institutions of this kind is a task for policymakers according to Homann. In this manner, dilemma structures can be specifically implemented and resolved. For Homann, these interaction patterns are a decisive instrument for implementing ethics. The question of implementation thereby becomes a decisive moment in the process of justifying norms.

The systemic forces in the subsystem of economy constitute a part of the theory of communicative action. Habermas also explicitly emphasizes that the systemic integration mechanism can no longer be circumvented. The material reproduction of a modern society is reliant upon systemic integration. The reconstruction of the medium of law as the mediator between systemic and social integration can be understood as an attempt to move the legal rules of interaction relationships into the foreground. This means that Habermas’s theory has nothing against emphasizing framework rules as a significant component for implementing ethics as long as the claims of ethical action rules are rationally tested via legal discourse in the lifeworld society and then rational consensus is met. Focusing on framework rules even offers an opportunity to deliver a framework for mediating between systemic and social integration. These framework rules should be created using the template of ethical norms that would have to be resolved rationally by life forms in moral and ethical discourse. Implementing rules that “should” be followed and resolved via discourse could therefore focus on creating institutions that can overcome mutual dilemma structures. In this way, ethical action rules could be tailored to the empirical circumstances and the state of international relations of the times. Additionally, there is a chance to integrate concepts of ethics implementation other than criminal law, such as the concepts from institutional economics, which has the objective of placing incentives (see [15]).

In his definition of legal discourse, Habermas accepts that the question of implementing a norm and its consequences plays a decisive role (see [7]). However, it cannot be overlooked here that Habermas, contrary to Homann, directs discourse ethics toward knowledge of ethical norms. Even if this can never be secured, there is indeed the presumption of a rational result in the foreground. The moment of rational insight differentiates him from the advantage/disadvantage calculations in Homann's conceptualization.

Discourse ethics' efficiency in relation to opening up future perspectives depends, in any case, on the discourse, on actor integration, on equal participation, and on forceless insight into good grounds. In this context, Habermas himself does not express clear reservations toward the system forces of the capitalistic economic system. Even if there is an indispensable place in material reproduction assigned to systemic integration, Habermas still warns of a "colonization of the lifeworld." Power and/or economic interests have a falsifying effect on discourse the moment in which an agreement is forced with their help. In cases like this, both the commandments of rational agreement and the demands of a symmetric relationship among discourse participants are broken: Circumventing linguistic consensus processes using the money or power code signifies a contradiction to the reciprocity expectations of transcendental argumentation preconditions and the opposite of rational agreement, according to Habermas.

These considerations against falsifying discourse using economic and power interests must be made when dealing with the design of framework rules, particularly in a global context. This is reinforced by the consideration that the pluralism of ethics concepts represents a further set of problems for discourse (see [16]). While discourse ethics do provide the theoretical groundwork for a solution, there are still grave problems for implementation.

For Habermas, this partially leads to unnecessary polemics against the modern market economy, which appears to obstruct a perspective for discourse ethics. If the modern economic system truly is uncircumventable, then paths must be found to deal with the demands of the capitalistic system. However, Habermas's reservations lead him to a "dualism" [17] of business and lifeworld, which makes it many times more difficult to find and implement consensual ethics. If both integration mechanisms of lifeworld and system have authority, then there is "only" the question of in which situation should integration mechanisms have primacy. With Habermas, this question is resolved using the medium of law. Legal discourse decides how law and framework rules should look. It appears to be imperative that actors acting in the subsystems of systemic integration represent and justify their interests in legal discourse. While this primarily implies "force-means-considerations" based on the logic of capitalistic market economics, it does not result in exclusion from legal discourse which shows Homann's statements on the moral quality of the market economy as an integration mechanism for societies (see [13], p. 49). Economic viewpoints, on the other hand, would be permissible in discourse as grounds even if they are not significant. Their claims and their authorization must be tested in rational discourse. Furthermore, it appears to be counterproductive to rigorously exclude the actors of a market economy from

designing these rules. The capitalistic economic system is dependent upon the medium of law as a tool for designing market rules, and its actors would therefore have an interest in collaborating in legal discourse. If empirical factors can be presented as grounds in legal discourse, then those participating in the economy must also be authorized to show the significance of systemic forces for material security. The competition between the claims of systemic and those of social integration would have to be contented rationally and discursively. Only in this manner can it be guaranteed that the consequences of implementing ethical norms flow into justification discourse. The potential for integrating business into designing law is therefore not only recommendable but also necessary (see [15]). For this purpose, Ulrich Beck even sketches out a model of shared sovereignty between states and global economic actors [18].

However, discourse ethics does not obey any consequentialistic principle. In contrast to the ethics of conviction, it does allow for orientation toward consequences in discourse, but the rules that indicate the framework for testing claims to validity solely obey the principle of reciprocity. The pragmatic preconditions in communicative action cannot be restricted in the name of considering overall benefit, as the sense behind violence-free argumentation would otherwise be destroyed (see [6]). Thomas McCarthy attributes therefore to discourse the task of accounting for all relevant evidence of ethical action rules. They, in turn, are independent of the consequences of implementation (see [7], p. 355).

It becomes clear that the problem with legal discourses is securing reciprocity. Inequalities can appear quite quickly, which undermines the rationality of discourse. A prime example of this is the dominant role that multinational companies have in the process of globalization. When they control politics and are not democratically monitored, it represents an infringement upon the principle of discourse ethics of not decoupling systemic forces from lifeworld apprehensions. Here, discourse ethics at least provide an orientation when it comes to designing discourse. An autonomous public that works for reciprocal discourse and considers grounds rationally is of decisive importance for the success of (nearly) rational discourse. It remains to be seen whether this foundation is sufficient for solving global problems.

Conclusion

In conclusion, it can be stated that Habermas awards primacy to (discursive) ethics in the form of communicative action in relation to the subsystem of economy. It ultimately represents the framework for demarcation of the exchange between communicatively structured spheres of life on the one hand and the subsystem on the other. The regulative concept for testing ethical norms consists in undominated discourse emancipated from systemic forces, i.e., a general, unrestricted, and rational discussion between lifeworld members. However, the functional interrelations in the subsystem economy have evolutionary authorization, particularly when involving material reproduction for modern society. They must be acknowledged and evince the limits to lifeworld considerations. Habermas endeavors to use law to create the requisite reflection

and controlling potential, which includes not only the lifeworld conditions in legal discourse but also systemic forces. The intention is to create a supplemental relationship between an autonomous public on the one hand and spheres of action controlled via money and power on the other hand. Discourse ethics provides orientation when dealing with processes for creating framework rules for (global) economies. It remains to be seen, however, whether the process indicated by discourse ethics is sufficiently robust and forward-looking in order to counter global challenges.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Corporate Human Rights Violations: A Case for Extraterritorial Regulation](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Discourse and Tractable Morality](#)
- ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)

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Abstract

It is a relatively common assertion today that globalization is leading to a change in the role of the corporation. While globalization exposes the limited ability of nation-states to develop effective systems of global regulation, concurrently, we witness privatization of areas that formerly were the responsibility of the state. The combination of a global governance deficit, increasingly influenced by corporate responses such as self-regulation and/or involvement in global institutions, combined with a greater involvement of corporations in delivering roles formerly assigned to state governments, has led to proposals that we need a new paradigm for CSR. It is suggested, by Scherer and Palazzo, that this paradigm needs to recognize the more politically active role of business in today's evolving post-Westphalian global order. This "political CSR" needs to acknowledge that the old presumptions of liberal democratic theory, in which there is a strict separation of the political and economic spheres, no longer applies. Instead, Scherer and Palazzo argue that, for pragmatic reasons, the theory of "political CSR" should be informed by Habermas's theory of deliberative democracy.

In this chapter, we first outline the arguments made both for "political CSR" and for its linking to deliberative democracy. We argue that by presenting deliberative democracy as a pragmatic and procedural approach to questions of the political, Scherer and Palazzo overlook and sidestep the importance of also understanding the philosophical underpinnings of Habermas's theory. Exploring those philosophical issues more directly, we expose the limitations and the hidden depoliticizing normativity of "political CSR" – illustrating this

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empirically with a critique of the Forest Stewardship Council, Scherer and Palazzo's exemplar for "political CSR" and deliberative democracy. As a corrective, we confront directly the philosophical issues raised by Habermas's development of critical theory. By situating his work in the context of philosophical debates in critical theory, both before and since Habermas, we show how critical theory has persistently failed to identify universal philosophical foundations from which to derive normative positions. In contrast to this problematic search for grounding universals, we argue that "political CSR" needs to be developed through political theory that recognizes that the core of the political is always difference, contestation, and undecidability. We propose therefore that "political CSR" ought to be developed with much more reference to post-foundational political philosophy and suggest that a more appropriate political theory to turn to would be Laclau and Mouffe's social theory of hegemony and the radical democratic perspective that this leads to.

Introduction

A highly respected CSR (corporate social responsibility) scholar (Tom Donaldson) has recently suggested that "we are in the most critical phase of an almost two-century-old realignment of values and business; that we are witnessing a permanent shift in the tectonic plates underlying modern industrial society" such that "we are undergoing a deep transformation in the logic of modern capitalism," a transformation that will require an "epic, social realignment of business" [1]. Why is that? In Donaldson's view, it is because "social responsibility and environmental issues" are now entering the picture. This change, understood by Donaldson as an evolution of democratic capitalism in which the gap between morality and markets progressively closes, is presented as a two-stage process. The first stage, now well advanced, has involved the creation of effective laws and regulations to legitimize, harness, and facilitate the powerful operation of markets. The second stage, which is seen to be in "its early, critical evolution," is one in which we are living today, and this involves "the transformation of private attitudes, mores, practices, and institutions."

Donaldson's analysis is doubtless contestable on a number of counts, not least of which, in the light of the unevenness of economic development and the presence of frequently oligopolistic markets, is the question of who counts as "we" and whether it is morality or even democratic pressures, rather than enlightened self-interest by elites, that has produced the current highly imperfect system of global regulation of markets. These questions have been debated extensively elsewhere. What we want to draw attention to here, in contrast, is the suggestion that, to date, advanced capitalist societies have established a somewhat effective *procedural* system for the regulation of markets and the values of business and that the further development of ethical business now requires a transformation of the "attitudes, mores (norms), and practices" of individuals and dominant social institutions. Donaldson does not explicitly say

it, but we understand him to imply that the “epic social realignment of business” and the “deep transformation” of capitalism’s logic are inseparable from a radical change of *identities and social institutions* (Donaldson explicitly refers to a needed “revolution in social attitudes and economic life” [1]). In short, if we are to accomplish the second stage of the “transformation of modern capitalism,” this will involve not just more or better *regulation* of existing identities and institutions but will require the development of a different way of *making sense* of who we are and a transformation of the society in which we live.

It is the prospect, and arguably the necessity, of momentous transformation that makes the topic of CSR and business ethics an especially profound issue and the development of a relevant understanding of CSR a daunting challenge. Donaldson’s reference to a “deep transformation in the logic of modern capitalism” implies an extension and perhaps a reinvention of CSR that moves far beyond questions of how to develop effective social regulation of business, or even whether responsible businesses are more profitable or sustainable than less responsible competitors, or indeed questions of what should count as “responsible” business practices. Far beyond these issues, Donaldson’s talk of “deep transformation” and “epic, social realignment” of business implies a radical and questioning reformulation of the role of business in society, how this relates to the logics and practices of our late-modern or postmodern globalized society, and how we understand processes of social change and their relationship to the transformation of identity.

It is this expansive vision of, and associated challenge to, the identity of “business ethics,” and CSR more specifically, that we address in this chapter. We do so by considering what, to date, is perhaps the most developed and influential attempt to rethink CSR: Scherer and Palazzo’s “political CSR.” A paradigm shift is needed in the theory and practice of CSR, Scherer and Palazzo [2] contend, in order to recognize and attend adequately to how transnational corporations (TNCs) are taking on roles previously ascribed to, or performed by, the state. These “roles,” as we understand them, include assuming some degree of responsibility for the “social responsibility and environmental issues” to which Donaldson alludes. More generally, these changing roles and responsibilities of the firm, occurring in parallel with the “transformation of private attitudes, mores, practices, and institutions,” [1] imply the need for a new theory of the firm less in thrall to liberal democratic thinking.

In liberal democratic theory, legitimacy derives from a depoliticization of the economic sphere: The economic activities of firms are conceived to exist separately from other spheres of activity, such as those of morality or politics. Firms are understood to preserve their legitimacy as long as they operate within the regulatory framework developed within the political sphere. Scherer and Palazzo do not question this understanding but argue that it no longer holds in a situation where the morality of business, as distinct from its legality, is being directly questioned and where firms are increasingly taking over functions from governments, partly as a consequence of deep privatization (including military services and prisons) but also in response to criticisms of their morality (e.g., with respect to their support and

use of NGOs that certify the sustainable and/or fair trade sourcing of raw materials). As they put it, “political CSR” offers:

a new understanding of global politics where private actors such as corporations and civil society organizations play an active role in the democratic regulation and control of market transactions. These insights may enrich the theory of the firm with a more balanced view on political and economic responsibilities in a globalized world. ([3], p. 901)

Scherer and Palazzo’s “political CSR” favors an alternative theory of the firm in which there is a dedifferentiation of the spheres of economy and morality, such that morality or “business ethics” becomes pivotal and the firm is thereby “repoliticized.” Our reading of Scherer and Palazzo’s advocacy of “political CSR” is that it is primarily oriented to the managerial question of how businesses and their senior executives can retain legitimacy when acting as overtly “political” actors. The principle objective, it seems, is to construct an alternative perspective and associated framework for assisting corporate managers in remedying a growing legitimacy deficit with regard to “environmental damages (and) human and labour rights abuses” ([3], p. 903) and thereby restoring or strengthening the legitimacy of business. As Scherer and Palazzo conclude their article, “The theory of the firm needs to be developed further for managerial decision-making in extremely difficult regulatory contexts” ([3], p. 922).

In principle, however, the model of deliberative democracy that underpins the advocacy of “political CSR” is not confined to the question of how to restore legitimacy to rapacious global business or a privileged elite of corporate executives (and above or behind them an upper echelon of financiers). For the process of deliberative democracy can, in principle, be applied to question the legitimacy of business itself – with regard, for example, to its complicity in global injustice, huge differentials of pay, environmental disasters, global warming, and so on [4, 5]. If business is to change radically, as commended by Donaldson, then it undoubtedly requires a postliberal theory of the firm and, with it, a very different conception of CSR. Scherer and Palazzo propose a notion of “political CSR” that is inspired by Habermas’s theory of deliberative democracy, which is forged from his normative theory of discourse ethics (see also ► [Chap. 26, “Fundamentals of Discourse Ethics”](#)). Their diagnosis, for which “political CSR” is their prescription, valuably highlights the growing crisis of legitimacy for business and offers some pointers for making sense of how business is responding to “social responsibility and environmental issues” [1]. But we are not persuaded that “political CSR” based upon Habermasian deliberative democracy provides the only, or even the most relevant and valuable, resource for addressing these concerns.

Our aim in this chapter is to appreciate and appraise Scherer and Palazzo’s proposition and then to outline an alternative perspective – in the form of radical democracy – that, in our view, is relevant when contemplating what Donaldson anticipates as an “epic, social realignment of business” [1]. To do this, we first consider why globalization may be leading to an increasingly overt political role for business and hence invite a shift of analytical orientation in the direction of Scherer and Palazzo’s “political CSR.” We then outline their case for engaging Habermas’s deliberative democracy as

a useful supplement to CSR theory. In doing so, we find that Scherer and Palazzo are remarkably reticent on the question of the philosophical pedigree of deliberative democracy and, in particular, are silent on the key issue of the implications that this may have for our understanding of social change and the defensibility of the normative values implicit in their proposals. Accordingly, we seek to tease out the philosophical and, more specifically, the ontological basis of deliberative democracy, exploring its origins in and relationship with Habermas's discourse ethics.

Our reading of the philosophical proclivities of "political CSR" gives us cause for concern about the role that deliberative democracy can and might play in promoting the scale of social and identity transformation which, if we follow Donaldson, should be central to CSR theory today. We illustrate these concerns with reference to the Forest Stewardship Council, an organization which Scherer and Palazzo propose as an exemplar of deliberative democracy and "political CSR." This leads us to consider a number of alternative philosophical understandings which, while they share the post-Hegelian and critical theory lineage in which Habermas locates his thinking, may prove equally fruitful as a basis from which to develop a theoretical orientation to CSR sufficiently radical to take up the challenge identified by Donaldson. By exposing the philosophical orientations which underpin these various alternatives, we suggest that a post-foundational ontology may offer a more fruitful, and less normatively driven, basis for understanding social change. We therefore conclude that radical democratic theory, which is derived from a post-foundational understanding of discourse and ethics, may be a more appropriate supplement to "political CSR" than is Habermasian deliberative democracy. Nevertheless, we conclude that there might be a role for a rhetoric of "political CSR" aligned with deliberative democracy to play in helping to promote major social change, although we remain very ambivalent about this because of the evidence that such a rhetoric is too readily co-opted to conservative agendas.

Globalization and Political CSR

"With globalization," Scherer and Palazzo contend, "a *paradigm shift* is necessary in the debate on [Corporate Social Responsibility (CSR)]" ([2], p. 414). For them, "globalization" is a process of intensification of cross-border social and material interactions which is producing a "post-Westphalian world order" or a "post-national constellation" ([3], p. 901, The latter term is drawn from Jürgen Habermas, *The Postnational Constellation* [Cambridge, MA: MIT Press, 2001]). In this new order, the old alignment of state authority and responsibility, national cultures, and geographic borders is being replaced by a "fragmentation of authority, the increasing ambiguity of borders and jurisdictions; and the blurring of the lines between the public and private sphere" [6]. In this rapidly developing context, nation-states do not become impotent to regulate business, but the globalization of business, concurrent with the growing influence of civil society organizations (e.g., NGOs, single issue pressure groups, etc.), presents the contemporary challenge of addressing regulatory issues internationally. Notwithstanding that nation-states were never

able to regulate fully activities in their own geographical borders, so that there have always been regulation gaps and implementation deficits, it is argued that globalization has substantively shifted the balance between corporations and states. The rapid rise in numbers and spread of transnational corporations (TNCs) able to manage their exposure to national legislation weakens the ability of national governments to define systems of effective regulation of business. Concurrently, an emergent, heterogeneous global governance system is seen to be struggling to formulate and enforce effective global regulation even as there is an attempt to accommodate and enroll other (i.e., nonstate) actors in the delivery of public goods and in processes of registering social concerns and populating systems of regulation.

In this post-Westphalian order, Scherer and Palazzo argue, it becomes less and less defensible to retain the liberal democratic view that corporations are only private, economic actors. Leaving aside the question of whether it ever made sense, except ideologically, to regard firms as primarily economic, rather than politico-economic, entities, the shift from a national to a global focus for, and form of, governance invites the ascription of new roles to corporations – for example, as private contractors in the provision of public goods or, and perhaps more significantly, as key actors in formulation of global regulation (see, for example, the ActionAid report which “highlights many examples of privileged corporate access to, and excessive influence over, the WTO policy-making process”: [7]). In the post-Westphalian order, the regulatory vacuum is being filled by a shift from “hard,” statutory legislation to “soft” forms of regulation, in the guise of self-regulation. A focus on compliance with legal liability is increasingly supplanted by principles of social connectedness as a basis for assessing where responsibility lies. In such a plural, heterogeneous, and deregulated social environment, it is no longer effective to seek legitimacy by reference to nationally defined laws or even by reference to widely accepted rules or customs. Where “no universal criteria of ethical behaviour are available” ([3], p. 906), legitimacy becomes more tenuous and so needs to be created, and constantly recreated, through proactive discursive and political engagement. To this end, a process of deliberative democracy is commended as a way forward that prioritizes (democratic) deliberation, to establish a historically and culturally contingent consensus on ethical behavior, over philosophical efforts to identify a universal ethics.

The effects of globalization, then, are apparently responsible for a situation in which the established “paradigm” of CSR – in which “responsible firms operate within a more or less properly working political framework of rules and regulations which are defined by governmental authorities” ([2], p. 414) – is discredited. In its place is emerging a fragile, incomplete, and unevenly applied global framework of rules and regulations. Partly as a consequence of the regulatory vacuum, business is seen to be encountering new and increased demands to be socially responsible ([2], p. 414). National laws continue to set out a minimum standard of business’s responsibility to society, but frequently the system or the scope of law is incomplete or the apparatus for its enforcement is ineffective. Having offered this diagnosis of the contemporary conjuncture and exposed the limits of the

orthodox paradigm of CSR for addressing its ills, Scherer and Palazzo contend that the “regulation gaps and implementation deficits . . . have to be filled by diligent managers with pro-social behaviour and an aspiration to the common good” ([2], p. 414).

To facilitate this remedy, Scherer and Palazzo propose a new perspective, in the form of “political CSR” that is based upon “an extended model of governance with business firms contributing to global regulation and providing public goods (and where) private actors such as corporations and civil society organizations play an active role in the democratic regulation and control of market transactions” ([3], p. 901). For Scherer and Palazzo, firms not only are increasingly engaged in responding, whether reactively or with strategic foresight, to regulations or even to stakeholder pressures but also, and crucially, are becoming active, influential, and constructive participants “in the overarching processes of (national and transnational) public will formation and these processes’ contribution to solving global environmental and social challenges” ([8], p. 1108).

Democracy or Philosophy?

This situation leads Scherer and Palazzo to propose that in order to understand the role of the firm today, we need to move away from outdated models of liberal democracy, which see corporations as private actors, and instead adopt models which better recognize the role of corporations as political actors. To do this, they propose that a theory of “political CSR” should be based on Habermas’s theory of deliberative democracy as “an alternative model which seems to be better equipped to deal with the post-national constellation and to address the democratic deficit” ([3], p. 907). Scherer and Palazzo’s call for “political CSR” informed by deliberative democracy is based upon two propositions. First, it is claimed that their model of the firm and its “social responsibilities” is better equipped (at least compared to existing liberal democratic models) to illuminate the current conjecture of a post-Westphalian order. In this respect, it appears to be a call for a nominally descriptive, rather than normative, theory of (political) CSR. Its claim is to understand better what *is* happening rather than what *ought* to happen. Second, it is commended for avoiding an appeal to some universal, normative ethics in favor of an ethics that is historically and culturally contingent upon necessarily open-ended processes of deliberation. This *procedural* understanding of deliberative democracy, it is argued, provides “a *less idealistic* and *more pragmatic* approach that narrows the gap between the *actual practice of political decision making* and the *theoretical purity of ethical discourses*” ([8], p. 1107, original emphasis)."

We find this position confusing because, in our view, the proposal that Habermas’s theory of deliberative democracy should be used to inform our understandings of “political CSR” is itself normative and not least because it presumes that we *ought* to prefer the deliberative democracy model to any other democratic model, whether that model be liberal or radical. The concern, central to deliberative democracy, to narrow the gap between the practice of political decision-making and

the purity of ethical discourses is not neutral or self-evident but normative. Furthermore, even if this is denied (e.g., by emphasizing deliberative democracy's focus on procedure rather than content), we question whether any theory can ever be devoid of normative presuppositions. "Description" is always selective, and the basis of this selectivity is inescapably normative in the sense of being based upon particular value-laden assumptions. If Scherer and Palazzo's "political CSR" is to make a useful contribution to the field (and we believe that it has the potential to do so), then it is relevant to expose and challenge, rather than hide or mystify, its normative underpinnings.

Given the philosophical focus of this handbook, it is appropriate to consider the normative impact of the turn to deliberative democracy. The issue of normativity (how we *ought* to live our lives) is, of course, a core concern of much philosophy, and it is one with which Kant, in particular, repeatedly wrestled both directly and indirectly. Indeed, as Crichtley argues, in modern philosophy the work of Kant forms both a cornerstone and a point of cleavage for two very different schools of philosophy: "much of the difference between (Anglo-American) analytic philosophy and Continental philosophy simply turns on *how* one reads Kant and *how much* Kant one reads" ([9], p. 17, original emphasis). Anglo-American analytic philosophy has developed in the shadow of Kant's first critique, the *Critique of Pure Reason* [10], to argue that even though our ideas about the world can never fully replicate the empirical world in which we find ourselves; nevertheless, those ideas (our consciousness of the world) do represent the world in a manner that is sufficient for us to have knowledge of nature and therefore to be able to reason logically and deductively about the world. Continental philosophy, in contrast, resonates with Kant's third critique, the *Critique of Judgement* [11], as it endeavors to "bridge between the faculties of the understanding (the domain of epistemology whose concern is knowledge of nature) and reason (the domain of ethics whose concern is freedom), through a critique of judgement" ([9], p. 19).

When following the first critique, ethics comes to be seen as a matter of analysis of situations in order to develop defensible and robust, albeit still possibly fallible, views (moralistic positions) about what is right and wrong – "the philosophical search for universal rules," as Scherer and Palazzo characterize it ([3], p. 905). If, however, one follows the third critique, then ethics is inherently a matter of difficult judgment in the terrain between theory and practice or knowledge and action [12]. In the first, ethics becomes reduced to often sterile and formulaic prescriptions about how to act (exemplified for example in the tick-box activities of CSR certification schemes and audit trails). In the second, ethics is not about establishing and/or applying a moral benchmark but, rather, exists in process – in the ongoing struggles and crises of conscience about how to act in a world where action can never be wholly determined by logical reasoning as there is no definitive basis for justifying or grounding the ethics of action.

While it would be a mistake to draw too sharp or rigid a distinction between the traditions of analytic and Continental philosophy, Habermas's thinking is in the tradition of Continental philosophy to which it makes a significant contribution. It is the contemporary incarnation of a lineage that runs from Kant, through

Hegel and Marx and more recently Nietzsche and Heidegger to the critical theory of Horkheimer and Adorno as well as to contemporary exponents of post-structuralism, notably Derrida (and a more bashful Foucault). Habermas is widely regarded as the prime exponent of second-generation critical theory, so it might be expected that a proposal to develop a conception of CSR informed directly by his discourse ethics and deliberative democracy would incorporate some close consideration of the philosophical foundations, justifications, and implications of such a move. This expectation is confounded as Scherer and Palazzo display a remarkable reticence on questions of philosophy, even to the extent of making a virtue of their silence. This virtue is paraded by arguing that their approach “emphasizes a priority of democracy to philosophy” ([3], p. 906) a priority that apparently excuses all consideration of the philosophical foundations of deliberative democracy. In effect, Scherer and Palazzo (unconvincingly) sidestep the question of how an understanding of philosophy may valuably be kept in focus as efforts are made to explore how deliberative democracy theory may play a role in reshaping the relationship of business to society in the future. The maneuver is unconvincing because it misleadingly equates *all* of philosophy with the *particular* analytical tradition of Kant’s first critique – where the preoccupation is with the development of defensible and robust, yet still falsifiable, benchmarks (moralistic positions) about what is right and wrong. Because Scherer and Palazzo equate and reduce “philosophy” to this analytical tradition, they can conveniently conclude that it has no further contribution to make – but in doing so, they allow themselves to ignore major debates in the field of Continental philosophy, which is rather perverse as Habermas’s work resides in this field.

Scherer and Palazzo are, in our view, quite right to reject the philosophical search for universal moralistic rules from which to derive a normative ethics for business. There is, as they compellingly argue, “no ‘view from nowhere’ from which a-historical and a-contextual (i.e., universal and transcendent, PE/HW) ethical norms could be deduced.” As a consequence, they plausibly observe, “the question remains of how the legitimacy of corporate activities can be normatively accessed when no universal criteria of ethical behaviour are available in a post-modern and post-national world” ([3], p. 906). Scherer and Palazzo explicitly distance their stance from the orthodox paradigm of CSR/business ethics which is populated by economic, instrumental, or empirical approaches to CSR (e.g., corporate social performance, the business case for CSR, instrumental or strategic stakeholder theory) and realist constructivist approaches (business ethics, normative stakeholder theory, social contract theory) (see, for example, Table 1 in [8], p. 1113). In our terms, this move amounts to a rejection of the analytical philosophical approach in favor of Continental philosophy, a move which we welcome and which we would applaud if the move had been explicitly and consistently made.

Unfortunately, instead of recognizing its philosophical underpinnings in Continental philosophy, deliberative democracy is justified on the basis of its political pragmatism rather than its philosophical pedigree. In our view, it is this positioning of “political CSR” that renders it vulnerable to displacement by approaches which make the easy claim to be (even) “more pragmatic.” The invocation of pragmatism

and politics – in the form of an empiricist/descriptivist ambition to “embed the CSR debate in the context of the changing order of political institutions” ([3], 906) – represents for us a too rapid dismissal of major philosophical debates in Continental philosophy, not least debates between Habermas and post-structuralism but also debates within critical theory by Habermas’s own students. We therefore believe that, rather than sidelining these issues in the name of pragmatism and an associated call for the “priority of democracy to philosophy” legitimized by Rorty (a political liberal), it is important to pay attention to the philosophical foundations of deliberative democracy. The benefit of doing so, we will argue, is that it reveals how, by relying on Habermas’s deliberative democracy, Scherer and Palazzo’s formulation of “political CSR” retains (but obscures) the tendency to a universalizing utopianism found in Habermas’s earlier work. Notwithstanding both that Scherer and Palazzo tend to present deliberative democracy as a pragmatic turn away from Habermas’s earlier utopianism (see, e.g., [8], p. 1108) and that this appeal to pragmatism is not an uncommon interpretation of deliberative democracy; nevertheless, we consider that such readings misrepresent how much deliberative democracy continues to rely on the utopianism of Habermas’s earlier theory of communicative action.

Political CSR and Democracy

In order to explicate the position that underpins Scherer and Palazzo’s “political CSR” and its advocacy of deliberative democracy, we take up another critique of their work which, although very different to our own, is helpful in elucidating their position. Willke and Willke’s [13] critique of “Palazzo/Scherer’s Communicative Framework” (the subtitle of their paper) is written from the perspective of *systems theory* and liberal democratic theory. They broadly agree with Scherer and Palazzo’s diagnosis of the effects of globalization in respect of its promotion of diverse factors, forces, and constraints without an encompassing global regime of democratic legitimacy. Within national contexts, they argue, democratic legislatures still function to provide collectively binding decisions on behalf of society that (among other things) restrict and regulate corporate activity. Corporations are conceived to exist within a subsystem that is driven by a purely economic logic, and to experience externally imposed restrictions on their profit maximizing pursuits as legitimate when they arise out of a political subsystem, through processes of representative democracy, that operates to identify and aggregate citizens’ preferences into laws backed by sanctions. In this systems theoretic modeling of modern societies, differentiation into functionally distinct subsystems (economic, political, etc.) ensures the preservation of the logic of the economic subsystem which relies on legally enshrined property rights that are aligned with the political subsystem’s logic of individuals as rational actors each with different individual interests but with equal and universalized rights to pursue those interests.

Crucially, for Willke and Willke, this differentiation of society into functionally distinct but mutually supportive subsystems is the hallmark of modern societies.

Whereas the logic of organization of modern societies is functional, the organization of society in premodern systems is hierarchical (e.g., king, knight, serf, etc.) or segmental (e.g., tribe, clan, etc.). “The point [and distinctive advantage, PE/HW] of functional differentiation as a structural principle of organizing society. . . is exactly to de-politicize all spheres of society except politics” ([13], p. 32). The claim of modern liberal societies, as exemplified in systems theory, is that, in contrast to premodern societies where politics is endemic to all aspects of society, “politics” is confined to the political subsystem. “Liberal democracy,” it is claimed, “rests on the assumption that all spheres of society (except for the political system) must be liberated from the influence of politics so they are able to pursue their own logics, rationalities and goals” ([13], p. 32). Notably, in modern societies, moral authorities (e.g., the Church) are understood to play no legitimate role in shaping, integrating, or regulating public subsystems, as, for example, by using religion to establish a common framework of duties and roles. In modern (secular, complex, and functionally differentiated) societies, this function is legitimately fulfilled exclusively by the political subsystem whose legitimacy rests upon democratic accountability. “Morality and ethics are no longer needed to keep (modern) society going. Law suffices. . . The unique legitimizing force of positive law as a modern medium of governance is its *procedural* rationality. It refrains from positing eternal truths or final solutions and instead adopts provisional models and temporary concepts that may be revised at the discretion of a different majority at a later point in time” ([25], p. 33).

The embeddedness of liberal democratic thinking in this idealized functional differentiation helps us to understand why proposals such as “political CSR,” which seek to repoliticize the economic sphere by reopening it to the influence of questions of morality from directions other than those legitimized through the functioning of the political subsystem and the laws it produces, are found difficult to grasp and/or attract vehement opposition. For believers in the virtues ascribed to liberal democracy, such thinking represents not a welcome contribution to the development of modernity but a dangerous regression to a premodern order. At the margins, it might nonetheless be argued, or conceded, that in circumstances where political procedures have yet to be fully established to secure fully fledged global laws and legislative legitimacy equivalent to those developed within liberal democratic social systems, it may be necessary, at least temporarily, to accommodate some degree of intrusion of premodern elements, in the form of morality, into the economic subsystem as an expedient, regrettable, and transient measure. From this standpoint, Scherer and Palazzo’s “political CSR” is, at best, a “presently necessary regression to past moralities” ([13], p. 37) as a stopgap while we evolve an effective modern system for global society.

Needless to say, Habermas’s diagnosis of the situation is very different (see also ► [Chap. 26, “Fundamentals of Discourse Ethics”](#)). In line with Kant’s third critique, he argues that ethical action can never be reduced to instrumental systematic knowledge. What counts as ethical, he contends, is not universal or ahistorical but is created, developed, and recreated through rational critical discourse in society. He therefore draws a distinction between the system and the lifeworld while

recognizing that society needs to be understood as the integration of system and lifeworld. The lifeworld is a symbolically structured realm of culture, personality, and meaning in which agents seek mutual understanding through substantive reason embodied in speech and action. The system, on the other hand, is a realm of instrumental rationality characterized by sedimented structures and established patterns of instrumental action mediated through money and administrative power [14, 15]. Since ethical positions are produced in processes of social communication, they arise in the lifeworld and then need somehow to become integrated into the instrumentality of the system. For Habermas, this requires the development of a thriving public sphere not just so that alternative views and associated ethics can be openly debated but also so that they actively guide the application of instrumental rationality. Habermas traces the origins of this public sphere to eighteenth- and nineteenth-century bourgeois cultural institutions such as coffee houses and salons where, informed by the spread of books and the press, the middle class could gather openly to discuss public issues. In the twentieth century, as modern industrial societies became bigger and more complex, Habermas notes how the public sphere becomes displaced by the power of money and bureaucracy (see [16]).

This distinction that Habermas makes between the instrumental rationality of “systems” of bureaucracy and money and the processes of public will formation that occur within the “lifeworld” resides at the heart of his thinking. It is a key philosophical distinction which supports his communication theory of society and discourse ethics, and it is reasserted in his later work on deliberative democracy where there is a renewed emphasis on the role of the public sphere. We might also add that it is central to Scherer and Palazzo’s attentiveness to the role of civil society in processes of legitimation in political CSR. Rather than enabling us to sidestep philosophical issues in favor of a primacy of democracy, we therefore seem to find ourselves thrown back onto a requirement to be alert to philosophical foundations.

Proposing to link deliberative democracy with “political CSR” is a normative act since deliberative democracy, just as much as liberal democracy or indeed the radical democracy that we would advocate, is embedded in particular value-based assumptions and preferences. In Habermas’s case, it is possible to elucidate these assumptions by reflecting on how he understands the formation of morality. For Habermas, morality arises in the lifeworld through processes of communication. Since subjects are formed through the medium of discursive communication in the lifeworld, it is in that medium that Habermas invites us to look when seeking to locate and appreciate the source of intersubjective solidarity. For Habermas, the source, or philosophical foundation, of morality resides in a mutual respect that is implicit in all communication. Whenever we communicate, we presume a capacity to understand each other, and so, a condition of all intersubjective communication, Habermas argues, is an implicit respect for the integrity of the other. This expectation is conceived to be prior to communication and so it forms a pretheoretical point of genesis for all the rest of his theory. By identifying a genesis in the

consensualism of mutual understanding and intersubjective solidarity, Habermas is proposing an ideal-type “counterfactual” against which the morality of specific actions and norms can be critiqued and thereby transformed.

Habermas captures this reliance on a genesis in mutual understanding and consensus in the, somewhat abstract, discourse principle (D) which states that “Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses.” When the discourse principle is expressed in the context of informal face-to-face relations, it becomes the universal principle (U) which states that a norm is valid only if “All affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of everyone’s interests (and these consequences are preferred to those of known alternative possibilities for regulation).” When, on the other hand, the discourse principle is expressed with respect to the formation, through formal political procedures, of legal norms which regulate relations between bearers of rights (i.e., to the formation of statutes and regulations), then it leads to the “democracy principle” which states that “Only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted” (see [17, 18]).

Habermas’s thinking can be understood therefore as a philosophy of praxis, where praxis is understood as action oriented to enabling liberating practical change. In other words, theory is developed that aims to expose and analyze societal contradictions (transgressions of the discourse principle, contextualized either through the universal principle or through the democracy principle) with the intent of overcoming or mitigating those contradictions by integrating practice with theoretical insight (where insightful praxis is understood to be action that promotes the realization of the discourse principle). This orientation displaces a search for value-free transcendent truths in favor of contextualized insights that are rich in practical, emancipatory consequences. In other words, such thinking aims at being not just a political philosophy but a politicized philosophy in that it tries to analyze the *is* in order to develop an action orientation toward a particular sense of the *ought*.

We recognize that it is common to understand deliberative democracy as a shift, from what is represented as the demanding universal principle of Habermas’s earlier work on discourse ethics to the (supposedly) less idealistic democracy principle. In this view, Scherer and Palazzo assert, the universal principle ascribed to an ethics for intersubjective discourse which “analyzes the ethical quality of a specific decision via a list of demanding discourse criteria (ideal speech situation)” whereas, “in contrast, the concept of deliberative democracy . . . shifts the focus to the macro level of the procedural design of political institutions” ([8], p. 1107). A focus on procedure supposedly replaces the utopianism of the universal principle with a more pragmatic preoccupation with establishing procedures that can promote democratic deliberation. These procedures, it is observed, are not necessarily oriented to achieving a (utopian) ideal in which all citizens participate in all public decisions. Instead, these procedures are informed by

a recognition of how the “civil society associations and movements that map, filter, amplify, bundle, and transmit private problems, needs, and values are the core actors in the process of democratic will formation” ([8], p. 1107).

A “key assumption” of “political CSR,” as Scherer and Palazzo put it ([3], p. 918), is that “politics” or “public will formation” is not confined to governmental institutions but, rather, “starts already at the level of deliberating civil society associations,” a contention that mirrors the primacy ascribed to the “lifeworld” and relies upon assumptions built into the communication theory of society and its discourse ethics. With direct reference to “political CSR,” and the broader dynamic of transformation involving the dedifferentiation of spheres prized by system-theoretic models of liberal democracy, Scherer and Palazzo contend that “Corporations thereby become *politicized* in two ways: they operate with an enlarged understanding of responsibility; and help to solve political problems in cooperation with state actors and civil society actors” ([3], p. 918).

Such a claim presents deliberative democracy as a “fix” for the precarious and diminishing legitimacy of corporations. This more pragmatic focus on procedure, which involves an instrumental turn away from the demanding criteria of the Habermasian communication theory of society and its counterfactual grounding in the “ideal speech situation,” marginalizes two key issues. Firstly, the justification for deliberative democracy, and for its attention to processes of public discourse, still derives from and depends on the system-lifeworld distinction and the pretheoretical genesis in communicative solidarity and respect. For us, a significant outcome of Scherer and Palazzo’s argument for giving the political primacy over the philosophical is a sidestepping and obscuring of these philosophical foundations of deliberative democracy. Secondly, a more practical implication of obscuring these foundations is that, for Habermas, the concept of deliberative democracy and its focus on public procedures of discourse is justifiable when the procedures directly facilitate a movement toward the realization of the ideal speech situation (as outlined in the discourse principle and the universal principle). The intent of deliberative democracy is not to circumvent the difficult idealism of Habermas’s earlier work but, rather, to facilitate praxis that aims at the more effective realization of a discourse principle that is conceived to be a foundational condition of possibility of communication. Deliberative democracy is therefore defensible on its own terms only when it promotes the realization of the discourse principle and the universal principle. A more consistent application of Habermas’s thinking to CSR would, we suggest, explicate its foundations before considering how it might be articulated into the world of business and markets.

For us, in contrast, the most important contribution of Habermas’s thinking is its stimulus to locate contemporary reflections upon business ethics and CSR in the crisis of modernity and to reflect critically upon how, philosophically, proposed remedies for this crisis may be grounded. More specifically, a Habermasian orientation can be of assistance in exposing and forcing us to worry away at the aporias that, in our view, “political CSR” unhelpfully occludes as a consequence of its lofty ambition to resolve differences through processes of deliberation.

Forest Stewardship Council: Deliberative Democracy in Practice?

We can illustrate what we view as the limitations, or blind spots, of “political CSR” by reference to the myopia which creeps in when Scherer and Palazzo offer examples of its practical operation. Notably, they repeatedly refer to the work of the Forest Stewardship Council (FSC). The FSC is identified as an exemplar of a deliberative democracy approach to “political CSR” through “corporate embeddedness in processes of democratic will formation and problem solving in a transnational context of political governance” ([8], p. 1110). More recently, Scherer and Palazzo commend the FSC as an example of an NGO that provides “structural measures to avoid an imbalance between participants from the North and participants from the South” ([3], p. 917). The focus on procedures, rather than political action, we now argue, exposes the vulnerability of Habermas’s ideas to a reading that identifies the operation of the FSC with even their partial actualization (our critique of the FSC example was first set out in [19] from which parts of this section are adapted).

The FSC was established in 1993 as a collaborative venture between NGOs and major corporations such as IKEA, Home Depot, and B&Q with the objective of promoting the responsible management of the world’s forests. According to the FSC website:

FSC is a pioneer forum where the global consensus on responsible forest management convenes and through democratic process effects solutions to the pressures facing the world’s forests and forest-dependent communities. Within this forum, voices from the Global North and South, from organizations big and small, assemble to define environmentally appropriate, socially beneficial and economically viable forest management and identify the tools and resources that will effect positive, lasting change. As a multi-stakeholder organization, FSC applies the directive of its membership to develop forest management and chain of custody standards, deliver trademark assurance and provide accreditation services to a global network of committed businesses, organizations and communities. FSC certification provides a credible link between responsible production and consumption of forest products, enabling consumers and businesses to make purchasing decisions that benefit people and the environment as well as providing ongoing business value. [20]

Ten years after the establishment of FSC and 4 years before Scherer and Palazzo’s Academy of Management Review article, the Rainforest Foundation (RF) conducted a detailed (160 page) report [21] on the FSC’s activities to which Scherer and Palazzo ([8], p. 1110) refer directly. Yet, despite its pertinence for their thesis, they mention only the RF report’s criticism of the FSC’s fast growth strategy that is linked to the certification of noncomplying companies. This selectivity is perhaps unsurprising as the full RF report makes uncomfortable reading for advocates of deliberative democracy. Specifically, it illustrates in detail the vulnerability of its principles and results – such as its claim to “provide a credible link between responsible production and consumption of forest products, enabling consumers and businesses to make purchasing decisions that benefit people and the environment” – to capture and subversion. The RF report is highly critical of the

transparency of the FSC and the lack of democratic accountability. A flavor of the problems is given in the Executive Summary where it is noted:

Key stakeholders are effectively excluded from many FSC processes . . . Whilst legitimate forest stakeholders, such as local communities and indigenous people, remain marginalized in FSC's decision-making processes, the influence of other stakeholders – such as certification bodies and their commercial clients – has grown . . . The FSC's complaints procedures concerning certifiers and their certifications are essentially non-functioning. They are cumbersome and onerous, discriminatory against weaker stakeholders, and biased in favour of the certifiers and their commercial clients. There is therefore no effective means of redress for many stakeholders in the event of dispute . . . There has been a serious lack of transparency or "democracy of knowledge." Key FSC processes have been undertaken without proper information being available to the membership and the wider public. This has undermined accountability of the organization . . . ([21], p. 7)

In short, according to the RF, the operation of the FSC privileged certification bodies and commercial clients as it marginalized the voice of local communities and indigenous people who were unable to obtain redress from the FSC as a consequence of a cumbersome complaints procedure. Of course, we readily acknowledge that this imbalance may have been corrected since the publication of the RF report although the recent resignation of the Dutch not-for-profit organization FERN from FSC (June 2011) [22] and the many posts to the site "FSC-Watch" [23] would suggest otherwise. The resignation of FERN followed a joint assessment in 2008 by a number of NGOs (Greenpeace, the Inter-African Forest Industry Association [IFIA], Precious Woods, Swedish Society for Nature Conservation [SSNC] and Tropical Forest Trust [TFT]) that "problems with FSC are so severe that supporting FSC threatens their own organisations' credibility" [24]. Three key areas of concern were identified, including the complaints mechanism, where the FSC system required substantial improvements. Specifically, in 2009, FERN issued a statement saying that it would resign its FSC membership if "the revision of the FSC Principles and Criteria and the inclusion of the recommendations of the Plantations Review do not result in a reversal of FSC's current practise of certifying large-scale monoculture fast-growing plantations" [25]. The resignation of FERN in 2011 followed a review of the available information and concluded that "progress towards achieving the changes requested in 2008 has been insufficient" [22].

This privileging of commercial clients and marginalization of local communities was also evident when we visited the FSC website in 2007 and came across an endorsement quote from the business manager of B&Q, a market-leading hardware store. This quote, selected and showcased by the FSC, passed comment only on the benefit of FSC membership in securing a competitive advantage over other suppliers of equivalent products by demonstrating how certain B&Q wood products are traceable from the store back to the forest. Revealingly, no mention was made of this service to customers being an integral part of any broader commitment to educating either its employees or the public about the importance of sustainability in relation to the example of forestry stewardship, and thereby to reducing the numerous detrimental impacts of corporate activity on the environment [26].

Although Scherer and Palazzo [8] make reference to part of the RF report, they are silent on its significance for shining light on their exemplar of deliberative democracy. Despite the findings of the RF report, Scherer and Palazzo offer the unqualified view that “the FSC can be considered one of the most advanced concepts in the sense of our proposed political CSR” ([8], p. 1110). This dubious assessment can perhaps be forgiven as no academic piece of work, any more than the organizations to which they refer, is without imperfections. What we find more difficult to understand is Scherer and Palazzo’s continued silence on major shortcomings of the FSC that have been exposed in previous commentaries [19] on “political CSR” to which Scherer and Palazzo ([3], p. 919) make reference while simultaneously affirming their commendation of the FSC as an exemplar of deliberative democracy. To us, it is strange but also instructive that advocates of deliberative democracy seem so disinclined to acknowledge and engage with such issues, even when exposed by critical but broadly sympathetic interlocutors – whether these are critics of the FSC or critics of “political CSR.”

As we have noted, no organization is without significant imperfections. Continuing to identify the FSC example as a relatively unproblematic example of deliberative democracy in action in the face of readily accessible and mounting evidence to the contrary does, however, fuel our concerns about the application of Habermas’s theory. We detect here a triumph of system, in the form of an investment in the democratic principles and procedures to which the FSC is formally committed, over the lifeworld – a triumph that is legitimized by a discourse of deliberative democracy where the emphasis is placed upon how “The FSC is designed around deliberative criteria such as broad participation, the attempt to exclude corporate power as a decision criterion . . .” ([8], p. 1110).

In our view, the critical intent of Habermas’s attentiveness to the procedures of deliberative democracy is to operationalize discourse ethics. The measure of success for any exemplar of deliberative democracy, however imperfect, is its provision of support for discursive processes that encourage participants to develop the awareness and behaviors that bring closer the realization of these ethics. With regard to the FSC, a congruent form of research would involve an assessment of whether the procedures of the FSC enable or impede progress with regard to this critical intent. This is difficult to ascertain robustly from the available evidence, but *prima facie*, the apparent nonfunctioning of complaints procedures, lack of transparency, low democratization of knowledge, etc., seem to point to a highly imperfect process that is working to marginalize and silence dissent rather than bringing it center stage. In other words, the application of the principles and associated procedures of deliberative democracy, as exemplified by the FSC which Scherer and Palazzo continue to hold up as a shining example of the operation of “political CSR,” would seem to occlude the *aporia* between system and lifeworld, rather than exposing it and thereby forcing participants to confront it.

The FSC case draws attention to a fundamental difficulty when trying to apply Habermas’s work in practice. There is a risk that principles and structures are established which formally approximate to ideals of deliberative democracy but the substantive, everyday practices of organizing then fail to respect and nurture

such lofty ideals. So, and to be rather crass, a superficial tick-box audit may show that the relevant procedures are “in place,” but it is only when attention is given to the outcomes of specific practices that significant doubt is cast on their ability to promote the conditions of ethical discourse.

What Alternatives Are There?

Our analysis to this point suggests some benefits of being alert to the philosophical indebtedness of any theorization of CSR, including “political CSR,” as opposed to marginalizing or sidestepping philosophical issues by, for example, arguing for the primacy of democracy over philosophical clarification. How, then, might attentiveness to, and excavation of, philosophical issues further help us to interrogate the concept of political CSR?

It is worth recalling that Habermas’s theory is located in the lineage of Continental philosophy inspired by Kant’s third critique (see earlier) as this invites consideration of other potentially relevant directions developed within this tradition. To explore this possibility, it can be instructive initially to reflect upon the philosophical inspiration of Habermas’s second-generation critical theory. Habermas’s thinking developed (dialectically) from an engagement and disillusionment with the work of Horkheimer and Adorno who, as first-generation critical theorists, had critiqued what they identified as deterministic tendencies in Marxian analysis. Of most relevance to our discussion, Adorno’s *Negative Dialectics* [27] shares Hegel’s focus upon how human beings construct speculative identities in which subjects and objects and rhetorics and realities become fused, but, contra Hegel, he questions whether such identities are achieved positively and, instead, contends that a sense of unity is imposed upon these objects which effectively displaces differences and diversity.

Marx’s left Hegelian demolition of the pretensions and self-deceptions of liberalism retains Hegel’s positive ontology as he attacks the very philosophical grounding of liberalism and, in particular, challenges its assumption that individual interests (and motivations) are prepolitical. From the perspective of Marx’s Historical Materialism, subjects’ interests are not given by “human nature” but arise (positively) from their position in society and, more specifically, from their social location (as ciphers of capital and labor) in the structure of production relations. Human beings are understood to exercise reason and thereby make choices, but their reasoning is in relation to, and therefore conditioned or perhaps determined by, their position in society – which is not of their choice. Far from being prepolitical, the “interests” of individuals as occupants of social positions are regarded as the product of a social order that is inescapably political in its formation and reproduction.

Exponents of first-generation critical theorists were inclined to read Marx’s Historical Materialism as having a pretheoretical genesis in the historically contingent material distributions and their supporting social structures which determine, and necessarily politicize, individual interests and opportunities. Accordingly, Horkheimer, together with his contemporaries in the “Frankfurt School,” advocated

a (radically humanistic) revision of Marx's left Hegelianism that we now know as critical theory. Marx's thinking was seen to slide too easily into economic determinism and reductionism – a form of unreflexive structuralism that invited totalitarianism based upon the (philosophical) understanding that subjects are a product of their circumstances and that powers of reason and reflection are of little consequence or indeed operate only to impede the destiny of socialism. To counter this tendency, first-generation critical theorists promoted a more dialectical understanding of materialism in which the objective (material, historical) socioeconomic conditions are still seen to condition the constitution of subjects, but, equally, subjects are understood to play an active and unpredictable role in constituting and responding to those objective conditions. In Horkheimer's formulation, critical theory "has as its object men as producers of their own historical way of life in its totality" ([28], p. 222) where the aim of critical thinking is to "transcend the tension and to abolish the opposition between the individual's purposiveness, spontaneity and rationality, and those work-process relationships on which society is built" ([28], p. 220). In this regard, critical theory "never aims simply at an increase of knowledge as such. Its goal is man's emancipation from slavery" ([28], p. 224).

Thought, culture, and other phenomena, which the scientific Marx was inclined to theorize as a "superstructure" determined by a materialist "base," are recast in dialectical materialism as having relative autonomy from the base. With its emphasis upon relative autonomy, critical theory prompts consideration of a multiplicity of dialectically related phenomena that are a medium and outcome of processes of reproduction and transformation. An obvious problem ascribed to this position – especially by those who hanker after a distinctive (e.g., class) agent of emancipation equivalent to the proletariat who are identified by Historical Materialism as occupants of a subordinate exploited position within capitalist relations of production – is that it harbors an unacceptable degree of indeterminacy about history and, more specifically, the catalyst of revolutionary change. As we show in the next section of the chapter, we favor a full recognition, rather than a denial or repression, of this indeterminacy. More specifically, we advocate a "postfoundationalist" conception of a politicized CSR in which diverse discourses and identities, with associated antagonisms and dislocations, are understood to arise from the aporia situated in the space between knowledge and action or theory and practice identified in Kant's third critique (see above). In considering this position, one might say that, in abandoning any authoritative, normative basis for intervening in the world, it admits multiple philosophical foundations and multiple normativities or indeed that it fails to provide any definitive basis for adjudicating a plurality of dialectically related normativities. Clearly, Habermas favored the latter diagnosis and has sought to provide a remedy for it. An alternative is to embrace postfoundationalism by considering the value of what it lacks, rather than viewing it as something to be remedied.

As the principal proponent of second-generation critical theory, Habermas inherited an approach that had failed to find a convincing replacement for the emancipatory role ascribed to the proletariat by Marx. Despite heroic efforts, notably by Marcuse, to identify such a group, the dominant trend was diagnosed as one of increasing colonization of lived human experience ("the lifeworld") by an

instrumental rationality (“the system”), resulting in intensifying unfreedom (and reflected in Habermas’s recurrent concern about the growing domination by the system of the lifeworld). At the same time, the normative foundation of critique proposed by Habermas is distanced philosophically from a radical humanist focus upon alienation in the form of attentiveness to mundane lived experience. Habermas addresses the problem of the lack, in first-generation critical theory, of a universal pretheoretical basis for adjudicating between competing normativities by turning away from the experience of subjects and arguing instead that solidarity and respect are counterfactually implicit in intersubjective communication. Habermas privileges agreement over dissent as he presumes a universal reason (rationality) that all participants share. Even if Habermas’s claims about the conditions of communication are accepted, his theory assumes a “telos of consensus” [29] which, for us, is not only implausible but inconsistent with a commitment to democracy, since the very lifeblood of democracy is dissent.

Among the third generation of critical theory, Axel Honneth, Habermas’s student, is the most prominent member. Honneth turns away from Habermasian proceduralism as he attends to “the moral grammar of social conflicts” (this phrase is taken from the subtitle of Axel Honneth [30]). Two words are key: “social conflicts” and “moral(ity).” Honneth’s point of departure is “the moral infrastructure of society” ([30], p. 257). Whatever normative principles are evoked to provide a theory with its moral impulse and justification, Honneth argues, it should be “understandable as moral claims that are already valid within our social order” ([30], p. 257). By emphasizing the “moral infrastructure” and the resonance of critique with its distinctive claims, Honneth signals his skepticism about the Habermasian appeal to the presuppositions of a communication theory of society, the invocation of an “ideal speech situation,” and, by implication, the coherence and emancipatory purchase of deliberative democracy.

In an effort to set Habermas’s thinking “back on its feet” ([30], p. 242) while continuing his normative quest for a benchmark for critique, Honneth endeavors to find within mundane human existence a pretheoretical emancipatory source whose existence can be demonstrated empirically and which can thereby secure a foothold for critique (and hence a basis for ethics). In doing so, Honneth somewhat mirrors Adorno’s earlier attempt to reinstate a foundation for critical theory. Confronted with the growing pessimism that critical theory seemed to be leading to in his work with Horkheimer on the *Dialectic of Enlightenment* [31], Adorno became increasingly concerned to identify a pretheoretical basis for critique (i.e., a basis that exists prior to any of the normativity or values that are implicit in notions of the free vs. the unfree which underlie emancipatory ideals). Adorno attempted to locate this, ultimately rather unconvincingly, in the human sensibility for art and the aesthetic [32]. It is this failure to identify a convincing pretheoretical basis (or foundation) for adjudicating between norms which defines the problematic that Habermas attempts to resolve by identifying communicative reason as a route to normative adjudication.

Similarly, Honneth contends that critical theory “must be confident of identifying empirical experiences and attitudes which already indicate at a pre-theoretical level that its normative standpoints are not without basis in social reality”

([33], p. 327). However, Habermas's location of the normative potential of social interaction with the linguistic conditions of reaching understanding free from domination is found wanting by Honneth as it is seen to rely upon social processes that unfold behind the backs of subjects – processes that neither are directed by human intentions nor, crucially, are capable of being grasped empirically by the consciousness of subjects. Since subjects and the intersubjective are, for Honneth, correlative (see below), he is concerned that Habermas fails to identify the correlate of the intersubjective moment in the lived experiences of human subjects as moral states of affairs or as existing experiences of social injustice.

For Honneth, the empirical pretheoretical experience which motivates emancipatory action does not arise from a drive toward domination-free communication but, rather, from experience of social recognition on which the development of human identity is understood to depend. Influenced by Mead as well as Hegel, Honneth's focus is upon the "positive relation to self" that is understood to "increase with each new form of recognition that individuals are able to apply to themselves as subjects" ([30], p. 173). The "relation to self," which may be negative as well as positive, is seen to develop through an intersubjectively mediated process involving a continuous struggle for recognition which may be affirmed or negated. A "positive relation to self," Honneth contends, is expressed in "the experience of love, the prospect of self-respect. . .and finally the prospect of self-esteem, in the experience of solidarity" ([30], p. 173). Honneth's focus, then, is upon the lived experience of such a positive relation to self that, for him, is (1) a precondition of "freedom" as it overcomes "inner barriers as well as psychological inhibition and fears" ([30], p. 174) and (2) a product of intersubjective recognition as it depends upon "prerequisites that human subjects do not have at their disposal, since they can only acquire this freedom with the help of their interaction partners" ([30], p. 174). Honneth's argument is that the potential of such freedom to be realized is implicit in the structure (and struggle) of recognition. A more "just social order" is desired not because it best exemplifies, say, the principles attributed to the ideal speech situation, but because "it is only under these conditions (i.e., in a "just social order") that subjects can attain the most undamaged possible self-relation, and thus individual autonomy" ([34], p. 259).

Following Hegel, gaining recognition is understood to assume a recognition of the other from whom recognition is sought. Where it is accepted that such reciprocity is built into the process of seeking recognition, this process is conceived as a struggle to fulfill the normative potential inherent in social interaction. Accordingly, human history is regarded as an ongoing struggle to address – for example, accommodate or challenge – experiences of "relation to self," notably those of disrespect and humiliation ([34], p. 245), efforts that are played or fought out through the prevailing "epoch-specific grammar of social justice" ([34], p. 250). As Honneth summarizes his position:

Essentially, my idea amounts to the hypothesis that all social integration depends on reliable forms of mutual recognition, whose insufficiencies and deficits are always tied to feelings of misrecognition – which, in turn, can be regarded as the engine of social change. ([34], p. 245)

Specifically, in the contemporary “epoch” of capitalism, Honneth observes that “the degree of cooperation, security and innovation” ([34], p. 256) required for the distinctive process for allocating resources is dependent upon “general norms” and that so-called capitalist imperatives rely upon “normative expectations” that condition the “social negotiations about the scope of the imperatives” ([34], p. 256). Such “general norms” are understood to include inter alia “an egalitarian concept of justice” ([34], p. 262) that presents a corrosive “surplus validity” ([34], p. 263) in relation to established, socially disrespectful, and exclusive institutions and practices. What is meant by “surplus validity” is that these moral norms go beyond the quiescent confirmation of the status quo insofar as they are able to show “with good reasons” that principles endorsed by the status quo “possess a constitutive ‘surplus’ of normative significance: moral claims concerning the just organization of social relations are broader or more demanding than what has already been realized in social reality” ([34], p. 258).

The pretheoretical emancipatory drive is conceived to arise in conditions of its negation in the form of disrespect and humiliation (understood as a denial of recognition): “If the conditions of interaction are damaged by denying people the recognition they deserve, they generally react with those moral feelings that accompany the experience of disrespect – that is with shame, anger or indignation” ([33], p. 330). For us, Honneth’s key point is that the Habermasian focus on the properties of communication tends to marginalize or displace an appreciation of how, in practice, the motivation for emancipatory change arises in the emotionality accompanying disrespect that is provoked by the denial of recognition as defined within the “epoch-specific grammar of social justice” ([34], p. 250). When reviewed in this light, the vulnerability of Habermas’s deliberative democracy to becoming colonized by instrumentalism may be associated with, if not directly attributed to, a misidentification of the foundations of critique, and so obscures and obstructs, rather than promotes, the conditions for recognition and thus for meaningful participation in processes of deliberative democracy. In our earlier examination of the Rainforest Foundation (RF) report on the Forest Stewardship Council (FSC), we illustrated how an attentiveness to procedures may mask disrespect and obstruct the more difficult task of facilitating meaningful domination-free recognition.

Postfoundationalism and Radical Democracy

From this brief outline of the genesis of critical theory – from Horkheimer to Honneth – we now draw out three elements and associated insights: Adorno’s suggestion that we value negativity, in the form of a negative ontology, rather than constantly search for a positive content to fill the pretheoretical space; from Habermas, that we appreciate the importance of the discursive construction of identity; and from Honneth, that issues of antagonism and emotionality require incorporation into our analysis. A philosophical orientation that brings together these elements is Laclau and Mouffe’s social theory of hegemony (STH) [35].

Their *radical democratic* orientation, we submit, may enable us to theorize what Scherer and Palazzo identify as “political CSR” in a manner that more adequately addresses criticisms directed at it and is less vulnerable to instrumental appropriation than deliberative democracy. In doing so, we will be emphasizing the postfoundationalism of Laclau and Mouffe’s position, rather than the antifoundationalism of post-structuralist analysis. We acknowledge, however, that the philosophical leanings of radical democracy may make it less commonsensically accessible and therefore more demanding than ideas of deliberative democracy. For that reason, we conclude that there may be pragmatic merit in developing “political CSR” via deliberative democracy, but, noting that deliberative democracy is more readily translated and degraded into the familiar framework of liberal democracy, we propose that this would need to be done in a manner that is attentive to its limitations and so minimizes the risk of a telos of consensualism and its easy appropriation by forms of instrumentalism.

We can begin by considering the responses of Habermas and Honneth to the negativity of Adorno. Habermas conjectures a unifying ground, or foundation, in discursive reason that is the condition of possibility for the communication process. Honneth accepts that there is no subjectivity without the intersubjective but strives to remedy what he regards as Habermas’s subordination of the subject to the intersubjective. Honneth recenters the subject by locating discursive reason in an emotional response to the denial of recognition but without denying its intersubjective formation. For Honneth, the context and meanings through which this denial arises are socially contingent (and therefore intersubjective), but the underlying condition of possibility (the subject’s recognition of the other’s denial of recognition) is pre-given in the impetus for recognition that is a defining feature of the human condition. What Habermas’s and Honneth’s different responses to negativity share is the assumption that the basis for avoiding the unjustified privileging of freedom and associated political pessimism in Horkheimer and Adorno’s early formulations of critical theory resides in the identification of a positive ground, or foundation, from which to originate and justify critique. Each rely on human beings having the capacity – whether “intersubjective” or “subjective” – to discern the difference between right and wrong or good and bad. So, in Honneth’s case, there is a presumption that “the subjects for whose sake just social relations are to be established *are aware* that their autonomy depends on the autonomy of their partners in interaction” ([34], p. 259 emphasis added).

An alternative to some version of foundationalism, which claims to circumvent negativity by identifying a positive foundation for critique, is the adoption of a nonfoundational philosophy which acknowledges negativity, or an absence of foundations, as its starting point. This places the uncertainty of the aporia at the center of our understanding of the human condition. That is to say, it makes the assumption or claim that whenever we try to identify a foundation beyond the realm of meaning, we will always encounter an absence – an unknowable, undecidable core that we can never pin down or articulate fully. Instead of trying to excise negativity by inserting a normative presumption (such as discursive reason or disrespect), a nonfoundational philosophy accepts that negativity, and hence

uncertainty, lies at the root of the human condition. In short, a nonfoundational philosophy is based on the recognition of radical negativity as the starting point for all theory and experience.

Once a nonfoundational philosophy is accepted, there are two main directions in which to develop theory. The first direction allows that we can never escape difference and that therefore there are no pretheoretical bases from which to develop theory. Instead, heterogeneity (plurality and relativism) are acknowledged to be the hallmarks of the human condition. The political is then always a matter of difference, power, and contestation (and therefore Habermas's telos of consensus, e.g., is rejected). This is the route taken by much of what is loosely referred to as post-structuralism. In our view, there is much to be learned and gained from pursuing this line of analysis but it courts the danger of a (directionless or self-absorbed) celebration of carnival and relativism that risks sliding into nihilism.

A second direction asks how, if the human condition originates in the radical negativity of nonfoundationalism, it can be that we find ourselves in a world of comparatively stable and persistent meaning(s). This postfoundational orientation, [36] provides a distinctive response to the question of how radical negativity can possibly be the condition of possibility for a world of order and meaning. Rejecting any universal grounding in pretheoretical foundations, and hence also any universal normative basis for our ethics, postfoundationalism conceives of grounding as a contingent, hegemonically accomplished process of stabilizing meaning and sedimenting order as difference is suppressed and diversity is domesticated or occluded. When taking this second, postfoundationalist direction:

grounding is no longer to refer something back to a foundation which would act as a principle of derivation but, instead, to reinscribe that something within the terrain of the undecidables (iteration, re-mark, difference, etcetera) that makes its emergence possible. So, . . . it is no longer a question of finding a ground from which an ethical injunction should be *derived* (even less to make such a ground of undecidability itself). We live as *bricoleurs* in a plural world, having to take decisions within incomplete systems of rules (incompletion here means undecidability), and some of these rules are ethical ones. ([37], p. 79, original emphasis)

In other words, any system of meaningful social relations is not stabilized or institutionalized by reference to pretheoretical foundations. Rather, stability is produced by conditions arising solely from within that system's own discourses. An inherently precarious stability is accomplished through the operation of power relations which are themselves inherently vulnerable to contestation, including the challenges to "power" by currently available "ethical rules," as was demonstrated earlier with regard to the challenge posed to the FSC by its critics. By discourse is meant not just forms of linguistic communication in speech and text but also the numerous practices (implicit social rules and aligned individual behaviors) which serve to reproduce the stability. So, for example, within the current discourse of business, we can see that Freeman's idea of stakeholder management [38, 39] arose as a description of how managers do manage (the *is*) but it also serves to communicate, influence, or reinforce the ways that managers understand what behaviors they *ought* to adopt. In this example, the process of describing practices and thereby

influencing expectations leads to a performative, iterative integration and alignment of ideas and actions (i.e., specific social rules and behaviors). This integrated system of meaningfulness is what, for the postfoundational perspective, is meant by discourse.

Laclau and Mouffe's social theory of hegemony (STH) explores the implications of postfoundationalism for reconstructing the political (and the ethical). In STH, the stabilization or sedimentation of any meaningful system relies on the hegemonic occlusion of radical negativity that is inherently precarious and so subject to challenge. Radical negativity implies that difference and dissent are unavoidable. Because we can never ultimately resolve or definitively arbitrate between difference, the only way that a social order can become stabilized and sedimented is by (temporarily) occluding and obscuring difference. Whereas Habermas derives a political philosophy from an originary normative moment of reason and consensus, STH identifies the originary moment as an intrinsically political one in which difference is hidden and silenced.

In this moment, the antagonism of contestation and dissent are at least partially eclipsed and/or devalued as an immanent and contingent order (an order of concepts and ideas aligned with subjectivities, behaviors, and practices that are nonetheless no less contingent upon that order than are the concepts and ideas which express it symbolically) becomes so widely accepted (hegemonic) that it appears to be natural, universal, and transcendent. What counts as ethical is therefore always a contingent product of our location in hegemonic discourses. There are no prepolitical interests or prior ethico-normative starting points. Instead, "the distinction between the ethical and the political is blurred" ([37], p. 81) until they become a unity. In this ethico-political moment of instantiation, the discourses we live by become called into question and, because our subjectivity is itself a product of those discourses, our sense of identity is called into question.

In this respect, the postfoundationalism of STH partially overlaps with other understandings of ethics from antifoundational, or post-structural, perspectives. Levinas, for example, sees ethics as a question of calling one's self into question. For Derrida, ethics always involves an experience of not knowing what to do, while for Agamben it is a matter of endless openness and difficulty ([4], p. 8). What distinguishes STH from these perspectives is its attentiveness to how discourses in which we locate, and therefore also construct, our subjectivity and sense of identity are stabilized by an occlusion of undecidability. In other words, our own emotional investment in our sense of identity is coterminous with the occlusion of undecidability in the discourses of our lifeworld. When Honneth identifies recognition/disrespect as the pretheoretical foundation of the subjective and the inter-subjective, he valuably appreciates how the ethico-political moment of origin is a moment of emotional challenge to the sense of identity. Where Honneth errs, when considered from a postfoundational perspective, is in failing to appreciate how disrespect is already bound up in particular discourse(s) to which Honneth is inclined to attribute an equivalence. For Honneth, the ethical moment hinges around the denial of recognition irrespective of what (sense of identity) is being "disrespected." To take an example drawn from CSR, one might consider the case

of a corporation (e.g., Shell) or an NGO (e.g., FSC discussed earlier) that reacts to “disrespectful” commentaries on its CSR record by “pulling back from imaginary possibilities (against which critics such as RF assess its performance) to the actually possible” [40]. By such “pulling back,” we mean whatever protects their growth (e.g., in the case of FSC, into the certification of forest carbon, issuing of FSC certificates concurrently or jointly with carbon credits and/or aligning or partnering with voluntary carbon standards (see [41]) and/or profitability).

We are minded here of Foucault’s understanding that conflict and struggle are inescapable and, indeed, critical for subverting power-infused occlusions of the contingency and precariousness of particular regimes of truth. While Foucault, in common with postfoundationalists such as Laclau, is prepared to provide extensive justifications of his thinking, he refuses to present his analyses and critiques as anything more than a situated engagement with a particular conjecture. Analysis, such as that which we have presented in this chapter, involves careful research and informed judgment but its outcome cannot be warranted either by an appeal to science or to some normative framework. For postfoundationalists, the ethico-political moment hinges upon how, by identifying emotionally with the need for respect and recognition, the subject misrecognizes and disguises a radical undecidability at the core of their subjectivity and so disregards the implications that this may have for the contingency of their identity and hence also of their normativity. This shifts consideration of the ethical from the issue of “what is the right thing to do?” to the more challenging far-reaching question of “what is this ‘me’?” From a postfoundationalist standpoint, this ethico-political moment is a moment of confrontation with the emptiness that lies behind our sense of identity. It is an emotional moment that occurs where reason fails us and anxiety and disorientation rise up. Potentially, this is deeply disruptive of the ways that, through identification with discourses, we allow them to “grip” us so as to preserve the “me,” projected in the form of the corporation or the NGO in which the reproduction of the “me” has become invested, by sparing it from radical deconstruction [42].

The social theory of hegemony (STH) therefore gives us a very different understanding of the political and the ethical than those provided by liberal democracy or deliberative democracy. From Laclau and Mouffe’s radical democratic perspective, neither liberal democracy nor even deliberative democracy can ever amount to a truly political approach because their normative foci, on aggregation of interests and the construction of consensus, respectively, decenter or sidestep the problems of difference, undecidability, negativity, and antagonism. Rather than seeing consensus or the aggregation of interests as the measure of success for politicization, radical democracy implies that we should look to the ways that a political process not only helps to expose difference and dissent but also, in doing so, leads us to confront, as problematic and in need of revision, our own self-identifications and understandings of the world. For this confrontation to be meaningful, in the sense that it can lead to changes in identification, then it has to disrupt the subject’s lifeworld – which we might clarify as their conscious and unconscious mental models and understandings of the world and their location, role, purpose,

and identity within that world and not as separate from it but, rather, as integral and intimate reproducers/transformers of it. Such disruptions or “reality disjunctures” [43] may be confined to a cognitive or intellectual understanding of postfoundationalism as a plausible idea, but, to be consistent, it must be lived – that is, directly experienced in an emotional way – and not simply “known.” The emotional charge associated with such disruption is likely to take the form of angst, uncertainty, and a loss of faith in old understandings and rationalities which, if not suppressed, subsequently is transformed into a difficult and constantly challenging search for a way forward with others.

Laclau and Mouffe illustrate their reconstruction of the political by mobilizing a distinction between logics of equivalence and difference. In a logic of equivalence, the political process “constructs a chain of equivalential identities among different elements that are seen as expressing a certain sameness” ([44], p. 301). Laclau and Mouffe illustrate this with the example of colonization:

In a colonized country, the presence of the dominant power is every day made evident through a variety of contents: differences of dress, of language, of skin colour, of custom. Since each of these contents is equivalent to the others in terms of their common differentiation from the colonized people, it loses its condition of differential moment, and acquires the floating character of an element. Thus, equivalence creates a second meaning which, though parasitic on the first, subverts it: the differences cancel one other out insofar as they are used to express something identical underlying them all. ([35], p. 127)

In order to draw differences together into a logic that brings them into equivalence, it is necessary to articulate them around concepts and ideas (e.g., “fairness”) that are taken to be meaningful by many or all parties yet, which when examined more carefully, are found to be largely hollowed out of any consistent or shared meaning in a manner that precisely makes possible widespread subscription to such concepts and ideas. Such signifiers (which are aptly termed empty signifiers in STH) are nonetheless potent as they operate to stabilize discourse by inviting our emotional investment in, for example, the good, the right, or the ethical. That investment serves to orient our identification with certain discourses and makes it difficult to challenge those concepts and thereby expose their vacuity and deflate their power and appeal. Examples can be found readily in the field of CSR where deeply held, but often largely unrecognized, normative commitments form the basis of established positions.

Consider, for example, a central claim of mainstream “strategic CSR”: Porter and Kramer [45] commend the idea of “win win” in which securing corporate profitability is conceived as perfectly compatible with social development and the reduction of inequity. This grounding presumption of much “strategic CSR” is clearly contestable. Yet, as almost anyone who has taught business ethics, whether to executives or business students, will confirm, it is very difficult to call this notion into question without encountering defensive vehemence and ridicule provoked by any challenge to this sacred cow. In liberal democracy, the idea that different interests can be aggregated is a fiction and yet is so central to liberal democratic thinking that doubting this possibility elicits vigorous, and at times acerbic, defense (as evidenced in Willke and Willke’s [13] dogmatic critique of Scherer and

Palazzo's turn to deliberative democracy). An equivalent fiction, we submit, is present in deliberative democracy where a normative investment, or identification, with the idea of consensus enables the fictitious nature of the grounding of this discourse to be obscured through claims that deliberative democracy is a pragmatic turn to democracy over philosophy.

STH and radical democracy raise an alarm whenever a perspective is presented as commonsense, as "pragmatic" or as "just being realistic." It warns us that we are approaching the locus of signification where difference and undecidability are hidden and the discourse is stabilized through hegemonic practices involving emotional investment. The point, we suggest, is well illustrated by Willke and Willke's revealingly excessive and patronizing commentary on "Palazzo/Scherer's" refutation of the relevance of the liberal democratic model where they opine that "it seems unwise to call for a politicization of the corporation in view of what is happening in Russia, Venezuela or Bolivia...Have they considered the possible effects of 'democratic accountability' when the 'demos' (are lead [sic] to) believe they should boycott Jewish shops?" ([13], p. 32) (a dispiriting irony here, of course, is that the rise of the oligarchs in Russia and the boycotting of Jewish shops in Germany are both a product of a naïve faith in the essential(ist) virtues ascribed to liberal democracy). It is therefore unsurprising that challenges to commonsense encounter dismissiveness, defensiveness, and even anger. We also detect something of this in how Scherer and Palazzo ([3], p. 919) represent our critique of their position as saying that they do not go far enough with deliberative democracy. Here their defensiveness gets in the way of engaging in constructive deliberation with their interlocutors. How do we justify this view? First, Scherer and Palazzo do not provide any elaboration or explication of what they mean by "do not go far enough." Where, we ask, is the deliberation in this assessment? Second, their representation of our critique implies that we endorse the logic of their stance but are (immoderately) pushing for a more "extreme" form of it. We trust that this chapter has made it plain that neither implication can be drawn from our position.

By contrast to a logic of equivalence, a logic of difference is "A way of relating discursive moments in and through their mutual differences. . . . The differential relations between the discursive moments are constitutive of their very identity" ([44], p. 300). This places at the core of the political the recognition of difference, and continuous struggles to expose difference, and thereby confront the challenge that difference presents to us and to our commonsense rationality and practices. "[T]he logic of equivalence is a logic of the simplification of political space, while the logic of difference is a logic of its expansion and increasing complexity" ([35], p. 130). By placing at its core an attentiveness to difference (rather than consensus) as the locus of (re)politicization, radical democracy aspires to appreciate how the originary moment of discourse, of subjectivity, and of ethics is found in a hegemonic moment of occlusion of difference. It is in this originary moment that we encounter the political, the philosophical, and the ethical as the same. Therefore it is through radical democracy's focus on exposing difference that, we submit, we can come closest to a nonnormative democratic theory through which to inform our alternative understanding of political CSR.

Conclusion

When embracing radical democratic theory, our research is geared to exploring whether and how “political CSR” stimulates and continually sustains confrontation with difference that involves anxiety over identity as well as the problematization of commonsense meanings. What is less clear is whether STH can, at present at least, achieve much traction or influence on practices of CSR. In our view, this “problem” does not reside in the theory but in the conditions of receptiveness to it. If Scherer and Palazzo are unwilling or unable to give it serious consideration, what prospect is there of it appealing to, let alone being adopted by, practitioners? The problem, we suggest, is that despite a convergence of financial, climate, energy, food, and migration crises, there is currently little appetite globally to call into question the hegemonic practices and commonsense logics that underpin our current, market-dominated, socioeconomic order.

We noted earlier how, in the Forest Stewardship Council (FSC), a turn to deliberative democracy had the effect of obscuring, marginalizing, and silencing indigenous dissent and difference, as highlighted by the Rainforest Foundation report. In parallel with this, we see, evidenced in the statement by the B&Q executive [26], that the turn to deliberative democracy, at least as implemented by the FSC and endorsed by Scherer and Palazzo, has done little to call into question such commonsense identifications with the logic of comparative advantage. From a radical democratic perspective, the marginalization of difference and the apparent failure to elicit an increased self-reflexivity and emotional disruption in participating individuals would be prime indicators of a process that was depoliticizing rather than repoliticizing. It is therefore prudent to have rather low expectations about the current receptivity or preparedness of practitioners (as well as academics) to radically scrutinize, rethink, and transform their thinking and practices.

The FSC example shows how at present the function or effect of “political CSR” can be to co-opt or subsume difference in ways that reaffirm rather than disrupt established identities. Nonetheless, it may be that “political CSR” has a role to play in helping to counter this conservatism. When considering this proposal, it is relevant to recall how CSR is just one arena of potential repoliticization in a wider social milieu [46]. If “political CSR” is to develop along more radical democratic lines, then its application must be geared to a wider disruption of the logics of markets which, taken as a whole, can ferment and address a more pervasive environment of anxiety arising from the calling into question of identities across society.

Notwithstanding the continuing fallout from the financial crisis and the prospect of a deepening ecological crisis, it is far from clear that we are approaching a moment of such widespread social disruption where radically different ways of thinking and being become intelligible and desirable. Indeed, where affluent consumerism spreads across the emerging economies, the prospect is for an increasing co-option of alternative identities to a market-driven subjectivity. Within this context, there may nonetheless be benefits from interventions, in

contemporary discourses of today, that are not postfoundational in their philosophical orientations yet may, if they are not diluted or displaced, nevertheless expose difference and promote the disruption of sedimented commonsense identities. In this process, deliberative democracy may facilitate a shift from an understanding of the political as a process of aggregating individual preferences to conceiving of it as a process of debate and public will formation. In this respect, and without withdrawing our earlier criticisms of Scherer and Palazzo's "lite" engagement with the thinking that underpins deliberative democracy, and their associated formulation of "political CSR," we see some merit in aspects of Scherer and Palazzo's "political CSR" so long as its limitations are adequately acknowledged and addressed, including an apparent disinclination to "deliberate" with comparatively friendly critics. As the FSC example instructively shows, it is necessary to develop an alternative approach that directly fosters an alertness to the ways that a deliberative democratic and "political CSR" can rapidly come to obscure difference, and thereby sidestep the deep emotional challenges to established commonsense and identities which a more open understanding of difference would expose. Where "political CSR" produces at least a partial disruption of established dominant liberalist and system-dominated discourses, it is to be welcomed, but as a first, not a final, step. Associating this disruption with postliberal political theory, as Scherer and Palazzo commend, may be helpful in promoting a fully postliberal theory and practice of "political CSR" as a mutation occurs from liberalism into a radical democratic perspective. By alerting us to the value and significance of difference, albeit within the confines of "political CSR," deliberative democracy may, potentially, act as something of a "Trojan horse" by creating a receptivity toward a more philosophically (and psychoanalytically) informed and radically remodeled form of "political CSR."

If deliberative democracy were to become central to "political CSR," we anticipate that its claim to offer a pragmatic approach would be increasingly challenged by demands to test its practical impact against the telos of consensus. In this telos, we find the origin, and hence also the limit, of the communication theory of society that lends philosophical credibility to deliberative democracy. STH tells us that it is at the limit of a discourse that we encounter the inescapability of difference and undecidability: It is at the limit of our search for a grounding positivity that we encounter the aporia of the originary negativity. Scherer and Palazzo's appeal to the pragmatism of agreement effectively occludes the radical negativity that is exposed when the philosophical foundations of Habermas's discourse ethics are interrogated. By being alert to the philosophical basis of our postfoundational political theory, we find ourselves at the limit of discourse where the political, the philosophical, and the ethical meet in a moment of radical negativity without foundations. For us, deliberative democracy might open a route toward a radical democratic "political CSR." But, in our view, this prospect will be realized only if we are prepared to question the philosophical foundations of Habermas's theory and, by pushing that questioning to its limits, expose, and address the radical negativity that, we have argued, lies hidden at the core of all ethics and discourse.

Cross-References

- ▶ [A Marxist Ethic of Business](#)
- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if any?](#)
- ▶ [Discourse and Tractable Morality](#)
- ▶ [Fundamentals of Discourse Ethics](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [What Are the Obligations of Those Who Invest in Corporations?](#)

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Abstract

When managerial decisions are examined, somehow the business context must be included in the analysis. In this chapter, causalities that transcend individuals are promoted as unit of analysis in empirical moral research, namely, discourse. Studying managerial decisions in their discursive context is an interesting way to study the moral side of these decisions. After discussing discourse theory, the conclusion is that discourse theory can help business ethics in many different ways. It is shown what a discourse description or analysis within business ethics could look like. Special attention is paid to stories and metaphors, and to the power effects of international anticorruption discourses.

Introduction

Watson ([89], p. 168) claims that “although increasing academic attention is being paid to business ethics, the ways in which ethical consideration come into activities and decisions of organizational managers have been examined in a very limited way.” This chapter¹ contributes by suggesting an interesting way to study moral managerial decisions is studying these decisions in their discursive context. In the ► [Chap. 27, “Discourse and Normative Business Ethics,”](#) the focus is on the normative side of ethics, here on descriptive ethics. Here I study why and how discourse analysis can aid descriptive business ethics.

In this chapter, first I claim that the internal dynamics within organizations render methodological individualism in business ethics hard to defend. Therefore,

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describing the moral side of a company by describing the moral part of managerial decision-making lends just a fragment of the whole picture. Somehow, the business *context* wherein managerial decisions are made also contains important moral information. Causalities that transcend individuals are proposed as a unit of analysis in empirical moral research, namely, discourse. I suggest that an interesting method for describing (moral) decisions of managers is looking at the way managers talk about their reality. After describing what is meant by discourse in this chapter, I suggest how discourse analysis could be used in descriptive business ethics and give the example of bankers' decisions. Special attention will be paid to storylines and metaphors and to the power and consequences of (business) ethics discourse by giving the example of international anticorruption discourses.

Problems with Applying Classic Moral Theories Within Business Ethics

Business Ethics and Classic Moral Theories

According to Van Lwijk and Kimman, well-known business ethicists in the Netherlands, business ethics is an institutionalized discussion about values and norms that should contribute to formulating directions for action [4] or rules [5] for managers [6]. In formulating those directions, classic moral philosophers are often studied. Some scholars within business ethics therefore lean heavily on classic moral theories, such as deontological, utilitarian and virtue "ethical theories."² Peter French: "I am convinced that the primary problem of business ethics is not to identify ways of applying the traditional moral theories and principles in order to evaluate the actions of corporate managers. That, unfortunately, has been the characteristic approach in the field" [7].

Solomon [8] is an example of a scholar using virtue ethics. Scholars who use some sort of integrity approach, such as Kaptein and Wempe [9], usually try to find the right mix between the three classic moral theories. Scholars like Ronald Green [10] take a more deontological approach: They define clear moral guidelines and principles to which companies always have to adhere.³ A theorist like Freeman, with a "fair contracts" approach, reflects the assumptions and methodology of the modern liberal Rawlsian theory of justice and property rights [11]. The stakeholder approach, like the one by Donaldson and Preston, has some affinities with utilitarian notions. Like the utilitarian moral theorists, stakeholder theorists struggle with the following problems: Whom to identify as morally relevant? How to accommodate conflicting interests? And what to do with moral claims that are incomparable? Answers should lead to a situation that is best for all. Contract theorists, such as Donaldson and Dunfee [12], do not so much get their inspiration from the classic moral theories, but make use of other classic philosophers like Hobbes, Locke, and Rousseau.

The Human Agent Versus Organizations: The Problem of Intentionality

Classic ethical theories happen to have in common the assigning of a key role to the human agent. The focus is on questions how *individuals* should act in certain, morally relevant situations. After all, the well-being of persons is the primary consideration of Western ethics; most philosophical ethics is about how to treat other human beings. Concepts like “responsibility” and “blame” play central roles.

Theories like utilitarianism, deontology, and virtue ethics can be, according to Van Willigenburg:

...viewed as systematisations of the moral insights, intuitions and beliefs of all who share basic moral concerns and who, therefore, participate in a common search for answers to questions about how to treat each other, how to organize society and how to lead our lives. Ethical theories try to construct a coherent and illuminative set of principles and rules . . . But clearly, not one of these theories’ systematisations can provide for the whole truth, though they all start from one or another part of folk morality that we find intuitively plausible and fundamental. Each systematic reconstruction will have its blind spots: areas where its principles do not readily apply or even lead to counterintuitive results. This is certainly the case when different levels of analysis are in play. An ethical theory constructed from the perspective of the individual actor will have difficulty accounting for the corporate context. [13].

The moral rules classical ethical theories prescribe can be used to advise individuals when making decisions. But classic moral theories were not designed for the corporate context. As Van Willigenburg notes, in the corporate context, different levels of analysis are in play. An important issue for business ethicists is thus to decide how far they can go in applying philosophical moral theories – meant for individuals – to organizations. In the famous words of Velasquez, “Although we say that organizations ‘exist’ and ‘act’ like individuals, they obviously are not human individuals. Yet our moral categories are designed to deal with individual humans who feel, reason, and deliberate, and who act on the basis of their own feelings, reasoning and deliberations” [14]. According to Velasquez, a corporation cannot be held morally responsible. It does not have autonomy. Velasquez is a so-called *moral* individualist. To him intentionality is essentially tied to consciousness. And the human kind of intentionality is necessary for moral responsibility. A related problem is how to punish organizations. Organizations cannot be put in jail and their souls cannot be damned. Many business ethicists who believe that organizations cannot be held responsible in a moral sense spend their energy on individuals within organizations, mostly the decision makers: the managers. Interesting and wide juridical and managerial literature exists on “who is to blame.”

Whether or not doing something intentionally is essential to being held responsible is an important question. After all, corporations are capable of doing considerable undeserved harm. And our organizations are complex: division of labor and expertise renders every action employees undertake a minor part of the overall task. This leads to problems in business ethics because of the intentionality condition.

“Sin without sinners, crime without criminals, guilt without culprits! Responsibility for the outcome is, so to speak, floating, nowhere finding its natural haven”[15]. There are some arguments that organizations can act intentionally whether or not it is seen as a human form of intentionality. These arguments, however, are not very convincing. There are many cases where the agent (the organization) has caused considerable harm (environmental pollution) that it clearly did not intend – as is required for moral responsibility on the intentionality condition. I am convinced that our ordinary (daily) discourse casts a considerable wider net than those business ethicists who defend moral individualism. *I think that in our daily moral discourse, the fact that harm is done is more important than the intentionality condition and is therefore more appropriate.*

The Outcome of Moral Choices

I argued that many scholars, who believe strongly in using one of the classic moral theories within business ethics, focus on managers and how they should make individual choices. Those business ethicists focus on advising individuals within companies: managers. Implicitly it is assumed that the conscious decisions of managers determine what actions organizations undertake. Society and human behavior are viewed as the outcomes of conscious (moral) decisions; the functioning of organizations is seen as the outcome of (conscious) managerial decisions. Thus, if these managers get good moral advice (and abide by it), the organization will behave in a good moral sense. This gives morality a chance to determine behavior. This is why the part of business ethics that leans heavily on classic philosophical ethical theories has clear affinities with choice-based decision theories. Within choice-based theories, the process of weighing alternatives is based on values, i.e., individual preferences over alternative outcomes.⁴

In most theoretical ethical discourse, the outcome of moral choices is given. The main problem it tries to address is how to choose between different actions and/or outcomes. But, because of the ever growing complexity of organizations, the distance between actions and outcomes is great in both space and time. Anthony Giddens therefore calls our society a risk culture. What is important here are the consequences these problems have for applying classical moral theories in the field of business ethics. Bauman notes:

We can do harm to them (or they may do harm to us) inadvertently, by ignorance rather than design, without anyone in particular wishing ill, acting with malice and be otherwise morally blameworthy . . . It also renders impotent the few, but tested and trustworthy ethical rules we have inherited from the past and are taught to obey. After all, they all tell us how to approach people within our sights and reach, and how to decide which actions are good (and thus ought to be taken) and which are bad (and thus ought to be avoided), depending on their visible and predictable effects on such people. Even if we abide by such rules scrupulously, even if everyone around observed them well, we are far from certain that disastrous consequences will be avoided. Our ethical tools—the code of moral behavior, the assembly of the rules of thumb we follow—have not been, simply, made to measure to the present powers. [15]

Concerns for “Applied Business Ethics”

The point I am trying to establish is that context in ethics is important, especially in applied ethics. Sorrel: “I suggest there is a whole genre of applied ethics—‘armchair applied ethics’—that extends in an objectionable way the method of arguing *a priori* and by abstract counter-example that is justifiable in most of the rest of philosophy. In applied ethics, there is an obvious value to leg-work—leaving one’s armchair and finding out about the actual practice of business, medicine and law, including the questions that seem natural to practitioners, or urgent to them at different times” [11].

Every issue in daily management has its value implications. Managers, however, are often not aware of this – perhaps one of the reasons why applied business ethics as a field is not as evolved as applied legal or medical ethics. Managers in these fields deal daily with issues they *perceive* as morally relevant; naturally they are more prone to turn to philosophical ethics for help [11]. But when a discourse does not perceive an issue as morally relevant, the theoretical moral discourse runs a risk of being misunderstood and giving intractable advice. Even when business people find certain philosophical discussion interesting, they have a hard time relating it to their daily problems. The ethics are too far removed from daily practice. In other words, the discourses are too different. When talking about the same issue, ethicists and business people sometimes use different terms and concepts and talk “past each other.” This point is also important in relation to stakeholder theory. Social constructivists have shown that various actors are likely to hold different perceptions of what the problem “really” is [16]. Even if all the relevant representatives of all the relevant stakes are around a table, the question is whether they perceive and are willing to talk about the same problems, let alone the same solutions. “This does not mean that facts don’t enter the discussion. Ironically, participants seem exclusively preoccupied with getting the facts straight. They accuse each other of misinterpreting or simply ignoring crucial evidence. Many authors contend that these agreements about facts actually mask a conflict underlying ‘belief systems.’ These are sets of causal and normative assumptions about reality” [17]. Both discourses have valid arguments within their own rules, but somehow they differ fundamentally.

In an interesting article, Hoffmaster [18] presents some difficulties he has with “applied ethics.” By the latter, he does not mean the catchall term used to refer to activities such as ethics rounds and consultations, ethics committees, etc. The target is “applied ethics” in the sense of a philosophically based and motivated theory. While his article is about applied ethics in the field of medical ethics, some of his points are relevant in the field of business ethics. Let me briefly list his criticism here. What Hoffmaster calls “criticism,” I see as “special areas of concern” when applying philosophical theories to applied business ethics.

Hoffmaster makes a distinction between two kinds of criticism that can be leveled against “applied” moral philosophy, namely, internal criticism and external criticism. Internal criticism purports to show that moral theory cannot succeed on its own terms. External criticism points out that moral theory cannot account for the phenomena of morality [18].

A first internal difficulty of applied ethics is that many principles within applied ethics are too general and vague to apply determinately to concrete situations, leading to intractable advice; always a concern for any sort of applied ethics. Within applied business ethics, philosophical ethics can play a role. But the philosophical discourse within a field of applied ethics should also be close to daily (business) practices or it will suffer from what Sorell [11] calls the alienation problem: a breach between ethicists and practitioners. As Stark claims, based on his study of the business ethics literature, “Far too many business ethicists have occupied a rarefied moral high ground, removed from the real concerns of and real-world problems of the vast majority of managers. They have been too preoccupied with absolutist notions of what it means for managers to be ethical, with overly general criticisms . . .” [19].

All the major concepts in moral philosophy are heavily under debate. The proper use is never agreed upon.⁵ Which kind of use of a concept is valid in a particular moral dilemma? In the use of the concept “values,” when we study what is meant by “loss of values,” we see that people can mean completely different things. Although an analysis of concepts can clarify confusion around concepts, it can never establish what a concept “really” means, let alone resolve the disputes in which concepts play a role. “In any moral controversy, the question of whether and if so, how, a principle is to be brought to bear upon that dispute is itself contentious . . . Disparity between the abstract semantic formulations of principles and the particular empirical circumstances they supposedly govern is a consequence of the inherently general nature of language” [18].

A second internal difficulty with applied ethics is that a multiplicity of principles is taken to be relevant to moral problems in the corporate context but when principles conflict, applied ethics does not offer a good way to resolve the conflict. This problem is often mentioned: for any one moral problem, several principles can be applied. Unfortunately, there is no accepted way of choosing one principle over another.⁶

A third internal difficulty of applied ethics is that it is not helpful in addressing some crucial moral issues because these issues challenge assumptions upon which the theoretical edifice of applied ethics is erected. The assumptions of moral theories with long traditions make many managerial ethical issues difficult to address. Addressing them would challenge the assumptions of the existing theories. Noticeable in this regard for business ethics is the debate over who belongs to our moral sphere. What, exactly, is the moral status of a cow? Or, what is the moral status of the environment, when a bank director has to decide upon giving a loan to a potentially dangerous chemical conglomerate? A cow and, certainly, the environment are not autonomous moral agents. Of course, that does not necessarily mean that they are thereby excluded from moral considerations, but the moral status of nonhumans complicates moral discussions to such a degree that the new field of environmental philosophy is as of yet not able to do much more than map the problems this constitutes for our longstanding moral philosophies.

Turning to Hoffmaster's external criticism, some theoretical moral theory is, in a number of respects, blind to actual moral phenomena. Therefore, applied ethics runs the danger of not appreciating the dynamic character of morality:

Because 'applied ethics' takes morality to be an autonomous theoretical system under which the flotsam of human experience is subsumed, it cannot account for the flux in that experience. It therefore cannot answer three questions that are central to our understanding of morality: why only certain issues come to be recognized as moral problems; how moral problems get categorized or labeled; and how and why moral change occurs. [18]

Elaborating on this last issue:

What induces and precipitates moral change? The salient moral issues of today are different from those a decade ago, let alone a century ago. 'Applied ethics' nevertheless remains impervious to moral change; it will deal with whatever moral problems are brought before it, assuming that the identification and characterization of moral problems themselves raise no difficulties and that moral problems can be dealt with independently of the contexts in which they arise. Yet, how, when and what issues become 'moral' are vitally important questions. [18]

The fact *that* an ethical question arises within a business is as interesting as *what* the question is; that many ethical questions are *not* asked is interesting as well. How animals are treated within Holland's intensive food industry is a good example. The kinds of (moral) arguments used in favor of and against intensive animal husbandry have been around for as long as these practices have existed. Yet, during the crisis of foot and mouth disease, the arguments against intensive animal husbandry gained importance. Why is that? The philosophical moral grounds concerning animals had not changed. Being able to understand why issues are raised about intensive animal husbandry requires more than just studying classical moral theory. To understand these types of questions, the context of moral questions must be examined. There must be an understanding of the *discourse* in which the question appears. The arguments in the Netherlands about intensive animal husbandry can only be understood against the background of the recent outbreaks of bovine diseases like the foot and mouth virus and swine fever.

How and why moral questions are asked in certain contexts at certain times is important. "Answering that question requires a broader conception of morality than the identification of morality with philosophical moral theory, a conception that situates morality in social, cultural, and historical milieus" [18]. Discourse theory is well equipped to study precisely that context and show the working of ethics in practice. By making organizational discourse analyses, it pays attention to moral practice; it puts moral problems in context. I will elaborate on this in the next sections.

Hoffmaster states, "a theoretically-oriented applied ethics tends to focus on 'big' decisions and portray them in binary terms. By doing so, it ignores pragmatic strategies for responding to moral problems such as abiding time, compromising or cycling through competing values" [18]. When one leans too heavily on theoretical-oriented applied ethics, one's morality runs the risk of being too abstract, of being intractable. On making hard moral decisions, Frohock writes: "Pain and guilt, rather than immorality and irrationality, plague therapy decisions" [20]⁷.

Moral decision-making is situational. When studying moral decisions, the context is of extreme importance. Due to the nature of language, abstract formulations derived from philosophical theories can easily lead to disparity with the circumstances in which a person has to make a decision [18].

Language and Meaning

In recent decades, discussions on the nature of truth have profoundly affected social research. Instead of assuming a given world “out there,” waiting to be discovered, attention is being drawn to the language processes through which the world is represented. The access we have to a reality outside language is highly problematic. Language does not simply report facts; it is not a simple medium for the transport of meaning. The meaning and effect of words depend on the context in which they are spoken or written. Du Gay ([21], p. 47): “The meaning that any object has at any given time is a contingent, historical achievement . . . theorists of discourse argue that the meaning of objects is different from their mere existences, and that people never confront objects as mere existences, in a primal manner; rather these objects are always articulated within particular discursive contexts.” Perhaps it is the case, as some philosophers claim, that what exists in the world is a necessity (independent of human beings or language), but things can only be differentiated through language. The world itself does not give meaning to objects; this is done through language. Stated simply, although things might exist outside language, they get their meanings through language.

This view of language implies the possibility to describe the business context as a discursive construction. The meaning of anything always exists in particular discursive contexts; meaning is always contextual, contingent, and historical. For business studies, language is not just seen as reflective of what goes on in an organization. Discourses and organizations are one in the same. “That is, organizing becomes communicating through the intersection of discourse and text” [22]. Our so-called organizational actions are embedded in discursive fields and are only recognizable as practices through discourse. Organizational discursive practices exist only in the organizational surroundings and practices they are part of.

Discourse

The concept of discourse plays an important role in most post-positivistic research and has many meanings. Of its many interpretations (see [23]), here I define discourse as “a specific ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities” ([16], p. 44). For example, psychiatric discourse brought the idea of an unconscious into existence in the nineteenth century (cf. [24], p. 3, [25]). Discourses contain groups of statements

that provide a way of talking and thinking about something, thereby giving meaning to social reality. Discourses are not “out there” between reality and language; they are not just a group of signs. They refer to practices that systematically form the objects we speak of. Discourse is not just a “way of seeing” – a worldview – but is embedded in social practices that reproduce the “way of seeing” as “truth.” Discourses are constitutive of reality [26]. What is and is not true cannot be seen outside discourse; it is internal to it. By looking at what people say and write, we can learn how their world is constructed.

The concept of discourse is often used to overcome oppositions like “action and structure” or “individual and structure.” Since discourses, as used here, institutionalize the way of talking about something, they produce knowledge and thereby shape social practices. Social interactions cannot be understood without the discourses that give them meaning. Discourses function as a structure to behavior; they both enable and constrain it. Since discourses in our context institutionalize the way of talking about something, they produce knowledge and thereby shape social practices. Discourses contain the conditions of possibility of what can and cannot be said. The fact that a question arises in any business context is as interesting as the question asked (and the questions not asked). And every question asked gets some form of an answer (including no answer), which has consequences. Discourses help us understand that a certain question is asked, and give us the spectrum of possible solutions to problems arising from it, i.e., what is or is not seen as a viable solution to a specific problem. A problem’s definition inevitably predisposes certain solutions, and vice versa ([17], p. 6; [27–29]). Compare this with the following quote from Schön and Rein ([30], p. 153):

When participants . . . name and frame the . . . situation in different ways, it is often difficult to discover what they are fighting about. Someone cannot simply say, for example, ‘Let us compare different perspectives for dealing with poverty,’ because each framing of the issue of poverty is likely to select and name different features of the problematic situation. We are no longer able to say that we are comparing different perspectives on “the same problem,” because the problem itself has changed.

Over the last two decades, organization studies have given much attention to language and discourse. Putnam and Fairhurst [31] give a good overview of the developments in the area of discourse theory in organization studies. Alvesson and Kärreman [23] discuss the variety of ways in which the concept of discourse is used in organizations studies. For more on discourse analyses, one could mention Dijk [32] and Titscher et al. [33].

The field of business ethics, however, does not pay much attention to (some form of) discourse theory. Among the exceptions are Parker [34] and Shapiro [35]. Also, Cheney and Christensen [36] discuss corporate rhetoric (not internal discourses, but communication that is directed to outsiders of the organization) on corporate social responsibility from a discursive perspective. Descriptive ethical research in the tradition of Jackall [37], Bird and Waters [38], and Kunda [39], looks at what and how moral issues are an issue in the daily life of managers. How do managers talk about ethics and what moral issues do they encounter?

Discourse and Values

Like meaning, values are immanent features of discourse. When we give meaning to something, we are also valuing it. Even though a Durkheimian view is clearly not endorsed here (our emphasis is on language, not institutions), there is a parallel. To Durkheim social institutions, collective ways of thinking, feeling, and doing are not empty but full of values (values give meaning to relationships). In similar fashion, discursive practices are not empty; they are filled with values. By giving something a name, we highlight certain aspects. But in that same process, all other possible qualities are placed in the background or even ignored. Values, causal assumptions, and problem perceptions affect each other. In our daily lives, we jump so often between normative and factual statements that we do not realize how much our views of facts determine whether we see problems in the first place. But when we study those discussions more carefully, we can see that “is” and “ought” are intertwined. Seemingly technical positions in discourses conceal normative commitments. Discourses make more than claims of reality – they accomplish what Schön and Rein [40] have called the “normative leap,” or the connection between a representation of reality and its consequences for action. Within most versions of discourse theory, the strict dichotomy between facts and values ceases to make sense. Facts and values here are not treated as ontologically different; discourse theory treats them as different sides of the same coin. The “is” and “ought” shape each other in countless ways. Language is thus neither neutral nor static in communicating meaning. The awareness that language does not neutrally describe the world is important to corruption research. Subtle linguistic forms and associated symbolic actions shape our convictions and presuppositions ([41], p. 79).

As discussed, discourses contain the conditions of possibility of what can and cannot be said. The fact *that* a moral question arises in business is as interesting as *what* question is asked; as is the fact that many moral questions are *not* asked. Every question that is asked gets some form of an answer which has consequences. Every (non-) decision of any manager in any company is a social activity and affects people’s lives [42]. In a specific discourse, different moral questions are raised than in others. As soon as managers of soccer clubs start to talk about soccer as a “product” (a relatively new development), a new world opens up around the same old game with new opportunities, managerial problems, and new moral issues [43]. Discourses do not only help us understand that a certain moral question is asked, they also give us the spectrum of possible solutions to moral problems being raised, i.e., what is or is not seen as a viable solution to a specific moral problem. It can be suspected that the framing of moral questions by managers [40] differs from moral questions framed by professional ethicists. Where moral philosophers frame moral questions for managers based on their philosophical discourses, managers (needing a “tractable morality,” see [44]) frame their moral questions on a daily basis.

Although Aristotelians and pragmatics like Dewey [45] intensely consider deliberation and conversation, there are clear differences with the discourse theory as described above. Aristotelian ethicists are usually looking for virtues to be

named, virtues that are good. Most discourse theorists though, want to stay away from anything associated with essentialism. Instead of looking for virtues for individuals, discourse theorists want to problematize the central role of individuals (at least the central role of individuals in research). Individuals are part of organizations; they operate in discursive contexts that determine (at least in great part) their behavior. Discourses thus focus more on context than on individuals and their virtues. The extent to which individuals are influenced by their contexts gives rise to extensive discussions about their autonomy and freedom. These discussions (interesting as they are) are left here aside. What is important is that the behavior of individuals is, at least to a high degree, influenced by the organizational entities in which they work and that affects the morality of managers. Jackall [37] concludes:

... because moral choices are inextricably tied to personal fates, bureaucracy erodes internal and even external standards of morality not only in matters of individual success and failure but in all the issues that managers face in their daily work. Bureaucracy makes its own internal rules and social context the principal moral gauges for action . . . Within such crucibles, managers are continually tested as they continually test others. They turn to each other for moral cues for behavior and come to fashion specific situational moralities for specific significant others in their world.”

Discourse Analysis

How can we transition from an ontological and epistemological stance of meaning that is always historically and socially constructed to a theoretical model useful to empirical ethics research? De Graaf [46] has offered an example from postmodern research where empirical corruption research is conducted based on Pierre Bourdieu’s theory of social action [47–50]. By combining macro and micro factors and everything in between, it is an example of how concrete corruption case studies can be conducted. Contextual research in this way can establish dispositions that *can* lead to corruption. Since dispositions do not always manifest, they cannot be called “causes” in the strict sense of the word. What is important in this type of research is the receptiveness of an individual to corruption, and whether the receptiveness is triggered.

An interesting additional method to traditional ones of describing moral decisions of managers is looking at the way managers talk about and view reality: describing their discourses. Instead of looking at the moral agents or the organization as a moral entity, one can study an organization’s internal discourse. In that sense, individuals are neither central to nor the proposed objects of study (methodological individualism); the object of study is discourses. By describing discourses of managers, moral aspects come to the fore.

How does research with discourse theory work? A researcher conducts discourse descriptions or analyses, the basis of which are texts (the material manifestations of discourses). All verbal and written language can be considered. A discourse analysis shows which discursive objects and subjects emerge in social practices, and which conceptualizations are used. Consequently, what is left out in social practices also emerges. It is not the purpose of discourse analysis to retrieve what authors

meant or felt. Discourse analysis is not a search for meaning in texts, empirical or otherwise. The analysis focuses on the *effects* of the texts on other texts. Hajer ([16], p. 54): “discourse analysis investigates the boundaries between . . . the moral and the efficient, or how a particular framing of the discussion makes certain elements appear fixed or appropriate while other elements appear problematic.”

A discourse analysis inquires into forms of problematization and offers a narrative about the production of problems. Why is something considered a problem (or not)? It does not concentrate on answering the problem at hand. In other words, when doing a discourse analysis, one can establish the limits of what can and cannot be said in a particular context, what Foucault [25] called “the conditions of possibility” of a discourse. A discourse analysis can identify the rules and resources that set the boundaries of what can be said, thought and done in a particular (organizational) context or situation. Mauws ([51], p. 235): “Thus, if we are to comprehend how decisions are made . . . it is by examining the conditions of possibility in relation to which these statements are formulated, that is, the often implicit institutionalized speech practices that guide what is and what is not likely to be said (Bourdieu).” By conducting discourse analyses in the field of business ethics, the contextuality of ethics is taken seriously. It gives content to the vague notion of “putting moral problems into context” [18].

An Example: Bankers’ Decisions

In 2001, in Holland the three largest banks dealing with private businesses were ING, ABN-Amro, and Rabobank. Each of the three banks would argue that they differ from each other. Rabobank, for example, is a cooperative company, not listed on any stock exchange. Therefore it does not have to satisfy shareholders and according to Rabobank this means more than just a different legal way of doing business. Rabobank claims that (partly) because they do not have to make a profit to satisfy shareholders, they treat their clients differently. And they claim to care more about the local economy than their competitors do.

One of the many ways in which the three banks could differ are the decisions they make toward requests for a loan by starting businesses. The problem with a starting business for banks is that they pose a higher risk. Many new companies go bankrupt in the first year of their existence.

By understanding how bankers make their choices with respect to starters, a discourse description can render visible the discursive formation within which bankers speak. It can identify the rules about the limits of what can be said and what cannot within a banker’s discourse. A discourse analysis can first of all try to make clear how the banker sees himself, what his identity is. Then it can try to show how the identity of the banker is matched to a situation in which a loan for a starter is decided. It has good opportunities to find rules that managers apply that are not financial norms, and that the bankers themselves are not consciously aware of. Maybe, the manager sees himself and his business, as something essential to the economic development in his region, which could lead to favorable impressions

of starting businesses. Or maybe he is young and trying to make a fast career within his national bank organization, and is very concerned with avoiding big financial risks for his local bank, because the national bank is judging him very heavily on avoiding “mistakes.” This example would lead to very stringent decision rules for starting businesses. A discourse analysis could also compare banks in that way. What are the similarities and what are the differences between the identities of local bank directors. Rabobank claims that it pays much attention to the region a specific bank office is located in. Is that reflected in the way the local bank directors talk about starters and the decision processes whether to give them a loan?

A discourse analysis by De Graaf [26], a study on bankers’ conceptualizations of their customers concluded that there are five different discourses about customers among Dutch bankers (using Q methodology, see also [52, 53]). These discourses contain many aspects about the job of a banker and conceptualizations of their customers. The discourse descriptions give valuable information about the context of managerial decisions. It is shown how bankers in the discourse of a Rabobank make more favorable decisions toward giving loans to starting businesses: They use a discourse where helping to start a business is seen as a moral question; others do not. The latter will ask themselves moral questions about start-up company loans but look primarily at the financial risk, and ask themselves primarily financial questions.

As stated before, in discourses factual and valuational statements are intertwined. Different ways of looking at the factual world lead to different valuations of it and vice versa. The moral problems managers have are always embedded in a context. Morals are always situational. In talking about values, bank managers from a discourse wherein the relationship with the customer is a commercial one, immediately start to talk about fraud and how to prevent it [26]. Moral issues seen by bankers – the treatment of start-ups, environmental issues, using the bank to improve the region, dealing with sponsor money, having a customer in financial difficulty, whether to treat clients differently, when to be completely honest to customers, how to negotiate with customers, etc. – are indissolubly tied to factual images a banker has of his customers. The moral questions and the factual images are part of the same discourse. By giving the best discourse description possible, the differences in moral stances between discourses become apparent by contrasting them.

Storylines and Metaphors

One way to study how discursive practices are shaped is to look at storylines and metaphors. Our own particular worldviews and discourses position us within discussions in terms of the concepts, metaphors, and stories of that discourse. For business ethics researchers, it is important that a discourse analysis can show how forces in language influence moral positions by looking at the role metaphors and storylines play within a discourse. Discourse analysis can also gain perspectives into the structure, dynamics, and directions of conflicting discourses, like narrative strategies.

Stories play an important role in people's lives; in large part, they give meaning to them [54]. If you want to get to know someone, you ask for a life story. Stories tell about what is important and what is not. Philosophers like Johnson [55] or McIntyre [56] would go so far as to argue that stories are central to creating human understanding: "I can only answer the question 'What am I to do?' If I can answer the prior question, 'Of what story or stories do I find myself a part?'" ([57], p. 304). Fisher ([58], p. xiii) claims that "all forms of human communication need to be seen fundamentally as stories." Many scholars agree that stories are filled with information and are efficient at conveying it ([59], p. 9). Boje ([60], p. 106) argues: "People engage in a dynamic process of incremental refinement of their stories of new events as well as ongoing reinterpretations of culturally sacred story lines"; ([61], p. 1001): "In sum people do not just tell stories, they tell stories to enact an account of themselves and their community." The assumption that meaning is produced in linguistic form fits well with exploring stories, which are simply one type of linguistic form, or elements of a discourse with certain characteristics.

Within stories, "is" and "ought" are closely connected. Even if they seem to give simple factual descriptions, an enormous implicit normative power lies within narratives. Hayden White ([62], p. 26): "What else could narrative closure exist of than the passage of one moral order to another? . . . Where, in any account of reality, narrativity is present, we can be sure that morality or a moralizing impulse is present too." According to White, the events that are recorded in the narrative appear "real" precisely insofar as they belong to an order of moral existence, just as they derive their meaning from their placement in this order. It is because the events described are or are not conducive to the establishment of social order that they find a place in the narrative attesting to their reality ([63], p. 10). A narrative analysis can therefore shed light on how different moral positions relate to each other. It shows how narrative structures (partly) determine moral positions and identities, and how they thereby influence the actions of individuals and organizations. And they show how internal dynamics of a discourse can influence the moral position taken; this can also be used strategically. An example from a study by Bracking ([64], p. 44): "These attempts by members of the political elite to gain political ground relative to one another by attempting to fix the others' behavior as 'corrupt,' entail 'corruption' acting as a signifier of moral detraction in a political discourse that pretends liberal reform but serves authoritarian power. Narratives like these often involve 'illegal' foreign exchange transactions . . . There is also a popular narrative of corruption acting as a moral censure of a rapacious elite."

Scholars have pointed to the moral significance of metaphors in business studies and in many empirical organizational discourse analyses, the role of metaphors has been brought to the fore [65–67]. Weick [68], for example, pointed to the operational consequences of metaphor. Just like stories, metaphors are important to business ethicists because of the (often implicit) moral baggage they carry. Describing metaphors in discursive practices can bring clarity to how metaphors, in part, morally shape discursive practices, i.e., how morality is embedded in discursive practices.

The Power and Consequences of (Business) Ethics Discourse – The Example of International Anticorruption Discourses

When values are an integral part of any discourse, they are an integral part of the business ethics discourse. The thesis that meaning is constructed by and through discourse has implications for the notion of business ethics itself. It is, as Hackley and Kitchen ([42], p. 38) note, “inseparable from ways of talking about and doing ethics and ethical things.” The descriptive ethics of the researcher comprises a moral component; descriptive ethics contains values itself and does not just mirror reality [cf. [69]]. Business ethicists’ studies play a role in what Foucault called “the regime of truth.”

It was often concluded in business studies literature that “independence” and “accountability” of employees were good for a company in a business sense. At the same time, business ethicists concluded they were good in a moral sense. Within companies, it is important who speaks of morals, what their viewpoints are and whose interests are represented. In a nutshell, how is ethics turned into a discourse? How do the forms of problematization of managers fit with forms of problematization of business ethics? The Foucauldian question becomes, to what extent is business ethics used as a power tool to discipline workers? This is what Bauman argues too. He accuses organizations (bureaucracies) in our society of “instrumentalizing” ethics to achieve the goals of the organization rather than ethics being the systematic reflection of the goals of the organization. When opinion within a management discourse is that employees steal too much from the company, they can hire “integrity consultants.” These consultants do not evaluate the goals or the products of the organization, nor do they look at whether employees are treated kindly. Instead, they are used to discipline employees with the use of an ethical discourse.

There is considerable power in structured ways of viewing reality. Power in post-positivistic research is defined relationally rather than an institutional or personal feature. So-called genealogical discourse analyses of business cases and controversies analyze how power and knowledge function, how the rules and resources that set the limits of what can be said are working. By using a grammar in its descriptions that replaces the subject with consciousness by a subject as the receiver of social meaning, static concepts are in genealogy made fluid in a historical process. Within genealogy, Foucault (e.g., [25]) looked for the way forms of problematizations are shaped by other practices. Shapiro ([35], p. 29):

Genealogy is gray, meticulous, and patiently documentary. Committed to inquiry, it seeks endlessly to dissolve the coherence of systems of intelligibility that give individual and collective identities to persons/peoples and to the orders that house them by recreating the process of descent within which subjectivities and objectivities are produced.

Foucault [25, 70] has shown how power works through “subjectification.” A practical example: Bracking ([64], p. 36) argues that “the formal definition of corruption used by international financial institutions ... acts in practice as a strategic resource and signifier within World Bank political discourse, indicating

bad governance, illegitimacy and geopolitical position . . . Rather it is the wider strategic role that the concept plays as a disciplinary governance concept which is critical to donors' attempted management of African politics and societies."

Every discourse claims to talk about reality. In doing so, it classifies what is (not) true permitted, desirable, and so on. Truth and power are closely related. As Foucault ([70], p. 74) stated, "Truth is linked in a circular relation with systems of power which induces and which extend it; a 'regime of truth.'" Power is not just repressive; it is always productive. A genealogical discourse analysis within business ethics can reveal some of the ways power functions in discourse and organization, how the rules and resources that delineate the limits of what can be said are working. It can follow back in history the traces of a discourse and reveal the contingencies of a current discourse.

As an example of genealogical studies, let's examine the evidence of power influences of international corruption discourses. Building partly on the work of Foucault, some have shown how discourses on corruption with their inherent worldviews give some an advantage over others. For example, Roberts et al. [71] have shown how the discourse on governance in the so-called Pacific Plan resulted in a technocratic direction such that a particularly narrow conceptualization of governance dominates. "In a direct reading of the Pacific Plan and the interventions it empowers there is ample evidence that governance (good and bad) is used in a disciplining way" [71]. As a result, most emphasis in the region was laid on institution building (offices of auditing, statisticians, and so on). "The definitions and modes of monitoring governance provide a framework through . . . which Pacific Island elites . . . are able to know and analyze their region As the Pacific comes under the gaze of an expert calculus that frames forms of governing as 'good' or 'bad' the island nations and people are once again defined in terms of lack, with answers proffered by development experts" [71].

To reveal the forces or power of a discourse, genealogy has to go back to the moment in which an interpretation or identity became dominant within a discourse, like the Pacific Plan, in which case many alternatives for the dominant governance discourses are available. In fact, in some cases the alternatives effectively challenge the governance interpretations of the Plan. "The continual remake of governance occurs in several ways as social movements act to make strategic use of the term within the context of the Pacific Plan and beyond it" [71].

In so-called critical corruption studies, questions are asked about the consequences of the international anticorruption measures. Brown and Cloke ([72], p. 281): "Recently, together with several other commentators [73–78] we have been promoting the need for critical academic reflection upon the growing calls for an international 'anticorruption' crusade." Why, then, has there been such an explosion of interest in corruption since the 1990s, and why is there such an apparent political commitment toward tackling the problem [79] when there is no evidence that corrupt behavior has increased? Brown and Cloke [79] argue that an important factor has been shifting geopolitical priorities after the end of the Cold War.

The effects of anticorruption measures turn out to be manifold, and toward much more than simply reducing the levels of corruption. “Despite the evolution of structural adjustment into a kindlier, cuddlier poverty reduction version, within the international financial institutions there is no serious commitment to address the issues of regulation and control so vital to any understanding or control of corruption that debilitates countries of the North, East, West, and South” ([80], p. 318). Once again, the importance of context is emphasized. Consequences of anything will always depend on the particular situation, so it is stressed. Brown and Cloke ([72], p. 282/283):

This lack of detailed, contextualized analysis of the implementation of supposed anti-corruption initiatives is, we would argue, reflected everywhere, rather than having anything to do with any uniqueness of Nicaraguan circumstances. . . . we have also come across a series of major reservations expressed particularly by those whose evaluation of such activities stems from long-term research experience in the country concerned . . . Taken together, these points reflect our concerns that in too many cases what is referred to as corruption has been taken out of the context within which it occurs both globally (in terms of the interactions between North and South, the transforming influence of globalization etc.) and locally (reflecting a tendency to seek for global explanations for and solutions to a monolithic signifier named corruption, rather than more detailed considerations of the complex dynamics of the nature of multiple, interlinked corruptions within individual societies).

Most of the critical corruption studies are not against anticorruption measures *per se*, but what is labeled “corrupt,” what is not, and the effects thereof are critical. A special concern is what the negative consequences will be for the poor (e.g., [72]).

The *intentions* of anticorruption discourses are questioned as well. Some claim, for example, that such discourses reflect a post-Washington consensus seeking to reinvigorate regulatory institutions while maintaining blame for the failure of development in South American governments [81]. Another example: “Policy on corruption is deeply embedded within the wider constructions of global neo-liberal and free market economic governance [79, 82–84], where a clear divide between the political and economic and between the public and private spheres is expected” [64] – remarks similar to Roberts et al. in their study on the Pacific Plan. Kondos focuses on the meaning of favoritism using a set of Nepalese cultural practices, showing that “the favor” and therefore “partiality” as values are in accordance with Hindu cultural values. Yet he also explains how Western intellectuals tend to construct “favoritism” to mean corruption and its motives. As a result an ideological conflict in the field of political ethics arises from Western pressure to adopt the principle of “impartiality” in government [85]. Gupta [86] focuses on discourses of corruption in contemporary India, specifically, practices within the lower echelons of Indian bureaucracy and representations of the state in the mass media. He stresses vigilance toward the imperialism of the Western conceptual apparatus, questioning the Eurocentric distinction between state and civil society and the conceptualization of the state as a unitary entity. Some also see the use of (insincere) anticorruption discourse as a strategic tool to legitimize the invasion of Iraq ([81, 87]).

In some critical corruption studies we find criticism of ideologies, especially neoliberalism. Neoliberalism is not just blamed for promoting the interests of the

elite via anticorruption discourses; some even blame it for *causing* corruption. Whyte [87], for example, states: “Neo-liberalism creates a fertile environment for ‘corrupt’ market transactions to flourish, because it seeks the creation of limited space as a means of promoting entrepreneurialism and the pursuit of self-interests,” once again reminding us of Roberts et al. and the Pacific Plan. Paradoxically, the Enron scandal, which involved falsification of balance sheets, manipulation of accounting practices, and the creation of an image of financial health, showed the pervasive nature of corruption within corporate America – a hotbed of neoliberal thought. [88] states, “corruption is more than a simple, isolated crime committed for personal gain. It is a part of corporate and political, culture – more pervasive and acceptable among elites than we realize. In short, it is *becoming institutionalized*.”

Others are very critical of almost all anticorruption measures – integrity workshops, national integrity system analysis, anticorruption commissions – in the sense that they are seen as parts of wider mendacious practices where people are subjected as supernumeraries to human development: “The anticorruption discourse and donor practice itself can cause perverse effects which aggravate cycles of deteriorating governance (discussed by various authors in Bracking, 2007)” ([64], p. 37). Just as we saw in the Pacific Plan example [71], it is often stated in critical corruption literature that the current dominating anticorruption discourse is too focused on technical solutions and the public-private distinction, resulting in too much attention to the public sector as the major cause of corruption. In short, the “anticorruption crusade needs to be shorn of its antistate bias” ([79], p. 291).

Conclusion

When managerial decisions are examined, somehow the business context must be included in the analysis. First in this chapter, I discussed problems with choice-based theories on managerial decisions. Also, methodological individualism turned out to be problematic. In this chapter, causalities that transcend individuals were the proposed unit of analysis in empirical moral research, namely, discourse. After discussing discourse theory, the conclusion is that (the different forms of) discourse theory can help studying managerial decisions in many ways. I showed what a discourse analysis within business ethics could look like. Special attention was paid to stories and metaphors. There is considerable power in structured ways of viewing reality, with power defined relationally rather than an institutional or personal feature. Most of the critical corruption studies are not against anticorruption measures per se, but what is labeled “corrupt,” what is not, and the effects thereof are critical. A special concern is what the negative consequences will be for the poor.

Cross-References

- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Fundamentals of Discourse Ethics](#)

Notes

1. This chapter is largely based on [1–3].
2. I do not mean those scholars who defend the amoral model, like Von Hajek or Friedman, who believe doing business has nothing to do with ethics.
3. One could also consider Badarocco, trying to formulate norms on the basis of defining moments.
4. Facts and values are often clearly separated. Values come into play after the process of information gathering. Prescriptive ethics traditionally focus on this moment. The prevailing notion is that ethics and the non-ethical language that describes and explains situations and events belong to separate domains.
5. See Schermer [90] for a very interesting study on the concept of autonomy in ethical theory and hospital practice.
6. When managers' decisions depend on the conviction that they should treat a person not solely as a means to an end (deontology), or the notion of promoting the greatest good for the greatest number (utilitarianism), what should they do?
7. This raises doubts as to the rationality of moral decisions. When we study moral decisions, we can see that they do not conform to some philosophical ethical theory.

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Part 8

Contractarianism

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Abstract

This chapter discusses the development and a number of key concepts of the modern social contract tradition. It starts with some reflections on general aspects of moral and political theories with special reference to contractualist theories; then Hobbes's, Locke's, Rousseau's, and Kant's position on the social contract is discussed. In the conclusion, the discussion focuses on the concept of contractualism as derived from justification theory, on Rawls' political contractualism, and on hermeneutic concepts of contractualism.

Introduction

Contract theories comprise conceptions in moral, social, and political philosophy that concern the moral principles of human action, the rational basis of social order, and the requirements for the legitimation of political governance, as based on a hypothetical contract that is concluded among free and equal individuals in a well-defined initial state. They thus see the general acceptability of principles as the fundamental criterion for normative validity. Contract theories – like the closely related Consensus theories – are based on a *proceduralism with regard to justification*. They represent a systematic elaboration of the characteristically modern conviction that the social needs for justification and explanation cannot be satisfied any more by reference to the will of God or to an objective natural world order. Many developments, such as the decline of the theological view of the world, the disappearance of the traditional qualitative concept of nature under the impact of the plain view of modern science that relies exclusively on factual proof, the

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decay of the established social order of integrated value under the growing weight of bourgeois values, and the economization of social conditions, made necessary a reorganization of the practice of cultural justification, to make it conform with the newly created intellectual foundations of the world of modernism and correspond to the mutated conditions of the individual self and of the human environment. The objectivist legitimation theories of the tradition, such as stoic-Christian natural law, theological absolutism or a teleological ontology, had all lost their validity and could not be referred to anymore in order to provide a metaphysical background for the social practice of reasoning.

Individualism, Proceduralism, Contractualism

The protagonist of this typically modern subjectivism in justification theory is the autonomous individual, which has fallen out of all given orders of nature, of cosmos and creation, and is now completely on his or her own. This figure has been completely decontextualized and became a metaphor of the “antisocial,” a methodological artifact, appropriate only as a constructivist alternative to the socially embedded communal being of the tradition, comprehensible exclusively by dissociation from all predefined contexts extending from the familiar environment to the all-embracing structure of being. The individual human being does not any longer acquire the good or any form of meaning by integrating himself or herself into overlapping communities that are defined by nature or history. On the contrary: social and political institutions can only be justified if their functions reflect the interests, rights, and perceptions of the happiness of individuals.

This typically modern individualistic foundation of all social and political forms of organization completely overthrows the traditional relation of individual and community. On the one hand, this concept attributes *absoluteness with regard to justification* to the individual, requiring the extraction of the individual from its particular realm and situating it beyond all historically evolved and culturally modeled communality. Only as either a naturalized or universalized individual, as occupant of a pre-social nature or of a commonality of reason beyond the level of society, can this role be assumed, which was assigned to it by a justification theory that has lost all trust in the potential of the traditional objectivist authorities of legitimation but nonetheless intends to adhere to the end of universal validity. Therefore, social and political institutions can solely be considered legitimate if they concur with the general preferences of human nature or with universal normative predispositions of the human character. On the other hand, the individualistic foundation leads to the specification of a legitimation model we may call the *procedural consensus model*. Since human individuals can possess differential normative importance only within predetermined normatively binding hierarchies, which are not taken into account any more by this justification theory, each individual counts as much as any other; each individual has the same right to be heard in the discourse of legitimation. The absolutizing of the individual with

regard to justification necessarily results in *egalitarianism*, and this concept again requires that the due justification be given by *consensus-generating procedures*. This explains the continuing appeal of contractualism in modern practical philosophy, as the contract represents the consensus-generating procedure *kat' exochen*.

Modern normative individualism provides the individual with moral autonomy and substitutes the lawmaking authorities of tradition, God, and nature with the right of any individual only to be restricted in its freedom by laws to which the individual would have agreed on – in a virtual contract – together with all other individuals in fair proceedings and disputes and on the basis of equal participation. As indicated by the application of the subjunctive, the center of the contractualistic argument is formed by an argumentatively sophisticated thought experiment the basic pattern of which is as follows:

X – and X may be: the establishment of public governance, a legal system or a constitution, social institutions and economic systems, principles of social, political, and economic justice, or even moral standards - can be considered legitimized, well-reasoned, justified, whenever X can be explicated in an argumentatively comprehensible way as the outcome of a contract that the individuals concerned would reasonably agree on under certain well-defined and generally accepted circumstances.

Dimensions of the Contract

To understand the logic of the contractualistic argument and to comprehend its strengths and weaknesses as a justification theory, three defining elements of the contractual concept must be clearly distinguished: the normativity of the contract, the morality of the contract, and the rationality of the contract. From the perspective of normativity the internal *obligatory* structure of the contract becomes visible, while the perspective of morality brings into focus the external validity of the contract. The normativity of the contract comprises all that defines the contract as a normative incident, as source of normative effects. It is referred to when the contract is described as the foundation of voluntary, self-imposed obligations, and corresponding rights. In contrast, the morality of the contract comprehends the requirements of validity of the contract, which at the same time form the requirements of its normative efficacy, as the contract must fulfill the requirements of its validity in order for its defining normative characteristics, i.e., being capable of founding new rights and duties, to come into effect at all. The third dimension of the contract deals with its rationality. Here, the motives and expectations of the contracting parties and their strategies for achieving their aims are highlighted; the attention is turned toward the instrumentality of the contract, its purpose and function.

The Normativity of the Contract

If the social coordination of behavior is largely achieved by objective norms, the domain of autonomous organization of social life through individual voluntary commitments is minimized. In contrast, when the network of objective norms becomes thinner, the autonomous coordination of behavior, and thereby the instruments of voluntary self-commitment, become more important. This mutually exclusive relation between normative objectivism and normative voluntarism explains the extraordinary appeal of the contract for the political philosophy of modern times up to the present. To the extent that philosophy lost its traditional confidence in normative objectivism, as it could not root it in the traditional teleological concept of nature or in the idea of God any more, the remaining path to the normative coordination of conduct, the category of voluntary commitment, had to shift into the focus of philosophical attention. If normative objectivism collapses, if the traditional law of nature cannot anymore meet philosophy's demand for justification, philosophy must satisfy this need by resorting to normative voluntarism and assign main role in arguments for justification to the independent individual. If nature and God disqualify as sources of normativity and the earlier account of reality as a blend of the descriptive and the normative yields to a purely descriptive factuality as offered by modern science – and hence if normativity can no longer be observed – it must explicitly be introduced by the people, it must evolve as a creation of the human will. Thus, promise, contract, and agreement become the fundamental normative terms of modern theories of legitimation. The instruments of flexible social coordination, familiar to the modern social life, the institutions of contract, promise, and agreement are promoted to the ranks of defining concepts of social life in general. However, the conception of self-commitment is not in the least suited to bear the burden of reasoning which has been imposed on it by contractualism. Contract theories, which want to resort to the contract as a source of self-imposed commitment, must necessarily start with empirical contracts: only contracts actually concluded, only promises actually given, can bind. Actual contracts and actual promises, however, are contingent incidents that cannot be used as the philosophical basis for something that aspires to be universally valid. These considerations lead to the paradoxical result that it is precisely the normative dimension of contracts that contractualism cannot use for its purpose of argumentation. The contract as an instrument of self-imposed commitment cannot play any role in political philosophy – just as little as the concept of a dog can bark, an imaginary contract can bind.

The Contracts of Contractualism Are Hypothetical

The contracts of contractualism, in both the classical, political version, and the contemporary version in theories of justice, are hypothetical. They take place exclusively in the minds of philosophers. So the crucial question is how hypothetical contracts can generate real obligations. How can contracts that occur

exclusively in thought provide information about the authority of the demands of justice in actual social orders or about the legitimacy of actual political governance? We cannot, after all, find out about the rights and duties that we derived from justified principles by inquiring what rights and duties we *would* have if we had agreed with all the others on certain normative principles of justice in an imaginary situation.

It is not because of the binding character that could be established through a contractual agreement of all people concerned that the idea of a hypothetical contract can serve as a model for the justification of principles of social and political constitution, but only because there are good reasons to assume that the parties involved should have reasonably reached such an agreement and that they should, therefore, regard those principles as originating from that agreement *as if* they had agreed on them. The aim of justification in contractualistic reasoning has nothing to do with the binding effect of contracts, which only comes into being – as is the case with promises – if there is a positively incurred self-commitment. Rather, what matters are the reasons that the theory offers for concluding the contract. The contract is a criterion, a theoretical litmus test; by means of it, generally binding principles of justice can be revealed. For this is precisely the metaethical precept of contractualism: Only such principles are generally binding as people would agree on under certain fair conditions, or in other words which can be publicly justified to anybody by anybody.

The Morality of the Contract

The contract of philosophical contractualism does not exist on its own; it is not self-sustaining and autarkic. Its obligatory character is not independent; it can only become effective if it is integrated into the external framework of obligation based on its moral conditions of validity. We encounter these moral requirements of contractual agreements when we ask whether there can be moral objections to contractual agreements and how these can be justified, if necessary. It becomes evident that we are not at all willing to accept the voluntaristic theme of *volenti non fit iniuria* without any additional moral qualifications, and that we hold specific beliefs about the morality of contracts which contracts must meet in order to exert their inherent normativity. For one thing, there is the requirement of voluntariness. There is certainly no expectation that an accurate and always satisfying demarcation is possible between voluntary consent and involuntary compliance. But it is important to note that the morality of contracts stipulates general terms of reasonableness which must be complied with in the negotiation situation – and in the context of philosophical contractualism this means in the state of nature – for the consent to the contract to be judged voluntary. Their violation – e.g., by coercion or extortion or by an emergency situation that drastically restricts personal freedom and thereby causes an asymmetry in freedom and power among the contracting parties – can legitimize a moral cancellation of the contract. On the other hand, there is the condition of a sufficiently symmetrical starting position of the

contracting parties and of a fair exchange of contractual benefits. Both requirements are derivatives of the principle of reciprocity. They equally articulate the conviction that a morally valid contract has to meet fundamental requirements of justice. The morality of contract not only shapes the contractual agreements in a society and its court rulings on contractual law, but also guides the argumentation of philosophical contractualism. The political philosophy of the social contract must conform to both requirements of the morality of contract; only a contract that meets both conditions can play the role of justification assigned to it by the theory.

The moral dimension of the contract has decisive implications for the argumentative program of philosophical contractualism. The conditions of justice and fairness embodied in the morality of contract, which the contract must fulfill in order to be used as a criterion of knowledge about what is legitimate and just, cannot themselves be justified by means of the contract model. Contractualism is no competent authority for the ultimate justification of morality. The scope of contractualistic justification is thus in principle limited. For what turns contractual agreements into morally permissible agreements cannot itself be derived from contractual agreements. The contract, therefore, is secondary in order of justification. As a philosophical theory of justification philosophical contractualism is constantly in need of external support, be it by a theory of human rights that derives the requirements of equality and fairness directly from the egalitarianism of human rights or by an argument about coherence that deduces the normative requirements of the contract from present moral beliefs.

The Rationality of the Contract

Contracts are social instruments which all contracting parties resort to for the purpose of enhancing their utility. As with any instrument, the employment of contracts is subject to rationality conditions which refer in part to the general context of contractual practice, and in part to the special characteristics of the contract in question, and which are partly formal, and partly concern contents. A person will conclude a contract if the desired advancement of his or her utility cannot be obtained on his or her own initiative and the cooperation of others must be ensured.

The interests of the contracting parties can be identical or – as is usually the case in ordinary life – differ from one another. In the first case, we get a contract of identical interests, in the second case a contract of complementary interests. Contracts of complementary interests provide for an exchange of benefits or resources, contracts of identical interests allow for the accumulation of benefits and the consolidation of resources. The contracts of contractualism are of necessity always contracts of identical interests: they serve neither the accumulation of benefits nor the consolidation of resources, but the justification of universal rules and principles. This justification can then be accomplished by identifying a common interest which serves as the motivating reason for agreement. This common interest invariably manifests itself as the interest of all in an improvement of their

amount of utility: if under the given circumstances the establishment of governance, of institutions, or of rules of conduct prove equally beneficial for everyone, all will reasonably agree to the contract, and governance, institutions, and rules of conduct will be seen by all as desirable from their own point of view – and this simply means legitimate and just.

The evaluation of the rationality of a contract demands an inquiry into its efficiency, which follows the triadic pattern of the general justification of conduct and analyzes the context of the initial situation, the meaning, and the consequences of actions. The efficiency of a contract can only be determined relative to the initial situation of the contracting parties, the subject matter of the contract, and the objectives of the parties. Asking for the rationality of a certain contract means ascertaining if it was or would be reasonable for the parties under the given terms and conditions and with their respective interests and objectives to assent to a contract with the characteristics A, B, C. . . . It further means figuring out whether the contract with its particular specifications gave or would in principle give rise to the expectation to do away with the initial status that is seen as in need of improvement, and bring forth the desired outcome.

The contractualistic argument is based on a complex conditional statement; its general logical form is as follows: If the original state possesses the characteristics A, B, C, then a contract with the properties Q, R, S must be concluded that results in an outcome with the characteristics X, Y, Z. This “must” expresses the character of hypothetical imperatives; it is a “must” of instrumental rationality. The contracts of contractualism take place solely in the minds of the philosophers, but they do not appear from nowhere. In fact, their existence and form logically depend on the requirements, conditions, and contexts which determine the grammar of situations of conflict that are to be consensually mastered and elaborated into the contractualistic arrangement by the theoretician. The contractualistic argument must derive from the constitution of the original position – and these include not only the external living conditions and conditions for action, but also the anthropologic constitution ascribed to human beings by the theoretician, which influences the perception of conflict as well as the ability to solve problems and the psychology of decision making – compelling reasons for the conclusion of a certain contract and so show the resolution toward the contractual agreement in question is rational. Disputes about rationality have thus played a major role in the history of contract theory: both Locke and Rousseau raised the objection of irrationality against the Hobbesian contract; Rousseau in his second discourse on historical philosophy brought up this blame of irrationality against the Lockean version of contract theory as well [1].

The conditional structure of the contractualistic argument indicates that the contractualistic argument in its purest form is of a syllogistic kind. The acceptance of its conclusion, i.e., its justificatory power, depends on the acceptance of the description of the state of nature. The latter comes in two versions: one has to distinguish between the acceptance of *normative* provisions in the state of nature which are meant to guarantee the moral permissibility of the contract and the recognition of *descriptive* provisions of the state of nature which determine

the character of conflict in the starting situation and thereby define both the range of the theoretical problem and the perception of conflict, the nature of the needs, and the psychological setup with regard to taking decisions of the individuals. It is obvious that reasons that are logically independent of one another can be brought forward for the acceptance of the normative and the descriptive elements of the state of nature. Accordingly, the acceptance of the normative constitution of the natural state does by no means entail the acceptance of the empirical assumptions made about the state of nature and vice versa. Consequently, the refusal to accept the alleged justification of certain principles through the contract argument can be based either on a dismissal of the normative provisions embedded in the state of nature or on a rejection of its empirical characteristics. For example, Rawls's design of the original position was strongly criticized for assuming a decision-making behavior among the inhabitants of the original position that only few people in very specific situations will adopt [2].

Evidently, the good reasons that make an agreement appear reasonable are closely connected to the situation in which the agreement is to be reached. Within the contract situation, these reasons can be detected in the form of the characteristics of the situation. Any version of a contractualistic justification of principles has to take the following form: *if the initial situation did not have the characteristics $M1, M2, \dots, Mn$, then there would not be any good reasons to agree on the principles $P1, P2, \dots, Pn$ with the attributes $E1, E2, \dots, En$* . This formula clearly shows that the initial situation moves into the center of attention of contractualistic theories. But it is not the exclusive task of political-philosophical contractualism to provide a plausible theory of the state of nature. Indeed the initial outlines of contractualism as a theory of justification do not possess the vividness of the anarchy-state-dualism, nor the dramatic character of borderline situations; and yet they bear the greatest systematic burden of the whole argumentation in the context of a contract-theoretical justification of principles. Their design determines if the arguments based on it can convince; hence, they must find universal approval first. The normative and descriptive requirements that are going to enter the theory and are interpreted by it must be indisputable, otherwise they do not provide a sustainable basis for a foundation of principles, and will be discarded as arbitrary and as fruitless for further theorizing. A contractualistic theory of justification therefore has to accomplish two things at once: For one thing, it must sketch a generally acceptable initial situation, and then, secondly, determine the principles which all parties would agree on based on this initial situation.

Contract and State of Nature

The contracts of contractualism are not being negotiated, the parties do meet each other halfway, and they do not retain any compromises. They have an epistemic, heuristic function. They are used as means for identifying generally approvable restrictions on freedoms. Contractual arguments, therefore, always build on consensus, but not on a consensus that is reached through deliberation and

discourse, because a consensus of this sort cannot be judged in advance by the theory. The consensus of the contractual arguments is a theoretically deduced, strategic consensus; it rests on a generalized egotism that is embedded in reciprocal instrumentalization. It is reached by a radical homogenization of interests, because a representative decision, comprehensible to anybody (including any reader) and hence a generally approvable outcome, can only be achieved if the interests that are relevant for the decision are the same for everyone. The reduction of the different subjective lists of preferences can be made plausible as a strategy for borderline situations, as Hobbes demonstrates, by pushing the search for what everyone reasonably desires so far that only the transcendental interest of self-preservation remains as the exclusive decision-relevant interest; or it can, as Rawls did, end up with the so-called primary goods, the basic social goods. In both cases, the search for identical interests that ensure consent leads to the transcendental conditions for individual patterns of lifestyle and reveals such interests as the ones everyone needs for leading an individual life and being able to realize diverse interests. In other words, while in actual social life agreements are anything but trivial, the agreements of contractualism are essentially trivial. The whole program of the theory is geared to producing unanimity; the trivialization of the agreements is its overriding task. Not so trivial, however, are the provisions of the contractual setting and the decision-making situation that make the agreement self-evident. They thus move into the center of theoretical and systematic attention. Contract theories, therefore, should be properly named theories of the state of nature.

Political-Philosophical Contractualism

Themes of social contract have already been found in the thinking of the sophists who stood up to the traditional orientation toward *nomos*, and in Epicureanism that turned against Plato and the law of nature and interpreted justice as a convention directed by interests. Even the anti-individualistic medieval ages fell back on the contract motif to illustrate the reciprocal structures of legal practice (on history of the contractual thought, see [3, 4]).

It was not until modern times that the contract was elevated to the ranks of a theoretical concept of legitimation. Its founder is Thomas Hobbes [5, 6]. The concepts and forms of argumentation developed by Hobbes shape all modern political-philosophical thinking; they set up the categorical framework within which reflection took place about governance, law, and the state until the times of Kant and Fichte. In addition, they have been revived in the contemporary political philosophy of liberalism. As in early modern times the internal development of the problems in question and of the positions of individualist political philosophy presents itself mainly as a conceptual-interpretative differentiation of the contractualistic grammar. The essence of early political-philosophical contractualism is the idea of legitimizing authority and governmental power by voluntary self-constraint born out of self-interest under the condition of strict reciprocity. In order to provide a motive for the infinitely free individual to

renounce natural freedom, and thus to attain the theoretical goal of justified governance and sound political obligation born out of self-imposed commitment, the contract theory contrived the theorem of the state of nature. It has to communicate the finding that *exeundum e statu naturali*, by providing evidence that a state without any public regulation and without securing in which everyone pursues his or her interests by all possible means, would inevitably lead to a virtual war of all against all, and thus be equally unbearable for everyone. As a consequence, it would be in everyone's fundamental interest to leave this lawless, pre-political state, to give up the state of being absolutely unattached that led into this aporia, and to establish a political regime with the power to assure a peaceful coexistence. The restrictions on individual freedom necessary for the establishment of the political state, however, can only be accepted under the condition of reciprocity, and therefore are only possible on the basis of a contract by which the occupants of the state of nature mutually engage each other to the renunciation of their natural freedom and to political obedience, and at the same time provide for the institution of a contractual power as guarantor endowed with a monopoly on the use of force.

In this way, political-philosophical contractualism provides legitimation of government in the form of a rational reconstruction of the creation of a state from the joint will of its citizens. The contractual argument consigns the role of the visible hand that founds the state to the contract. The initial situation of contract here features a natural, pre-political situation of anarchy. It is characterized by a potential for conflict that makes it intolerable; this can, as Hobbes put it, be founded in the finiteness of human beings and the scarcity of goods or, as Locke illustrated, be based on problems of the coordination of actions and on the deficiencies in conflict regulation – in any case the state of nature is such that nothing but the establishment of a government promises relief.

Thomas Hobbes

The Hobbesian contract depicts a contract of everyone with everyone else. Its design corresponds exactly to the individualistic conflict structure of the state of nature. As the state of nature represented a state of war of all against all, the contract that puts an end to this state must be a contract of everyone with everyone else. It is at the same time a social contract and the constitution of a state. The erection of civil government by the contract is in the same logical moment the erection of a political government and the construction of a society. This is because a process of socialization and the establishment of a government independent from each other are unthinkable: the contract constitutes the basis for socialization only insofar as it creates at the same time the basis for the establishment of government, and it possesses this rule-establishing function merely as a legal concept associating and mutually binding the individuals. The contractual association contains the project of modern civil society whose persistence ought to be guaranteed by the Leviathan.

The only cause of conflict that is accessible to human alteration is the entitlement of everyone to everything and to everyone else (in the state of nature); human nature as such cannot be modified, just as the predominance of scarcity cannot be thrown off. The unlimited human freedom of action, though, can be subjected to regulations. The first step on the way out of the state of nature must therefore be the mutual abandonment of the *ius in omnia et omnes*.

The reciprocal renunciation of the *ius in omnia et omnes* alone, however, would not yet achieve the desired improvement of the situation. In addition, there must be a power-wielding will that coordinates the use of freedom of the individuals and consolidates the diverging wills of the many in its own will. But how can the act of reciprocal renunciation of rights constitute sovereignty, produce a right to rule, and yield a will that integrates everyone into a political entity? How can a general will vested with monopoly on force emerge from the mutual self-disarmament of all occupants of the state of nature? Hobbes' answer to this question about the basis of legitimacy of public authority is the contractualistic argument about the authorization of the Leviathan:

The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is, to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one Man, or Asseembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of what soever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgement. This is more than Consent, or Concord; it is a real Unite of them all, in one and the same Person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, *I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner.* This done, the Multitude so united in one Person, is called a Common-Wealth, in latine Civitas. This is the Generation of that great Leviathan, or rather (to speake more reverently) of that *Mortall God*, to which wee owe under the *Immortal God*, our peace and defence. For by this Authoritie, given him by every particular man in the Common-Wealth, he hath the use of so much Power and Strength conferred on him, that by terror thereof, he is enabled to conforme the wills of them all, to Peace at home, and mutuall ayd against their enimies abroad. And in him consisteth the Essence of the Commonwealth; which (to define is), is *One Person, of whose Acts a great Multitude, by mutuall Covenants once with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence.* [7]

Through the contractual transfer of the right of self-determination the multitude becomes a political unit represented by the sovereign; or more accurately, by this act of transferring rights and empowering the sovereign it is turned into a political body that is made alive by the sovereign – Hobbes himself called the sovereignty an “artificial soul, [...] giving life and motion to the whole body” in the famous introductory section of the *Leviathan*. The act of authorization is the Fiat of the political world, the inspiration and animation of the political body. The will of the

sovereign governs and directs the political body, just as the individuals in the state of nature controlled their bodies and commanded them to certain actions when exerting their right of self-determination. And each member of the multitude of contractors has, through the act of authorization, turned into the morally responsible author of the acts of the sovereign. A multitude can only become a political unit if a real union of wills occurs. Such a real union of wills can only take place if all individuals either want the same thing or accept that which is intended by one of them as something they have wished themselves. Hobbes' conception of the political unit is based on the second alternative (Rousseau will later resort to the first alternative for his conception of the political unit). By such authorization, each element of the multitude renders itself author of the acts of the sovereign; it thereby provides the foundation for a relation of representation that absorbs the individuals and creates an identity between the one representing and the ones represented. *Rex est populus*.

Hobbes' contract represents the foundation of government, not the limitation of governance. The renunciation of the right to everything, the surrender of natural freedom, and the authorization and transfer of the right of self-determination all mean an unconditional relinquishment that does not retain any freedom or any right on the part of the contracting parties. This contractual concept is unique in the history of contractualism. In the times after Hobbes, the contract has repeatedly been employed for arguing for a *restriction* of governance. Locke's contract, for instance, is concluded on the basis of inalienable, individual rights and only confers the authority to provide for the protection of these fundamental rights, which stand completely beyond his disposition, to the sovereign. For Locke the contract thus explicitly sets up these individual fundamental rights as a boundary for government. For Kant the structure of the contract even turns itself into a constitution that delimits power and authority. Hobbes' contractually based state, however, owns absolute power; its authority to govern is restricted neither by fundamental liberal rights nor by human rights, neither by a constitution of rational law or one of natural law. Hobbes' political philosophy shows the oddly paradoxical picture of a radically individualistic foundation of absolute power, of a legitimation of state absolutism through the unreserved willingness to self-commitment on the side of the individuals.

John Locke

In contrast to Hobbes, the conflicts of the state of nature that call out for the political state are conflicts of law. They reflect the difficulties of establishing the inalienable fundamental rights within an institutionally unconsolidated state. The enforcement of natural law and of the individual rights that are rooted in it demand three things, as does the implementation of positive law: first, an interpretation and legal determination of the natural law that serves as the basis for judgment and reasoning, second, the judicial application of this basis to specific cases and the determination of punishment (the kind of penalty, compensation, or criminal punishment, and the

level of sanctions), third, the execution of the respective judicial decisions. In the state of nature these three tasks of implementation are entrusted to private individuals; everybody is equally entitled to exercise these three indispensable and by their very nature essential tasks at all times, uncoordinated with others, on his own initiative. This distributive strategy for implementing the natural law, however, fails: The deficiency of the state of nature can in fact be described precisely as the result of the distributive strategy for implementing the natural law. To redress the deficiency of the natural regime, the distributive implementation strategy must be replaced by a collective, centralized implementation strategy, i.e., by a strategy within which the implementation of the natural law, which concerns and affects everyone, will not be carried out by every single individual anymore, but by all of them together. This happens when the individuals form a civil society by means of a network of mutual contracts. With this contract a new political unit emerges that acts as a new legal entity. The law governing this political entity does not consist of original law, but of a derived law; it represents the right – transferred by each and every one to the association for the purpose of efficient enforcement – to implement natural law and the protection of fundamental rights.

But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is political society, where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law has established: whereby it is easy to discern, who are, and who are not, in political society together. Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in civil society one with another. [8]

The deficiencies of the state of nature – no authoritative interpretation and legal validation of the natural law, no impartial judicial authority with general jurisdiction, no central and efficient power to enforce laws and judicial decisions – contain *e contrario* the functional description of the Lockean state. The political government serves to implement natural law, and to protect and realize the pre-state social order made up of free and equal individuals and constituted according to individual rights. For Locke the state essentially represents the organized administration of the fundamental rights, it depicts the well-ordered and efficient cooperation of institutions such as the legislative, the jurisdiction, and the executive. In these, public legislation, by means of which the natural legal system of the individual fundamental rights of freedom, equality, and property is laid down, specified, and legally designated, determines the general rules that are enforced by the unified public jurisdiction. It also determines what is regarded as lawful concerning individual controversial case; and both kinds of decisions, the political laws and the judicial sentences, are enforced by it with uncontested efficacy.

The Lockean contract constitutes a political society as every individual contractually commits to everyone else to the transfer of one's right to privately and independently secure and defend his or her own life, freedom, and possessions, and even one's right to enforce the natural law by exercising penal power, to the association that has been created as a legal entity through this contract: With regard to the right of self-defense and execution, the contractual association follows the uncommitted occupants of the state of nature as legal successor. These rights are the roots of the political power of the association: Through their contractual unification, the association's authority to govern is constituted. The political power does not cede any of these rights, it does not, e.g., confer them upon the ruling instances, the legislative, the judicial, and the executive powers, as part of a second contract. It delegates solely the exercise of these rights – for pragmatic reasons – to appropriate institutions of the legislative, the judiciary, and the police that are installed for this purpose. Whereas, for Hobbes, the Leviathan raises its head and overawes a society that is made up of lawless private people through the absolutist state, Locke brings up the constitutional, governmental, administrative, and political self-organization of civil society on the pragmatic basis of the majority principle that ensures efficiency: the community itself adopts a political form, a constitution, and installs a government in order to provide for legal certainty and legal security. In Hobbes' theory, we encounter a sovereign ruling the society of the contracting parties; Locke, on the other hand, presents a nonruling sovereign and its non-sovereign government. In Locke's account the government figures neither as a contractually empowered sovereign, as Hobbes described it, nor as a contracting party as was held by the double-contract doctrines of the German natural law: It is not integrated into a reciprocal relation of rights and duties; in particular, it is not in the possession of full legal power nor devoid of all duties. Between people and government, Locke finds a kind of trusteeship: The legislator has been entrusted with the people's authority to govern as their trustee. He provisionally administers the political power of the association within the framework of the constitution, but does not have any independent constitutional profile. The constitution determines the form in which the political society handles its authority and its self-composed powers for the guarantee of rights and the enforcement of natural law. The connection between the political society and its government is not a legal relationship founded on natural law and human rights, but a relationship of trust, hence a moral relation. The political society does not renounce any right or abandon at any time any one of the powers that have been transferred upon it by the process of contractual association: It merely arranges their effective exercise by creating competent and functionally apt institutions and by entrusting certain positions with the performance of specific tasks. And if these tasks are not completed in the adequate way, if the legislative, the jurisdiction, and the executive do not prove to be institutions of legal protection and bastions of individual property rights, but abuse their authority and mock the purpose of natural law to secure and enhance the public good welfare, and disregard the natural rights of the citizens, and intrude into the private, intimate spheres of the individuals, and lay hands on their property, then the political society is entitled to offer resistance to the government, to remove it from office, and to oust it from power.

Locke's contract functions as a political rule that is both legitimizing and restricting, it constitutes the political power of the civil society and thus provides a consensual basis for the government of people over people exerted on its behalf. Without explicit or tacit consent, government of individuals over their fellow citizens cannot be exercised; political rule would then have to be considered as disdaining the individual right to freedom and self-determination and the legitimate opposition of the individuals would have to be anticipated. At the same time, the contract confines the government to the freedoms expressly surrendered by the individuals in the terms of the contract, and aligns it to those purposes for the effective enforcement of which the contractual association has been undertaken in the first place. Thereby, the rights *not* handed over by the contract are placed beyond the grasp of the state. The contract ties the exercise of political power to the conditions of the emergence of the *body politick*, and asserts the fundamental purpose of association: legal certainty, the guarantee of property rights, the preservation of the political community. These are the boundaries of government that decide upon its legitimacy. Through the contract, the operations in the name of the public are confined to the law-ascertaining elaboration and institutional protection of the natural legal form of the community in the state of nature. What is called "the state" represents the compensation – desired by the community in the state of nature and beneficial for all – of the deficiencies in stability of the community in the state of nature. Thus, in Locke's original contract the outlines of civil liberalism become manifest, demanding protection for fundamental rights and private rights.

Jean-Jacques Rousseau

Rousseau rejects the contract models proposed by his contractualistic predecessors as insufficient with regard to legitimation. In the focus of his critique, one finds an account of freedom that sees freedom as the essential defining feature of human nature and thereby promotes freedom to the rank of an absolute criterion for a theory of justification. Only that can be considered justified which can be justified by the concept of freedom. Freedom becomes the source, the measure, and the end of the law and the political regime, and contracts that do not include freedom and that do not guarantee freedom are considered illegitimate.

Certainly, in the eyes of Rousseau the right to freedom of the people comprises not only the freedom from forceful, arbitrary intervention by others, not merely general freedom of action, but also an inalienable and nondelegable claim to material self-determination, to self-government. And this dimension of moral autonomy of the right to freedom presents the theory of legitimation with particular difficulties, as it calls, after all, for the foundation of a political, legislating, and power-wielding entity whose members are still free and remain their own masters, so that their legal status does not in the least change as a result of the transition from the *status naturalis* to the *status civilis*. It is apparent that under a political government each member will only then obey exclusively his or her own orders, if he or she also governs himself or herself, if the laws demanding obedience

are self-imposed laws. However, under the prerequisite of such a radical, morally charged concept of freedom, can there be a legitimate government at all? Is not every attempt to resolve this problem of legitimation going to lead to a regulatory paradox? How can one imagine the establishment of rules by a social contract that does not curtail the material self-determination of the individuals?

The answer to this question is provided by Rousseau's version of the social contract:

The clauses of this contract are so determined by the nature of the act that the slightest modification would make them vain and ineffective. . . . These clauses, properly understood, may be reduced to one – the total alienation of each associate, together with all his rights, to the whole community; for, in the first place, as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others. Moreover, the alienation being without reserve, the union is as perfect as it can be, and no associate has anything more to demand: for, if the individuals retained certain rights, as there would be no common superior to decide between them and the public, each, being on one point his own judge, would ask to be so on all; the state of nature would thus continue. . . . Finally, each man, in giving himself to all, gives himself to nobody; and as there is no associate over whom he does not acquire the same right as he yields others over himself, he gains an equivalent for everything he loses, and an increase of force for the preservation of what he has. If then we discard from the social compact what is not of its essence, we shall find that it reduces itself to the following terms. “Each of us puts his person and all his power in common under the supreme direction of the general will, and, in our corporate capacity, we receive each member as an indivisible part of the whole.” [9]

What is the content of this contract? “The total alienation of each associate, together with all his rights, to the whole community.” This may come as a surprise if one considers Rousseau's vehement polemic against contractualistic absolutism, but the contractual doctrine of the *Contrat social* represents an undiminished Hobbesianism with regard to sovereignty. The syntax of the Rousseauian social contract does not distinguish itself from the syntax of the Hobbesian state constitution. In both cases, we are dealing with a contract of alienation by which the occupants of the state of nature promise each other to renounce all freedom, all rights, and all power, and to submit themselves unreservedly to an absolute authority. The rights that the individuals receive from these contractual promises include the right to the absolute political obedience of all other individuals. For both Hobbes and Rousseau, the act of alienation marks the constitutional act of political government, the birth of the sovereign. The addressee and beneficiary of the act of alienation does not exist prior to it. It is a legal construct that – independent of the contractual relations of the individuals from which it originates – does not possess any legal existence.

The particularity of the Rousseauian social contract lies in the fact that only the association of contractors itself can rightfully take over the position of sovereignty. While for Hobbes an absolute position of power and a right to rule has indeed been created, but a material sovereign has not yet been enthroned – as Hobbes does not construct any essential relationship between the absolute competences granted by the right to rule and the material occupancy of the sovereignty position – for Rousseau's social contract, the construction of the absolute position

of government and its material occupancy by the association of contractors itself necessarily coincide with each other.

In the constitutional chemistry of the *Contrat social* the act of alienation has the function of transforming the aggregative, decentrally organized association of contractors into a centralized unit of wills: The aggregate of individuals made up of many particular wills becomes one political unit wielding one uniform general will. *Populus est rex*: The Rousseauian social contract is the symbol of the political self-empowerment of the people. By assigning to everybody the twofold role of a shareholder in power and a subject to power with equal rights and duties before the law, it lays down the legal concept of social self-organization by the rule of law.

Immanuel Kant

The Kantian metaphysics of law brings the argument of the contractualists into a completely novel and peculiar form. The reason for this breach with the tradition can be found in Kant's thesis about the necessity of the state as implied by the law of reason. For Hobbes, Locke, and Rousseau, the state is conditionally necessary for pragmatic reasons: As an anarchic state in which force rule contradicts the fundamental interest of self-preservation and security, thwarts any rational way of life, and does not allow a sensible use of the fundamental right to freedom and property, it is simply a question of consistency and evidence to every prudent egotist that one should bring about a regime under which everyone's life is safe and everyone is able to enjoy his or her fundamental rights without interference. As part of the argument by Hobbes and Locke, the political state figures as an instrument of security grounded on a well-considered evaluation of expediency by the individuals. Prudence, not the binding force of the law, leads the way from the state of nature to the legal state. For Kant, however, the public organization of the law is a command of the reason of law [10]. The legitimacy of the Kantian state is not anchored in the rational will of the individuals but based on the legislation of pure practical reason. As a result of this anti-voluntaristic foundation of the state, the doctrine of the constitution undergoes a modification. In Kant's replacement of the paradigm of instrumental reason – predominant in modern political philosophy – with the orientation toward the concept of practical reasonableness, the contract of contractualism is no longer part of ordinary private law, but becomes a contract *sui generis*, a contract in which the instrumental function and dimension of rationality are completely dispensed with, being “of such peculiar kind, that it essentially distinguishes itself from all others” [11].

For Kant the contract manifests itself in a standard – implied by the reason of law – of organization of the civil state, to be installed in the first place for the sake of the law; its legal necessity is demonstrable independently of any contract. The contract steps up to the rank of a state constitution based on the reason of law, it formulates the internal normative structure of a legal state and is drafted exclusively according to concepts of reason. The contract does not mark the beginning of the existence of the state. The contract does not depict the historical record of the state

but its record of reason. The contractual state reflects “the one form of political state at all, i.e., the state as an idea as it shall exist according to pure principles of law, which serves as guidance (standard) for every true association into a communal being (hence on the inside)” [12].

When Kant talks about the original contract being the standard for every genuine public association, he wants to express that every state in history, no matter how it may have evolved, should adjust its internal organization of government to the model of the contractual state, and organize its government in a way *as if* it originated from the common will of a contractually founded association. With regard to the historical world, the original contract constitutes “guideline, pricipium, example of state constitutional law” [13]; it expresses the “ideal of legislation, government and public justice” ([13], p. R7734). It defines how the historical state shall manifest itself. The contract thereby turns out to be the constitutional counterpart to the categorical imperative, the constitutional principle of universalization. Just as the categorical imperative as moral principle allows the assessment of maxims, the original contract, as a standard of public justice, can be used for determining the legitimacy of positive laws. It gives the citizens a universally valid criterion for the assessment of the degree of justice of their government: only this kind of exercise of power can pass the constitutional judge’s bench of legal reason, the common will of the contractual association, which aims at the enforcement of legitimate laws and so puts into effect the intention of the contract.

We have before us the idea of an “Original Contract” as the only condition upon which a civil and, therefore, wholly rightful, constitution can be founded among men, and as the only basis upon which a State can be established. But this fundamental condition – whether called an “original contract” or a “social compact” – may be viewed as the coalition of all the private and particular wills of a people into one common and public Will, having a purely juridical legislation as its end. But it is not necessary to presuppose this contract or compact, to have been actually a fact; nor indeed is it possible as a fact. We have not to deal with it as if it had first to be proved from history that a people into whose rights and obligations we have entered as their descendants, did actually on a certain occasion execute such a contract, and that a certain evidence or instrument regarding it of an oral or written kind, must have been transmitted so as to constitute an obligation that shall be binding in any existing civil constitution. In short, this idea is merely an idea of Reason; but it has undoubtedly a practical reality. For it ought to bind every legislator by the condition that he shall enact such laws as might have arisen from the united will of a whole people; and it will likewise be binding upon every subject, in so far as he will be a citizen, so that he shall regard the Law as if he had consented to it of his own will. This is the test of the rightfulness of every public law. If the law be of such a nature that it is *impossible* that the whole people could give their assent to it, it is not a just law. An instance of this kind would be a law, enacting that a certain class of subjects should have all the privileges of hereditary rank by mere birth. But if it be merely *possible* that a people could consent to a law, it is a duty to regard it as just, even supposing that the people were at the moment in such a position or mood, that if it were referred to them, their consent to it would probably be refused. ([13], p. 297; [14])

The criterion that guarantees justice or at least indicates injustice is a *logical* criterion and only requires a thought experiment that is analogous to the application

of the categorical imperative. The empirical legislator must simulate democracy in his mind, must reflect on the question of whether every citizen can be a co-legislator of the law in question, whether the citizen can possibly fill this role. Now, a law will necessarily not be able to obtain the approval of all if it leads to a restriction of freedom that does not affect everyone in the same way, or reversely, if it distributes freedoms unevenly and if the freedom that it grants cannot be enjoyed generally and reciprocally. Thus, public laws will necessarily contradict the standard of the contract if they themselves violate the conditions under which the contract could have emerged. These conditions determine the contract as the only possible act of constitution – consistent with the law of reason – of the legal state, and hence the conditions to which civil society is committed when it mandates the realization of these conditions. These are the moments of freedom, equality, and reciprocity.

The categorical imperative forms the operational principle of the universalism of morality; the original contract forms the operational principle of the universalism of the law. Their role as criterion is specified by the epistemological proceduralism that is characteristic of universalism and that considers and resolves questions of practical truth as procedural questions. The practical truth of maxims, standards, and laws turns into a function of an apt procedure of bringing forth these maxims, standards, and laws; the verification of the claim to truth of given maxims, given standards, and given laws is assigned to a procedural criterion that transforms an ideal democratic proceduralism that necessarily meets with general approval into a convenient logical operation of universalization. The discriminatory performance of this operation of universalization can draw exclusively on formal and negative criteria that focus on the aspect of equality. This applies to the cognitive procedure of the categorical imperative as well as to the state-constitutional contract procedure. The categorical imperative marks as morally inadmissible types of conduct that are parasitic on the moral discipline of a sufficiently large part of the community, which can succeed only because the rest of the community willingly abstains from resorting to these types of conduct to attain their own ends. In precise correspondence to this argument, the contractual criterion describes as legally inadmissible laws that do not treat as equal what is considered equal, that do not treat unequally what is found unequal, or that lead to an uneven distribution of benefits and burdens, prohibitions, and permissions.

The contract offers the only way for constituting government that concurs with everyone's right to freedom. For only the laws born out of the public will conform with everyone's right to freedom as a result of the equal participation of all individuals in their formation. And only these laws are just, as each co-legislator is voting on his own behalf as well. Thus all legal restrictions of freedom can be seen as intended by all citizens who are affected by them, and as a treatment cannot be unfair if those who are affected by it have assented to it beforehand – *volenti non fit iniuria* – the laws that emerge in this way must necessarily be fair. The sovereign who is inspired by the reason of law, the legislating contractual will, must inevitably be infallible. It should be noted that this conception of justice, based on unanimity and equal participation of all participants, does not formulate any moral presuppositions; it does not even demand a sense of justice. Those called upon for arriving at a common resolution

are allowed to pursue their own interests. Justice can definitely go together with self-interest, however, it must consider the self-interest of all individuals concerned in the same way. A law proves just and fair if it serves the distributive good and concurs with everyone's interest in the same way. As distributive advantageousness cannot be identified a priori, the legislation that guarantees justice can only be described by means of the determination of a strictly democratic procedure with special focus on the persons who are directly concerned. And this is exactly the *contractus originarius*: The paradigm of a democratic procedure for conciliation and agreement that filters out all non-generalizable interests. In the history of contractualism the Kantian contract theory turns out to be a conception at a historical crossroad, which, on the one hand, dismisses a contractualism that is deduced from political philosophy and that dominated the early modern era and, on the other hand, has sown the seeds for a contractualism that is derived from a theory of justice as it prevails in contemporary philosophy.

Contractualism in Theories of Justice

The contract is a rather flexible instrument of reasoning that can be applied to a vast variety of original positions, presentations of problems, and conflict scenarios. Thus, the program of contractualist theory is not confined to the classical problem of legitimizing and delimiting government. Contemporary practical philosophy illustrates the fact that the contractualist theme – *volenti non fit iniuria*, no wrong can be done to those who have willingly consented from what they have assented to – can be used for addressing even the tasks of the justification of moral principles and institutions, of constituting democracy, and of founding a theory of collective action. If someone concludes a contractual agreement with others, he or she approves of the duties and the correlating rights which will be distributed to this individual and his or her partners on the basis of such an agreement. If the consent was given voluntarily and there were fair contractual negotiations, he or she does not have any right to complain about the normative consequences that result from this contractual agreement and must therefore accept them as binding. The basic idea of *modern contractualism in theories of justice* hence consists in interpreting – in the course of an adequate generalization – the whole society including all its various institutional structures and arrangements as a contractual relation and in ascribing the authority of the social and political institutions, of the social and political constitution, to a universal approval of all members of society as contractual partners. Just as a contract among two individuals under the prerequisite of freedom and equal status on both sides creates the reciprocal normativity of the rights and duties agreed upon, a contractual arrangement that contains the unanimous agreement of all members of society under the condition of equal freedom to a normative regime could bring about the general authority of these constitutions of morality and justice.

The essence of the conflict of the original position, as it is outlined by the version of contractualism in theories of justice that can be traced back to Kant, hinges on the

presentation of the problem that determines the theory program. It can be provoked by distributional problems, as in Rawls, or it can be defined by a moral pluralism, an aspect of which may be a controversy over the proper constitution, over law and justice, or a dispute concerning public morality. The contractual procedure here assumes a heuristic function. Closely related to the thought experiment of the categorical imperative, to the adoption of the *moral point of view*, and to the perspective of the *impartial spectator*, the principles that can be ascertained by it are those that can be publicly justified, by each individual to all others, and which can therefore be useful as the foundation of a public morality, a regime of justice, or an authoritative system of institutions.

John Rawls

Rawls's starting point is the assumption that justified and objectively binding principles of justice must be identical with the principles that free and rational persons, orientated only toward their own interests, would choose if they were in an original position of equality and charged with the definition of the form, the basic structure, and the fundamental principles that should bind all ensuing laws of their future society. Already in its description, this conception of "justice as fairness" reflects exactly the duality of the aim of the contract and the contractual situation that is essential for the contractualistic argument, and the duality of economic rationality and moral rationality. The principles of justice are derived from the outcome of a rational decision that can claim general public validity because it happens under fair conditions.

How does Rawls's original position guarantee a fair agreement? The principles of justice are chosen behind a veil of ignorance. This condition of the veil of ignorance is derived from the following simple and plausible consideration: If someone is to choose the principles of a constitution, yet does not know anything about himself or herself, thus unable to determine what principles of the ones to choose from could be beneficial for himself or herself, this person must perforce make a choice that is based on public arguments. Such a person cannot reflect on what principles of constitution might serve his or her particular interests and dispositions, but only on what principles of constitution may promote the public and formal interests shared by everyone. If the individuals are wrapped in a veil of ignorance in order to guarantee the fair character of the original decision-making situation, so that they cannot know anymore whose self-interest they are supposed to pursue, how can they still come to a rational decision? What principles can they still rely on if their self-interest has been stripped of its subject matter? The de-individualization leads, on the one hand, to a general orientation toward the formal, general conditions for success and advancement that are common to all individual life plans and strategies in the pursuit of happiness, and on the other hand toward the so-called primary social goods, the possession of which determines the quality of life and the future prospects of everyone in the same way. The conception of the primary social goods endows the individuals in the original position with an

instrument for making a rational decision governed by self-interest despite their ignorance, for everyone wants to have more rather than less of these primary goods. These primary goods describe what is common to diverging individual strategies of interest because the primary goods constitute the institutional and material requirements of a successful realization of any one strategy of self-interest, regardless of what this strategy might aim at in particular. Each self-interested individual, regardless of the particular self, desires more rather than less of these goods and will therefore be capable of making a rational choice of among all proposed principles that lay down the fundamental order of society and thus determine the distribution of primary goods. He or she considers the principles of distribution at choice from the perspective of the distribution of primary goods and selects the distribution of primary goods that favors him or her most. This, however, leads to the most beneficial distribution of primary goods for *everyone*, because the veil of ignorance has rendered self-interest anonymous.

It is obvious that the defining element of the original position, the texture of the veil of ignorance, will guarantee the general acceptability of the chosen principles of justice. The original position and the veil of ignorance compose, as it were, an arena of morality. In it, prudence and rational self-interest prevail; this is an ingenious move within the framework of decision theory. Through this construct, economic *rationality* is provided with a moral perspective that goes beyond the horizon of the individual subject, but without thereby having to become moral itself. These moral constraints on rational choice, which the voluntary transcendence of subjectivity that is demanded by moral principles dictates in the guise of the veil of ignorance, are not rationally deduced themselves as principles of constitutional choice – this would lead downright to an infinite regress. The calculation of interests of the individuals behind the veil produces exactly such principles of justice as were already included into the defining characteristics of the situation of choice as a priori moral correctives of the individual pursuit of benefits. The veil of ignorance deindividualizes the parties of the original position; it deindividualizes the bearer of economic rationality so thoroughly that it almost resembles the public subject of moral philosophy. The latter is founded on reason, whose position we all, as reasonable beings, can and must assume in order to gain an impartial, moral perspective for considering our own conduct and the conduct of others.

Economic rationality presupposes an individual that is aware of his or her interests. It thus depends on an input variable that Rawls takes care to conceal – and that he has to conceal for arriving at acceptable principles of justice as the results of choice. Rawls outwits the prudent egotist; he lures him or her into a situation that requires of him or her to act morally without noticing it. The didactic move of the veil of ignorance is the gambit of moral philosophy by which Rawls's theory of justice adopts economic rationality for its own purposes; and the latter is left with no other option but to run the business of justice, although it continues to aim at the maximization of benefits. This leads to the conclusion that the operations of economic rationality represent only an ornament to the argument and are devoid of all logical function. The principles of justice, introduced as results

of the constitutional choice, can thus just as well be deduced in a straightforward way from the normative provisions that are embedded in the construction of the original position, without any detour into decision theory. The conditional model – justice as the result of a rational choice under fairness conditions – could therefore in principle be substituted by a simple model of explication: justice as the explication of conditions of fairness (For detailed presentations of the Rawlsian contract theory, see [15–17]).

Conclusion

Hermeneutic Contractualism

In contexts of a theory of justification, the contract serves as a cognitive procedure of political ethics, as a criterion of justice and of public morality. The contract of theories of justification provides a universal criterion for moral epistemology; it is related to the categorical imperative and the other principles of impartiality that belong to the family of universalistic moral principles. As do these, it describes a testing procedure based on a thought experiment that principles and constitutional precepts have to pass if they should be considered just. The good reasons that substantiate and motivate the hypothetical agreement also represent good reasons for the normative rightness of the principles that are deduced as the imaginary results of this supposed agreement, and therefore they can again be cited as good reasons for accepting those principles and for adopting them as one's own. These good reasons which make approval seem reasonable and which are, of course, always representatively good reasons (i.e., equally good reasons for everyone) are certainly connected closely to the situation in which the imaginary agreement shall be reached. In the contractual situation, reasons can be found in the characteristics of the situation. To each version of the justification of the contractualistic principles hence applies the following formula: If the initial situation did not have the attributes M_1, M_2, \dots, M_n , then there would be no good reason to agree to the principles P_1, P_2, \dots, P_n . For contractualism as a theory of justification, the initial situation must equally shift into the systematic focus of the argumentation. Its configuration determines whether the argument of justification which relies on the former will be able to persuade the audience. If it does not entail compelling reasons for a consensus, or if it does not meet the requirements of a fair process of agreement, it is no acceptable starting point for the foundation of principles. In that case, it must appear as an arbitrary construct that is fruitless for a theory of justification. Accordingly, two things have to be demanded from contractualism as a theory of justification: First, it must propose an initial situation that is generally accepted, and second, it must lay down the principles all parties would agree on based on the presumed initial situation.

It is evident that the contract as a device of a theory of justification cannot overcome the fundamental deficiency of contractualism as theory of argumentation. Its applicability as a criterion of justice depends on normative

prerequisites which it cannot itself control; the normative characteristics of the initial situation, which determine the general acceptability of the course and the outcome of the contractual procedure, cannot, on their part, be justified by a contractualist argument without falling into an argumentative circle. The contract is not capable of standing on its own as part of a theory of justification. But this does not diminish its philosophical meaning. Just as in his day Kant responded to Tittel, a disillusioned member of a church council who expected a moral reform from the philosopher but only received a new moral formula, the formulation of a new, precise criterion of cognition is no small thing to be achieved, and the suitability of the contract as a criterion is beyond dispute. In combination with a conception of the original position that is both morally admissible and sufficiently defined, tailored precisely to the question of justice, the contract is a reliable theoretical instrument for drafting rules of justice that relate to the situation in question and that must meet with the approval of all concerned individuals, if only they accept the normative requirements of the total procedure – just think of the contractual substantiation of an account of intergenerational justice within the morality of ecology and the ethics of the welfare state [18, 16]. At the end of our tour of the history of constructive contractualism, the figure of a new hermeneutic contractualism stands out, which has abandoned all claims to the creation of normativity *ex nihilo* and which, based on the normative grammar of our politico-cultural self-conception, explicates our shared beliefs in values adequately to the problem in question and thereby proves itself as a heuristics of justice.

Cross-References

- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)
- ▶ [The Social Contract of Science](#)

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Abstract

This chapter discusses central strands of the modern social contract tradition. Distinguishing between moral and political theories on the one hand and contractualist and contractarian theories on the other, it presents one example of each of the ensuing categories: Gauthier's moral contractarianism, Buchanan's political contractarianism, Scanlon's moral contractualism, and Rawls' political contractualism. In the conclusion, strengths and weaknesses of social contract theories are discussed.

Introduction

Around the middle of the twentieth century, political philosophy was at a low point. There was some research in intellectual history and consequentialist thought, and there were a number of conservative and libertarian thinkers, but there was no dominant tradition. The revival came with a bundle of theories that can be subsumed under the title of "modern social contract tradition." It is usually said that John Rawls' 1971 *A Theory of Justice* started the movement, although some articles had preceded it. After that, a broad stream of articles and books took up the idea of justifying norms or institutions through the construction of a social contract, sometimes building on Rawls, sometimes criticizing him or looking for alternative foundations. The idea of a social contract is at the core of a liberal

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vision of political theory as exploring the principles that free and equal citizens would agree on when thinking critically about questions of moral and political legitimacy and social order.

This chapter presents important strands and figures within this tradition. It categorizes them according to two dividing lines: *moral* versus *political* and *contractarian* versus *contractualist* theories (see Table 30.1). While the former distinction concerns the *subject matter* of theorizing – individual morality versus the structure of a just society – the latter relates to the starting point of theories and in particular the assumptions about human nature an author makes: contractarians see human beings as basically self-interested, in a Hobbesian sense, whereas contractualists start from a picture of human beings as capable of moral reasoning in a Kantian sense (cf. [1]). I discuss one example of each of the resulting four versions of modern social contract theory: David Gauthier, James Buchanan, Thomas Scanlon, and John Rawls. Although the boundaries are not always clear-cut, and some authors of the modern social contract tradition do not fall easily into one field or the other, it is a useful heuristic for a first approach to these different strands of theorizing. In the conclusion, I discuss a number of strengths and weaknesses of the modern social contract theories.

The Modern Social Contract Tradition

The idea of a social contract is an old one, going back at least to sophist thought in ancient Greek (cf. e.g., [2]). It has been made prominent in the early modern era by thinkers like Hobbes, Locke, and Rousseau. While earlier thinkers in this tradition often developed their approaches against a metaphysical – usually Christian – background, contemporary defenders emphasize that it can also get off the ground from relatively weak and unproblematic – “unmetaphysical” – assumptions, which makes it suitable for ethical thought in pluralist societies that are divided on religious and metaphysical issues (cf. [3]), as no references to a divine will or to some ideal of human perfection are needed.¹ The basic idea of contract theories is straightforward: in order to argue for some normative claim, one presents it as the outcome of a contract all concerned parties could have entered into. The persuasive power of such an argument hinges on the insight that a state *without* normative regulations is undesirable and that implementing a set of norms will be profitable for everyone, as it reduces the risk of aggression and opens a space for trustful cooperation. The agreement to such norms does not have to be explicit there does not have to be an *actual* contract; it can as well be *hypothetical*, as a thought experiment about rules people *could* agree to and thus bind themselves. It is usually assumed that the individuals or parties in the original position do not make rational errors (e.g., calculation errors) and are not misinformed or grossly inexperienced; without some such idealizing assumptions, it is questionable whether a determinate result could be achieved at all (cf. [3]). Apart from that, however, the character and the epistemological situation ascribed to the individuals vary in different theories.

Table 30.1 Types of social contract theories

	Interest/reason	
Scope	Contractarian = interest based	Contractualist = reason based
Moral	Moral contractarianism	Moral contractualism
Political	Political contractarianism	Political contractualism

Depending on choices about the character of the situation before the contract (which has traditionally been called the “state of nature”), the parties to the contract, the contract itself, and the scope of the principles generated by the contract, a large number of variations of social contract theories are possible. In this chapter, they are categorized along the lines described above (Table 30.1).

Moral Contractarianism

The paradigm example of moral contractarianism is David Gauthier’s book *Morals by Agreement* [2]. He starts from the assumption that individuals are only interested in their own situation, not in that of other people: they are “non-tuists.” This is the weakest assumption one can make as a basis for deriving morality, as hardly anyone would want to deny that people are in some sense interested in their own well-being. This Hobbesian starting point differentiates Gauthier from other contract theorists who from the outset start with some principle of impartiality or practical reason – Gauthier wants to *derive* impartiality through contractual reasoning. His theory thus sets itself a very specific task: it wants to convince the moral skeptic, someone who does not see the point of moral rules, that it is in his or her own interest to obey such rules. In this sense, morality is a subdomain of the theory of rational choice for Gauthier.

It is likely that most of us are no moral skeptics and would not question the legitimacy of the claims morality makes on us, even if we may disagree about particular rules or constraints. Many of us think that man is a social animal and that “[h]ow selfish soever man may be supposed, there are evidently some principles in his nature, which interest him in the fortune of others, and render their happiness necessary to him, though he derives nothing from it except the pleasure of seeing it,” as Adam Smith, the founding father of economics, held [4]. Many philosophers do indeed think that it is impossible to convince a thoroughgoing skeptic of the normative force of morality (cf. e.g., [5]). Gauthier nevertheless attempts this task, while also holding that rational self-interest is not necessarily the *only* reason why someone would want to be moral.²

The interest in one’s own well-being includes the interest in gains from cooperation with others. This is the lever Gauthier uses for unfolding his contractarian program, in which he derives morality as an impartial constraint on the pursuit of one’s self-interest. In his approach the contractual reasoning is purely hypothetical, as a device for justifying normative claims. Gauthier’s assumptions will be familiar to many readers from economic theory: he uses a subjective theory of value in which

value is explained exclusively by the preferences people have. He employs decision theory and in particular game theory, the theory of strategic choices in interaction, in order to develop his account. Individuals are fully informed and rational, and there is no “veil of ignorance” – as in Rawls, see below – or any other device that would screen out certain informations as irrelevant for the decision process.

The foil against which Gauthier develops his moral theory is the scenario of a perfectly competitive free market with no externalities, asymmetries of information, transaction costs, etc. ([2], Chap. 4). In such a situation of “moral anarchy,” everyone fully bears the costs of pursuing his or her interests, all disagreements can be resolved by exchanges, and the resulting distribution is pareto-efficient, that is, nobody’s position can be improved without hurting someone else’s. This is a “morally free zone”: no constraints on the pursuit of individual self-interest are needed. But the world is different from such a perfect market; in particular, there are externalities and constellations where what is rational for every *individual* leads to a suboptimal outcome: the world without morality is a prisoner’s dilemma. This is why moral norms need to be introduced, to prevent free-riding and parasitism.

Gauthier describes the moral contract as the result of a bargaining process over the moral rules that are to be applied. As individuals are self-interested, everyone tries to negotiate rules that lead to the maximal satisfaction of his or her preferences, but knows at the same time that he or she must not drive away the other parties from the bargaining table. The problem is thus to determine the concessions that everyone has to make in order to arrive at an agreement. Gauthier argues that equal and rational individuals will choose the “principle of minimax relative concession,” that is, the rule according to which the greatest concession (as proportion of the total stake a person has in the bargain) is minimized. Under this arrangement, no rational individual would reject participation in the contract. In many situations, it leads to a rule according to which everyone has to make the same concession. Central moral practices like promising or telling the truth, Gauthier holds, can be explained as applications of the rule of “minimax relative concession” ([2], p. 156).

In order to create and maintain a situation in which peaceful cooperation is possible – which is in everyone’s interests – rational individuals will switch from a modus of unconditional utility maximization to a modus of “constrained maximization” *provided* that they can expect the same from others and will not be exploited by them. The profits that they can expect from cooperation will, under plausible circumstances, be greater than the benefits they could reap from exploitative behavior. As it is thus rational to be a “constrained maximizer” rather than a “straightforward maximizer,” individuals will internalize the disposition to comply with the moral rules.

The question is, however, how individuals can be made willing to enter into such a contract and to stick to the rules, and so, to arrive at a *stable* system of norms. In what is maybe the most significant systematic aspect of his theory, Gauthier argues that certain conditions need to be fulfilled to make it rational for an individual to participate in the contract. He argues that the contract can only be successful if the starting position is fair and equal, as the individuals will not comply with the resulting rules otherwise. This is how he pulls a condition of impartiality back into

the contract between purely self-interested individuals. Rather than *assuming* some rule of impartiality or producing it through some device that screens out certain informations, impartiality is thus the *result* of the reasoning process: it turns out to be a condition for a successful contract.

Gauthier formalizes this condition of impartiality and noncoerciveness of the initial situation as a “proviso”: no one must have reached his or her position – from where the bargaining starts – by having made worse someone else’s position. This introduces a structure of personal rights and property rights as the starting point for the bargaining process. Whereas Locke, for example, had justified such rights from the fact that man is created in the image of God, Gauthier explains their necessity *within* his approach, as precondition for a contract that serves the interests of all.

Gauthier’s approach is thus strictly reductionist: he shows why a completely selfish individual would want to stick to impartial constraints on his or her maximizing behavior in order to make possible cooperation that leads to mutual profits. As such, the argument depends on a situation in which there is indeed a potential for mutual gains from cooperation, as Gauthier himself admits ([2], p. 17). Nor is it clear how those who cannot contribute to the cooperative venture – for example, severely mentally handicapped individuals – can be included in the moral community on this rationale. Gauthier describes what morality looks like for free and equal “economic men”; in this sense, it can be understood as specifically tied to a historical and cultural situation in which strongly individualistic ideals dominate.

Gauthier’s approach is thus a strictly rationalist reconstruction of central moral intuitions. Gauthier emphasizes, however, that many people value the fruits of mutual cooperation and find participation in common enterprises intrinsically valuable, so that they can also develop emotional attachments to the rules of morality, which can help to stabilize the normative system. But these are an addendum; the strength of Gauthier’s theory is that it explains why it is rational to be moral even if one is a purely selfish skeptic, a Hobbesian “Foole.”

Moral Contractualism

Thomas Scanlon’s *What We Owe to Each Other*, one of the most famous examples of moral contractualism, starts not from the assumption that one has to show the coincidence of morality and *interest*, but from the assumption that human beings are equal and have a moral status as autonomous agents ([2], Chap. 4). Whereas Gauthier clearly associates his contractarianism with the Hobbesian tradition, Scanlon’s contractualism is closer to Rousseau’s idea of the general will and Kant’s notion of autonomy. In contrast to Kant, however, Scanlon does not use the idea of a “pure moral will,” that is, a will that abstracts from all concrete characteristics of persons and situations, or with any other device for excluding certain considerations from moral reflection. Rather, his contractualism is built around the ideas of mutual respect and justifiability. Instead of a categorical imperative, his central model for the justification of norms is the idea of principles that no one can reasonably reject. While for Gauthier social contract theory is part

of the theory of rational choice, for Scanlon it is part of a broader theory of reasoning and of what constitutes rightness and wrongness.

Whereas Gauthier starts by outlining the contours of rationality in the sense of the modern economic orthodoxy, Scanlon develops a notion of “reasons” – and hence “reasonableness” – that goes beyond instrumental rationality. Scanlon takes “reason” to be a primitive concept that applies over a broad range of areas: there are reasons for belief, for action, for attitudes, etc. Practical reasoning plays a particular role in our lives: it motivates actions. There is nothing metaphysically puzzling about reasons if one understands them from the point of view of “the status of being a reason, that is to say, of counting in favour of some judgment-sensitive attitude” ([5], p. 56). Scanlon rejects the idea that motives are to be explained in terms of desires and in particular the idea that the effects on the well-being of oneself and others is all that matters for the evaluation of moral actions. This is, roughly, the position of utilitarianism, which aggregates the well-being of individuals and holds that one should choose the option that leads to the highest aggregate. Scanlon argues that well-being plays an important role in many moral considerations, but by no means the only one. More basically, it would be wrong to think that value always has to be conceived as “teleological,” that is, as connected to some state of affairs that is to be promoted. “Valuing” friendship, for example, does not imply that one should try to somehow maximize it; rather, it means that one accepts certain reasons for actions, that one cultivates one’s friendships, and wishes other people to have friends as well ([2], Chap. 2). That something is valuable means that it has properties that give us reasons to behave in certain ways with regard to it.

Scanlon’s notion of “reason” is pluralistic: it acknowledges that considerations of different kinds and structures come to bear on moral decisions. It is also substantive rather than formal, as it does not look for a formula by which to deduce what we have reasons to do, but assumes that in weighing different reasons there is always need for some degree of judgment. Finally, it is objective: reasons are “universal” because they are judgments about a situation that apply to everyone.

The basic principle of the Scanlonian contract is straightforward:

An act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced, general agreement. ([5], p. 153)

What is at stake is not actual consent, nor consent by rational egoists, but the hypothetical consent by people who are similarly motivated to react to reasons rather than to achieve their aims no matter what. Acting morally thus means to react in the right way to the intrinsic value of other persons. Scanlon takes it that this contractualist account explains both the motivating force of judgments about right and wrong and the importance and priority of moral reasons in comparison to other reasons. Although they do leave room for other values and reasons, moral reasons can often trump others, as they have to do with the most basic relations in which we stand with other people.

Scanlon sees a number of advantages in this contractualist theory that make it superior to what he sees as its main contender, utilitarianism. Not only, as has

already been mentioned, can it take into account reasons of different kinds and structures, not just teleological arguments. It can also solve moral dilemmas in more plausible ways: it can capture the intuition that when we have a choice between rescuing one innocent person or five innocent persons from death, we should go for the five, but it also explains why one must not prefer great harm to a small number to minor harm for a greater number. Consequentialist reasons can thus be taken into account, but not in the reductionist way in which utilitarianism does it (cf. also [6]).

Scanlon is explicit that the everyday usage of the term “morality” may include more than what he calls the realm of “what we owe to each other.” The latter includes, however, core issues of morality and captures our intuitions about the need for moral rules to be general and fair. By focusing on justifiability rather than interest, his account does not have the problem, identified in Gauthier’s account, of including into the scope of morality those with whom we have no ties of interest. It can also do justice to a number of nonpersonal issues via the notion of “trustees” who bring forward the reasons that speak for treating, for example, animals and the natural environment in certain ways. Scanlon’s account is strictly nonreductionist: it does not explain morality in nonmoral terms, but rather starts from a picture of human beings as susceptible to moral reasons, which it elaborates and defends against objections. It is thus much closer to our everyday way of understanding moral issues: it is unlikely to convince a moral skeptic, but those who *aren’t* moral skeptics are likely to find this theory to be closer to what they take morality to be than Gauthier’s account.

Political Contractarianism

Political contract theories ask not about the rules of individual morality, but about the structure of a just society and in particular about the legitimacy of claims of political authority: Why should one obey the state? Political *contractarianism*, as exemplified by James Buchanan’s and Gordon Tullock’s *The Calculus of Consent*, starts with the assumption of the self-interested individual, or, as they call it, with “methodological individualism” [7]. As such, it is closest to the Hobbesian *Leviathan* that also starts with selfish individuals and aims at deriving the legitimacy of political authority. Buchanan and Tullock repeatedly emphasize that not all aspects of political life can be explained by this strategy, but argue that it captures important phenomena that have been overlooked by standard political theory.

Gauthier approaches the question of individual morality from the point of view of individual choice; Buchanan and Tullock approach the question what the *state* ought to be from the perspective of a rational individual confronted with “constitutional choices” of different kinds. Rather than building on any notion of “public interest” or “common good” that individuals would choose for moral reasons, they ask what rules and regulations are in the individuals’ interests. Some basic personal rights and property rights are assumed to be in place for this approach to make sense.

Some agreement on rules is evidently necessary to make possible a peaceful society. Buchanan and Tullock argue that the basic decision to have a constitution must be taken in unanimity, as this is the only way in which every individual can either agree to regulations that are profitable for himself or herself or insist on compensation from those who profit (more) from alternative regulations, without any coercion being involved. The infinite regress of finding rules for finding rules... etc., can thus be avoided.

Buchanan and Tullock discuss the ways in which individuals can find agreements about different aspects of constitutional choice. The innovative move of their approach is to see political decisions as *exchanges* in which individuals can raise their utility if they find ways of “trading” their preferences. General rules for behavior make sense from an individual perspective if they help to avoid external costs or to secure external benefits. But collective decision-making processes also create new costs, as the processes themselves are costly and as rules can *in turn* impose external costs on individuals. It is rational to opt for regulating an activity through collective action if the sum of these costs (what the authors call the “costs of social interdependence”) is smaller than it would be under alternative arrangements, that is, a status quo with no regulation at all *or* some form of voluntary cooperation between individuals. This explains why there is in fact a plethora of difference forms of decision-making in real life: some things are better left to individuals, while others can be addressed by voluntary agreements and yet others need institutional enforcement ([8], Chaps. 7 and 8).

Buchanan and Tullock ask what kind of decision rules rational individuals will choose for what kind of issues. For example, when individuals recognize that a regulation can potentially impose very high costs on them (e.g., when it concerns redefinitions or limitations of basic rights), they will opt for a decision rule that contains protections and provisos, even if this may lead to more complex – and hence more costly – decision processes. If, however, the individual does not expect high costs to be imposed on him or her through some regulation (e.g., if he or she is indifferent between alternative sets of rules), the aspect of minimizing decision costs dominates, which may mean, for example, that such decisions are taken by a small representative assembly rather than the community as a whole. When a series of decisions is made, individuals are able to “trade” their approval for one particular proposal with others, which explains phenomena like “logrolling.” As Buchanan and Tullock show, such “negotiations” can take a wide variety of forms; the simple majority vote, which is often used in democratic processes, is just one of many possible forms that social decision-making can take.³

Buchanan and Tullock discuss, in formalized models, a wide variety of decisions to be taken either *about* the rules to be applied to decide certain issues (the “constitutional” level) or *within* such a framework of rules (the “operational” level). Often, formal decision rules and substantive decisions are intertwined in complex and sometimes unexpected ways. Whether the resulting distributions of benefits and burdens are efficient or not can depend on a wide range of aspects of a model. For example, things look very different if one assumes that everybody’s preferences are equally strong or if one admits preferences with differing strengths

([7], p. 125ff). Buchanan and Tullock also show that practices such as trading of votes can under certain conditions be rational and profitable for everyone, challenging readers who reject such practices as morally wrong from the outset.

In a later companion work to *The Calculus of Consent*, *The Limits of Liberty*, Buchanan expands the rational choice approach to more aspects of political life [8]. He emphasizes the role of law as a “public capital” that serves the good of all but that also needs to be maintained rather than used up. He also discusses in more detail the necessity of limiting the power of the state: although public institutions, in particular the protective function of the state, are necessary to avoid conflicts and external costs of various kinds, there is also a danger that they in turn impose costs on individuals. The self-government that a group of rational individuals could agree on in a social contract needs to be controlled *in turn*, at least when not all decisions are taken in unanimity. Numerous political phenomena can be explained by the interplay between collectivization (which is often more cost-efficient) and the protection of minority rights and interests. All political structures need to find a line “between anarchy and leviathan,” as the subtitle of the book suggests.

Buchanan’s contractarianism works at a level that is less basic than Gauthier’s; for example, he assumes basic personal and property rights rather than deducing them in his theory. He agrees with Gauthier, however, in one basic finding: even if one assumes purely egoistic individuals, it is rational to agree on certain rules and procedures for making possible collective action. This provides a rationale for justifying state institutions, but also a critical tool for evaluating existing institutions that might have developed in dysfunctional ways.

Political Contractualism

John Rawl’s *A Theory of Justice* is a case of political contractualism, that is, a social contract theory that starts from the assumption that people follow practical reason and that deals with political structures [9]. It is the most famous of the modern contract theories; its significance has been compared to classical texts in political theory like Aristotle’s *Politics* or Hobbes’ *Leviathan*. While there are also other political contractualists (e.g., Ronald Dworkin), Rawl’s theory is the one that made it into all undergraduate curricula of political theory and also became known to a wider public.

Rawl’s question is how to conceptualize a just society and, in particular, how to reconcile the principles of liberty and equality. His basic approach is to conceive of “justice as fairness,” in contrast to the utilitarianism that was the dominant current of thought in the 1950s and 1960s. Utilitarianism, by using aggregate values, neglects “the separateness of persons” and their rights and liberties *qua* individuals. It could therefore not be endorsed by individual citizens; a society built on utilitarian principles could not be stable. Questions of justice are prior to questions about the good life, as free and equal citizens could not agree with any violation of the rules of justice for the sake of a particular conception of the good life. A theory of justice explicates and justifies our intuitions about justice and generates principles

on which the members of a society can agree, which is a condition for a society to be “well ordered” and stable. Principles of justice concern the “basic structure” of a society, that is, the system of rules that determines the most important public institutions and thus the distribution of advantages and disadvantages ([9], p. 7). Justice thus is, for Rawls, the “first virtue of social institutions.”

Rawls uses the idea of a social contract in order to derive principles of justice as principles that free and equal citizens could agree on. The central device of Rawls’s theory is the idea of an “original position” in which individuals have a certain knowledge about the structures of a modern society, but do not know which class, religion, ethnicity, or gender they will have within this society, nor how intelligent, strong, etc., they are, or what conception of the good they have. These facts are hidden behind the famous “veil of ignorance” that ensures the impartiality of the contracting parties by making it impossible to tailor the principles of justice to one’s own position. The “veil of ignorance” models the situation of free and equal citizens who want to find principles for the “basic structure” of society that can be endorsed by everyone and thus lead to a stable society.

Rawls’s theory of justice is thus part of a theory of rational decisions, but it includes moral principles from the outset, through the impartiality imposed by the veil of ignorance. The original position is understood as a “procedural interpretation” of the Kantian idea that men are free and equal. The description of the original position expresses “what it means to be a free and equal rational being,” and even “resembles the point of view of noumenal selves” ([9], p. 255f). To see one’s place in society from the point of view of the original position “is to see it *sub specie aeternitatis*” ([9], p. 587).

When reflecting behind the veil of ignorance, the parties in the original position must take into account a number of formal constraints on the principles they can choose: generality, universality in application, publicity, ordering on conflicting claims, and finality ([9], p. 130ff). Rawls argues that the parties will agree on two basic principles of justice:

First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all ([9], p. 60).

The idea of a social contract is thus used in its hypothetical function as a thought experiment. Rawls argues that these principles are what free and rational persons who are mutually disinterested, that is, not motivated by benevolence or altruism, would agree to when presented with the alternatives of a utilitarian account and an account of “justice as fairness” (for a discussion see also [10]). As utilitarianism might sacrifice the rights and liberties of some citizens to the interests of others or to the public good, the parties behind the veil of ignorance reject it, as they fear ending up in the position of someone whose interest is sacrificed. Giving equal rights and liberties to all citizens and protecting

the position of the worst-off by the difference principle creates, Rawls argues, a basis for trustful cooperation among citizens, as they know that their interests cannot be sacrificed. He holds that a society whose basic structure follows these principles would be stable, because the individuals recognize that these principles protect their basic rights and liberties and give them the opportunity to pursue their own conceptions of the good life.

Basic freedoms like political freedom, freedom of speech, liberty of conscience, etc., are thus equal for everyone; this principle takes lexical priority over the second principle. Within the second principle, which relates to social and economic institutions, the first part takes lexical priority over the second. Inequalities in income and fortune are thus compatible with these principles as long as they serve the position of the worst-off. This last clause has become known as the “maximin” principle. It formalizes the intuition that the rich must not get richer at the expense of the poor (cf. also [11]). The reasons Rawls adduced for the choice of the maximin principle are that it would be unreasonable to use probabilistic calculations from behind the veil of ignorance (hence, expectational values are ruled out), people would not care very much about what can be gained above the minimum, and all alternatives are more problematic, as they impose grave risks on individuals ([9], pp. 154–155). At the same time, positions of power or prestige must be open to everyone; the social class into which a child is born, for example, must not predetermine its chances of attaining a position in the higher percentiles of the income distribution. The metric on which these principles are applied are the so-called primary goods, “things which it is supposed a rational man wants whatever else he wants”; they include “rights and liberties, opportunities and powers, income and wealth” ([9], p. 92).

Starting from these principles, Rawls describes how the “veil of ignorance” is gradually lifted and the principles are applied to the concrete situation of a society, taking into account its cultural and economic features. The imaginary parties develop a constitutional framework and then decide on more detailed laws and policies, which are then applied to concrete cases.

This theory has provoked a large discussion and numerous commentaries and criticisms. Over the course of his life, however, Rawls has considerably modified his account. Most notably, in *Political Liberalism*, he argues that his liberalism is “political, not metaphysical,” holding that it can be agreed to from the point of view of different reasonable “comprehensive doctrines” [12]. In an “overlapping consensus” people agree on certain basic principles for which they adduce different arguments from their different worldviews. For example, a Catholic, Muslim, Hindu, and Atheist can all agree on the importance of basic human rights, although the reasons why they hold this position differ, from the claim that persons are made in the image of God to deep-seated intuitions or pragmatic considerations. In *Justice as Fairness: A Restatement*, Rawls also makes explicit which socioeconomic framework he favors: either a “property owning democracy” in which there is widespread ownership of productive assets, or a “democratic socialism,” where companies are managed by workers [13]. Such societies attempt to improve the position of the working class and to broaden the access to education and training so

that the worst-off do not depend on welfare, but are integrated and recognized as full members of society. Rawls also slightly changed the formulation of the two principles of justice. They now read:

- (a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle) ([13], pp. 42–43).

Conclusion

Contract theories have certain advantages and disadvantages in comparison to other moral and political theories. As a conclusion, let me point out some of these.

Contract theories capture deeply rooted moral intuitions about the dignity of every human individual. They provide us with reasons why the good of some people must not be sacrificed for a greater social good. In this respect, they are superior to utilitarian theories that often lead to counterintuitive results in cases in which the rights of minorities are at stake. But a utilitarian might object that this strength of contract theories implies a symmetrical weakness, as such theories seem to be silent on questions of how to weigh the interests of different individuals in moral dilemmas in which *some* sacrifices are unavoidable. Should not a moral theory provide us with some guidance on what to do in such cases? As we have seen, Scanlon's moral theory tries to include consequentialist arguments *within* a contractualist framework, which seems to be a move by which he might win over a utilitarian. But there is a price to be paid for Scanlon's inclusive approach: one might ask whether his pluralist notion of reasons is not too unspecific, comprising too many different things. Scanlon would maybe reply that *no* moral theory can do with a certain degree of judgment and that we should not expect to be able to use such a theory as one would use a pocket calculator – entering the variables and waiting for the correct solution to appear on the screen. Nevertheless, it is an open question whether the attempt to capture utilitarian modes of thinking within a contract theory can be successful.

A feature that contract theories share with utilitarianism, but which differentiates them both from other moral theories (e.g., a divine command theory), is that they are metaphysically unassuming; as has already been noted, this makes them suitable for pluralist societies. This holds in particular for the contractarian variety, where the only assumption about individuals is that they pursue their own interests, whatever these are, without caring about the interests of others. An advantage of this position is that it can be put in dialogue with naturalist approaches in other disciplines, for example, with evolutionary biology (see e.g., [2], p. 187ff). A weakness, however, seems to be that it is either overly general – anything can count as a person's "interest" – or, if it

tells us more clearly what is meant by “interest,” that it might leave out factors that are indeed crucial for how we perceive moral phenomena: “soft” factors such as cultural preconceptions or linguistic conventions that influence how people *define* their interests. By assuming that people have well-defined “interests” or follow some abstract ideal of moral “reason” (as in the contractualist version), crucial questions about how these things are *acquired* are left out of the picture. Contract theories seem to start with idealized adult human beings; questions about cultural influences, education, and socialization are hardly ever mentioned.

The starting point of contract theories is in fact ridden by a puzzle. The question is whether a reductionist approach of morality, as Gauthier, in particular, has tried to develop, can be successful. Can you really “cook up” morality from nonmoral ingredients? A suspicion against contract theories that deserves to be taken very seriously is that it “comes too late” as a theory: it has to start with people who are already fully developed and able to keep promises, otherwise the construction of the contract seems futile. But, one might ask: Should not theoreticians focus on how people acquire this basic ability first? More generally, where do the “ingredients” of the contractual situation come from?

The problem can be made particularly clear in the case of Scanlon’s theory and its focus on the formula about principles that “cannot be reasonably rejected.” Everything hinges on the notion of “reasonableness.” But how do people acquire the ability to tell good from bad reasons? Does it really tell us a lot that we should follow principles that cannot be “reasonably rejected”? Does not everything that is theoretically interesting happen before Scanlon’s theory gets started? Scanlon provides us with an account of the metaethical status of “reasons” and defends this notion against a number of charges, but he does not tell us a lot about how children, for example, are socialized into a world that distinguishes good from bad reasons.

A parallel point can be made about people’s motivation to follow certain standards. Contract theories are here faced with a dilemma, which has been discussed by Jean Hampton with regard to Hobbes’ contract theory, but which can be generalized to all contract theories (see [1]). Either moral reason and the willingness to obey its precepts are already presupposed (the *contractualist* variety). Then we can ask how much work the construction of a contract really does. Or one starts from an assumption of amoral self-interest (as in the *contractarian* versions). Then, there are two possibilities. Either people are still purely self-interested after they have entered the contract – then, it is questionable whether their motives can be described as *moral* rather than self-interested in an enlightened way and whether the situation can be stable in the absence of massive coercive enforcement. Or there needs to be some fundamental change in human dispositions that turns self-interested human beings into moral human beings: But how would this change happen? Gauthier’s distinction between straightforward and constrained maximization is an attempt to come to grips with this problem. What his theory only mentions in passing, and many

other contract theories do not mention at all, is the crucial role that habituation and socialization play for a successful moral life. It is here that individuals learn what it means to be rational, or reasonable, and to respect one another's dignity. Contract theory has often understood itself as describing the crucial bones of morality or political justice, but there is also a "flesh" to a moral community or political unit, which deserves more consideration than contract theory has given it so far.

Critics have also objected that the metaphor of contract has been used to justify the exclusion of certain groups, for example, women, nonwhite people, children, elderly, or disabled people, as the parties to the contract have often been assumed, implicitly or explicitly, to be white male citizens.⁴ At one level, this is simply a problem about whom to include in initial bargaining situation and can in principle be solved, even if this has not always happened in the past. As we have seen, Scanlon tries to integrate even the "interests" of animals and the natural environment by the notion of "trustees." Contract theories need to be very careful about potential exclusions and biases in the initial situation, but by making suitable amendments one can in principle meet this challenge. But at another level, there is a deeper question here: Can we really capture all that is relevant for moral considerations in terms of contractual relationships? Could relationships between men and women, or between the members of a family, not be of a deeply noncontractual nature, having to do much more with one's understanding of what a flourishing life is than with a quid-pro-quo exchange? Or, to take a negative example, can certain subtle kinds of discriminations continue to exist, although in a formal sense there are equal rights and opportunities?

Scanlon's move to recognize that "what we owe to each other" may not be all that morality is about seems wise, as it avoids overcharging contract theory with expectations it cannot fulfill. But it also raises the fundamental question whether contract theories should be seen as basic theories of what morality or justice really *is*, and as a *justification* for certain norms – or whether they should be seen as devices for *indicating*, *giving evidence for*, or *illustrating* what morality or justice demand.⁵ They might be seen, for example, as illustrations for deep intuitions about the "moral point of view," in which one abstracts from one's own particular desires and interests and takes into account the desires and interests of all parties concerned (cf. [10]).

But this does not mean that contract theories could not be useful and illuminating. Their starting point from – more or less – rational adult individuals makes them particularly suited for problems that have to do with moral and political relationships between independent adults. For example, one can take some notion of basic rights (e.g., human rights) as given and ask how rational individuals who all have these rights can come to an agreement in certain situations of conflict. Rawls's approach, in particular, has been very successful in this respect and has also led to intense debates about questions of *international* justice. But contractual thinking does not have to be confined to questions about the most basic political structures.

It can also be applied to different fields of “applied” ethical and political theory. One such field is business ethics, as the next chapter by Christoph Luetge discusses.

Cross-References

- ▶ [The Classic Social Contract Tradition](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)

Notes

1. cf. [1]. However, some authors of classical contract theory, notably John Locke, build on theological premises (cf. below).
2. Gauthier [2] cf. in particular the last chapter.
3. Buchanan and Tullock [7], cf. in particular [Chap. 11](#).
4. See [1], for an overview.
5. Cf. also [3] for a discussion.

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Abstract

This chapter discusses two major approaches to business ethics which rest on the foundation of social contract theory: the contractualist position of Integrative Social Contracts Theory (ISCT) and the contractarian position of Order Ethics. Both are summarized and analyzed critically. It turns out that Order Ethics might remedy some defects of ISCT.

Introduction

Contractarianism has been a major position in political and social philosophy at least since the days of Thomas Hobbes. This has been extensively shown and covered in the chapters of W. Kersting and L. Herzog (in this volume; more work on contractarian business ethics has been done by [12, 14, 21, 32, 34, 40]). What remains to be dealt with is the way in which contractarianism can act as a foundation of business ethics.

Contractarianism, as understood here, is a philosophical position which regards the consent of actors as its only normative criterion. In particular, it assumes that actors are self-interested and give their consent to norms or rules only if they regard this as beneficial for themselves. This is different from a position that takes the consent of actors *after deliberation* as its main starting point.

As Oosterhout, Wempe, and others [20, 34, 39] highlight, contractarianism can be distinguished from contractualism: Contractualism presupposes an internal morality of contracting: It assumes that contracting parties must have certain moral capabilities in order for the contracts to work. Moreover, contractualism usually

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regards actors not as predominantly self-interested, but rather as being embedded in a more general frame of commitments (In this sense, contractualism is at least in some regards closer to discourse theory and discourse ethics).

Contractarianism does not deny the presence of such commitments. However, it does not regard them as necessary presuppositions of (economic or other) contracts. Contracts can be negotiated and fulfilled in many ways. Commitments may help here, but without incentives and sanctions in place, commitments will tend to erode, particularly in dilemma situations like the prisoner's dilemma. The concept of Order Ethics elaborated here proceeds systematically from the idea of dilemma situations. (However, I find the line between a *moral* and a *political* contractarian approach is rather blurry, and therefore this distinction will not be of importance here).

Contractarianism is attractive as a philosophical foundation of business ethics for a number of reasons: First, it requires only comparatively weak normative presuppositions. Contractarians do not assume special capabilities like a "rational motivation" (as in discourse ethics), a "sense of justice" (as Rawls), virtues, or common values of the actors. Rather, only self-interest is needed – which of course needs to be spelt out in detail (cf. [28]). Weakening the normative presuppositions is certainly good for implementing business ethics in the globalized world, where pluralism and diversity play an important role and where a good manager must be capable of adequately dealing with people from very different backgrounds, both within a corporation and regarding its external stakeholders.

Second, deriving morality from interests (and, in a theoretical sense, with the help of economics) is a project that is especially fit for an ethics of modern *business*. As the philosopher of economics Wade Hands put it: "For economists, unlike for most others in modern intellectual life, the ubiquitousness of narrow self-interest in science or elsewhere, does not necessarily initiate a wringing of hands or lamentations about lost utopias; it only initiates a conversation about proper prices, compatible incentives and binding constraints" [15]. In the same vein, contractarians, rather than lamenting interest-driven societies, would prefer channeling those interests via rules and the order framework.

A fully fledged contractarian business ethics, in this sense, does not exist yet, but only elements of it. I will give an overview of some of these elements and then proceed by outlining the approach of Order Ethics, which tries to spell out the idea of a contractarian business ethics. Some preliminary remarks are necessary for this task, however.

First, the concepts of utility, benefits, and advantages must be seen as "open" concepts in the sense that they are not limited to narrow "economic," material, or monetary utility, benefits, and advantages, but rather as including – in the sense of G. Becker [3] – all that actors *regard* as utility, benefits, and advantages.

Second, a successful contractarian approach to business ethics should meet or at least be able to answer the criteria that Wempe [40, 41] outlined, according to which a social contract model, when applied to "the domain of corporate morality," should be (1) "self-disciplined, i.e., not aspire to results beyond what the contract

model can realistically establish,” (2) “argumentative, i.e., provide principles that are demonstrative results of the contractarian method,” (3) “task-directed, i.e., it should be clear what the social contract thought-experiment is intended to model,” and (4) “domain-specific, i.e., the contractarian choice situation should be tailored to the defining problems of corporate morality.” I will address these criteria in the last section of this chapter.

Integrative Social Contracts Theory

The internationally most well-known approach to business ethics that makes use of social contract theory is the *Integrative Social Contracts Theory* (ISCT) of T. Donaldson and T. Dunfee [13, 14]. Donaldson and Dunfee are dissatisfied with the general ethical theories offered by philosophy and therefore develop a theory of their own which takes its origin not from abstract philosophical problems but from concrete problems of business. Like Order Ethics, they see contractarianism as avoiding several problems that standard theories of ethics face.

These concrete problems lie mainly in the nature of contracting which, in the globalized world, is subject to many different standards and norms. ISCT is meant to explicitly allow for such a variety of norms – within limits however. The contractarian idea is used to conceptualize both of these intentions, in the following way:

First, the authors conceive a *macrosocial contract* which all boundedly rational human beings would consent to. This contract is to regulate the process of norm-finding on lower levels. According to Donaldson and Dunfee, the contractors on the macro level will – implicitly more often than explicitly – consent to a contract that allows for significant “moral-free space” on the lower levels of communities, corporations, and individual actors.

Second, *microsocial contracts* are generated within the framework of the macrosocial contract, between (mostly smaller) communities and corporations. Here, communities can accept quite different norms and standards, and immediately the question arises whether *any* such norms and standards can be ethically acceptable. Donaldson and Dunfee (try to) solve this problem by using the concept of *hypernorms*: Hypernorms are meant to be universal, overarching ethical principles which “are sufficiently fundamental that they serve as a source of evaluation and criticism of community-generated norms, and may include not only rules specifying minimum behavior, such as the rule against the killing of innocents, but imperfect duties such as virtue, beneficence and decency” ([13], p. 96). Hypernorms are to express principles “so fundamental to human existence that one would expect them to be reflected in a convergence of religious, political and philosophical thought” ([13], p. 96). They are not explicitly seen as being subject to a contract themselves. Rather,

they are to set the boundaries of the moral-free space, together with the consent required from the members of the community and certain rules of thumb for dealing with the inevitable norm conflicts between communities. These “priority rules” are the following:

1. Transactions solely within a single community, which do not have significant adverse effects on other humans or communities, should be governed by the host community’s norms.
2. Existing community norms indicating a preference for conflict of norms should be utilized, so long as they do not have significant adverse effects on other individuals or communities.
3. The more extensive or more global the community that is the source of the norm, the greater the priority that should be given to the norm.
4. Norms essential to the maintenance of the economic environment in which the transaction occurs should have priority over norms potentially damaging to the environment.
5. Where multiple conflicting norms are involved, patterns of consistency among alternative norms provide a basis for prioritization.
6. Well-defined norms should ordinarily have priority over more general, less precise norms. ([14], Chap. 7)

Critics have highlighted the vagueness inherent to these priority rules. However, ethical theories are not meant to provide ready-made recipes, but yardsticks – and as such, the priority rules certainly are good candidates to start with.

The theoretical discussion on ISCT has been continued by authors like Wempe, Oosterhout, and Heugens [32, 42], who especially highlight the concept of “extant social contracts” and reconstruct ISCT as spelling out the details of the (necessary) internal norms of contracting. In this sense, ISCT is a contractualist rather than a contractarian approach. Boatright has criticized this enterprise by arguing (among other points) that while such an internal normativity might be desirable and even profitable, however, contracting is not necessarily dependent on it and can take place without it (if less amicably) ([8], cf. also the response [33]). Moreover, morality cannot be deduced from internal norms, but would have to be derived from other reasoning.

I agree with this criticism, in principle, and find ISCT – at least in this regard – theoretically unsatisfying. To start a contractarian business ethics merely from an internal morality of contracting would be quite limiting. In particular, it would disregard the moral benefits produced not by individual corporations or individual actors but by the entire system of the market economy (within rules and institutions). Order Ethics takes up this idea and uses it to derive the internal morality of contracting in a more systematic way, employing the concept of incomplete contracts.

Nevertheless, ISCT is a major and fruitful approach to a contractualist business ethics. It allows for pluralism of ethics, it is closely oriented on business problems, and it takes empirical issues seriously, such as the “extant social contracts.” Some of its systematic deficits may, however, be cured by the approach discussed in the next section.

Order Ethics

I argue here that there is a theoretical position that fulfills the criteria Wempe has been calling for. Moreover, it also finds a place for more *political philosophy* in business ethics, which Heath et al. [19] demand. While Heath et al., however, mainly have a Rawlsian position in mind – which is certainly one of the most prominent positions in contemporary political philosophy – there are other, if related, approaches, too. The conception I will present here is *Order Ethics* (cf. [22, 23, 26, 29, 35]).

Order Ethics (“Ordnungsethik”) can be regarded as the complement of the German conception of “Ordnungspolitik,” which stresses the importance of a regulatory framework (“Ordnung”) for the economy. From a philosophical point of view, Order Ethics relies heavily on contractarianism, taking up its basic idea that society is a cooperation for mutual self-interest. The rules of a society, and of its economy, are agreed upon by the participants, in a situation like Rawls’ *original position*. In accordance with Rawls’ principles of justice, it will be in the mutual interest of all to devise rules that will improve everyone’s position and, in particular, that of the least well-off. This idea is taken up in Order Ethics: The order framework of a society is regarded as a means for implementing ethics.

I will present the basic logic of the Order Ethics approach, starting with its account of modern, competitive societies. Second, I will explicate the distinction between action and rules, and third, the role (mutual) advantages play in its treatment of ethical norms.

Competition as a Social Condition

Order Ethics takes its start not from an aim to achieve, but rather from an account of the social conditions within which ethical norms are to be implemented: Modern societies differ strongly from premodern ones. Premodern societies were “zero-sum societies” (the term has been made popular in a slightly different sense by [38]), in which people could only gain significantly at the expense of others. This view is concisely expressed in the words of the successful fifteenth-century Florentine merchant Giovanni Rucellai, written around 1450: “By being rich, I make others (which I might not even know) poor.”

Modern societies, by contrast, are societies with continuous growth, made possible by the modern competitive market economy. In this system, positive-sum games are played. Many types of ethics, however, are still stuck with the conditions of premodern societies and lag behind: They ignore win-win situations when distinguishing sharply between self-interest and altruistic motivation, and when requiring people to be moderate, to share unconditionally and to sacrifice. These attitudes, which make self-interest something evil, would have been functional in a zero-sum society, but they are inadequate for modern societies.

In a situation of zero-sum games, it was necessary to call for temperance, for *moderate* profits, or even for banning interest. But in a modern society, self-interest in combination with the order framework promotes morality in a much more efficient way: Morality is implemented on the level of the order framework which governs the market. Via competition on the market, the position of each individual can be improved, resulting in win-win situations. These are of economic as well as of ethical value, which is visible in the form of innovative products at good value for money, of jobs, of income, of taxes, or in the promotion of diversity and pluralism [30, 31]. Within the positive-sum games of modern societies, the individual pursuit of self-interest is compatible with traditional ethical ideas like universal solidarity.

Competition is central to this conception: Order Ethics emphasizes the importance of competition in a modern society, which fosters innovation [18], the spreading of new ideas, and the tendency of (unjustified) positions of power to erode (e.g., those of former monopolists).

Competition, however, has negative aspects, too: In competitive situations, morality is constantly in danger of getting crowded out. The prisoners' dilemma and the stag hunt game are classic models for such situations which can be detrimental to morality if the incentives set by the rules thwart what is deemed ethical ([2], for the systematic use of the stag hunt game cf. [4, 5, 6]). As an example, if corruption is seen as unethical, then rules which allow for corruption (e.g., allowing bribes to be deducted from tax) will promote unethical behavior – no matter how many public calls for morality are being launched. Therefore, Order Ethics aims at changing the order framework of a society rather than at appealing to moral behavior. This does not imply that people cannot behave ethically, but rather that ethical behavior should not get punished by (counterproductive) incentives. The role of rules will be made more explicit in the following section.

Actions and Rules

Order Ethics distinguishes between actions and rules. Most traditional ethical theories focus on actions and call for direct changes in individual behavior. Within premodern societies again, this made sense, as the predominant type of social interaction was face to face: In face-to-face interactions, individual behavior is closely monitored by one's fellow citizens. The implementation of norms or standards was unproblematic. Modern societies, however, consist largely in anonymous interactions. Therefore, rules and institutions, to a large extent, must fulfill the tasks that in premodern times were fulfilled by moral norms.

Morality must be incorporated within incentive-compatible rules in order to avoid the erosion of moral behavior. More precisely, there are three problems here: First, only changes in rules can change the situation for all participants involved *at the same time*. Second, only rules can be enforced by sanctions – which alone can change the *incentives* in a *lasting* way. Third, only by incorporating morality in the rules can competition be made productive. This mirrors Adam Smith's classic idea of the market promoting the interests of all people: If the rules

are set adequately, self-interest as the dominant motive in actions can bring about the ethically desired results [37].

This way of framing the central problem of business ethics is also related to J. Boatright's [7] distinction between a *moral manager model* and a *moral market model*: While the first one focuses on making individuals (managers, officials, trade unionists, etc.) more moral, the second one – which is analogous to Order Ethics – aims primarily at changing the institutional framework and indirectly inducing ethical behavior.

For business ethics, an important lesson is that rules and actions should be prevented from getting into opposition with one another. Moral behavior on the level of actions can only be expected if there are no counteracting incentives on the level of rules. In the classic model of the prisoners' dilemma, the prisoners cannot be expected to cooperate, because the conditions of the situation are set in a way so that cooperation is punished by defection on the part of the other player. The actors are permanently faced with the possibility of being "exploited" by others if behaving cooperatively, and therefore they stop cooperating themselves preemptively. This leads to a situation where rational, self-interested actors end up with a result that leaves all worse and no one better off: Morality gets crowded out. But rules are designed to prevent this from happening.

The rules themselves are subject to meta-rules, rules of higher order, in particular, constitutional rules. These rules must be accepted with higher degrees of consent, as J. Buchanan and others maintain (cf. [9] and [10]; for the ethical dimension of Buchanan's work cf. [27]). Ultimately, Order Ethics thus differentiates the normative criterion of consent, i.e., the central criterion of contractarianism, into several degrees or dimensions.

Implementation and Advantages

Order Ethics does not require people to *abstain* completely from pursuing their own self-interest. Actors will abstain from taking (immoral) advantages only if their behavior can be seen as an investment, yielding ultimately greater benefits in the longer run than defection in the particular single case. By adhering to ethical norms, an actor may become a reliable partner for others, which may open up new forms or ways of cooperation and of win-win situations. So an ethical norm that constrains one's actions may simultaneously expand one's options in *interactions*.

While not requiring people to abandon their self-interest, Order Ethics rather suggests *improving* one's calculation, by calculating in a longer run rather than in the short run and by considering the interests of others (e.g., the stakeholders of a company), as one depends on their cooperation for future interactions, especially in the globalized world.

Order Ethics therefore does not equate altruism with moral behavior nor egoism with immoral behavior. The demarcation line lies elsewhere, between unilaterally and mutually beneficial action: In order to act in an ethical way, an actor should be pursuing his/her advantage in such a way that others benefit as well.

Order Ethics and Incomplete Contracts

Order Ethics does not deal only with those rules that are incorporated in the law, but with rules on other levels as well. This includes, in particular, agreements at branch level and also self-constraining actions of individual corporations and leads into the area of corporate citizenship and corporate social responsibility (CSR) [11]. The underlying idea of mutual advantages, however, stays the same: to aim for a win-win situation.

Corporations are in fact doing much more than merely maximizing their profits within the order framework: They are providing social welfare; they are engaging in environmental protection, or in social, cultural, and scientific affairs. The stakeholder approach explains these observations by insisting that a corporation has to take into consideration not only shareholders, but other groups as well. From an Order Ethics perspective, however, one has to justify why the claims of stakeholders, which are already incorporated in the formal *rules* – as taxes, salaries, interest rates, and environmental and other restrictions – should be incorporated a second time in the *actions* of corporations. This is not to say that corporations should not account for stakeholder interests at all, but rather that the *justification* given is not strong enough.

A suitable justification for a greater political role of corporations can be developed along the lines outlined in the rest of this section. It is consistent with the conception of Order Ethics, especially in view of two points: Ethical norms (1) must be implemented in an incentive-compatible way and (2) should be built on (expected) advantages and benefits.

Order Ethics proceeds by extending the concept of “order” to other, less formal orders. It therefore introduces another contractarian element: the theory of *incomplete contracts*.

In reality, contracts are most often not completely determined by rules. They are not entirely fixed in terms of quality, date, or content, for any possible circumstances in the future, and they are not resistant to any difficulties in enforcing these contracts. In more detail, it can be said that incomplete contracts are contracts in which one or several of the following conditions apply (cf. [16, 17]):

1. The obligations of each party resulting from the contract are not specified exactly, in view of changing conditions such as flexible prices of raw goods.
2. It is difficult and/or expensive to determine whether the contracts have been fulfilled. External consultants have to be employed.
3. The enforcement of the contract is very difficult, very expensive, or even downright impossible, due to insufficient systems of law in a number of countries.

The globalized world is full of such incomplete contracts, like work contracts, long-run cooperation contracts, insurance contracts, strategic alliances, and many others. In dealing with these contracts, there is a major problem of interdependence of the partners' actions: A partner that is honest and fulfills her part of the contract cannot automatically be sure that the other partner does the same. The other one might point to gaps within the contract, may propose differing interpretations, or it may be too expensive to enforce a claim.

A rational actor faced with these kinds of contracts would rather not sign them, especially when being risk averse. However, if these contracts promised high benefits, the actor could try to rationally deal with the incompleteness.

Making incomplete contracts complete is no way to go: Not only is it impossible to specify all scenarios in advance, but this would also greatly reduce the flexibility which is the main advantage of the incompleteness. Incomplete contracts can be made quite productive, as the parties involved can adapt their agreements to different frameworks more easily. In order to exploit the benefits of incomplete contracts, however, trust, fairness, integrity, and goodwill are needed, in short, ethics. If contracts are becoming increasingly incomplete, both an ethics for the interior relations of the company (workers and management) as well as an ethics for the exterior relations to customers, banks, suppliers, and the public become a necessity. It is rational for a company to *invest* in these ethical categories, as it contributes to the company's success in a way that directly affects shareholders.

So if rules are incomplete or if there are no rules for a specific situation, contractarianism suggests relying on substitutes: Corporations, as partners in interactions, have the opportunity to commit themselves to certain policies, to mechanisms of trust and fairness, for example. This commitment must be made credible through organizational measures and must be signaled to others. In this way, actors create by themselves the very reliability that would normally be expected from formal rules. They create a *reputation*, which especially under conditions of globalization is a necessary prerequisite for success in the long run. This commitment must be signaled and, thus, becomes an asset for the company.

So from a theoretical perspective, Order Ethics provides an integrative contractarian view on both situations, those with well-established and those with incomplete rules. In both cases, incentives and sanctions are key issues. In the first case, incentives are set by formal rules, while in the second case, this role is taken up by informal rules in the shape of "soft" factors like ethics and reputation.

Philosophical Elements in Order Ethics

The main philosophical elements of Order Ethics can thus be summarized as follows:

First, Order Ethics is a consequentialist ethics. It aims for mutual benefits and win-win situations. Unlike many versions of utilitarianism, however, it regards the individual actors as the only source of normativity: The consent of all people involved is a contractarian legacy which makes Order Ethics differ strongly from utilitarian ethics. In this way, Order Ethics avoids a number of problems which keep riddling other consequentialist theories, in particular, utilitarianism: It avoids the anti-individual consequences and the danger of suppressing minorities.

For a contractarian business ethics, these ideas imply that business ultimately has to fulfill the needs of the individuals and that economic efficiency cannot be a stand-alone criterion. In the modern globalized world, there is a good chance that competition, the market, and other international actors like NGOs will help considerably in achieving this aim.

Corporations should, in this picture, not be seen primarily as collectives with no responsibilities beyond the responsibilities of their members. Rather – as recent work in analytical philosophy [25] suggests – can organizations be regarded as having duties in their own right, provided they fulfill a number of criteria, such as being sufficiently structured for meeting their responsibilities.

Second, Order Ethics can be seen as a naturalistic variant of ethics, as it makes extensive use of the methods and results of other disciplines (this is the version of naturalism espoused by P. Kitcher and others, cf. [24]). In particular, economic theory is a major resource for Order Ethics: For identifying incentive-compatible rules, economic analyses are pivotal, both on the macroeconomic as well as on the company or branch level. Beyond economics, evolutionary biology and game theory are becoming key resources for ethics, too (cf. the work of Binmore, [4, 5, 6]).

Third, Order Ethics can give an answer, if not meet the criteria that Wempe [41] proposed:

1. It is *self-disciplined* in the sense that it aims for the *implementation* of ethical norms and does not claim to answer all questions of normative *justification*.
2. It is *argumentative* as it aims at argumentatively deriving rules from the normative criterion of consent of the involved actors and as it, with regard to specific problems, argumentatively tries to show how win-win improvements are feasible (for examples cf. [26] or [35]).
3. It is *task-directed* in that it is directed toward the modern situation of normativity under pluralistic conditions, where consent is the only remaining normative criterion and where specific agents can design rules adequate for their specific interactions, i.e., large corporations, NGOs, and local governments (cf. [35]).
4. It is *domain-specific* at least when being applied to questions of corporate morality, as it makes use of the theoretical element of incomplete contracts (and also of others like “orthogonal positioning,” cf. the articles in [22]) as specific tools designed for answering questions of corporate morality.

Finally, ethics is starting to develop an experimental branch, too: While preeminent philosophers like Appiah [1] and (to some extent) Singer [36] have been advancing the role of experiments within ethics for some time, others go a step further and actually do experiments themselves. This might become an important method for business ethics in the future, too.

Conclusion

Several conceptions have approached the idea of a contractarian business ethics. First, Integrative Social Contracts Theory has been presented here, which has, however, raised criticism concerning its normative foundations and its

theoretical coherence. Second, I have presented the conception of Order Ethics, which is linked closely both to the contractarian philosophical tradition as well as to fundamental theories of economics. This model of interdisciplinary cooperation should prove fruitful in developing a systematic and coherent theory of business ethics, with contractarianism as its basis.

Cross-References

- ▶ [Biological and Experimental Perspectives on Self-Interest: Reciprocal Altruism and Genetic Egoism](#)
- ▶ [Business and Liberty: An Ethical Union](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Fundamentals of Discourse Ethics](#)
- ▶ [The Classic Social Contract Tradition](#)
- ▶ [The Figure of “Rivalry” and Its Function in Kant’s Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)
- ▶ [Utilitarianism](#)

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Part 9

Sen's Capabilities, Poverty and Economic Welfare

Jesús Conill

Abstract

This chapter presents (a) the capabilities approach as a real freedom perspective through the connections with the ethics of Aristotle and through its eleutheronomic foundation in Adam Smith, Immanuel Kant, and Karl Marx; (b) the contributions of the impartial spectator as open impartiality to the idea of justice; and (c) a broader conception of rationality.

Introduction

The capabilities approach is an economic and philosophical focus with foundations lying in the line of thought stemming from the economics of Aristotle and Adam Smith, who set this in the domain of practical philosophy and categorize it as Political-Ethical Economics. The philosophical foundations of the new capabilities approach, which have since Amartya Sen brought about a transformation in contemporary economic thought, could be summed up in three basic conceptions: capabilities as real freedom, justice as satisfaction of needs and open impartiality, and an evaluative rationality in the realm of public reason.¹

Freedom, Justice, and Rationality

The Capabilities Approach as a Real Freedom Perspective

The capabilities approach is commonly referred to as if it were philosophically linked to Aristotelian ethics. Other connections can nevertheless be found for

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establishing the philosophical (ethical-political) foundations of the capabilities approach.² The notion of “capability” is not only related with Aristotelian *dynamis* but also with the modern (enlightened) understanding of this as “freedom,” as this was conceived by Adam Smith and Immanuel Kant, connected in turn with Marx (From each according to his ability, to each according to his needs!) and with Rawls (Equal Liberty!). This is because both schools are committed to a capability which should be understood as freedom with effective guarantees (either in the socialist or social-liberal version). This outlook ties in with the real freedom conception of van Parijs [9], drawing inspiration in turn from Marx and Rawls (and not from Aristotle, because the principle of freedom in the modern sense is threatened in the latter).³

The Connection with Aristotle

Sen himself resorts to Aristotle to explain the philosophical foundations of the capabilities approach: “the most powerful conceptual connections would appear to be with the Aristotelian view of the human good. (. . .) The Aristotelian account of the human good is explicitly linked with the necessity to ‘first ascertain the function of man’ and it then proceeds to explore ‘life in the sense of activity.’”⁴ Sen himself, nevertheless, also straight away points out that there are “substantial differences” between the way functionings and capabilities are tackled in his own approach and in Aristotle’s. There are also some very significant differences between the versions of the capabilities approach put forward by Sen and Nussbaum.

From Aristotle’s standpoint (and this is supported by Nussbaum [12]), it would be possible to determine “one list of functionings (. . .) that do in fact constitute human good living.” Sen does not consider that this opinion is inconsistent with his approach, but asserts that it is “*not*, by any means, *required* by it.” He prefers not to eliminate “the ‘incompleteness’ of the capability approach” since the Aristotelian route is not the “*only*” way to see human nature, because the capabilities approach instead allows “other routes” to be taken. Aristotle is useful insofar as he contributes to a certain “*general* argument” in favor of the capabilities approach, but according to Sen, different specific theories of good and value may be consistent with the capability approach, because the point is actually to open up a common “evaluative space” ([10], p. 49).

Why did Sen choose the term “capability” for his new approach? Did its relations with Aristotle have anything to do with this choice? Sen explains that he chose the expression “capability” to represent “the alternative combinations of things a person is able to do or be – the various ‘functionings’ he or she can achieve” ([10], p. 30). This occurred at the Tanner lecture (“Equality of What?”) given at Stanford University in May 1979 (published in 1980). Although the original reason for using the capabilities approach was the context of the question “Equality of What?,” the use of the approach has however not been restricted to the matter of equality, instead helping to extend the horizon of the consideration of individual opportunities and advantages in terms of capabilities. Starting from the initial use in the analysis of inequality, Sen has therefore extended the horizons for application of his new viewpoint, displaying its potential for analyzing other social issues, such as well-being⁵ and poverty, liberty and freedom, living standards and development, justice, and social ethics.

Hence, as Sen explicitly acknowledges, he did not grasp the Aristotelian relations when he first proposed the capability approach. It would seem to have been Nussbaum who later on “aroused him” from that unawareness and made him see the connection with Aristotle, writing a number of studies on this relationship. Since then, Sen has taken this form of interpretation into consideration and even partly incorporated this. For example, he points out that the Greek word “*dynamis*,” used by Aristotle to deal with one aspect of the human good, and which has been translated by “potentiality,” can also be translated as the “capability of existing or acting.”

Nonetheless, as I see it, the best Aristotelian contribution to Sen’s thought lies in steering the economic approach toward the capability of living as we would like to live. The basic standpoint provided by Aristotle is not of dealing with economic wealth, but dealing with the life that we could live: “wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else” [11]. Sen’s construal of this Aristotelian approach considers that the main thing is what we can “do” with greater wealth; hence, income and wealth are not desirable for their own sake, but are means to have *more freedom* with which we can lead the kind of lives we have reason to value ([13], pp. 13–14).

The decisive thing is the concern for the conditions of life and the ability to function. What is at stake, according to Sen, are the freedoms generated by goods. Neither utilities nor goods, but *substantive freedoms*, the capabilities to choose the life that we have reason to value. According to Sen, it is the concept of “functions” which has clearly Aristotelian roots. On the other hand, “capability” is the substantive freedom to obtain different combinations of functions, the freedom to attain different lifestyles ([14], p. 75). The main center of axiological attention will not be the “functional outcomes” (which could be the same, as in the much-repeated paradigmatic example distinguishing between “fasting” and “starving”). It will be the “set of capabilities,” the effective *power* to decide (being able to dispose). This second evaluative area constitutes the most radical level of the meaning of “capability.” Rather than the Aristotelian one of functions, it is I feel connected with the Kantian one of *freedom* (the area of eleutheronomy). This is why Sen has gradually, and increasingly insistently, drawn up his capabilities approach as “the perspective of freedom.”

The domain of what was in Aristotle a hierarchy of goods up to the supreme good, or a relationship between means and ends, as far as the ultimate end, in respect of which everything else is an instrument (means), is increasingly construed in Sen with greater clarity from the standpoint of freedom: here the *good life* is presented in a version of *free life* (as opposed to poverty and tyranny).

Another aspect of Aristotle which could be used in greater depth is that of certain philosophical concepts such as that of “*dynamis*” (“power”), which requires a more careful examination of Aristotelian texts. Several rewarding interpretations contribute to this, such as the one provided by a Spanish line of philosophy from Ortega y Gasset [15, 16]: “power insofar as this is actuality,” “the act becoming its own power, actuality insofar as this is power,” dynamism which progresses toward itself, an act of energy (*enérgeia*).

Modern Context of the Capabilities Approach

The Perspective of Freedom (from Adam Smith to Karl Marx)

In spite of its references to Aristotelian thought, both Sen and Nussbaum place the capabilities approach in a modern setting. The modern connections are inescapable, indispensable, and indeed, the decisive ones, in my opinion. Sen preferably draws from Aristotle the spirit of his practical philosophy, his focus on real, concrete life. Nussbaum, on the other hand, feels herself forced to adopt a liberal interpretation of Aristotle, in later versions perfectly classifiable within Rawls' political liberalism. The modern connections in Sen's socioeconomic thought, which in my opinion lie basically in Smith, Kant, Marx, and Rawls, thus need to be established.

The main basis of Sen's economic thought can be found in Adam Smith. Sen himself explicitly acknowledges this when he describes his book *Development as Freedom* as "having an intense 'Smithian' character," since his economic thought has roots in practical philosophy, concerned with real life, with life's "needs" and conditions. The influence of Marx⁶ can also be seen in this approach of focusing on needs and conditions of real life. There are several themes from Smith to which Sen returns, but the most radical question that Sen already finds in either Smith or Marx would seem to me to be that of freedom in relation with "need" and "capability." For example, Smith was concerned with the capability to function conceived as "the ability to appear in public without shame" ([13], p. 73). What is considered as being a "need" in a society depends, in a Smithian analysis, on what is required to attain certain minimally necessary needs, such as the "ability to appear in public without shame" or to participate in community life. Needs involve essential goods for living with a certain decorum, so as not to feel humiliated. These are ultimately the freedoms which are generated by goods, not the goods in themselves, but insofar as they constitute the real condition of freedom: freedom in effective conditions.

The Eleutheronomic Foundation of the Capabilities Approach

In my opinion, the implicit foundation of the capabilities approach, especially as this is put forward in *Development as Freedom*, can be found in Kantian *eleutheronomy*. This is not a mere "Kantian component" (Crocker), nor only a matter of "convergence with Kantian strategy" (O'Neill), but the recognition of a fundamental order, a basic unconditional principle, which is why Sen gives this intrinsic value and regulatory power in its own right.

The question is, as in other contemporary neo-Kantian approaches (Rawls and discursive Ethics), that the affirmation of freedom defended by Sen's capabilities approach is also complemented with the analysis of consequences in an integrated framework. The moment, which is called "deontological," is determined through the perspective of freedom: in its normative facet, in its intrinsic value, understood as an end, according to Sen's own expressions. This aspect nevertheless needs to be combined with concern for the consequences in the framework of a "new ethics," which would as I see it have the nature of an *ethics of responsibility* in a strict sense, one which without relinquishing principles (or convictions) is able to make these effective in the complexity of reality, through the relevant mediation and situations.⁷

The crux of the matter is the notion of “capability.” If, as is diversely, but convergently asserted by Nussbaum and Sen, it is true that this constitutes the “modern equivalent of the Aristotelian term *dynamis*”⁸ and which actually means in most cases something like “the condition pursuant to which something can be done,” then one can also understand that the notion of “capability” should be introduced “to refer to the extent of freedom that people have to pursue valuable activities or valuable functionings” [18]. *Capability* consequently really means, even more markedly in the modern context, *freedom in conditions, real freedom* (effective power). This means that it exceeds the merely “liberal” concept of freedom (which always tends to be understood as “noninterference”), and stresses the positive, empowering, fulfilling side of freedom, which requires conditions of equality and justice. This therefore opens up a more favorable horizon for freedom, socially conditioned with justice, also in economic life.

Capability as Freedom

This sense of capability as the constituent freedom of the human being is found throughout Sen’s work and particularly in *Development as Freedom*. Extending freedom is the basic aim, which is why the analysis of the mechanisms and social institutions has to be measured according to how they contribute to making individuals’ freedom effective. This is *real freedom* and thus what has to be eliminated are the sources of deprivation of freedom, i.e., poverty and tyranny.

According to Sen, freedom is fundamental, both for “the evaluative reason” and for “the effectiveness reason,” although the fundamental aspect for Sen’s thought is not effectiveness but freedom. As regards the market, for example, instead of evaluating this from such a commonly used standpoint as its contribution to economic growth, Sen insists above all on “the direct significance of the freedom to interchange” ([13], p. 6). When he examines the demographic problem, furthermore, Sen relies on the contribution of freedom to moderate fertility rates, instead of “economic compulsion.” For this reason he would back Condorcet’s approach rather than Malthus’, based on his perspective of freedom. Sen explicitly understands this, when he uses the development approach which is in favor of freedom as an example of the debate between the defense of freedom against need, asserting that “the solution of the population problem calls for *more* freedom, not less” ([13], pp. 226). More examples of his fundamental standpoint could be given: a “freedom-centered understanding of economics and of the development process,” which is to a large extent sustained on the concept of “agent” ([13], p. 11).

This perspective of freedom shifts the center of attention of standard economic thought, which tends to focus more on “utilities” (income and wealth) than on freedom, when the meaning of modern economics is freedom [19]. Sen provides us with a very fruitful distinction to understand the value of the dynamic capability of freedom in economic life: the one that exists, in his opinion, between “*culmination outcomes*” and “*comprehensive outcomes*”; the first term does not take into account the process (the possible exercising of freedom); the second takes into account the processes. This distinction helps us to understand

the reasons for the separation of and confrontation between two aspects which should be coordinated in the economy (properly understood): placing the value of freedom over that of utilities.

Freedom is so radically important that in the debate on the evaluative question between the changes introduced by modern processes and tradition, the “basic value” consists in the fact that individuals freely decide on the traditions that they wish to maintain or not, because the basic aim is the extension of freedom and the main means is also freedom. Freedom thus has both a “constituent role” and an “instrumental role.” Freedom has intrinsic importance as a preeminent objective of development, a value that must be distinguished from instrumental effectiveness.

The Idea of Justice

Information Bases for a Different Approach to Justice

The capabilities approach proposal brings up a different approach to justice, with an information basis involving individual freedoms (not utilities): a “capability approach to justice.” This angle is the most helpful one for focusing attention on the *real life* achieved by individuals, on the *real freedom* to choose and accomplish the life that we have reason to value (satisfaction of basic needs, “levels of life”). In his *Critique of the Gotha Programme*, Marx defended the distribution of goods according to needs, as a requirement of justice, as opposed to the persistence of the narrow “bourgeois law,” which defends remuneration according to the product of labor [20, 21]. What lies at the heart of this requirement of justice is the defense of “positive freedom” – in my opinion, of radical freedom – which not only goes beyond utility and efficiency, but even surpasses certain formulations of rights in the liberal tradition. This is why Marx, for example, rejected “the so-called human rights” and radicalized the importance of positive freedom (what some have considered his revolutionary “ethics of freedom”).⁹

When it comes down to it, Sen’s whole position has a universalist presumption which he himself expresses as follows: “this book [*Development as Freedom*] is informed by a belief in the ability of different people from different cultures to share many common values and to agree on some common commitments. Indeed, the overriding value of freedom as the organizing principle of this work has this feature of a strong universalist presumption” ([13], p. 244). Sen shows that in different cultures, in all cultures, there has always been a clamor for freedom, disagreement, and dissident opinions which are the expression of freedom.

Sen adopts this perspective of freedom as a “normative approach” from which he puts forward the “foundations of justice” [23]. One of the different aspects of the *eleutheronomic* version of Sen’s capabilities in relation with justice deserving mention is what Crocker has rightly called the “small mercies argument” [2] and Gustavo Pereira has analyzed as “adaptive preferences” [24], because in this issue he very clearly expresses the deeper sense of freedom in conditions and of being deprived of this through poverty and/or tyranny.

When Sen explains the limitations of the utilitarian perspective of justice, his reflection leads us to the domain of freedom. Thus, if concentrating one's focus only on mental characteristics (such as pleasure, happiness, desires) can be extremely limiting when making *interpersonal* comparisons of well-being and deprivations, calculating utility can be very unfair for the perennially underprivileged, the usual underdogs, oppressed minorities. This is because the destitute tend to come to terms with their deprivations due to the need to survive, tending to relinquish their courage to demand a radical change and, even meekly tend to adapt their desires and expectations to what they consider feasible. Hence, persistent deprivations gradually stifle and silence the destitute, for as long as the conditions are not met for those people to have real opportunities to freely choose the type of life that they would like to live ([25], pp. 62–63).

Resignation to persistent (structural) deprivation and even gratefulness for “small mercies” is fairly commonly found among the poor or people subject to different forms of tyranny, insofar as these adapt their aspirations and wishes to the little that is affordable or feasible for them ([26], p. 309). The deprived have “mental reactions (which) often reflect defeatist comprises with harsh reality induced by hopelessness” ([26], p. 512). Due to the low level of aspirations and high level of regular misfortune, a person may be grateful for any small “mercy,” in spite of the persistent deprivations to which they are subject. They experience deprivation with some satisfaction and the deprivations are silenced and dampened, in spite of the suffering, due to the need to survive. Nevertheless, from the perspective of an eleutheronomic ethics, such as the one entailed by Sen's capabilities approach, which has to be very attentive – with hermeneutic meaning – to each specific situation,¹⁰ possible relative satisfaction is not the measure of justice because in this case one is not living freedom as a capability to choose the type of life that one considers valuable.

“The utility calculus can be deeply unfair to those who are persistently deprived: For example, the usual underdogs in stratified societies, perennially oppressed minorities in intolerant communities, traditionally precarious sharecroppers living in a world of uncertainty, routinely overworked sweatshop employees in exploitative economic arrangements, hopelessly subdued housewives in several sexist cultures. The deprived people tend to come to terms with their deprivation because of the sheer necessity of survival, and they may, as a result, lack the courage to demand any radical change, and may even adjust their desires and expectations to what they unambitiously see as feasible” ([25], pp. 62–63).

Consequently, what justice demands is to foster the creation of conditions for individuals to have real “opportunities to judge the type of life that they would like to live.” To create these conditions, there need to be social and economic factors, such as basic education, healthcare, and secure work, which are important to provide individuals with the “opportunity to face the world with courage and freedom.” This requires a basis of information (more extensive than that of utility-based welfare), concentrating its focus on “individuals' ability to choose the life that they have reason to value.”

The Idea of Justice as Open Impartiality Critique of the Social Contract and of the Original Rawlsian Position

In his work *The Idea of Justice* Sen's conception of justice takes a new angle as he presents a critique of the social contract and of the Rawlsian original position.¹¹ In his opinion, using the social contract as Rawls does restricts the search for justice of the members of a community or "people" to a group similar to that of the national state:

"It is the contractarian framework of 'justice as fairness' that makes Rawls confine the deliberations in the original position to a politically segregated group whose members 'are born into the society in which they lead their lives'" ([27], p. 127). Sen points out that this contractualist framework does not offer the procedure for reviewing "local prejudices," nor for "opening up the reflections in the original position to the eyes of mankind" ([27], pp. 127–128).

Sen also blames Rawls for having formulated a closed program of the "original position," since the "veil of ignorance" in the "original position," does not guarantee an open scrutiny of local and parochial values, in Sen's view. On the other hand, Sen refers to Smith's procedure as going beyond local presuppositions, separating us from "our own natural station," of seeing local presuppositions "at a certain distance from us." Smith's procedure insists on exercising an open impartiality, because "we can do this in no other way than by endeavoring to view them with the eyes of other people, or as other people are likely to view them" [28].

Sen defends a sense of justice – which does not mix up with mere humanitarianism – going beyond the bounds of sovereign states and which will be formulated by means of the notion of "open impartiality," because "our sense of identity" is not confined within the frontiers of the state ([27], p. 129), but instead crosses national frontiers, which is why certain demands of justice come up. Sen insists on the fact that "the world beyond a country's borders cannot but come into the assessment of justice in a country," since the actions of certain countries affect life in other countries very seriously, not only by means of wars, but by means of all kinds of exchanges, for example, trade. Hence, if one takes for granted this multiple reciprocal influence on the real life of people from other countries, Sen asks whether the voices of affected people elsewhere should not count in some way in determining what is just or unjust in a society's organization, in view of the effects brought about by the interaction in life of people from other societies. This means that the voices from all origins should not be ruled out, because, according to Sen, "objectivity demands serious scrutiny and taking note of different viewpoints from elsewhere, reflecting the influence of other empirical experiences" ([27], p. 130). Different points of view bring up questions, which help to overcome parochialisms and localisms, made up of fixed beliefs and specific practices. Considering others' reasons "can be an effective way of determining what objectivity demands."

In short, for Sen, "assessment of justice demands engagement with the 'eyes of mankind'" ([27], p. 130), because this is how the local community is surpassed, one becomes aware of how our own actions may affect others' lives and because other standpoints may help to overcome particularism. That is why Sen stresses

several limitations of the “original position” ([27], pp. 138 ff) which are connected with a closed form of impartiality, and advocate an open impartiality through the impartial spectator.

Rawls himself brought up the question of justice in the present context of the growing interaction between different countries with his proposal of the “law of peoples,” which suggests a second original position between the representatives of different peoples.¹² The Rawlsian form of tackling the problem implies invoking another “original position,” which this time involves representatives of different “peoples.” The two original positions may be called “*intranational*” and “*international*,” but Sen considers that this involves “closed impartiality” in both cases. For when Rawls says in his later work, *The Law of Peoples* (1999), that “at some point, a political conception of justice must address the just relations between peoples, or the law of peoples,” what actually occurs is that what Rawls considers to be “just relations between peoples” is, according to Sen, “an altogether different issue from the need for an open scrutiny of the values and practices of any given society or polity, through a non-parochial procedure” ([27], p. 128).

As well as Rawlsian procedure, Pogge has proposed a “cosmopolitan” version of the original position through a comprehensive practice of impartiality. This idea of a global practice of the social contract for the whole world population nevertheless appears to Sen to be “deeply unrealistic” and he thus considers that “there is an institutional lacuna here” ([27], p. 141). So Sen considers that Nagel’s skepticism [29] on global justice is also relevant for the proposal of a cosmopolitan social contract and that it is therefore useful to resort to the route of open Smithian impartiality, since the cosmopolitan social contract depends more on global institutions than Smith’s less rigid and demanding approach.¹³

Contributions of the Impartial Spectator

By resorting to the impartial spectator Smith indicates that relevant judgments on justice can come from outside the standpoints of the agents in contractual negotiations: they can in fact come from “any just and impartial spectator,” as the proper procedure is to listen to the expressions of others’ viewpoints, which can help to reach “a fuller – and fairer – understanding” ([27], p. 131).

In spite of the “contractualist” form of the Rawlsian theory of justice, the social contract is not the only tool that Rawls brings into play in his particular understanding of justice. According to Sen, there is an imaginary “background” in the original position, which turns out to be a reflexive exercise prior to the congregation of the people’s representatives in the original position. The “veil of ignorance” can be seen as a procedural demand of impartiality attempting to constrain someone’s political and moral reflections, whether a contract is invoked or not. According to Sen, in the use of the “veil of ignorance,” “the parties (that is, individuals under this veil) would already agree with each other when the point comes to negotiate a contract.” This is why Rawls asks whether a contract is

required, “since there is already a precontract agreement.” This means that part of Rawlsian reasoning involves precontractual reflections and this would to a certain extent be in parallel to the Smithian procedure of just arbitration. Rawls therefore resorts to a “public framework of thought,” which is not merely equivalent to demanding a “contract,” but presupposes that “we share a common viewpoint with others” [30, 31].

Sen nevertheless stresses certain differences between Rawlsian theory and the Smithian approach of the impartial spectator: (1) Smith’s insistence on what Sen calls “open impartiality,” which accepts the legitimacy of the “enlightenment relevance” (and not only of “membership entitlement”) of others’ opinions; and (2) the comparative direction taken by Smith’s research (pursued by an alternative enlightened tradition, in which he places Condorcet, Wollstonecraft, Bentham, Marx, and Mill), going beyond the search for just institutions and concerned with social accomplishments ([27], p. 134). He points out a similarity between this alternative tradition (interested in comparing different ways in which people can steer their lives, people’s real behavior and social interactions) and the ancient Indian tradition of justice as *nyaya* (referring to comprehensive results), as opposed to *niti* (reduced to schemes and institutions). Pursuing this enlightened tradition comes out into the theory of social choice, concerned with the evaluative comparisons on social accomplishments, which is why Sen includes the analytical and mathematical discipline of the “social choice theory” (from Condorcet to Arrow) in this line of research. If properly adapted, this approach may represent a substantial contribution to the treatment of matters concerning the improvement of justice.

The Smithian impartial spectator is a recourse for critical scrutiny and public discussion. He does not need to seek unanimity or total agreement as this is demanded by the institutional straitjacket of Rawls’ theory of justice ([27], p. 135) nor base himself on contractualism or utilitarianism ([27], p. 137) but the impartial spectator can, with open impartiality, “enlighten without being *either* a social contractor, *or* a utilitarian in camouflage” ([27], p. 138). Open impartiality allows more distant and closer opinions to be heard in the construal of justice, avoiding parochialism. Hence, from Smith’s standpoint, a “public framework of thought,” which crosses borders, can be invoked according to Sen ([27], pp. 134 and 141).

What occurs to Sen is that by resorting to the figure of Adam Smith’s “impartial spectator” to sustain a conception of “open impartiality,” he is referring to a notion of “public reason” which comes increasingly close to that of Habermas and of the later Rawls. This is because what Sen is actually opposing is a particularist (parochialist) contractualism, which is unable to open up to universalism. However, the universalism to which he resorts now seems to be the possible universalism of public reason, which perhaps proves convergent with the universalism of freedom (which he already made use of from the capabilities approach),¹⁴ given that public reason is a domain of freedom, in whose scenario the demands of justice are debated.¹⁵

Conclusion

A New Conception of Economic Rationality

It appears to Sen that the distancing of the economy in respect of ethics “has brought about one of the major deficiencies of contemporary economic theory” [37]. Economic rationality can be made more productive, if it pays greater attention to ethical considerations determining human behavior and judgments. For example, the case of egotistic behavior in conventional economy has prevented the analysis of highly significant relations. It is furthermore known that “there is neither evidence for the claim that self-interest maximization provides the best approximation to actual human behavior nor that it leads necessarily to optimum economic conditions” ([38], p. XI). Since, according to other economic studies, there are economies in which other forms of behavior (based on duty, loyalty, goodwill, etc.) have become highly relevant to accomplish economic efficiency.

The supposition of “rational behavior” needs to be questioned because, although rationality tends to be identified with the “maximization of self-interest,” according to Sen, “universal selfishness as *actuality* may well be false, but universal selfishness as a requirement of *rationality* is patently absurd” ([38], pp. 16 and 17). Adam Smith already realized and explained that there is *aplurality of motivations* in human behavior, reaching beyond the maximization of self-interest. This is not the only aspect involved in exchange, and far less so in the other economic activities and functions. A single motivation is thus not enough to explain human behavior, not even presumed economic rationality.

What is ultimately at stake are the ethical foundations of economic rationality. As opposed to the utilitarian perspective and “economic efficiency” in the sense of Pareto optimality, Sen has proposed a new approach to ethical economics from the rationality of freedom. The value of real freedom, the importance of the “agency aspect” of people constitutes the real foundation of the economic rationality proposed by Sen as an alternative to the conventional sort. The gradual surmounting of the impoverishment of the economy as its ethical root is rediscovered “may shake the foundations of conventional economic theory” and the growing need for a “systematic ethical assessment” may help to extend the horizon of rationality and enrich the suppositions of the analysis of human behavior.

The rationality of freedom that Sen proposes from the economy surpasses the utilitarian approach, just as Rawls managed to exceed this in the sphere of ethical-political thought. In his work *Rationality and Freedom* [39] and in *The Idea of Justice* he pursues this normative approach to the rationality of freedom and justice,¹⁶ for this innovative line of economic thought shows that the “monist” method in which the standard economy is stuck is inappropriate, because it does not allow a consideration of evaluative plurality, which is what really ties in with the freedom approach.

New economic analysis integrates the technical and ethical sides of economics in its rationality. Indeed, consequential reasoning may cover what Sen calls

the “position relativity” in the assessment of social states and the differences in agents’ sensitivity in moral valuations, that is, the plurality of points of view in interpersonal relations and in social life ([38], p. 77). The important thing about Sen’s stance is the fact that has been able to go from economic thought to combining the type of “consequential reasoning” with the perspective of “intrinsic value” that an activity may have. Having to deal with instrumental value does not rule out any possible intrinsic value and the same thing applies the other way round – the intrinsic value of an activity does not have to lead to ignoring the consequences of the action. In short, one contribution made by Sen, in my opinion, consists of the fact that he integrates the “intrinsic value” and the “instrumental function,” starting from economic thought.

Sen illustrates several types of possible evaluative rationality in the economic-ethical analysis of the bases of information by means of the Annapurna parable,¹⁷ which tells that she wants to have her garden cleared and three unoccupied workers want to get the job. The most important thing involved in deciding is to realize the type of evaluative rationality acting in each case and to perceive the decisive importance of information bases of the different types of evaluative rationality which come into play in the different approaches: for example, in the egalitarian one (focusing on the lack of income), the utilitarian one (focusing on measuring pleasure), and that of the quality of life (focusing on the types of life that each of the three persons can lead). The decision is based on the information which is made to carry greatest weight, because each evaluative rationality is in relation with an information base.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Agency, Welfare, Equality, and Democracy](#)
- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Business Contribution to Human Development from the Capabilities Approach Standpoint](#)
- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Kant’s Categorical Imperative and the Moral Worth of Increasing Profits](#)
- ▶ [Moral Implications of Rational Choice Theories](#)
- ▶ [Poverty as a Lack of Freedom: A Short History of the Capability Approach](#)
- ▶ [The Capability Approach as Guidance for Corporate Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)

Notes

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2. See for example, David A. Crocker [1]; [2]; *Ethics of Global Development*, Cambridge University Press, Cambridge, 2008; Jorge Chaves [3]; Onora O'Neill [4]; Adela Cortina [5]; Sara Lelli [6]; Jesús Conill [7]; Marta Pedrajas, *El desarrollo humano en la economía ética de A. Sen*, Universidad de Valencia, 2005; Pablo Sánchez [8].
3. See Aristotle, *Politics* VIII, 1, where it states that citizens do not belong to themselves but to the political community: "And since the whole city has one end . . . neither must we suppose that any one of the citizens belongs to himself, for they all belong to the state, and are each of them a part of the state, and the care of each part is inseparable from the care of the whole."
4. Amartya Sen [10], 30–53 refers to Aristotle, [11], I, 7.
5. "Well-being," a term specifically used by Sen to get away from the utilitarian and economicist conception of welfare, extending its meaning by means of a more direct relationship with the person's condition, which is the reason for the other term as "quality of life."
6. Adam Smith, *Wealth of Nations*, Book V, Chap. 2; see Jesús Conill [7]; Pablo Sánchez [8].
7. See David Crocker [2] and Adela Cortina [17].
8. "Justice for Women," *New York Review of Books* (8th October 1992), 47, n. 22 (quoted by Crocker, [2], p. 69).
9. See G.G. Brenkert [22 (quoted by Sen [20], p. 48, n. 19).
10. A now classic precedent of these "indicators" lies in the existential version of the ethics of development, which is concerned with specific agents, proper to the approach provided from the 1960s by Denis Goulet (*Ética del desarrollo*, IEPAL-Estela, Barcelona, 1965 and IEPALA, Madrid, 1999; *Development Ethics at Work*, Routledge, London/New York, 2006) and more recently, in the last decade, and in line with Sen's approach, with the Reports by the PNUD.
11. Sen [27], pp. 126 and ff.: "The original position and the limits of contractarianism."
12. See Charles Beitz, Brian Barry and Thomas Pogge (see [27], p. 140 and p. 430, n. 17).
13. Sen [27], pp. 140–141 and p. 71 (referring to Th. Pogge (ed.), *Global Justice*, Blackwell, Oxford, 2001).
14. See Jesús Conill [7].
15. J. Rawls [32]; J. Habermas [33]; J. Muguerza [34]; A. Cortina [35]; D.A. Crocker [36].
16. Sen [37], pp. 47 ff., 53 and 56–57, 58 ff. and p. 63, n. 6.
17. A. Sen [13], particularly Chap. 3 and [39], where he again insists on this point.

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Abstract

The article attempts to make the capability approach fruitful for corporate ethics (i.e., the ethics of business organizations) in two parts. The first part presents the capability approach. After a short historic overview of its development advanced by Amartya Sen and Martha Nussbaum, the question about an adequate informational basis for interpersonal comparisons is raised, and traditional answers of the utility-based and resource-based approaches are criticized. Against this backdrop, the essential elements of the capability approach, common to Sen and Nussbaum, are highlighted, and some foundational implications of Sen's capability approach in particular are explained, followed by a few considerations on the limitations of the capability approach. The second part discusses the application of the capability approach to corporate ethics. Beginning with three basic assumptions on corporate ethics, the application includes a critique of "value-free" economics and other business disciplines and an enrichment of the notion of rationality. It stipulates a sensitivity to issues of poverty and distribution and elaborates on the focus on functionings and capabilities. The article ends with a few concluding remarks.

Introduction

If one blind person guides another, both will fall into a pit. (Matthew 15:15)

Guidance without adequate informational basis is misleading and can have catastrophic consequences. This holds true for entire societies as for personal lives, for economies as for business organizations.

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Over a long period of time, increasing concerns have been raised about the adequacy of current measures of economic performance, especially those based on GDP figures. Furthermore, there are broader concerns about the relevance of these figures as measures of societal well-being, as well as measures of economic, environmental, and social sustainability. Therefore, the Commission on the Measurement of Economic Performance and Social Progress, initiated by the French government, was created in early 2008 in order to address these concerns. Under the leadership of Professors Joseph E. Stiglitz, Amartya Sen, and Jean-Paul Fitoussi, the commission published its final report on Sept 14, 2009. There it states:

The whole Commission is convinced that the crisis is teaching us a very important lesson: *those attempting to guide the economy and our societies are like pilots trying to steering a course without a reliable compass* (emphasis added). The decisions they (and we as individual citizens) make depend on what we measure, how good our measurements are and how well our measures are understood. We are almost blind when the metrics on which action is based are ill-designed or when they are not well understood. For many purposes, we need better metrics. Fortunately, research in recent years has enabled us to improve our metrics, and it is time to incorporate in our measurement systems some of these advances. There is also consensus among the Commission members that better measures may enable us to steer our economies better through and out of crises. ([21], p. 9)

After discussing “classical GDP issues,” the report addresses the conceptualization and measurement of “quality of life” and “sustainable development and environment.” For the purpose of this article, we focus on the capability approach that prominently figures as one of the approaches to capture quality of life, besides the approaches based on the notions of subjective well-being and fair allocations. As is well-known, the capability approach has been developed by Amartya Sen and Martha Nussbaum and represents today a coherently elaborated body of knowledge, which has served as the basis for numerous public policy issues at the national and international levels. Suffice it to mention the annual *Human Development Reports* published by the United Nations Development Program since 1990.

One might, therefore, ask how the capability approach can be made fruitful for business and economic ethics. For those familiar with Sen’s work, there is no doubt that Sen has made seminal contributions to lay new foundations for business and economic ethics, ranging from opening economics to ethical considerations, to enriching motivations for economic behavior, and assessing economic and social achievements in terms of freedoms and capabilities. Throughout his professional career, Sen has paid close attention to these foundational issues, documented in numerous publications, for instance, in Sen [22, 24–27], [31], and [35] (see also [14]). On various occasions, he also has spoken on business ethics, for example, at the International Conference on the Ethics of Business in a Global Economy, held in 1992 in Columbus, Ohio [30], and at the First World Congress of Business, Economics, and Ethics in 1996 in Tokyo [32]. Moreover, he writes extensively on capitalism and business ethics in *Development as Freedom* [31]. Thus, he can rightly be called a pioneer and trailblazer of contemporary business and economic ethics.

Nevertheless, it is fair to say that until now the capability approach has been used only rarely in “business ethics” (or corporate ethics) understood as the ethics of

business organizations, which differs from individual ethics and the ethics of economic systems. Therefore, it appears appropriate to explore the potential and limitations of the capability approach for corporate ethics. Thereby, Sen's foundational work will also be considered insofar as it relates to this question.

This article includes two parts. The first part presents the capability approach. After a short historic overview of its development advanced by Amartya Sen and Martha Nussbaum, the question about an adequate informational basis for interpersonal comparisons is raised, and traditional answers of the utility-based and resource-based approaches are criticized. Against this backdrop, the essential elements of the capability approach, common to Sen and Nussbaum, are highlighted, and some foundational implications of Sen's capability approach in particular are explained, followed by a few considerations on the limitations of the capability approach. The second part discusses the application of the capability approach to corporate ethics. Beginning with three basic assumptions on corporate ethics, the application includes a critique of "value-free" economics and other business disciplines and an enrichment of the notion of rationality. It stipulates a sensitivity to issues of poverty and distribution and elaborates on the focus on functionings and capabilities. The article ends with a few concluding remarks.

The Capability Approach and Its Foundational Implications

A concise summary of the capability approach can be found in the Stiglitz-Sen-Fitoussi Report:

This approach [to measuring quality of life] conceives a person's life as a combination of various "doings and beings" (functionings) and of his or her freedom to choose among these functionings (capabilities). Some of these capabilities may be quite elementary, such as being adequately nourished and escaping premature mortality, while others may be more complex, such as having the literacy required to participate actively in political life. The foundations of the capability approach, which has strong roots in philosophical notions of social justice, reflect a focus on human ends and on respecting the individual's ability to pursue and realise the goals that he or she values; a rejection of the economic model of individuals acting to maximise their self-interest heedless of relationships and emotions; an emphasis on the complementarities between various capabilities; and a recognition of human diversity, which draws attention to the role played by ethical principles in the design of the "good" society. ([21], p. 42)

Before discussing the features, strengths, and limitations of this approach in detail, a short historic overview of its development advanced by Sen and Nussbaum is presented. Sen (see [15, 18]) began to focus on capability in his Tanner Lecture at Stanford University in 1979 in the specific context of evaluating equality ("Equality of What?" in [24], pp. 353–369). In *Poverty and Famines* [23], the term of capability is not yet mentioned (while the concepts of entitlements and the ability to command enough food play a key role). Shortly after, the notion of capability gained much attention and elaboration: in the context of development, well-being and poverty, liberty and freedom, living standards and development, gender bias and sexual divisions, and justice and social ethics. Among the numerous

publications, one might mention *Commodities and Capabilities* [26], *Inequality Reexamined* [28], and “Capability and Well-Being” ([17], pp. 30–53). In *Development as Freedom* [31], the capability approach takes a center stage and is, again, masterly presented in *The Idea of Justice* [35].

Nussbaum connected the capability approach with Aristotelian ideas in the 1980s and jointly edited the book *The Quality of Life* [17] with Sen. She has made pioneering contributions to the development of this approach and has published numerous books and articles, documented in her most recent book *Creating Capabilities* [16], which is a lucid masterpiece on capabilities and human development.

The capability approach starts from the experience that “all over the world people are struggling for lives that are worthy of their human dignity” ([16], p. 1). As there is an enormous diversity of lives, many plagued by poverty, disease, disabilities, and violence, the search for a better world and more just societies appears inescapable. The question then arises how these lives can be compared – or what “informational basis” is adequate – in order to reduce injustices and advance good societies.

Critique of Utility-Based and Resource-Based Approaches

This question is of paramount importance for empirical and theoretical studies as well as for ethical evaluations and public policies. If one chooses an informational basis that does not allow for interpersonal comparisons, one cannot, strictly speaking, make social judgments. This outcome was famously demonstrated by Kenneth Arrow’s “Impossibility Theorem” [1].

Also, “the new welfare economics,” spearheaded by Lionel Robbins in the 1930s, rejects interpersonal comparisons of utility and uses only one criterion of social improvement, namely, the “Pareto criterion.” This accounts only for the utilities of each person *separately*. Accordingly, the situation x of a group (or a country) is better than the situation y of this group (or country), if at least one person has more utility in x than in y and everyone has at least as much utility in x as in y . A situation is then described as “Pareto optimal” or “Pareto efficient” if and only if there is no other feasible situation that is superior to it in terms of the Pareto criterion. This means that Pareto optimality ignores the issue of the distribution of utilities and does not account for anything other than utilities (such as freedoms, rights, or opportunities). It goes without saying that, in comparing situations of men and women, ethnic groups, and entire nations, this criterion would generate bizarre results.

Because interpersonal comparisons are necessary for investigating and assessing social states of affairs, one may ask for the appropriate informational basis of comparisons. Broadly speaking, two influential sets of approaches can be distinguished. The first set is based on subjective feelings of persons and has been advocated, historically and most prominently, by utilitarianism with its different versions: the hedonistic view of utility as pleasure, utility as desire fulfillment, and utility as preference satisfaction. More recently, studies of subjective

well-being (i.e., about whether people are “happy” and “satisfied” with their lives) have been undertaken, and these studies show that it can be made amenable to systematic quantification (see [21], pp. 145–151).

The second set of approaches is based on “objective” resources such as income and wealth, which are discussed as “primary goods” in John Rawls’s *A Theory of Justice* [20]. Moreover, in the economics field, the welfare economics tradition and the theory of fair allocation have developed ways to include nonmarket aspects of quality of life into a broader measure of well-being ([21], pp. 153–155).

While Sen acknowledges the legitimacy and usefulness of subjective and objective approaches to quality of life, presented in the report, for certain purposes, he strongly criticizes the utility-based and the resource-based approaches. The utility-based approaches suffer from two fundamental flaws. First, they aggregate the utilities simply by summing them together (an arithmetic addition), which is called “sum-ranking.” Therefore, the distribution of the utilities of individuals becomes irrelevant. Second, utilities are subjective, mental entities, which are shaped by the environments to which individuals have been exposed for a long time.

The utilitarian calculus based on, say, happiness can be deeply unfair to those who are persistently deprived, such as the traditional underdogs in stratified societies, oppressed minorities in intolerant communities, precarious sharecroppers living in a world of uncertainty, sweated workers in exploitative industrial arrangements, subdued housewives in deeply sexist cultures. The hopelessly deprived people may lack the courage to desire any radical change and often tend to adjust their desires and expectations to what little they see as feasible. They train themselves to take pleasure in small mercies. The practical merit of such adjustments for people in chronically adverse positions is easy to understand: this is one way of making deprived lives bearable. But the adjustments also have the incidental effect of distorting the scale of utilities. ([34], pp. 18–19)

Sen’s critique of the resource-based approaches (particularly Rawls’s notion of primary goods) is based on a differentiated understanding of the relation between goods and persons and the fundamental value of a person’s real freedoms. He distinguishes different categories that are involved in the relation between a good (say, a bike) and a person (see [24], p. 30):

Goods	>>> Characteristics	>>> Conversion into:	>>> Functioning	>>> Capability
(e.g., a bike)	(e.g., transport)		(e.g., moving)	(e.g., able of moving)

“Characteristics” are qualities of goods, whereas “functioning” relates to a person’s *use* of those characteristics, for example, *a bike* provides transport while *a person* moves and can move with it. The crucial point in this relation is that the goods with their characteristics are means to achieve the ends of the person. They are not identical with, but *converted* into, the functionings and capabilities of the person. This conversion of goods in general and primary goods in particular depends on the characteristics of the person.

For example, a person who is disabled may have a larger basket of primary goods and yet have less chance to lead a normal life (or to pursue her objectives) than an able-bodied person with a smaller basket of primary goods. Similarly, an older person or a person more prone to illness can be more disadvantaged in a generally accepted sense even with a larger bundle of primary goods. ([31], p. 74)

Against Rawls's use of primary goods, Sen insists that the conversion problem that affects significantly disabled people should be addressed by choosing the informational basis with the focus on functionings and capabilities. After all, "the magnitude of the global problem of disability in the world is truly gigantic. More than 600 million people – about one in ten of all human beings – live with some form of significant disability" ([31], p. 258).

Sen's emphasis on finding an adequate informational basis for comparing human lives can be explained by his lifelong concern for the poor and his search to engage ethics and economics into productive interdisciplinary communication. On the one hand, the informational basis must reach the lives and freedoms of people; on the other hand, it has to be objective enough to allow for interpersonal comparisons. Moreover, it must include all people and hence be globally applicable. Thereby, both commonalities and diversities of human lives have to be taken into account, avoiding ethical imperialism as well as ethical relativism. Finally, the informational basis should allow sufficient room for multiple ethical theories.

Essential Elements of the Capability Approach

Having discussed the importance of an adequate informational basis for interpersonal comparisons and criticized different prominent approaches, we ask: What can the capability approach offer? What are its essential elements? As Nussbaum writes, the key question for an adequate informational basis is "What is each person able to do and to be?":

The approach takes *each person as an end*, asking not just about the total or average well-being but about the opportunities available to each person. It is *focused on choice or freedom*, holding that the crucial good societies should be promoting for their people is a set of opportunities, or substantial freedoms, which people then may or may not exercise in action: the choice is theirs. It thus commits itself to respect for people's power of self-definition. ([16], p. 18)

The importance of each person as an end, with his and her choice or freedom, and the claim to be respected, has universal validity and holds for all people in all cultures and religions. It is noteworthy that the concentration on capabilities of persons does not imply "methodological individualism" which assumes that individuals with their thought, choice, and action are detached from the society in which they exist. "The capability approach not only does not assume such detachment, its concern with people's ability to live the kind of lives they have reason to value brings in social influences both in terms of what they value (e.g., 'taking part in the life of the community') and what influences operate on their values (e.g., the relevance of public reasoning in individual assessment)" ([35], p. 244). In other words, it would be "a significant mistake" (Sen) to interpret the capability approach in an individualistic sense.

A further feature of the capability approach is a pluralist understanding of value:

The approach is resolutely *pluralist about value*: it holds that the capability achievements that are central for people are different in quality, not just in quantity: that they cannot without distortion be reduced to a single numerical scale; and that a fundamental part of understanding and producing them is understanding the specific nature of each. ([16], pp. 18–19)

To illustrate, it does not make sense to curtail to one single indicator among the following capabilities: being adequately nourished, escaping premature mortality, reading, calculating and writing, doing “decent work” (that includes many substantive elements), and having leisure time. It is noteworthy that the Stiglitz-Sen-Fitoussi Report, too, emphasizes a range of features in people’s lives “that are important either intrinsically, as objective expressions of a good life, or instrumentally, to achieve valuable subjective states or other objective goals. Some of these features may be conceived as referring to particular functionings (i.e., descriptions of people’s doing - e.g. working, commuting - and beings - e.g. being health ore educated) while others may be conceived as freedoms in particular domains (e.g. political voice and participation)” ([21], p. 156).

Finally, Nussbaum emphasizes the value perspective of the capability approach:

The approach is *concerned with entrenched social injustice and inequality*, especially capability failures that are the result of discrimination or marginalization. It ascribes an *urgent task to government and public policy* – namely, to improve the quality of life for all people, as defined by their capabilities. ([16], p. 19)

While the capability approach offers an adequate informational basis for inter-personal comparisons in general, it is particularly apt to shed light on poverty and inequalities and to guide public policies to address these issues. This does not require an all-encompassing theory and policy. But a focus on a limited set of issues – or what Sen calls a “partial ordering” – suffices (see Sen’s extensive discussion of his view of how to approach justice in [35]).

These essential elements of the capability approach, outlined above, are shared by Sen and Nussbaum (and many other scholars). However, there are also differences between the two authors, which may be indicated briefly, but not pursued further in this article. Nussbaum calls her approach “Capabilities Approach,” pointing to the plurality and qualitative distinctness of the most important elements of people’s quality of life (see [16], Chaps. 2 and 4; also [33], pp. 157 and 160). She explicitly grounds her theory of fundamental political entitlements in human dignity and employs a specific list of ten “central capabilities.” They constitute a minimal threshold level that a political order must at least secure to all citizens: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over one’s environment, politically and materially. In line with Rawls’s political liberalism, her capability-based theory of justice refrains from offering a comprehensive assessment of the quality of life in a society. But it also comprehends the capabilities of nonhuman animals.

In contrast, Sen abstains from establishing a specific list of (basic) capabilities, leaving its specification to public reasoning (although he thinks some capabilities, e.g., health and education, are particularly important). A main concern of his has been to identify capability as the most pertinent space of comparison for purposes of quality-of-life assessment, which can be the basis for a comprehensive quality-of-life assessment in and between nations and other groups (see [21]). Such a project, in turn, goes beyond the deliberately limited aims of Nussbaum's political liberalism. Sen, however, develops a theory of justice in a very broad sense. "Its aim is to clarify how we can proceed to address questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice" ([35], p. ix). Moreover, Sen does not extend his theory to nonhuman animals' capabilities.

Some Foundational Implications of Sen's Capability Approach

In order to better understand the capability approach and its application to corporate ethics, it is helpful to explore some foundational implications of Sen's approach. As economist and philosopher, Sen has never accepted the strict separation of both disciplines, but persistently aimed at relating ethics and economics in fruitful dialogue. This has led to a lucid critique of core neoclassical assumptions in economic theory and considerably enriched the paradigm of economics, which he calls an "ethics-related approach" as distinct from the "engineering approach" to economics ([27]; also [11]). The latter primarily focuses on logistical issues in a "value-free" manner: what means should one choose in order to achieve as efficiently as possible, under very simple behavioral assumptions, goals that are given from elsewhere? The ethics-related approach, however, going back to Aristotle, involves a broader understanding of economics and other business disciplines. It also comprehends problems of human motivation and the judgment of social achievements that cannot be disconnected from the ethical question of the good and just: how should one live and how should we foster a good and just society?

For Hilary Putnam, Sen's approach demonstrates successfully how the false dichotomy of "facts" and "values" can be overcome. There are no "value-free facts" in juxtaposition to (subjective) value judgments because both facts and values are subject to value judgments, the first to epistemic value judgments and the second to ethical value judgments ([19], pp. 46–78). This means that the "engineering approach" in general and the neoclassical theory in particular are not "value-free." For example, the choice of a particular informational basis for interpersonal comparisons (say utility or income) depends on epistemic value judgments, which, in turn, are influenced by ethical value judgments. Other examples are the notions of rationality and economic behavior, the role of self-interest, and profit maximization.

Sen criticizes the economic model of individuals acting to maximize their self-interest heedless of relationships and emotions (see also [18]). First, it is a bad description of how people actually behave. Second, it does not respect how individuals may value what to do and to be. Third, it disqualifies all other-regarding

motivations as irrational. Fourth, it fails to motivate for the production of public goods (as distinct from private goods). Fifth, it excludes respect for and fair dealing with disabled people. Finally, as a core assumption in social contract theories based on cooperation for “mutual advantages,” it limits the people included to those who can make contributions and excludes those in need.

With regard to judging social achievement (i.e., the goodness and justice of societies), Sen’s long-standing concern for poverty and inequalities has given him a sharp heuristic perspective to examine prevailing philosophical and economic approaches. Neither purely subjective (e.g., utility) nor merely objective criteria (e.g., income) nor any single numerical scale is adequate to capture the plight of the poor in particular and the achievement (or nonachievement) of the whole society in general. The capability approach offers a way to avoid these impasses. It places the persons’ lives at the center: what matters is what they do and they are (functionings) and their freedoms to choose among these functionings (capabilities). Thus, “human development” is defined as “a process of expanding the real freedoms that people enjoy” ([31], p. 3). The expression “the real freedoms that people enjoy” epitomizes the concepts of functioning and capability. Clearly, it is not about any freedoms, but about the freedoms (a) that people value, (b) that they have reason to value, and (c) that stand the test of public scrutiny.

Three implications are to be mentioned briefly. Poverty as capability deprivation is measurable and requires value judgments, which need to be enforced by public policies. Sensitivity for distributions of functionings and capabilities can be enhanced by statistical documentation and opened up to public reasoning. In its reach, the capability approach is global across cultures and religions and comprehends all human beings.

Limitations of the Capability Approach

As Sen readily admits, the capability approach also has its limitations. For instance, it cannot pay adequate attention to fairness and equity involved in procedures (i.e., the process aspect of freedom) that have relevance to the idea of justice ([35], pp. 295–298; this point, though, is criticized by [16], p. 67). Moreover, capabilities are not, like human rights, moral claims that involve duties ([33] and [35], pp. 370–376).

Another limitation – and a critique to some extent – has to do with the notion of wealth. Sen agrees with Aristotle that “wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else” ([31], p. 14; also [35], p. 253). Wealth is not something we value for its own sake. It is only an “admirable general-purpose means for having more freedom to lead the kind of lives we have reason to value” ([31], p. 14).

This notion of wealth seems to be understood in a narrow, material sense, reflecting a certain underestimation of the material world and the “bodiliness” of the human person. According to Jacob Viner, “Aristotle . . . insisted that wealth was essential for nobility, but it must be inherited wealth. Wealth was also an essential need of the state, but it should be obtained by piracy or brigandage, and by war for

the conquest of slaves, and should be maintained by slave-workers” ([39], p. 39). If the material world is considered inferior and merely instrumental, wealth cannot but share these qualities and is likely to be undervalued. If it has no intrinsic value, it is not a place where deeper meaning can be searched and found.

It is therefore suggested to enrich the notion of wealth ([7, 8], and [9]). This notion is consistent with the ethics-related approach, integrates the capability approach, and adds a more specific purpose of business and economics within the overall purpose of “expanding the freedoms that people enjoy.” Thus, the purpose of business and economics is conceived as “wealth creation” in a comprehensive sense that goes beyond profit maximization and adding value. Wealth is more than financial capital by including physical (i.e., natural and produced), human (in terms of health and education), and “social” capital (as trust relations in Robert Putnam’s sense). Wealth encompasses not only private but also public wealth, both influencing each other in multiple ways. Because the process of wealth production inescapably involves distributive patterns, the productive and the distributive dimensions of wealth creation, strictly speaking, cannot be separated. Wealth is not merely material, but also has a spiritual side, which ennobles its creation to a truly noble human activity. By placing wealth creation in the time horizon of sustainability enriched by Sen’s capability approach, one overcomes an exclusively short-term view and integrates an intergenerational justice perspective. The emphasis on creating as distinct from possessing and acquiring highlights the need for innovation in both private and public wealth creation and requires “mixed” motivations (i.e., self- and other-regarding) to overcome the exclusive and thus insufficient motivations of either self-interest or collective interests.

Obviously, this rich concept of wealth creation is influenced by Sen’s work in several respects: his capability approach incorporated in human capital and the sustainability perspective; the important role of public goods; the rejection of self-interest as the only rational motivation and the indispensability of other-regarding motivations; and the concern for distribution and poverty as capability deprivation. Moreover, the Stiglitz-Sen-Fitoussi Report discusses different types of capital, namely, physical, natural, human, and social capital, and emphasizes the crucial role of wealth as stock for assessing the sustainability of the standard of living over time.

Application of the Capability Approach to Corporate Ethics

As discussed in a previous section, the capability approach offers an informational basis for public policy, which is more adequate than utility-based and resource-based approaches. It is decidedly people-centered and provides theoretically sound and specific guidance for governments and international agencies such as the World Bank. In principle, it can be applied to any decision-making situation, be it of an individual, an organization, or in a systemic context (see Three-Level Conception of Business Ethics in [6]).

In the following, the focus is on the ethics of business organizations: what guidance can the capability approach provide to corporate ethics? So far this

question rarely has been addressed, and also Sen has ventured on this complicated field only on a few occasions (e.g., [30] and [32]). Therefore, what follows is an attempt to explore some important features.

When addressing issues of corporate ethics, it is important to keep in mind the enormous variety of business organizations operating in multiple industries and hugely diverse cultures and countries. In addition, there are many different definitions of the purpose of business and business organizations such as making money, maximizing profit, surviving competition, providing goods and services, and improving society. However, it does not lie within the scope of this article to discuss this diversity of organizational forms and motivational views. Suffice it to state three basic assumptions for our exploration:

1. Business organizations have some space of freedom to set their own goals and implement their strategies while constrained by laws and regulations, market forces, and social and cultural factors. Thereby, the extent of responsibility is a function of the extent of freedom: the bigger their spaces of freedom, the bigger their responsibilities.
2. Large, formal organizations such as corporations are understood as “moral actors”: as collective entities, they act with intention (or at least exhibit intentional behavior) to achieve their goals and impact on society and nature, often to a large extent. Therefore, they can be held responsible for their acts in a moral sense. But they are not moral persons because they are not ends in themselves and thus cannot claim the rights of human beings.
3. The general purpose of the business organization is defined as the creation of wealth in a comprehensive sense as outlined in the previous section.

Sen’s capability approach with its foundational implications contributes to a better understanding of corporate ethics in several respects.

Critique of “Value-Free” Economics and Other Business Disciplines

By refusing to address the questions of human motivations and social achievements in a serious manner, the engineering approach dismisses a large part of business reality as irrelevant for understanding business challenges and conduct. Business models based on mechanistic assumptions cannot account for human agency and may have grossly negative consequences. It is not possible to search for and find meaning in business itself. Ethical values and norms are extraneous to business and can only guide its culture, policy, and behavior, at best, from outside. Therefore, the ethics-related approach that explicitly incorporates human motivations and the judgment of social achievements opens economics and other business disciplines to fruitful communication with normative-ethical perspectives of corporate ethics.

The Notion of Rationality

If rationality is defined exclusively as instrumental rationality, rational business aims to instrumentalize everything: the relations with customers, the treatment of employees, and the dealing with other stakeholders. Human capabilities are not respected for their intrinsic values. Similarly, if self-interest and profit maximization are supposed to be the only rational motivations in a market economy,

other-regarding motivations and goals (such as service to the company and the country) are disqualified as “irrational.” Such a narrow understanding of rationality is highly questionable on theoretical grounds and fails to underpin the realities of long-term business success and the production of public goods. Thus, the notion of rationality needs to be extended beyond instrumental rationality, self-interest, and profit maximization, which is indispensable for sound corporate ethics. Of course, this does not mean that instrumental rationality, self-interest, and the pursuit of profit are unimportant.

Sensitivity to Poverty and Distribution

Growing out of a deep concern for the plight of the poor and glaring injustices, the capability approach has provided a powerful perspective to better understand poverty and inequalities in and between societies. Moreover, it can guide businesses to evaluate and possibly improve their distributional structure and impact within and outside their organizations. For instance, businesses may critically assess the distribution of salaries and other benefits among employees or the distributional impact of corporate policy on different social groups. The capability approach is particularly apt at guiding companies in the global context because it provides universal standards on the one hand and great flexibility for cultural and national adjustments on the other hand. For an increasing number of global corporations, the alleviation of mass poverty has become a key corporate objective (see, e.g., [40]). Furthermore, businesses around the world are called upon to be part of the solution in addressing poverty and gross inequalities by joining the United Nations initiatives of the UN Millennium Development Goals (www.un.org/millenniumgoals) and the Global Compact (www.globalcompact.org) (see, e.g., [41]). Needless to say, the capability approach can be of invaluable guidance.

The Focus on Functionings and Capabilities

By taking each person as an end and focusing on real opportunities or substantial freedoms, the capability approach is decisively people-centered. People are not just “factors of production” or “human resources” as many theories in economics and management hold (for a critique of “human resource management,” see, for instance, [4]). Because functionings and capabilities are measurable, the approach can show whether the slogans such as “putting people first,” “empowering the workforce,” “employees are our most important assets” and “the customer is king” are supported by facts or are merely lip service.

In evaluating the business organization’s performance in terms of functionings and capabilities, four considerations deserve particular attention. First, there are multiple and interdependent functionings and capabilities. The functioning of working in a company may generate the capabilities of connecting with other people and being well respected in the community. Moreover, it can create the capability to be loyal to the company’s mission and the functioning of being promoted. Or take the example of micro-lending at the Grameen Bank: micro-loans improve the capability of (mostly) women to be productive. This increases

their functioning of earning a higher household income. It also expands the capabilities of the household members to be better nourished and the children's capabilities to enjoy basic education instead of working in factories. The women's capability to be self-confident increases and leads to their capability to participate in political debates and elections, which may result in the functioning of being elected.

Second, Sen refrains from establishing a special list of capabilities and accords an important role to public reasoning in order to identify context-related relevant capabilities. As the stakeholder theory stipulates for corporate ethics, the company should engage in dialogue with its stakeholders (see [12]). In such a way relevant capabilities may be determined for employees in terms of health and training, for consumers in terms of safe products, for investors in terms of transparency, and for the community in terms of keeping jobs. As public reasoning is crucial for setting relevant capabilities in societies at large, so is the stakeholder dialogue crucial for fixing them in business relations.

Third, Sen and Nussbaum both see a close link between capabilities and human rights ([33] and [35], pp. 355–387; [16], pp. 62–68). The promotion of human development in terms of capabilities and the fulfillment of human rights share a common motivation. The combination of the two perspectives also contributes something that neither can provide alone. The human rights approach links the human development approach to the idea that others have duties to facilitate and enhance human development (human rights as entitlements to capabilities), and human development helps to augment the reach of the human rights approach (capabilities as potential contents of human rights).

Moreover, the United Nations Framework for Business and Human Rights, developed under the leadership of John Ruggie since 2005, incorporates human rights into corporate responsibility and provides guiding principles for the implementation of the framework [38]. Although the framework does not mention the capability approach, it prominently refers to “fundamental freedoms” (General Principles [a]). It covers all human rights, civil, political, economic, social, and cultural rights, including the right to development – in total 29 rights [37]. These rights can easily be translated into capabilities with the claim of duties to people and institutions.

The UN framework is a groundbreaking and very helpful contribution to the clarification of corporate responsibility (or corporate ethics) with regard to human rights (see [10]). This responsibility includes the following components: (1) Transnational corporations and other business enterprises have to “respect” all human rights worldwide. This means they must not cause directly, or be involved as accomplices directly or indirectly in, human rights violations. (2) In order to perceive and fulfill these responsibilities, the companies have to exercise “due diligence” (i.e., to be committed) to examine, on a regular basis, their corporate strategies and activities with regard to all potential and actual (causal) impact on human rights and to make sure that all human rights are “respected” (3). Therefore, companies are not responsible for all types of human rights violations, but “only” for “respecting” them, though in their entirety.

Based on the UN framework, a set of capabilities can be determined that defines the moral minimum corporations have to “respect.” Beyond this minimal set, the capability approach can help identify other obligations and even ideals, depending on the particular nature, mission, and environment of the business organization. In other words, the identification of capabilities as guidance for corporate ethics draws on both the norms of human rights and the principle of stakeholder dialogue.

Fourth, in the last few years, several well-thought-out metrics for economic, social, and environmental performance have been developed, in particular: the sustainability performance indicators for business and other organizations by the Global Reporting Initiative (its fourth generation in the making; www.globalreporting.org); the ISO 26000 – Guidance on CSR (or corporate social responsibility) for any type of organization by the International Organization for Standardization (promulgated in 2010; www.iso.org/iso/social_responsibility); and, regarding entire societies, the Report on the Measurement of Economic Performance and Social Progress mentioned earlier [21]. These metrics cover a fairly comprehensive range of issues through which business organizations may affect people. Hence, the capability approach can strengthen the focus on people rather than on things and on the quality of life rather than on simple indicators of material well-being. The Stiglitz-Sen-Fitoussi Report adopts this focus and deals with this challenge from a broad, societal perspective. It is suggested that GRI sustainability reporting and ISO 26000 may also benefit from the capability approach in their organizational perspectives. In addition, the various indicators can serve as heuristic devices in the stakeholder dialogue to identify the relevant capabilities in the specific contexts.

Conclusion

As stated in the introduction, there is a serious disorientation among those attempting to guide the economy and our societies. They are “like pilots trying to steering a course without a reliable compass.” When this happens, the blind end up falling into a pit, as Matthew warns in the New Testament. Responding to this strong statement, this article attempts to provide solid guidance with the help of the capability approach. As it has been very fruitful for public policy, it can also enlighten and strengthen business and economic ethics in general and corporate ethics in particular. By focusing on real opportunities (functionings) and substantial freedoms (capabilities) the people have reason to value, the shortcomings of utility-based and resource-based approaches to interpersonal comparisons can be overcome, and the people’s power of self-definition can be respected. The foundational implications of the capability approach enlarge the paradigm of economics and other business disciplines, enrich the notion of rationality, and sensitize decision makers for poverty and inequalities. Based on the UN Framework for Business and Human Rights, a minimal normative set of capabilities for corporate ethics can be determined. Beyond this minimum, the metrics of the GRI sustainability performance indicators and the ISO 26000 – Guidance on CSR provide heuristic devices for identifying, through stakeholder dialogue, context-relevant functionings and capabilities. For the question of the

purpose of business and ennobling business activity, it is crucial to overcome the merely instrumental understanding of business by also placing intrinsic value in business itself as a human activity. This can be achieved by defining the purpose of business as wealth creation in a comprehensive sense. It is an innovative, interrelated process of production and distribution, aiming at the creation of not only financial but also physical, human, and social capital.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Agency, Welfare, Equality, and Democracy](#)
- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Biological and Experimental Perspectives on Self-Interest: Reciprocal Altruism and Genetic Egoism](#)
- ▶ [Business Contribution to Human Development from the Capabilities Approach Standpoint](#)
- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Corporate Human Rights Violations: A Case for Extraterritorial Regulation](#)
- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if Any?](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [Poverty as a Lack of Freedom: A Short History of the Capability Approach](#)
- ▶ [Purpose](#)
- ▶ [The Modern Social Contract Tradition](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)
- ▶ [Utilitarianism](#)
- ▶ [Value Ladenness and the Value-Free Ideal in Scientific Research](#)

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Abstract

A chapter on the importance for the business world of both the demands made by human rights and the connection between these rights and the capability approach cannot fail to be included in any handbook of business ethics published in the early twenty-first century. This chapter attempts (1) to specify the relationship between the capability approach and the human rights approach, because both put forward global imperatives and thus seem to cover the same area of justice, (2) to present both discourses as complementary, because each of these has advantages missing in the other, but at the same time there are great coincidences between them, (3) to present the necessary interaction between people's capabilities and social recognition of human rights and (4) to specify the kind of obligations that the demand to empower basic capabilities in relation to human rights creates for companies¹.

Introduction**Basic Capabilities and Human Rights: Two Approaches for Constructing a Global Justice**

In his recent book *The Idea of Justice*, Amartya Sen states that his capability approach “was initiated by my search for a better perspective on individual advantages than can be found in the Rawlsian focus on primary goods” in works such as “Equality of What?” and *Commodities and Capabilities*, amongst others.² Different answers to the question “equality of what?” were put forward,

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leading to a lively debate: Rawls would reply that a minimum of justice demands equality in primary goods; authors such as Streeten thought it necessary to attain equality in the satisfaction of basic human needs; Dworkin would propose equality of resources; a large number of authors, such as Thomas Pogge, understand that the minimum equality demanded requires all human beings' rights to be respected, referring to human rights, whereas Sen understands that primary goods or resources will be taken advantage of by people according to each person's capability, interpersonal comparisons thus needing to be taken into account. In the context of the debate on equality, Sen proposed that equality in the basic capabilities of all human beings should be attained as a demand of justice, and was backed by Nussbaum, Crocker, Alkire, Comim and Pereira, amongst others, in this bid.

In Sen's work, this basic capability criterion would turn into the informational focus, which would act as a basis to decide which features of the world we should concentrate on in judging a society and in assessing justice and injustice. This informational focus is the one that has been used to measure the level of human development in the United Nations Development Programme programmes, precisely because human development will be understood as the empowerment of people's basic capabilities to carry out the plans for life that they have reason to value. Poverty will be identified with the lack of substantive freedoms, with "being poor" meaning suffering a lack of the capabilities and functionings required to carry out the type of life that the person has reason to value.³ Sen would affirm that "Development is indeed a momentous engagement with freedom's possibilities"[13]. This will not mean ceasing to take into account other variables for measuring societies' quality of life nor resorting only to capability for proposing plans for human development. It is sometimes necessary to also take *basic human needs*, resources or rights into consideration, but the focal variable will be capability.⁴

From the first works in which he puts forward his capability approach, Sen clearly debates with other proposals dealing with the subject of equality, but at the same time explains that he feels he is particularly close to Rawls's approach and to the basic needs approach, although he also finds fault with these. As for Rawls, Sen considers that primary goods can partly be understood as resources which do not take differences between people into account. As regards the basic needs approach, Sen acknowledges that he agrees with Streeten in that "first things first" must be applied in cases of radical poverty, and the first thing involves meeting basic human needs [14]. Sen nonetheless considers the capability approach to be preferable for at least two reasons, if the situation is not so radical: because through taking into account interpersonal differences, developed countries cannot be satisfied with appeasing their conscience by sending goods to developing countries, but have instead to take the differences between people very much into consideration; furthermore, because empowering people's capabilities implies reinforcing their agency, helping them to be subject-agents of their lives, whereas mere satisfaction of needs can convert them into passive beings, patient-subjects.⁵ The target of the capability approach is to empower people, to reinforce their agency.

Over time Sen would nonetheless be obliged to specify very particularly the relationship between the capabilities approach and the human rights approach, because these are very similar from a certain angle: they put forward global demands and global imperatives and thus seem to cover the same area of justice.

The United Nations Universal Declaration of Human Rights in 1948 was indeed the result of a fascinating story, through which human beings have gradually discovered rights extending to all humankind, rights which are not possessed through being a member of any particular political community. These are first- and second-generation rights, followed by third- and even fourth-generation rights, such as Internet access, which has just been declared a human right by the United Nations. The demands implied by these rights go beyond national frontiers and generate obligations which in turn cross the boundaries of national states, and even go beyond international agreements. In spite of authors such as Nagel considering that it is impossible to establish global justice, because it is only possible to practise the lawful coercion demanding compliance of obligations in nation states, many others, such as Pogge and Beitz, consider that human rights bring up moral demands of justice which make a claim for a global and not just international justice to be set up [16–19].

To some extent, nevertheless, this is also the case with the capability approach because if it is a demand of justice for the basic capabilities of all human beings to be empowered, then this approach also requires establishment of the structures of a global justice, the institutions and lifestyles which make it possible to empower these capabilities. This might well raise the question of whether the capability approach can take the place of the human rights approach. That is, can the demands entailed by human rights be replaced by the demands entailed by the empowerment of basic capabilities?

Does the Capability Approach Replace the Human Rights Approach?

One might think that the answer to this question is affirmative, amongst other reasons because the capability approach seems to involve the advantage of being transcultural, i.e., of not being linked to Western traditions, which is one of the accusations often made against the discourse of human rights: that of its Westernism. The history of human rights seems to be linked to the West, and even first-generation rights are closely bound to liberal traditions. On the other hand, at least *prima facie*, everyone, in all cultures, seems to wish to have their capabilities empowered.

The capability approach does not, however, seek to replace the human rights approach – these are instead two complementary approaches. Sen himself affirms that “human right” and “basic capability” are two concepts which relate to each other well on condition that neither of them sets out to invade the other’s territory, because the capabilities approach does not explain the process, an aspect which is indeed included in human rights.⁶ In her *Frontiers of Justice*, Nussbaum points

out: “The capabilities approach, as should by now be evident, is closely allied to the human rights approach. Indeed, I regard it as a species of the human rights approach.”⁷ To what extent is this true? What relationship can exist between human rights and basic capabilities?

Two Complementary Approaches

Both Sen and Nussbaum consider that the basic capability approach and the human rights approach are complementary because each of these has certain advantages not found in the other. The main disadvantage with the human rights approach is claimed to be its ambiguity, which can be specified in the following points, according to Sen and Nussbaum.

Firstly, the human rights discourse involves a lack of foundations, because it does not indicate the basis on which the defence of these rights is claimed. Throughout history different authors have stressed specific characteristics of human beings, maintaining them to be the aspects distinguishing humanity as a species and which, through being superior to those of other species, make humans worthy of a set of rights. The most highly valued traits are the ability to reason, self-consciousness, self-sufficiency, the ability to have second-order beliefs – that is, beliefs about beliefs – and the ability to reflect, to imagine different possible futures or to make long – term plans [26]. However, as has often been seen in the debate on animals’ rights, it turns out that not all the beings that we call “human” meet these characteristics and make use of them. This problem leaves us with two options: either to go on sustaining that these beings lacking the specific traits of human beings are persons in any event because they belong to the human race, or to recognise that they are not persons and act accordingly. The most commonly held position is the former, and this stance is criticised as being “speciesist” (For the debate about animal’s rights see [27].) As such, the discourse of rights therefore lacks foundations.

At this point, Sen and Nussbaum would claim that the capabilities approach manages to overcome this lack of foundations because it does indeed offer a basis for the demands of justice, which is the equal dignity of human beings.

In my view, this assertion is nevertheless disconcerting. The 1948 Universal Declaration of Human Rights proclaims precisely this: that dignity is the foundation of human rights. This is not, however, meant to provide a philosophical foundation, but still leaves open the question “why do human beings have dignity?” – a question to which the capabilities approach does not provide any convincing reply, thus displaying a very considerable lack of philosophical foundations.

As I see it, this is where both the capability approach and the human rights approach have a lack of foundations. What the capabilities approach does indeed provide, in Nussbaum’s version, is an interesting complementation: if it is taken for granted that human beings are endowed with dignity through the characteristics of their species, then all the beings belonging to the human race have dignity, whether they can currently exercise these capabilities or not, because the rights are not based

on present capabilities but on the basic capabilities characteristic of the human species norm. This is an assertion which deserves some discussion, but which, as I see the matter, explains why any being in the human race must be socialised in a human community [28].

A second difficulty involved in the discourse of rights, according to Sen and Nussbaum, consists in those of the first generation, above all, being closely linked to liberal traditions. According to these traditions, in order to ensure that a right has been recognised, it is enough for there to be negative liberty; that is, it is sufficient for the state not to interfere. The capability approach, on the other hand, considers that recognising a right is an affirmative task: guaranteeing a right to political participation or to free practice of religion implies actively making it possible for people to be able to practise the relevant capabilities for this, not only for there to be no interference. A right is effectively recognised when there are effective measures for people to be able to really act on the political level, from both the material and the institutional standpoints ([28], p. 287).

Thirdly, the human rights discourse does not expressly link together the rights of different generations, which is why they seem to be independent of each other, whereas the capability approach openly recognises the interdependence of first- and second-generation rights. It does not take much thought to realise that in countries in which first-generation rights are protected it is hard to envisage there being any starvation, lack of health care and lack of education. Neither is it hard to see that when the right to education, to healthcare or to work is lacking, basic freedoms are also curtailed. And if it is considered impossible to defend second-generation rights in some cases, through a lack of funds, the solution does not consist in saying that since there is no possibility of complying with the obligation, neither is there any right, as Onora O'Neill puts it, but that the right continues to exist and the relevant institutions to protect this must be created [29].

Fourthly, the capability approach focuses on what people are really able to do and be, which is why it is useful to discover the inequalities which women suffer in the family setting in many parts of the world and to compensate for such inequalities by empowering their capabilities. This cannot be done in the same way by the discourse of rights.

Lastly, as already mentioned, the discourse of rights has been stated to be above all Western, whereas that of capabilities can be seen as transcultural. It is true to say that even defenders of the capabilities approach qualify this assertion and remind us that there are roots of human rights in other cultures, as is the case of China and India, but it is also true that they point out that talking of capabilities means that any discussion about the possibility of ethnocentrism can be avoided, because the ideas of activity and capability are to be found in all cultures [30].

Nonetheless, the defenders of the capabilities approach also admit that the discourse of rights has at least three advantages. This focus first of all enjoys high standing worldwide, and has managed to arouse widespread agreement. Secondly, it has great rhetorical power, because it insists on being an urgent claim based on justice. Saying that people have a right means that they are legitimated to demand this urgently, which does not occur with the capability approach. To say, "Here's

a list of fundamental rights” is more rhetorically direct than to say “Here’s a list of things that people ought to be able to do and to be.” Thirdly, the language of rights places emphasis on people’s choice and self-sufficiency ([30], pp 100–101).

Everything that has been said leads to the conclusion that the most appropriate solution is to present both discourses as complementary, because each of these has advantages missing in the other, and at the same time there are great coincidences between them: both enable building a partial theory of social justice, which brings up demands of justice, because the discourse of central human capabilities sustains that these are not only desirable social objectives, but are *entitlements* based on justice, putting forward urgent claims which address national states, but also the international community. Nussbaum, specifically, identifies ten basic capabilities and a minimum threshold which the worldwide community should attempt to attain, whereas Sen leaves the decision on capabilities and rights for open public deliberation ([28], pp 290 and 291, [31], pp 290 and 291).

The capabilities approach is thus not a rival to the human rights approach, but is a specification of the latter, a necessary specification, because it stresses the need for affirmative action in the public domain and also emphasises the interdependence between freedom and good economic order.

All this does not actually amount to much, however. In my opinion, there needs to be an explanation of the connection between basic capabilities and human rights going further than the idea of complementation proposed by Sen and Nussbaum.

The Necessary Interaction Between People’s Capabilities and Social Recognition of Human Rights

In theory, from Sen’s perspective, “human rights are ethical claims constitutively linked with the importance of human freedom, and the robustness of an argument that a particular claim can be seen as a human right has to be assessed through the scrutiny of public reasoning, involving open impartiality”[32]. At least three conclusions can be drawn from these statements.

Firstly, in the discussion as to whether human rights are legal or moral rights, Sen openly declares that he is in favour of the second option: going on in the Hart tradition, human rights are moral rights, moral claims [33]. They are not in this case “children of law,” as Bentham would have it, but are “parents of law,” in the approach taken by Hart. Their nature is not even exhausted in being something rather like “laws pending positivisation,” but, whether these are positivised or not, they continue to be valid as moral demands. This is precisely the reason why they can be defended through different channels, such as the “legislative route,” but also the “declarative route,” that is, the route of “declarations,” which has enormous power, and also the “agitation route.”

Secondly, the *content* of a human right is made up of an ethical affirmation on the critical importance of certain freedoms and the correlative need to accept certain social obligations safeguarding these freedoms ([32], Chap. 17). This is an essential point. Recognising a right implies recognising the obligation to protect it at the

same time, which is why two facets have to be considered in the case of human rights: freedoms are primarily characteristics of people, whereas rights imply demands made of society. This point, as we will see, is made explicit with greater clarity by Paul Ricoeur.

Thirdly, as far as *viability* is concerned, a human right is proclaimed when it is considered that its content will survive well-informed scrutiny. To carry out this scrutiny, Sen thinks it is useful to resort to practising that “open impartiality” which Adam Smith talked about and also to a public reason, whose practice enables one to discern when the proclamation of a right as being a human right does not come up against any obstacles, or should not do so.

This is, in my view, still an insufficient way to conceive of the interaction between rights and capabilities, one which needs to be enriched with other contributions, such as that of Paul Ricoeur and the one I myself would like to add.

In his latest writings, Ricoeur proposes articulating basic capabilities and human rights through a notion that Sen never mentions, which is the Hegelian notion of mutual recognition [34]. In Ricoeur’s opinion, capabilities belong to the level of recognition that people have of themselves, that is, to the level of self-recognition, whereas the concept of rights belongs to the level of mutual recognition. A person is aware of having capabilities and expresses this self-recognition in terms such as “I can” or “I think I can,” from which it follows that this person also recognises that he or she is responsible for his or her actions and that these actions are attributable to him or her. But as Hegel said, the development of freedom is a social, not merely individual, endeavour, and people recognise their freedom from the point where society recognises their legal personality. Whereas the term “capability” belongs to the vocabulary of human action, to the power of making something happen, the term “right” comes into play when a person recognises that his or her actions are attributable to him or her and thus that if he or she acts badly he or she has to accept the social consequences, which may consist in making amends for damage or being punished. This would be the threshold of the subject of law, and the mark for crossing this would be the capability of accepting responsibility for acts and their consequences. The responsibility of moral agents provides the anthropological foundation for characterising human actions in terms of validity, of *Gültigkeit*.

We should nevertheless add on our own behalf that not all human capabilities require society to protect them, recognising that practising these is a right. There have to be two factors between the recognition of capability and the recognition of right: the recognition that the capability is valuable for that person’s development and the recognition that society is obliged to safeguard the development of that capability because the person is worthy of this. In this approach, Deneulin understands capability as being a person’s ability to perform valuable acts or reach valuable states of being [35]. Charles Taylor is right in this matter with his “antiatomist” thesis: “self-sufficiency” is not the same thing as “survival,” and it is possible to survive without belonging to a political community, but it is not possible to develop all characteristically human capabilities without that community [36]. When we recognise people as having human rights, we are doing so

thinking of the development of capabilities which we respect, which we recognise as being valuable and whose development we consider to be good for this reason.

In my view, the notion of capabilities has precisely gained such particular significance through having become the informational focus for assessing the level of human development by the United Nations programmes, thus taking for granted that the capabilities whose evaluation is important are the ones promoting *human development*, the ones which are valuable for people to develop them. This means that there is already a list of capabilities, however basic these might be, considered to belong to any human being, a list of capabilities which have to be promoted to foster a person's development. If it is in any way useful to link these valuable capabilities with human rights, it is because we are persuaded of the existence of these valuable common capabilities whose practice requires a global justice to be set up.

Throughout history, human rights have indeed gained strength and become bonded with the idea of valuable capabilities, whose development must not only be respected but also promoted. A being only develops all its potentials in a community of its species, which requires not only that it should be left to act in this community but also that it is empowered to act. A bond is therefore formed between two sides of the same coin: the notion of capabilities belonging to people and the notion of rights demanding social recognition that society is obliged not to hinder the development of these capabilities and to promote this. The question is how to lay bridges between these facets, because it does not follow from the fact that a being can develop certain capabilities either that one has the duty to develop these or that others have the obligation to help that being to do so. These capabilities have to be valuable in some way for their realisation, and society has to have some reason for both allowing the being to act and for helping the being to develop them. This is where the notion of recognition becomes vital, because it is this which demands the construction of institutions protecting the right to develop capability and the obligation to empower this. These institutions will give the process stability and durability.

Capability can thus become the cornerstone of a normative theory of social relations, a partial theory of justice, which demands the institutional facet of human rights. What kind of obligations does the demand to empower basic capabilities in relation to human rights create for companies?

Basic Capabilities, Human Rights and the Business World

It is well known that in 1999, at the Davos Economic Forum, Kofi Annan, the Secretary-General of the United Nations at that time, invited companies, trade unions and civic organisations to join a Global Compact designed with the intention of making the benefits of economic globalisation reach all humankind. Any organisations that freely wished to join had to accept a commitment to respecting nine principles, two of these referring to human rights, the following four to employment rights and the last three to respect for the environment. The first six principles were

thus actually linked to respect for human rights. Later, a tenth principle was added, that of “working against corruption in all its forms, including extortion and bribery,”

Annan’s speech presenting the compact was heartening: “Let us choose to unite the power of markets with the authority of universal ideals. Let us choose to reconcile the creative forces of private entrepreneurship with the needs of the disadvantaged and the requirements of future generations.” This was how Annan expressed his conviction that the economy is not a blind mechanism, but is a human activity, in which it is possible to choose, and that this ability to choose should follow a direction, that of putting the power of markets to work for the ideals of modernity, that of harnessing the economy’s creative capacity to serve the most underprivileged and future generations.⁸ We cannot relinquish our moral ideals, and have instead to place the enormous technical and economic progress at their disposal. This was the sign under which the first decade of the new millennium was to start.

In January 2011, as the second decade began, the new Secretary-General of the United Nations, Ban Ki-moon, launched a new shared leadership initiative, under the theme of “sustainability.” It is, however, impossible to forget that in 2003 the United Nations deemed it necessary to pass “Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.” In 2005 the United Nations Human Rights Commission requested the appointment of a special representative on human rights, and in August 2005 John Ruggie was elected to that post. The decision was passed with the vote of 49 countries out of 53, and with the opposition of the USA. Why was it so vital to get an *explicit sphere* of reflection and action on human rights under way in the business world?

The memory of catastrophes such as the Union Carbide disaster in Bhopal (India) in 1984, when leakage of a toxic substance caused the death of thousands of people and made nearly 200,000 ill, the exploitation conditions in which people work in factories and plantations in different parts of the world, the consequences of pharmaceutical patents in deaths from AIDS and other diseases, the restriction in some southern countries of freedoms such as those of expression and association, and the suffering of native populations who helplessly have to watch their lands being snatched away from them help to give a forthright response to this question.

Situations like these mean that it is not enough for companies to accept the invitation to respect the ten principles of the Global Compact, nor to voluntarily assume their corporate responsibility and draw up a triple economic, social and environmental balance sheet. Respecting human rights, trump cards which should be enough to prevail over any other possible strategy, is an obligation of basic justice, not a voluntary option.

As if this were not enough, in a globalised world when there are gaping loopholes in the law in a large number of southern countries which prevent their inhabitants from being defended from the inhuman activities of certain local but also transnational companies, it becomes necessary to go further than the voluntarily assumed Global Compact and corporate social responsibility, and to open up a specific sphere referring to business and human rights.

This was the context in which Ruggie recommended promoting a *new international normative framework*, focussing on three pillars: the state's duty to protect human rights, the obligation of corporations to respect these, and the promotion of mechanisms to remedy violations. "Protecting, respecting, remedying" is the new framework which has to be assumed by states and businesses of any size and degree of complexity, but especially transnational ones, because the greater the power, the greater the responsibility.

This is where capability again comes into play, because it openly asks who is obliged to protect those human rights which in turn make it possible for people to be able to practise their basic capabilities and functionings. A list of basic capabilities may be put forward, as Nussbaum does, or like Sen, one may understand that there are indisputable minimums, but no complete list. In Sen's opinion, any list must be drawn up by means of an open discussion, taking into account Scanlon's affirmation "thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject"[38]. Giving a closed list would be tantamount to cutting down democracy's power and also to forgetting the specific context for which that list was conceived and to which it must be applied.

But whether the list of basic valuable capabilities is open or closed, the question of who is obliged to empower them by defending respect for the corresponding rights still remains.

Nation states and institutions belonging to the United Nations are, of course, bound to do this, but what about businesses? Are they also obliged to help to empower people's basic capabilities and to have their human rights respected?

In 2000, George F. DeMartino proposed taking the capability approach as a candidate for internationalist ethics which would enable the degree of justice of the economy to be evaluated from the following perspective: "a regime will be deemed just if and to the degree that it promotes harmonisation of capabilities to achieve functionings at a level that is sufficient, universally attainable and sustainable."⁹ To reply to the question properly, it is nevertheless not only necessary to move from internationalist ethics to global ethics, but also to distinguish between duties of perfect obligation and duties of imperfect obligation, as Sen and Nussbaum do, following Kant's distinction in *Groundwork of the Metaphysics of Morals* and above all in *Metaphysics of Morals*.

Ethical Corporations as Public Assets. Not Harming, but Actually Benefiting People: Duties of Perfect and Imperfect Obligation

In his *Metaphysics of Morals*, Kant distinguished between two types of duties: perfect duties, which are the obligatory sort with no exceptions, whose fulfilment is clearly understood, and imperfect duties, given this name because two maxims of duty come into conflict in this situation and it is thus the subject who has to decide in specific cases which of the duties is to be given preference and how these should be complied with. This is not in the least a matter of a moral maxim and an immoral

one coming into conflict, because there is no doubt in such a situation, but involves two moral maxims coming into conflict. The example used by Kant is enlightening: what should one do if the duty of universal love for one's neighbor and the particular duty of paternal love come into conflict? In this case it is the subject who has to decide which one to opt for and to what extent [41]. It can be inferred from what was stated above that perfect duties entail obligatory compliance.

When this assertion is applied to the case of human rights, it must be recognised that not violating these is a perfect duty: no one is legitimated to violate human rights and to actively prevent the development of people's basic capabilities, and what can be said of anyone similarly applies to corporations. In spite of the Global Compact being presented as an invitation, refraining from violating human rights and hindering the development of basic capabilities is a demand of justice, not merely an invitation. That is why it is urgent to integrate respect for human rights in the hard core of corporations, to identify which aspects of business activity affect basic rights, to design respectful practices, to adopt indicators to evaluate these and for companies to submit to control of internal and external audits. All of this makes up an *ethos*, a character of the company, which has to be assumed from inside the firm.

If corporations do not carry out this task, the rights of three generations are at stake, from the right to life, in cases such as that of the Union Carbide disaster in Bhopal, weapons manufacturing and trade, patents, the price of food and so many others, including the free expression of complaints, free association, non-discrimination, a decent salary for keeping a family, child or adult exploitation, and safety, as far as the right to development. It will be impossible to make any progress in the always deferred Millennium Development Goals if corporations do not join in this task. Neither should one forget that the requirements of these goals are minimum demands of justice.

Companies are not authorised to violate human rights anywhere in the world, nor can they allow their partners to infringe these either through their work or through the consequences of their work. This is a duty whose compliance involves serious risks in a globalised world, in which there is enormous asymmetry between economic movements and the moral and legal ability to control these. The legal loopholes found in developing countries represent a temptation to act with one yardstick in developing countries and another in developed ones. Respect for human rights nevertheless prohibits violating these anywhere in the world. This is not a matter of invitation, but is a demand. That is why it is vital to apply a "remedy" when people have been harmed, and to compensate for the harm done as far as possible.

Recognition of rights does not, however, demand that anyone – or, in the present case, any company – anywhere in the world has to help to avoid any violation whatever may happen. This is where we start to head into the world of imperfect duties, in the Kantian sense, in which it is the company which must decide how far it is obliged to go. To this end, Sen at least provides a guideline for action: if a company is in a position enabling it to do something effective to prevent a violation, then it has the obligation to consider doing this. Imperfect obligations

are ethical demands which go beyond the duties marked out as perfect obligations which certain people have, to do particular things, but demand that anyone who is in a situation in which one can reasonably help someone whose right is endangered should give serious thought to this. According to Sen, the difference between perfect duties and imperfect ones does not lie in there being a duty associated with an obligation in the first type of duties, and this not being the case in the second type, it instead lies in the nature and the form of the obligation [42].

Hence, human rights generate reasons for acting in the case of agents who are in a position to help to safeguard or promote freedoms, in the case of both perfect obligations and imperfect ones. The latter are correlative to human rights as much as the former are, and accepting them goes beyond any voluntary charity or elective virtues.

To clear up this point it would in my opinion be useful to remember that perfect duties are nevertheless usually associated with negative duties and imperfect ones are usually associated with positive ones. The former are expressed imperatively with a “you shall not,” of which the Ten Commandments is an excellent example. Three of the Ten Commandments are expressed positively (“you shall love God above all else,” “you shall remember the Sabbath day,” “you shall honour your father and your mother”), whereas the remaining seven are expressed negatively. In the case of positive mandates it is impossible to specify how far the obligation has to be complied with, whereas the negative ones are very precise.

As regards corporations, of course they have the negative duty not to harm, but they also have the positive one to benefit people. In theory, any business activity is a benefit by creating wealth in different countries, giving people work, transferring technology, training professionals, creating tangible and intangible wealth and acting as a source of innovation. But furthermore, above all in the case of big companies, by taking advantage of their ability to influence governments in order to attempt to fill in the legal loopholes where there are any: firstly, by breaking the vicious circle of corruption and bad practice and establishing the virtuous circle of good practice, fostering compliance with contracts in different countries, displaying that it is possible and useful to involve all the workers in the running of the company and taking into account all the stakeholders. The company that works in this way is creating a new culture, taking advantage of its “moral resources” and thus benefiting its setting [43, 44]. As Sen so rightly says, an ethical company is a public asset [45, 46].

On the other hand, to go even further, sometimes companies have a broad sphere of influence in the countries in which they work and can use that influence to fill in any gaps in the law and to encourage governments to change the rules of play in order to make it possible for the rights of each and all human beings to be institutionally respected and for their basic capabilities to be empowered. Of course the question that always remains open for discussion is why they should do so. Sen’s reply, as already mentioned, is that there is a certain obligation for whomsoever has the power to do so, and to illustrate this affirmation he brings up two

religious examples: that of Buddha and the gospel story of the Good Samaritan ([32], pp 205–207). In the example of Buddha, there is a line of reasoning in the Sutta-Nipata according to which if someone has the power to produce a change that he or she considers will reduce the injustice in the world, there is a powerful reason for he or she to do so. The gospel story of the Good Samaritan is a parable of a man accursed in the country in which he is travelling because of his being a Samaritan who helps an injured Jew, takes him to an inn and pays the innkeeper to care for him. Jesus of Nazareth's question, as Sen reminds us, is not "Which of the men who saw the injured man acted correctly?," but "Who was his neighbour?" His neighbour was the one who helped him, thus founding a new neighbourhood ([32], pp 170–172, [47]).

Conclusion

The capability approach and the human rights approach are complementary, because each of these has advantages missing in the other, and at the same time there are great coincidences between them: both enable a partial theory of social justice to be built, which brings up demands of justice, because the discourse of central human capabilities sustains that these are not only desirable social objectives, but are *entitlements* based on justice, putting forward urgent claims which address national states, but also the international community. The capabilities approach is a necessary specification of the human rights approach, because it stresses the need for affirmative action in the public domain and also emphasises the interdependence between freedom and good economic order.

But in order to explain the connection between basic capabilities and human rights, it is necessary to go further than the idea of complementation proposed by Sen and Nussbaum. Throughout history, a bond is formed between two sides of the same coin: the notion of capabilities belonging to people and the notion of rights demanding social recognition that society is obliged not to hinder the development of these capabilities and to promote this. The bridge between these facets is the notion of social recognition, because it is this which demands the construction of institutions protecting the right to develop capability and the obligation to empower this. These institutions will give the process stability and durability.

Capability can thus become the cornerstone of a normative theory of social relations, a partial theory of justice, which demands the institutional facet of human rights. What kinds of obligations do companies have regarding this relationship between basic capabilities and human rights?

Corporations have negative duties not to harm, but they also have positive duties to benefit people. Any business activity is a benefit by creating wealth in different countries, but furthermore, above all in the case of big companies, by taking advantage of their ability to influence governments in order to attempt to fill in the legal loopholes where there are any. The company that works in this way is creating a new culture, taking advantage of its "moral resources" and thus benefiting its setting. It is a public asset.

Cross-References

- ▶ Agency, Welfare, Equality, and Democracy
- ▶ Business Contribution to Human Development from the Capabilities Approach Standpoint
- ▶ Corporate Human Rights Violations: A Case for Extraterritorial Regulation
- ▶ Corporations and Fundamental Rights: What is the Nature of Their Obligations, if Any?
- ▶ Duties of Justice in Business
- ▶ Poverty as a Lack of Freedom: A Short History of the Capability Approach
- ▶ The Capability Approach as Guidance for Corporate Ethics
- ▶ The Philosophical Foundations of the Capabilities Approach

Notes

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2. Sen [1] note. On this matter Sen cites [2–7].
3. Sen [8]. See also, amongst others, [9]. For the birth and history of the ethics of development see in particular [10–12].
4. Flavio Comim “Capabilities and Beyond”, paper presented at the 2nd Latin-American and Caribbean Conference on “Human Development and Capability Approach”, held in Montevideo, from 15 to 17 October 2008.
5. Crocker [15], specifically, 601 and ff.
6. Sen [20]. For relations between basic capabilities and human rights in Sen's work see in particular: [20–23].
7. Nussbaum [24]. For relations between basic capabilities and human rights in Nussbaum's work also see: [25].
8. For the notion of “ethical economics” see [37].
9. DeMartino [39]. On this point see also [40].

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Abstract

The capability approach is a normative framework for welfare assessments. The concept of capability, understood as freedom to achieve the goals that someone appreciates, is the one which articulates the impact of Sen's contributions to the discussions about justice, poverty, and development. The development of the capability approach can be reconstructed from two features that appear early and consistently in Sen's work; one of them is the integration of moral rationality in social explanation and the other is the sensitivity to vulnerability. Both features determine the high sensitivity to interpersonal variability of the capability approach, which differentiates it from other proposals that have shaped the discussions about justice, poverty, and development. The development of the capability approach has benefited from theoretical contributions of philosophers and economists who have expanded and strengthened Sen's original view, while it has become a normative guide for government agencies to adopt multidimensional measures for poverty and development, or design suitable social policies.

Introduction

Sen's capability approach is a normative framework for the assessment of well-being. From this framework, it is possible to determine when a person is in a better or worse social position, what poverty is, what the best ways are for development, or what measures should be taken to realize justice. The growing importance this perspective has taken comes largely from Sen's remarkable participation in the debate on distributive justice that started after the publication of *A Theory of Justice*¹ by John Rawls. In this discussion, the capability approach introduced

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a dimension to the processing of interpersonal evaluations called “capability,” whose distinctive feature is to be highly sensitive to interpersonal variability.

The concept of capability is assimilated by Sen to the freedom someone has to achieve the goals that they set and value. In consequence, in assessing how well a person is or what should be done to support anyone in the pursuing of their life plan, the emphasis must be moved from means, such as income, to the meaning these means carry for the individual. Means are essential for anyone to realize their life plans, but the capability approach will evaluate their impact on individual freedom. From this perspective, poverty becomes less dependent from the means someone has and is rather associated with the absence of sufficient freedom to achieve the goals that are considered valuable. As a result, various circumstances such as the education that someone has received, their propensity to disease, or how the values of their community affect their decisions will determine the extent of their freedom.

The sensitivity to the different circumstances that affect the lives of each person is the greatest virtue of Sen’s proposal, and such radical sensitivity is based on two concepts that can be reconstructed to perceive the conceptual road that he has gone through (see ► [Chap. 32, “The Philosophical Foundations of the Capabilities Approach”](#) in this book): these concepts are moral rationality and vulnerability. They will be presented below as characteristic features of the capability approach.

Moral Rationality and Vulnerability

A first feature that Sen’s proposal has is that it distances itself from a methodological assumption that has had an enormous influence on economics, philosophy, and social sciences. This assumption considers subjects as rational egoists, and from this assumption, rational action is conceptualized in terms of the adequacy of the means to the ends that someone aims at. On this basis, the subjects are exclusively considered as self-interested, and in pursuing their own interest, they are supposed to operate under such strategic logic. As regards the different proposals of distributive justice, the influence of this position is evident in utilitarianism (see ► [Chap. 14, “Utilitarianism”](#) in this book) and libertarianism; in both cases, subjects are assumed as self-interested, maximizing their personal welfare, whose individual preferences are given and work as a kind of raw material for choice. Against these conceptions, Sen, along with other philosophers like Rawls and Dworkin, presents the limitations of establishing the satisfaction of personal welfare as the only motivation for rational action because in the explanation of practical rationality, it should at least be taken into account that there are multiple reasons for the choices that lead to action, of which personal welfare is only one.

Sen’s explanation of rational action can be seen at its best in his book *Rationality and Freedom*,² although its main features can be traced back to his article of the 1970s, “Rational Fools” [3]. Both studies distinguish between three main dimensions of rational behavior: the first is the dimension of self-interest, in which the individual is guided exclusively by the pursuit of maximizing their utility. The second dimension is the one referred to as sympathy, according to which

someone gets satisfaction or pain from the satisfaction or pain experienced by others. In this case, the action based on sympathy will be guided by the consideration of others, but the increase in personal welfare produced by such actions is its main motive, so it ultimately is self-interested behavior. The third dimension postulated by Sen is called commitment, and it is distinctive for establishing a gap between personal choice and welfare because actions based on commitment break the assimilation between choice and welfare that take place in the other two dimensions and may even lead to a choice that goes against one's own welfare. Such actions are those in which someone acts directed by duty, but the particularity of this type of behavior is that such action is not chosen to avoid the regret that a failure to act that way would cause but is motivated by duty itself ([3], p. 329). In this case, the subject prioritizes a certain choice because it is considered valuable, whereas in the case of a choice focused exclusively on satisfaction, value is the satisfaction of the preference at stake.

Sen's contribution can be understood as an expansion of the rationality of means to ends present in positions structured from the perspective of rational egoism, and it also integrates the possibility to act based on values and norms, which is a distinctive feature of what is known as agency or personal autonomy. The most suitable term to explain this process is expansion because self-determination is not an alternative to strategic rationality but is part of a more comprehensive version of practical reason. Therefore, this expansion of rationality can contribute to issues such as the pursuit of justice or the promotion of development, by incorporating a normative component that will influence the agents that promote those issues, such as institutions, social organizations, or companies (see ► [Chap. 33, "The Capability Approach as Guidance for Corporate Ethics"](#) in this book).

A second characteristic of Sen's capability approach is a high sensitivity to vulnerability, which leads him to argue that arbitrary circumstances affecting someone's life should be counteracted. In this respect, he coincides with the position taken by Rawls [1, 4] and Dworkin's³ egalitarian liberalism, although it should be noted that Sen's recognition of vulnerability goes deeper. In the case of egalitarian liberalism, such recognition leads to postulating the need to ensure certain resources that are essential for anyone to carry out his/her plan of life, and in that regard, basic liberties, opportunity, access to education and health, and a certain minimum income should also be ensured. However, egalitarian liberalism is blind to facts such as that someone may have preferences that are the result of a process besieged by marginalization and injustice, and, based on such preferences, he/she may make decisions that place them in an unfavorable situation.⁴ This type of preferences, called adaptive preferences, becomes the best indicator of the limitations of liberal justice.

In the case of the capability approach, recognition of vulnerability is considerably higher, and this perspective⁵ allows for explaining circumstances that are not perceived by other approaches, such as the stated adaptive preferences. The latter makes Sen's approach the most appropriate one for conceptualizing poverty and development, as it not only expands the strictly instrumental rationality present in the main stream of economy but also assumes a significant vulnerability that makes

his proposal highly sensitive to the influence of circumstances on the possibility of achieving the goals that someone finds valuable and seeks.

In short, these are the two main features in the capability approach: (a) the expansion of rationality in terms of moral rationality and (b) sensitivity to vulnerability. These features allow for conceptualizing, on the one hand, the orientation of action by norms and values and, on the other hand, our being fragile and needy. This results in the explicit presentation Sen makes of what is probably the most notable feature of his proposal, i.e., sensitivity to interpersonal variability, embodied in the concept of capability. On the next pages, I shall present the main characteristics of this concept and its relevance for justice and development.

Capability, Functionings, and Development

The capability approach was initially developed by Sen, but at this point, there are several contributions that enhance the proposal, maintaining a strong coincidence in the main concepts as well as a divergence in what might be called secondary issues of the proposal. To develop the core concepts, it is necessary to remember that Sen's intention has been to provide a normative framework that allows for the evaluation of people's welfare. To this aim, he intends to overcome the risks of subjectivism that trying to find a suitable design of this concept can entail: as it is possible that in categorizing what is valuable for a person, all his/her preferences should be included with equal value. This occurs in the case of welfarist theories, which assign equal weight to whatever preferences the persons have, and as a consequence, someone's preference for a cruise around the Caribbean and another person's preference to satisfy hunger are both equally relevant [10]. Sen distances himself from this risk and intends to build an objective criterion of well-being.⁶ In this task, he agrees with Rawls and Dworkin's proposals in principle but differs from them in avoiding the risk of fetishising means, such as Rawls' primary goods or Dworkin's resources, because it is possible that by concentrating on means as a measure of justice, the importance of interpersonal variability for issues of justice is not perceived ([8], pp. 39–42). In constructing a normative criterion to process interpersonal comparisons, Sen distances himself from these two risks, welfarist subjectivism and overrigidity of means, and proposes the concept of capability that will establish a specific evaluative space in which to make moral evaluations: the one of capability. The concept of capability is meant to capture the differences people have in means conversion, such as income into well-being ([8], pp. 83–86). For example, for a perspective concerned with assigning an objective set of means, two people would be treated equally if they had equitable access to the same material resources; however, if one of those two people has a chronic illness or very basic education while the other is healthy and has gained a higher level of education, their chances to turn means into well-being will be significantly different. In terms of distributive policies, this represents a shift of emphasis from means such as commodities or income, to what they mean for humans; therein lies one of the main contributions of the capability approach.

Capabilities, in turn, are manifested in different functionings, i.e., beings and doings that reflect someone's achievement. Thus, Sen argues that life can be conceived as a set of functionings, where a person's achievement can be understood as the vector of his/her functionings, covering elementary things like being "adequately nourished," "in good health" or "avoiding escapable morbidity," and complex achievements like "taking part in the life of the community" ([8], p. 39). Functionings constitute a person's being, and the evaluation of someone's well-being depends on the evaluation of these elements. The idea of capability represents the various combinations of functionings that someone can achieve, and hence, the capability of a person reflects his/her freedom to pursue a wider or narrower set of life plans ([8], p. 14). On this basis, the capabilities can be actualized through a set of vectors of functionings, the subject being responsible for such actualization; the freedom of a person, as such, is under the scope of the capabilities' potential to materialize through different functionings. Therefore, according to Sen's proposal, individual positions should not be assessed by the resources that the persons have, but by the freedom they have to choose between different ways of life. This freedom is represented by a person's capability to obtain alternative combinations of functionings.

From this perspective, the task of establishing what development consists of should build on the informational basis of the capability. The concept of informational basis establishes what information is considered relevant to comparing which persons are positioned better and worse. This specification leaves out a set of information that is not relevant to the theory from a normative point of view and is excluded or regarded as secondary ([8], pp. 73–74). The informational basis of the capability, whose main virtue is being extremely sensitive to interpersonal variability and vulnerability, excludes development conceptions structured around concepts such as income per capita through GNP, i.e., average measures that are far from pointing out how capable of carrying out a life plan persons are. Besides this, Sen places himself in direct opposition to the view which holds that development is a process that demands sacrificing, in the first place, a series of social protections to the most disadvantaged, only to restore them once wealth has reached society as a whole. His position understands development as a less traumatic process, which, instead of delaying the social protections, is to be articulated with them. In this sense, it is presented as a process of expanding the real freedom that people enjoy, which in turn arises from the development of the affected people's elementary capabilities. Hence, this expansion of freedom is posited as the primary end and principal means of development ([12], pp. 36–38).

In this way of understanding development, the primary purpose or end cannot be restricted or delayed by any social arrangements and shapes what Sen calls the constitutive role of freedom in development; this designation takes a faithful representation of the importance of freedom in enriching human life through the development of elementary capabilities that allow a person, for instance, to be free from starvation, undernourishment, or premature mortality ([12], p. 36). The constitutive role of freedom in development also takes place through the political

freedoms that allow for the exercise of the corresponding capabilities that enable participation in community life (see ► Chap. 37, “Agency, Welfare, Equality, and Democracy” in this book). In turn, freedom understood as a means explains the instrumental role assigned to it by Sen ([12], pp. 38–40) because not only does it operate as an end in itself but it is also the best way of achieving development. This is due to the fact that the development of elementary capabilities is a highly effective contribution to economic progress. The instrumental role of freedom determines the way in which rights, opportunities, and social protection contribute to the expansion of freedom and hence to the promotion of development. Political freedoms, economic and social opportunities, transparency guarantees, and social security, all collaborate, through their interconnection, with the expansion of freedom that a person has to carry out his/her plan of life.

From Sen’s formulation of the idea of development, a significant interconnection can be seen occurring between the concepts of development and poverty because both are formulated from the expansion of capabilities or their impairment. As in certain circumstances such concepts refer to each other, it can be said that development understood as the expansion of freedom is the real way to combat poverty. In his explanation of some successful development strategies, Sen insists that sustained investment in education with long-term expectations is what best explains the development of Asian countries in recent decades. This type of investment which coincided with the formulation of Sen’s concept of development has the effect of expanding, in the first instance, people’s elementary capabilities, in such a way that provides them with greater opportunities to carry out their life plan. In turn, the development of capabilities through education contributes to economic growth, as it allows for more qualified human resources. Finally, it ensures effective participation of citizens in decision-making processes that affect them. Therefore, development can be seen as a comprehensive process built around the development of the persons’ elementary capabilities, also involving social institutions and various actors such as civil society organizations or companies.

Development of the Capability Approach

The capability approach has had a relevant impact on discussions about distributive justice, poverty, and development. One of the most significant indicators of this impact has probably been the fact that it has become the theoretical background for the concept of human development implemented by the United Nations to measure the progress of societies. With regard to the measurement of poverty, it has also had an increasing influence leading various governments and government agencies to start adopting multidimensional measurements as a way to provide more precise diagnoses of the social situation of many societies. In the case of Mexico, since 2008, there has been an adaptation of this methodology to the measurement of multidimensional poverty⁷ and to the selection of the beneficiaries of the well-known program of conditional cash transfers, *Progresal/Oportunidades*. Nicaragua

is also considering using this index for the income transfer program *Red de Protección Social*. Besides, Chile has used Sen's approach to justify the inclusion of variables not related to income for the selection of beneficiaries in the program *Chile Solidario*.⁸

In the field of theoretical discussions about justice, the impact of Sen's proposal has stood out in the debate conducted during the 1980s and 1990s. However, his recent work *The Idea of Justice*⁹ presents a series of theoretical positions that have hardly had an impact comparable to the one of the introduction of the concept of capability in the debate. Sen maintains a sharp distinction between theoretical formulations and application, which leads him to reject the postulation of normative principles or criteria for guiding the application. He shows a strong concern for application, but he relies only on factual consensuses which deprive his approach of an accurate policy guidance for the interventions in social reality.

Due to the growing influence the capability approach has had, Sen's early work has been considerably strengthened by a group of philosophers and economists. Their versions show how Sen's original proposal of the capability approach can be enriched and projected. Someone who has contributed to the development of the capability approach to the point that she has developed her own different version is Martha Nussbaum.¹⁰ Nussbaum's work coincides with Sen's central arguments, but she moves away from his perspective in very important aspects. Among the points to be highlighted is Nussbaum's defense of a list of capabilities, as well as her intention to propose a theory of justice. Both positions have been explicitly rejected by Sen and have been central to the discussion between them.¹¹ As for the list of capabilities, Sen is afraid of losing the transcultural character of the capability concept by postulating functionings. Meanwhile, defenders of the lists state that their intention is to keep its transcultural character by proposing capabilities which can be locally translated into functionings. In addition, they point out that the lists' great practical use as guides for application must not be ignored. In turn, Sen's rejection of the possibility to build a theory of justice is confronted by the prospect of combining theory and application, clearly chosen by Nussbaum.¹²

The sensitivity of the approach to interpersonal variability makes it a very appropriate perspective for meeting the demands of justice from the gender point of view and has, therefore, incorporated a number of developments on this subject.¹³ The relevance of Sen's proposal to development has also allowed his perspective to be enriched by others which, in spite of their autonomous development, are converging with the focus on capabilities. Examples are Des Gasper's development ethics¹⁴ and Stewart's explanation of conflict in social dynamics.¹⁵

Philosophers who incorporate the capability approach into more comprehensive theories are to be noted as well; they have also considerably expanded not only the core concepts of the proposal but also its scope. Nussbaum again has a high prominence at this point since her projection of the scope of the capability approach means integrating it or coexisting with a rational theory of emotions.¹⁶ At this point, James Bonham¹⁷ also plays an important role by integrating Sen's concept of capability into his proposal of public reason. Spanish philosophers Jesús Conill and Adela Cortina must also be highlighted. Based on Sen's proposal, Cortina¹⁸ has established a set of

capabilities required to ensure a subject of dialogue which serves as a normative criterion for justice; in this way, along with others,¹⁹ she has created a fertile combination of the capability approach and the various versions of discourse ethics. In turn, Conill²⁰ has introduced a highly original interpretation of the capability approach, as Sen's strong emphasis on freedom allows connecting it to a Kantian perspective that greatly strengthens its normative dimension.

Application, as has been pointed out, is one of Sen's major concerns, and its importance becomes evident in the numerous contributions that have been made in different parts of the world. One of the difficulties the capability approach must confront is the possibility to make it operational and therefore turn it into an effective tool for measuring poverty and development. In this regard, the work developed from different perspectives²¹ has been aimed at overcoming one of the greatest challenges to the approach because if it is not practicable, its conceptual precision may die in theoretical discussions.

In Latin America, the influence of the capability approach is growing and has a high incidence in the study of poverty and inequality. Particularly in Uruguay, Andrea Vigorito has led a team of economists who have had a high impact on public discussion on poverty and inequality.²² They have also played the role of technical advisors to the implementation of one of the government's most important social policies which, through income transfer and the implementation of compensatory measures, aimed at reducing extreme poverty in Uruguay. In Brazil, Flavio Comin, by working from UNDP,²³ has led a process by which the binding values of the Brazilians have been identified, and which helped to determine what the irreducible normative dimension raised by the capability approach means to the Brazilian society. Such products are useful for further development of social policies, as their acceptance and their success will depend on whether such policies fit into the values of the target population.

Conclusion

As has been pointed out, the capability approach is remarkably vital in contemporary discussions. The innovations it proposes in the field of economics and in the discussions on justice and development are the main reasons for its ongoing popularity. The idea of freedom that reflects the persons' capability to carry out the ends they consider valuable operates as a keystone of the conception of development and poverty in the capability approach. Development is understood as an expansion of freedom, while poverty is seen as a lack of such freedom. In both cases, the capability approach has generated multidimensional valuations as a tool to allow for more precision and efficiency in the task of overcoming poverty through development and justice. The conceptual potential of the capability approach enables two possible ways of projection. The first is related to the immediate connection between the approach and its application so that the approach can have a direct impact on the issues considered in theory. The second possibility is its fecundation with other perspectives. It is likely that the possible connections with other approaches such as discourse ethics and the Rawlsian justice will allow for theoretical growth that can follow its founder's original intentions even better.

Cross-References

- ▶ [Agency, Welfare, Equality, and Democracy](#)
- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [The Capability Approach as Guidance for Corporate Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)
- ▶ [Utilitarianism](#)

Notes

1. Cf. [1].
2. Cf. [2].
3. Cf. [5].
4. Cf. [6, 7].
5. Cf. [2, 8, 9].
6. Sen modified his terminology from welfare to well-being to differentiate himself from welfarism, because his proposal is a moral conception which considers people under two different perspectives: well-being and agency. This feature expands the informational restriction of utilitarianism and welfarism, which only considers personal preferences as the relevant moral information. Cf. [11].
7. Cf. [13].
8. Cf. [14].
9. Cf. [15].
10. See [9, 16].
11. Cf. [17].
12. See [16].
13. Cf. [17].
14. Cf. [18, 19].
15. Cf. [20].
16. Cf. [21].
17. Cf. [22].
18. Cf. [23].
19. See [22, 24].
20. Cf. [25].
21. Cf. [26–28].
22. Cf. [29].
23. Cf. [30].

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Business Contribution to Human Development from the Capabilities Approach Standpoint

36

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Abstract

The necessary business contribution to human development is analyzed from the capabilities approach standpoint. The important, but rarely acknowledged, role of business ethics in development theories is explained, a role that can help us understand companies as institutional actors that must be accountable for their actions and aware of their responsibility for development.

The capabilities approach, in this case from an institutional level, is proposed for this role of the company as an agent of (in)justice, using a reformulation of Kant's principle of publicity applied to the company.¹

Introduction

As with any institution, companies require social legitimacy and must inspire trust in order to function properly. Their social credibility is always dependent on what they contribute to society and the social response they provide. Their contribution to development is an important part of this social response, and is a key factor in lending credibility to and justifying their activities, particularly in the case of transnational corporations. Nowadays, contribution to human development is an indisputable cornerstone of what we know as corporate social responsibility.

However, the responsibility that large corporations actually assume is not on a par with the power they hold, or their capabilities, to influence human development and the improvement of real freedoms of all those involved in or affected by their activity. Despite this asymmetry of power and responsibility, development theory does not often reflect systematically on the idea of companies as agents of development and, particularly, on what type of institutional design would help

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redress this imbalance of power and responsibility. One reason why so little attention has been paid to this question lies in the common misconception of the company as a kind of “black box,” a complete, immovable institution that cannot be changed or transformed. This is clearly illustrated by the negligible organizational changes the current global crisis has engendered in firms operating in the financial markets; for example, initiatives to eliminate their lack of transparency.

The aim of this chapter is to put forward some ideas to further our understanding of the contribution to human development that companies, as institutional actors, can and should make. I base my argument on a business ethics perspective which explains the underlying capabilities of the company as a socioeconomic institution, capabilities that must be actualized if companies are to attain legitimacy and the trust society deserves. To this end, Amartya Sen’s capability approach offers an excellent theoretical basis, not only to evaluate the impact of corporate behavior – its corporate responsibility – but also to justify and develop the normative principles that must guide all institutional design and redesign in the company.

In short, I will attempt to outline the basic ideas that enable us to apply the capability approach to the company as an institutional actor. The important, but rarely acknowledged, role of business ethics in development analysis will be explained, a role that can help us understand companies as actors that must be accountable for their actions, thus contributing to breaking the moral immunity behind which today’s transnational corporations attempt to operate.

Agents of Justice? The Distribution of Responsibility

The process of globalization has given civil society and its component institutions a greater role to play. This increased protagonism does not, however, mean that the state no longer has maximum responsibility for social and economic rights; nor does it mean that corporate responsibility is in any way a substitute for the legitimate role of governments. It only means that in today’s global context other actors now also shoulder some of this responsibility and form part of what we call civil society, or better, global civil society [1]. In this sense, globalization represents, rather, the end of a way of thinking in which public responsibility is confused with state responsibility. Or as O’Neill has it, states are no longer obviously the sole “agents of justice” in the sense we are concerned with here, of taking responsibility for development [2].

One of the actors directly involved in development – understood as an extension of real freedoms of individuals – is the company, particularly multinational or transnational corporations, major players in the globalization process. The activities of these transnational corporations now go beyond the legal scope of the state, and they are often more powerful than many, particularly weak or failed states. At the same time, because of their leading role at an international level, the social expectations invested in their activities are also higher, and with that comes an increased need for their legitimacy.

Global corporations pursue some of this legitimacy by cultivating an image of themselves as a conduit through which the benefits of globalization flow to developing countries. Their activities are expected to improve the living standards of the communities in which they operate; by creating jobs, thereby reducing poverty; by transferring technology and training; by raising awareness about the importance of the environment, etc. But the real picture is quite different, and all too frequently the results contrast starkly with these expectations.

Although no one denies that global corporations are capable of playing this role, even their most benevolent critics admit that the results have been modest, and that corporations could do much more than they actually do. The prevailing public concern, however, is not only how much of an impact they have, but rather, that the problem lies in the very nature of transnational corporations. Their immense power turns them into an authentic counterweight to the whole development process, as clearly shown by the persistence of poverty and the relentless deterioration of the environment. The social legitimacy of transnational corporations is measured in terms of two major challenges facing globalization: poverty and the environment. The truth is that they do not come out of it very positively.

Despite their huge power and their more than dubious contribution to development, global firms have managed to keep a low profile in development theory. Put another way, they have managed to uncouple their need for legitimacy from their role in development. It was assumed that their rise of power could only be justified by their contribution to human development, since any defense of huge economic profits for a few, gained at the expense of the misery and exploitation of others, cannot be spoken about publicly. But when we consider the need for a truly just development, the real value of their economic influence or their power is not seen clearly. This invisibility of transnational corporations' power within development theory is closely linked to the absence of any international regulation, but also to their very institutional design, or perhaps more accurately, the institutional reforms they urgently require ([1], p. 268).

Rather than an institutional agreement requiring social legitimacy, transnational corporations seem more like a natural fact in which we cannot intervene. On this point, critics and defenders of the present role of global corporations tend to agree. The bottom line is always the supposed risk attached to any attempt to redefine their institutional design, since the pursuit of equality might destroy efficacy, innovation, and motivation, and in the end, the characteristic value creation of this institution [3]. Faced with this threat, we have no option but to resign ourselves to accepting the social and environmental consequences of a company model based solely on maximizing profits for its shareholders. In the end, we are forced to recognize as inevitable externalities what in fact are simply the consequences of a certain way of understanding and managing the global corporation [4].

The concept of corporate social responsibility was introduced precisely to break this unresponsive company model and to account for the wide degree of freedom that companies have, and their capabilities for acting [5]. The concept implies the acceptance of a broad notion of corporate responsibility that includes not only shareholders and managers, but also workers, suppliers, clients, etc., and the social

and environmental context in which they operate. It always refers to the company's voluntary commitment to behave ethically and to contribute positively to development by improving the quality of life of its workers and their families. Its essential premise is that the company's success depends on these interests being recognized as an integral part of the company, and acknowledging that economic benefit is inseparable from the social and environmental benefits of all those involved and affected by its actions.

The corporate social responsibility movement was therefore born out of the need to account for the wide degree of freedom that companies have, but its use quickly became twisted. Today, corporate social responsibility seems to be used exclusively to clean up the image of transnational corporations, an image that is increasingly tainted by their scant, if any, contribution to development. Global corporations are aware of how decisive social and environmental factors are to their potential – and necessary – legitimacy and social credibility. They have reacted by incorporating this extension of their economic responsibility into their marketing and communication departments in order to “whitewash” their bad practices. The conclusions drawn by the latest United Nations reports are very clear: in its present form, corporate social responsibility does not respond to development goals.

Despite this fraudulent use, I believe the concept of corporate social responsibility still provides a good way of reporting the company's contribution to development, as long as the concept of corporate social responsibility and its various manifestations are included in an ethics framework that enables us to distinguish between a moral use and an instrumental use, between a corporate commitment and a commercial strategy. Business ethics can provide that framework, as it understands social responsibility as part of the ethics or character of the company, and not only as a set of possible social responses [7]. In what follows, I will outline the contribution to development that we can expect from the business ethics perspective.

Beyond Prudence: Moral Resources in the Company

By providing an ethics framework for corporate social responsibility, business ethics can be of enormous help in making the company's power visible, and therefore, grounding its contribution as an agent of development. This is the idea Sen defends when he clearly and forcefully advocates business ethics as a factor of economic development, as a productive asset; in his words, “in the analysis of development, the role of elementary business ethics thus has to be moved out of its obscure presence to a manifest recognition” ([1], p. 113). Business ethics rests on a basic fact: our behavior is influenced by values and priorities that are not limited to the pursuit of self-interest. These values, moral values for example, can and do influence business conduct.

To this end, we must start from the social and economic role of business ethics; that is, as Sen states, from the position that business ethics must be considered in “functional terms.” In my view, this means that moral knowledge fulfills a basic

social function as an action coordination mechanism, which is also necessary for economic relations, for the functioning of the market and its institutions, the case of the company. To give two well-analyzed examples, no one can question the role of trust in the efficient workings of agreements and contracts, nor the role of corporate reputation in today's global contexts. In both cases, moral behavior plays a crucial role, since we must know, or at least presume, that the company is going to act in the way we expect it will [8]. Indeed, Sen lists the advantages for development deriving from a commitment to ethical behavior, namely: increased production and economic efficiency; development of trust and cooperation in the market; prevention of corruption and irregularities; protection of the environment and sustainability; strengthening of human rights and the eradication of poverty; prevention of institutionally backed crime and violence [9].

Referring to business ethics as a productive asset for the economy and for society does not imply falling in line with utilitarian approaches. It does not mean the moral dimension has to be subordinate to economic profitability; indeed, the opposite is implied. It means acknowledging that the company is not amoral, that it has a degree of freedom and therefore a responsibility, and that fulfilling this responsibility is a decisive part of its economic success. Economic profitability is linked to ethical behavior, to meeting our expectations – what we have a right to expect – from the company. Following Sen, the lack of ethics in a company can harm its own interests. For example, a company that treats its employees badly, that has no regulations, that fails to pay its suppliers or breaks its contracts, etc., will earn a bad reputation that damages the company's interests ([9], p. 44).

It is not, however, a question of a merely strategic action following the mandates of prudence. The difference between acting from a position of prudence and acting from a moral perspective is clearly seen in the differentiation Sen makes between three types of motivation for the action: self-interest, sympathy, and commitment. From the work of Adam Smith, the maximization of utilities differentiates between *sympathy*, where a person derives satisfaction from helping another, and *commitment*, which “is concerned with breaking the tight link between individual welfare and the choice of action” [10]. In the case of commitment, it is neither personal interest nor sentiment that moves us to act, but rather respect for values and norms that we are rationally convinced we should follow. Commitment thus becomes an action-coordination mechanism, capable of impeding or strengthening business cooperation and interrelationships.

In previous works, I have proposed the term “moral resources” to refer to these underlying mechanisms of commitment that allow us to act beyond prudence. They are *resources* because they allow us to carry out actions, in this case interactions, and coordinate our plans for action with other actors, whether individuals or institutions. They are *moral* because they refer to our practical reason, to our capacity to be guided by moral values and norms, to take on responsible commitments and act accordingly [11]. In contrast to legal and judicial resources, which are legitimate but always based on external pressure and coercion, moral resources work because we are convinced we should act in that way, because from our position of freedom and autonomy we want to act in accordance with moral values

and norms. Sen tells us that the sense of justice is one of the factors that can and does move the will of the individual. His understanding of this “moral power” is stated clearly: “Space does not have to be artificially created in the human mind for the idea of justice or fairness – through moral bombardment or ethical haranguing. That space already exists, and it is a question of making systematic, cogent and effective use of the general concerns that people do have” ([1], p. 261).

From the moment these moral resources allow us to establish interactions, the real opportunities that each one of us possesses are opened up. They become capabilities when we are able to feel sure they will be actualized, when they allow us to instigate an action or bring about a state that we have reasons to value. Business ethics is concerned with highlighting and managing this moral knowledge inherent to the trust placed in the company. Its objective is to turn resources into capabilities; in short, to promote the use of moral resources in companies.

Although the capabilities approach is conceived in accordance with the lives and freedoms of the people involved, and human development is concerned with the real liberties of the individual, Sen does not ignore the institutional level of his analysis when he turns to the company’s contribution to development. In other words, he does not confuse the institution of the company with the individuals that form it, be they shareholders, employees, managers, etc. Sen repeatedly insists that institutions are necessary to further our objectives and our value commitments, since they can either impede or strengthen individuals’ real freedoms, as well as providing the reasons that allow us to value and choose one way of life or another. As we have seen, this institutional analysis does not have to be limited to the state as the only institution committed to defend and promote real freedoms. I now turn to explore how the capabilities approach can be used at this institutional level.

Transparency and Publicity: Business Ethics in Institutional Design

In *The Idea of Justice*, Sen again highlights the importance of institutions as a means of empowering individuals’ capabilities. Moreover, he argues that any plausible analysis of justice must give a significant role to institutions, and that development is dependent on the way institutions are structured and the right choice of institutions. In sum, institutions play a “significant instrumental role in the pursuit of justice” [12]. As stable social agreements, institutions restrict or encourage individual action and, in the end, people’s real freedom.

However, Sen does not leave this instrumental character behind when referring to the role of institutions for fear of falling into what he calls *institutionalist fundamentalism*. By this he aims to avoid the mistake which is fairly common in economics of regarding “institutions as themselves manifestations of justice,” thus shifting from necessary stability to dangerous inalterability. His concern lies in the fact that the institutionalist approach does not sufficiently separate institutional agreements from the real consequences they generate. It is therefore better to regard institutions as a means to improvement, to advance justice. In his words: “There is

evidently considerable attraction in assuming institutions to be inviolable once they are imagined to be rationally chosen by some hypothetical just agreement, irrespective of what the institutions actually achieve” ([12], p. 84).

Although Sen is right to accuse many institutional approaches of being “empty – even if acknowledged to be ‘well-meaning’ – rhetoric,” current transcendental institutional design theories do not commit the same error ([12], p. 26). Dialogical business ethics, for instance, is based on a clear differentiation between the level of grounding, the normative principles that must govern the agreement so that it is made in free and equal conditions, and the level of application, which demands public deliberation, with comparative analyses and the most accurate calculations possible of the real achievements made [11].

For these approaches, the basic question about the contribution of institutions to development is also how justice should be promoted, but this question is inseparable from that which asks about the conditions in a certain institutional context, the company, for example, that allow free and equal public dialogue among all those affected and involved in the business activity. Without criteria of moral validity on these symmetrical conditions for reaching agreements, we cannot explain the dynamic character of institutions that, as collective learning processes, must always be considered as partial social agreements that can be revised against the horizon of the idea of justice.

If development is measured by the spread of real individual freedoms, only agreement between individuals can determine the justice or injustice of an institution. Of course, the agreement is, and cannot be otherwise, on the real consequences, and the good that the institution contributes. But we must learn to separate the conditions of possibility of the agreement from the possible calculation of the consequences. The choice of effective institutions for development must have both, since only those involved and/or affected can decide what is real and what is not.

The capabilities approach can provide a theoretical basis, rich in nuances, from which to think about an institutional redesign for the company. On the one hand, we can use Sen’s proposal to evaluate the impact of corporate behavior through its processes and results. Our objective is to use the capabilities approach as a base for a proposal to determine and justify corporate responsibilities. This would give us an information base that “offers consistent cross-cultural or universal standards, adaptable, at the same time, to different socioeconomic and cultural situations.” This proposal consists of combining the five sets of instrumental freedoms with a concept of the company that can achieve a balance between its economic, social, and environmental outcomes. We would thus have an ethical framework for corporate social responsibility that could respond not only to *what* we can expect of the company, but also to *why* we can expect this.

On the other hand, I believe that the capabilities approach can also be used in a previous stage to design – in the sense of identifying and justifying orientations – normative principles that reveal the capabilities the company, as an institution, uses in its contribution to development. The company’s capabilities are understood as the way in which it deploys its set of resources as a whole.

Our objective is to come up with an institutional redesign that anchors the contribution to development firmly within the institutional structure itself. The proposal once again uses the five instrumental freedoms as a base from which to consider different principles for the institutional design. It is not a question, at this juncture, of evaluating the company's impact on development, but of how to come up with an institutional configuration that provides for free and equal agreement among all the parties – stakeholders – involved in these outcomes, and that, in principle, guarantees that those involved and/or affected will be those who calculate and define their reality.

Although this is ongoing research, we can offer an example of this proposal to apply Sen's theory by taking the guarantee of transparency as one instrumental freedom. Our starting point can be no other than, in the words of Sen: "The development of the financial crisis in some of these economies has been closely linked with the lack of transparency in business, in particular the lack of public participation in reviewing financial and business arrangements. The absence of an effective democratic forum has been consequential in this failing" ([1], p. 185).

The guarantee of transparency is, for Sen, an instrumental freedom, since it allows social interactions to take place and thus improves individuals' general capabilities, their freedom. Sen starts from the idea that any social interaction demands a minimum level of trust, and this trust, in turn, rests on the mutual interplay of expectations: individuals' interrelationships are based on what they suppose they will be offered and on what they can expect to obtain. What is required, therefore, is the guarantee of the clear and maximum possible disclosure of the information necessary for this interplay of expectations to take place. In the absence of information about what we can expect and how far the expectation will be met, doubts and mistrust arise, and the interaction finally breaks down.

The shift from the individual to the institutional level is easy to make since, as we have seen, the same happens in institutions. We base the trust we deserve on the knowledge, intuitive to a greater or lesser extent, that the institution is complying with what is expected of it, that it is accountable for its activities. We know what we can expect to gain from the company as an institution, and on the basis of these expectations, and how far they are met, we explain the unequal sharing out of burdens and benefits that it entails. The company should therefore be designed so that this guarantee of transparency forms an integral part of its institutional structure, and it is not an isolated, one-off occurrence; in other words, separate from its own character or ethics as an institution [14].

For business ethics that not only aims to define a criterion of justice that can be applied to the company, but that also sets out to ensure its proposal can function, this guarantee of transparency brings back the basic meaning of *responsibility*, namely, the capability of the company to answer to society for its actions, or lack of actions. We have no yardstick that tells us how responsible a company is in each concrete case; this always depends on the social and economic contexts and specific conditions. But we can design mechanisms of communication and participation that give us a "rational basis" on which to place our trust or mistrust in business activities.

What is decisive in defining a responsible company is that this guarantee of transparency provides for public forums in which all involved parties can

participate, together with all the information necessary for dialogue and subsequent agreement. This capability of public justification now forms part of the moral contract on which the company's credibility is grounded; in other words, its responsibility. It is not simply a question of being disposed towards frankness or openness, but that this disposition takes on the status of a *public institutional commitment*. This is the only way that responsibility can become a business asset, a moral resource with which to generate trust.

This idea of public justification is nothing new. Just as a person worthy of trust is someone who exposes himself or herself to the continual and scrupulous examination of others, the same happens in institutions. The proposal to use transparency to show good will was first systematized by Kant as a *principle of publicity*, understood as the requirement to "make public," so that all the information is available to those potentially involved or affected. One must ask if the company could do what it does if the reasons underlying its decision were in the public domain. In its negative form, this principle states, "All actions that affect the rights of other human beings, the maxims of which are incompatible with publicity, are unjust" [15]. Hence, now in Sen's terms, the need for participation and public scrutiny.

It is this condition of publicity that establishes the difference between a good and a bad use of social responsibility by the company. We can only speak of responsibility as a moral resource under these conditions, and avoid the criticism of instrumentalization and deception. Hypocritical action cannot withstand the demand for publicity. Indeed, a company based on these principles eliminates mistrust and provides sufficient meaning to motivate support for and trust in its decisions and policies.

From this idea, the guarantee of transparency is systematized as a principle of publicity that can be required in all institutional design, able to improve the capabilities of the company in that it broadens its degree of freedom. This principle might be formulated as follows: *trust is directly proportional to the capability of companies to make public and justify, through discourse, their actions, strategies, and policies.*

However, continuing Sen's concern to avoid the pitfall of institutionalist fundamentalism, business ethics must specify this principle in organizational proposals that embed the principle in the institutional structure itself. Although it may be given different forms and labels, this demand for publicity must distinguish three stages in applying the publicity principle (for discussion on the development of these mechanisms, see [16]):

1. *Ethics code*, as an explicit manifestation of the company's commitments to the promotion of real freedoms for all parties; that is, as a definition of its position on social and environmental responsibility. Sen is aware of the value of ethics codes as a first step, but never on their own or as a final step, in generating trust: "A basic code of good business behavior is a bit like oxygen: we take an interest in its presence only when it is absent" ([1], p. 264).
2. *Corporate responsibility report/ethics audit*, as tools for evaluation and analysis of the company's response to the expectations it generates; that is, the fulfillment of its responsibility. Internationally accepted methods are now available – such

as the Global Reporting Initiative – for this process of accountability and for the scrutiny and public control of corporate responsibility [17].

3. *Ethics and Corporate Responsibility Committee*, as a “public space” within the corporation, a place for participation and public deliberation involving analysis and debate on the corporation’s concrete objectives for development and the conflicts that concern the satisfaction of general interests, or the legitimate expectations at stake. Corporate social responsibility is thus taken out of the marketing and communication departments.

Conclusion

In summary, transnational companies can become agents of justice, so long as we stop regarding them as immovable institutions and come up with an institutional design that guarantees the development of their capabilities from the perspective of their contribution to development. The guarantee of transparency, interpreted as a principle of publicity, is a necessary step in this direction. What is at stake is the balance between equality and efficacy, a balance that, if the company wants to generate trust, cannot be defined without including those who suffer the consequences of its actions. Business legitimacy is not, and cannot be, an issue external to those who are affected by and involved in the business activity. It is therefore necessary to secure their participation and to have the information necessary for public debate on their contribution to development.

Cross-References

- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Duties of Justice in Business](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [The Capability Approach as Guidance for Corporate Ethics](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

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Abstract

This chapter argues that when properly and normatively understood, trade policy, poverty reduction, and democratic progress are related in a “virtuous circle.” With the right sorts of policies and institutions, poor (and rich) countries can produce and export in ways that, on the one hand, reduce poverty and inequality and, on the other hand, broaden and deepen democracy. Improved standards of living and democratic quality, in turn, result in more economic productivity and better trading opportunities.

Introduction

In this chapter, I argue that when properly and normatively understood, trade policy, poverty reduction, and democratic progress are related in a “virtuous circle.” With the right sorts of policies and institutions, poor (and rich) countries can produce and export in ways that, on the one hand, reduce poverty and inequality and, on the other hand, broaden and deepen democracy. Improved standards of living and democratic quality, in turn, result in more economic productivity and better trading opportunities.

Globalization is neither an unqualified good nor an unmitigated evil. Even poor and developing countries can “leverage” or “manage” globalization (economic integration) to serve their own people and promote democratization. As international political economist Dani Rodrik puts it, “We can retain much of the benefit of economic globalization while endowing national democracies with the space they need to address domestic objectives ([1], p. 9)”. The result will be

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a “virtuous circle” of trade policy, economic opportunities, and democratic governance, but one very different than the dream of the globalizers.

In this chapter, I propose how we should normatively understand our three variables and how they can and should be related to produce a “virtuous circle.” The aim is to redefine and bring together three concepts – and their related literatures, policies, and experiences – that are unfortunately often kept in academic and professional isolation, for example, in separate governmental ministries. The normative understandings and linkages that I propose aim not (merely) to clarify concepts and their ethical assumptions but also to remind ourselves of ideals to which we are committed in the world of economic productivity, personal well-being, and social-political participation. I conclude by drawing out the implications of this “virtuous circle” and suggest that regional and local democratic bodies offer a promising institutional embodiment of the normative ideals.

Reconceiving Trade Policy, Poverty Reduction, and Democracy

Ideas matter, and the concepts we use to understand and improve globalization are no different. In what follows, I offer a way of conceiving a nation’s trade, poverty alleviation, and democratization in relation to the ideal of “development as freedom.” In this approach, whose most prominent proponent is Nobel Laureate economist-philosopher Amartya Sen, beneficial economic and social change is conceived not as economic growth, although it may be a means, but as both the removal of what Sen calls “unfreedoms” and the promotion of freedoms or capabilities that individuals and communities have reason to value.¹ Of central importance in this approach to development – variously called “human development” or the “capability approach” – is the individual and communal freedom to run one’s own life rather than be controlled by others – such as authoritarian governments – or the impersonal force of circumstances, such as some forms of globalization. This freedom of self-determination or, as I shall call it following Sen, “agency,” is the freedom to decide on, prioritize, and trade off other freedoms (and other values, such as efficiency and stability).² From this agency-focused human development approach, how should we understand the concepts of trade, poverty, and democracy?

Trade. Two individuals trade, as I shall use the term, when they exchange goods or services or one buys goods or services from the other. International trade takes place when individuals, enterprises, or governmental entities in one country engage in trade with their counterparts in another country. A nation’s trade policy consists of those laws or policies that regulate exports, the selling of goods and services to other countries, or imports, the buying of goods and services from other countries. The aim of exporters is to profit from the transaction; the aim of importers is to profit from willing consumers. The aim of trade policy has been understood in different ways.

In classical economics, such as the work of David Ricardo, the theory of comparative advantage captured the idea that the consumers of all countries

would be better off if each country produced only those goods made from its own raw materials (or other favorable conditions) and then traded with other countries for goods that they in turn produced to their comparative advantage. If England produces shoes more efficiently and cheaply than does Portugal, but Portugal has a comparative advantage over England with respect to wine, then both the English and the Portuguese will be better off by trading shoes for wine (and vice versa) than each country producing both shoes and wine. On this classical view, the purpose of trade policy – for example, tariffs on quotas on imports or exports and subsidies for exports – was to maximize national and individual well-being.

Dani Rodrik argues that under the influence of free market liberalism (and its emphasis on unregulated trade), the aim of the World Trade Organization and the trade ministries of many countries has been to invert classical trade policy. Instead of viewing trade policy as a means to nontrade and ethical ends, neoliberalism trumpets market access as an end in itself. Rodrik advocates a return to viewing trade policy as a means to further ends, but instead of advocating the utilitarian end of maximized well-being, Rodrik endorses an international trading regime that “enables nations around the world to pursue their own values and development objectives ([1], p. 228)”.

Although Rodrik himself identifies those “development goals” that countries have reason to value as “prosperity, stability, freedom, and quality of life” and as including “political freedom, civil liberties, and human rights,” he also emphasizes that in a justified trading regime, and in good national development, a country decides its development goals for itself.

Poverty. If trade and trade policy can best be understood in relation to a country’s deciding on its own development goals, how should we understand the second of our three themes – poverty (and poverty reduction)? From the standpoint of an agency-focused capability approach, poverty is not ultimately a lack of income or commodities but rather a lack of freedom and agency.³ Income and commodities are important but as means rather than as ends in themselves. Someone can be income poor yet rich in opportunities and self-determination because she lives in a community in which she can take care of her basic needs or in which she has decided to live an austere aesthetic life. The hunger striker lacks food and nourishment but – should she decide to end her protest – has the freedom to be well fed. Someone can be income rich but be sickly and friendless (and be unable to remedy her plight).

From this perspective, economic growth, like international trade discussed earlier, is important only as a means and not as an end in itself. When economic growth increases peoples’ valuable capabilities, it is developmentally important. When it decreases these substantive freedoms or increases them for only a minority, it is developmentally deficient. For the agency-focused capability approach, poverty (and maldevelopment) is the lack of freedoms that we humans have reason to value.

It follows that when we investigate whether a nation’s international trade openness causes (or is caused by) a reduction of poverty, we should examine not (only) whether income-poverty decreases but (also) whether there is an

increase – especially in those previously unfree in the sense of having enforced poor health, ignorance, unemployment, and disenfranchisement. A trade policy friendly to human development (and not just economic growth) would enhance people’s capabilities and agency, especially of those most deprived. A trade policy inimical to human development would fail to expand or would contract human opportunities and autonomy.

Democracy. The third variable in our triumvirate is that of democracy.⁴ Like trade and poverty, democracy is defined in various ways for various purposes. For purposes of assessing the impact of trade policy, it is best to begin with the idea that democracy is “rule by the people” in contrast to rule by “guardians” or experts, whether religious leaders, philosophers, economists, political scientists, or politicians. We progress beyond this vague starting point by arguing that democracy is a complex notion with at least four dimensions. A trade policy may score well on some of these dimensions and not so well on others.

Rule by the people may be more or less *broad*. In ancient Athens and the early USA, citizenship was not extended to women, the landless, or slaves. In no democracy do children vote, and in many democracies, convicted felons and immigrants either do not vote or vote in restricted ways. One important decision for a democracy to make at its founding or later stages is who should be counted as citizens. Although globalization may bring many immigrants – seeking work or political asylum – to a country and they may eventually become citizens, a new trade policy as such is unlikely to affect the breath of a nation’s democracy.

In addition to being more or less broad with respect to the “who” rules, democracies differ with respect to *range* – the scope of the questions that the people decide. Although democracy in ancient Athens was narrow with respect to the number of its inhabitants, it was extensive with respect to the issues that citizens decided. By lottery or rotation, citizens served in many decision-making positions, such as that of judges and jurors. The Athenian Assembly made decisions about war and peace, tax policy, and trade policy with other city-states. Members in the 500-man council, elected by their demes or districts, decided which questions would be taken up by the Assembly.⁵

In contrast to this wide-ranging Athenian democracy, citizens in modern democracies, whether in developed or developing countries, typically decide no questions other than who is going to represent them in local, regional, or national bodies. And many who rule – judges, bureaucratic officials, and public servants – are not elected by the people but are appointed by those who the people elect. Trade policy may have a not insubstantial impact on the range of democracy in that such policy may empower citizens to participate in trade policy decisions in various venues and in various ways. Citizens, as we shall see, may play a limited or robust role in trade policy decisions and in export groups’ strategic decisions.

The last point suggests that range concerns not only the questions that the people decide but the institution in which they decide them. We tend to think of democracy as only one type of governance, one that contrasts with “government by the few,” such as aristocracy, autocracy, or theocracy. But democratic decision making also takes place in some nongovernmental institutions such as civil society associations,

nongovernmental groups, and educational institutions. Even some religious communities, families, and business enterprises conduct their affairs democratically. In fact, some democratic thinkers, such as North American philosopher John Dewey, have gone so far as to advocate that democracy is a “way of life” that should be embodied in all social institutions [3, 6]. Whether we go all the way with Dewey or not, the range dimension of democracy is very relevant for our exploration of the “virtuous circle” of trade, poverty reduction, and democracy. For example, exporting groups, decentralized throughout a country like Peru, hold great promise as being venues for and schools in democracy. Insofar as exporting groups consist of partnerships with national, regional, and local governments, these hybrid groups also extend the range of democratic governance – at least when the governmental structure is itself democratic along one or more of our four dimensions.

Suppose a democracy is fairly inclusive with respect to who rules and the people who rule decide on many questions in many governmental and nongovernmental venues. Yet, society’s democratic quality may be deficient on a third dimension, namely, *depth*. In a shallow democracy, the people rule by voting for officials, if indeed they vote. In a deep democracy, the people do much more than vote. They attend meetings, petition, write letters, remonstrate, march in protest, engage in work stoppage, take part in public discussion of public norms and policies, and meet with fellow citizens and representatives to bargain, negotiate, or deliberate about what ought to be done. This depth dimension of democracy will have important relevance for our study. Exporting groups, of course, might have little if any democratic depth. An autocratic leader (*jefe máximo*) or managing elite, especially of big producers, might call the shots. Even if an exporting group included small producers, governmental officials, and representatives of women’s, environmental, and antipoverty groups, these group members might participate in such minimal ways as merely attending meetings, rubber stamping the elite’s decisions, expressing their preferences to deciders who ignore them, or implementing policies decided by others. In contrast, a deliberative exporting group would be one in which group members – freely and equally – engage in a critical give and take of proposals and counter proposals until the group forges a policy or decision with which at least a majority can agree. If voting is necessary at all, and sometimes it is, balloting would do more than merely aggregate member preferences. Voting, in contrast, would bring to a close a deliberative process that transforms preferences. In a thin democracy, voting is the main thing. In a deliberative democracy, what happens before (and after) balloting is equally or more important.

The people who “rule” in a government or other group might be many and diverse. They might tackle a wide range of questions in many institutions. And they might do so in a robustly deliberative manner. Yet, the group’s decision might have little if any impact. An effective democracy would be one in which the group’s decision made an important difference to the group’s members, the group itself, or the wider society. In contrast, in a weak democratic group, decisions would have no “uptake” or would be hijacked or overridden by some other institution or social force. Democratic exporting groups might be democratic on our first three dimensions and yet not be in control of their own destiny.

In summary, we should keep in mind these conceptions of trade, poverty, and democracy when we examine whether trade policies contribute to poverty reduction and democratization, whether democratization alleviates poverty and enhances employment-generating exports, and whether alleviation of multidimensional poverty contributes to better commerce and a higher quality democracy.

Normative Assumptions

How might these ideal conceptions of trade, poverty, and democracy be justified? One method would be simply to look at what actually exists with respect to trade practices and policies, poverty and efforts to reduce it, and democratic practices. This empirical approach, however, is incomplete. Although it will tell us about what is actual, it does not – by itself – disclose what is ideal or desirable. Many current trade, poverty-reducing strategies, and so-called democratic institutions and processes fall far short of the ideals or represent competing ideals. As David Hume saw in the eighteenth century, you cannot simply deduce an “ought” from an “is.” That said, what is actual and factual is not irrelevant for our ideals, for an impossible dream may cause people to become cynical when reality comes crashing in. An ideal should be pitched high enough to inspire us to improve the actual state of the world but not so high as to be unattainable. It follows that empirical research can be normatively important insofar as it brings to our attention concrete cases that more or less realize the proposed ideal. One of the responsibilities of the international development ethicist is to “keep hope alive” (Denis Goulet) by showing that our most defensible ideals have, in fact, been more or less embodied in actual institutions and that striving for further realizations is not unrealistic utopianism. Certain Peruvian exporting groups are beginning to approximate the ideals of developing friendly international trade that positively affects (and is positively affected by) both capability enhancement and more robust democratic institutions [7].

A more appropriate way to justify the above conceptions of trade (policy), poverty, and democracy is to show that these conceptions are supported by certain reasonable ethical values or normative principles. In what follows, I clarify three ethical principles, which, I claim, can be marshaled to defend our conception of each of the three variables in our “virtuous circle.” In this chapter, I have little space to defend the three principles themselves.⁶

Agency. The first principle is that of agency. This term, perhaps unfamiliar to many in a development context, has to do with individuals and communities running their own lives, being in the driver’s seat of their own affairs. Other terms that point in the same direction are “*protagonismo*,” “autonomy,” or “self-determination.” The meaning contrasts radically with the principal/agent distinction in institutional economics, for in this latter view an agent should not decide for himself or herself but rather do the bidding of the principal. In contrast, in my view, individuals and communities are agents to the extent that they scrutinize reasons for various courses of action, decide for themselves, act, and have an impact on the

world. Although human beings are often constrained, coerced, or conditioned by the actions of others or the force of circumstances, they sometimes have the opportunity, provided by their environment, to decide for themselves and make a difference on the world. As Sen explains:

In terms of the medieval distinction between “the patient” and “the agent,” this freedom-centered understanding of economics and of the process of development is very much an agent-oriented view. With adequate social opportunities, individuals can effectively shape their own destiny and help each other. They need not be seen primarily as passive recipients of the benefits of cunning development programs. There is indeed a strong rationale for recognizing the positive role of free and sustainable agency—and even of constructive impatience. ([2], p. 11)

One way to defend agency is to affirm its intrinsic importance, apart from whatever good consequences it might have, by appealing to our considered judgments. British philosopher Isaiah Berlin does just that in the following passage:

I wish to be the instrument of my own, not other men’s, acts of will. I wish to be a subject, not an object.... I wish to be a somebody, not nobody; a doer—deciding, not being decided for, self-directed and not acted on by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them. [8]

Although we may not agree with someone’s choice to be nonreligious or religious (or what sort of religion to espouse), we believe it is intrinsically important that each person decide the matter herself (and for herself) rather than either unthinkingly conform to custom or be coerced by others.

Another way to defend agency is to show that agency has a number of good consequences. When people or communities are in charge of or have ownership over their own enterprises, they are more apt to be responsible for them, invested in them, and benefit from them. Hence, as quoted above, Rodrik connects people attaining “greater control over their lives” with their “lifting themselves out of poverty” and improving their standard of living. An agency-oriented perspective stands in stark contrast to “assistentialism,” where external aid givers see people, in Sen’s memorable locution, “primarily as passive recipients” of the aid giver’s “cunning development programs.” A commitment to agency does not condemn all aid programs but insists such aid normally should help people sustainably help themselves rather than be dependent on others. Similarly, drawing on the agency principle, Rodrik argues that a “development-friendly” international trading regime does not exclusively focus on a developing country’s access to developing world markets but “enables poor countries to experiment with institutional arrangements and leaves room for them to devise their own, possibly divergent solutions to the development bottlenecks that they face ([1], p. 215)”.

Opportunities for Well-Being. Our second principle is that of individual development or well-being. Not only is it good that individuals and communities are authors of their own lives but also that they have opportunities or freedoms to live lives they have reason to value. As we have already seen, among the freedoms that reasonable people would choose are those of good health, education, adequate

nutrition and accommodation, and meaningful work. One reason why exporting groups are important is that we have good reason to believe that they will improve employment opportunities and, hence, other aspects of well-being.

Equality. In nondemocratic societies, only a few people have decision-making or agency freedom and significant opportunities for well-being. Hence, for our normative vision to be relevant for a democratizing society, we must also affirm a principle of equality.⁷ Here, equality does not mean that everyone is made strictly the same in income. Rather, by equality, we mean that people have roughly equal freedom to exercise (if they so choose) their agency and genuine opportunities to get over a basic level of well-being. One implication of this principle is that the family in which you are born should not be your destiny. Instead, basic health and educational opportunities should be available to everyone. Another implication is that the region of the country (or the world) in which you are born should not condemn you to powerlessness, voicelessness, or destitution. Hence, one role of centralized political and economic power is to promote decentralized political and economic opportunities, including that of broad-based exporting groups that practice deliberative democracy. By “broad-based,” I mean groups that include micro, small, and medium producers (as well as big producers) and give voice to marginalized or discriminated groups such as women, subsistence farmers, and indigenous peoples. (Many of these groups, of course, would benefit from that sort of capacity building that would enable them to be more competitive producers and deliberative partners.) A final implication of the equality principle is that each country’s right to forge democratically its own institutional arrangements entails that it must respect the equal agency of other countries and not impose its own model on them. The same applies to the rights and responsibilities of subnational regions, for instance, Lima in relation to other Peruvian departments and Santiago in relation to other Chilean provinces.

A Virtuous Circle

Given normative conceptions of trade policy, poverty reduction, and democracy and the three normative assumptions, how can and should trade, poverty reduction, and democratization be related in such a way that they reinforce each other? With a developmentally friendly trade policy, trade can promote development as the expansion of agency and well-being for all. Regional exporting groups can seek export strategies – whether in mining, agriculture, crafts, textiles, leather goods, and so forth – that not only identify a competitive comparative advantage but also engage in decision-making various micro, small, and medium producers, as well as other regional groups, such as representatives of women and indigenous people.

Conclusion

Six concluding remarks are in order. Nothing we have said implies specific trade policies or detailed institutional designs. Such policies and institutional details are up to regional participants in their inclusive democratic bodies. We can say, however, that markets themselves will not solve the problems of development

and that institutions are needed because, as Rodrik puts it, “markets are not self-creating, self-regulating, self-stabilizing, or self-legitimizing ([1], p. 154).”

Second, we can affirm in a general sense the importance of inclusive, wide-ranging, deep, and effective democracy at all levels. The specific form of these economic and democratic institutions will depend on both democratic will and sensitivity to local constraints and opportunities ([1], p. 6). Rodrik aptly calls democracy “a metainstitution for building good institutions” ([1], pp. 155, 166–168) for, argues Rodrik, “participatory political systems are the most effective mechanism for processing and aggregating local knowledge ([1], p. 8).” I would add that democratic bodies not only process and aggregate local knowledge but also transform preferences about what ought to be done. Rodrik does at one point call for trade and development decisions to be made by “coordination and deliberation councils ([1], p. 113)”.

Third, this chapter in no way denies the importance for enterprises in general and regional exporters in particular to make substantial profits. But profit-making and inclusive and deep democratic decision can go hand in hand.

Fourth, many countries are seeking ways to extend, increase the range, and deepen their democracies as well as make them more efficacious. Much discussed, for example, are Brazil’s municipal participatory budgeting processes (*presupuesto participativo* – PP) and health councils.⁸ Proponents of both kinds of decentralization are aware of benefits that come from the right kind of centralization. One advantage of regional democratic export councils over participatory budgeting, however, is that the former bodies *produce* as well as distribute wealth while the latter do only the latter.

Finally, as Rodrik claims, just as bottom-up experimentation (in conjunction with governmental agency-respecting assistance) should replace top down dominance, so each country (and region) should seek its own export and institutional solutions rather than slavishly imitate others ([1], pp. 4–5). Yet cross-cultural communication and exchange of ideas and experience may be useful in surmounting old impasses and forging a better future ([1], pp. 8, 165).

In their most recent book on India, *India: Development and Participation*, Jean Drèze and Amartya Sen set forth lessons they believe one can learn from the “developmental challenges faced in India”:

There are, we have argued, rich lessons here, which cannot be seized without taking interest in the ends and means of development in general and in the intrinsic value, constructive role, and instrumental importance of public participation in particular. The basic approach involves an overarching interest in the role of human beings – on their own and in cooperation with each other – in running their own lives and in using and expanding their freedoms. [13]

I have treated trade policy, poverty reduction, and democratization, ideally conceived, and the ways in which they might contribute one to the other in a “virtuous circle.” I have suggested that the development, democratic, and privatization challenges that Peru’s regional export councils are facing are rich lessons for a freedom-focused way to respond to the constraints and opportunities of globalization.

Cross-References

- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Fundamentals of Discourse Ethics](#)
- ▶ [The Capability Approach as Guidance for Corporate Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)

Notes

1. See, especially, [2] and Parts II and III of [3].
2. See, [3] and [4].
3. See [Chap. 4](#) of [2], and [Chaps. 4–5](#) of [3].
4. For an extensive discussion of approaches to democratic theory and practice and a defense of deliberative democracy, see [Chaps. 9](#) and [10](#) of [3].
5. See [5].
6. For further clarification and defense of these principles, see [Chaps. 4–7](#) of [3], and [4].
7. See [3], pp. 134–36, 220–21, 229–30, 235–36, 365–68 and [9].
8. See, for example [10–12].

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Part 10

Justice and Business Ethics

Geert Demuijnck

Abstract

In this section we analyze the role, if any, of principles in distributive justice in business ethics. The business world is often criticized in morally condemning terms, many of them somehow related to the issue of distributive justice. Traders are accused of receiving indecently high bonuses; CEOs benefit from shockingly high packages upon dismissal – the “golden parachutes”; the announcement of a massive layoff boosts share value on the stock markets; and multinationals are said to exploit supplier companies and, indirectly, their workers in emerging countries. The list of complaints is endless. However, justice, more particularly distributive justice, is a complex issue. Moreover, the scope and the relevance of the different principles of distributive justice in the business world is not obvious.

Introduction

This chapter introduces a general discussion of business ethics and justice. The aim is to clarify which duties of justice we may legitimately attribute to corporations taking into account that they function within a competitive market system. Throughout the chapter, we use the terms “corporation” and “company” as a black box: We do not make any inference on a firm’s ontological status or whether we ought to attribute intentional or moral agency to the firm. Firms are populated by real people with moral agency, and it would be unreasonable that these people would be allowed to violate others’ rights simply because it is corporate policy or the expected culture within their firm. Corporate decisions are *de facto* moral decisions because they are made by human beings who have a moral sense.¹ The task is to spell out the scope of the duties of justice, that *a priori* operate as

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side constraints, against the background of market mechanisms, as well as the fiduciary duty that executives have toward their shareholders.² The fact that markets are competitive implies that moral rules are, like in sports, specific, but they do not dispense economic agents, in Aristotle's broad definition of distributive justice, from "giving to each his or her due" [3, 13].

In this chapter, we will not discuss the broader issue of social justice. A market economy unavoidably leads to unequal outcomes. Egalitarian thinkers, like Rawls, have argued in favor of principles of justice that should underlie the basic political institutions so that citizens can consider themselves as free and equal. A just society will most likely, given the unequal outcomes of the market economy, imply that there should be mechanisms of redistribution. The degree to which redistribution is needed and the mechanisms that are appropriate to do so are issues for political philosophy; our scope is related to corporate duties related to justice.

This chapter develops the general framework of the discussion, ► [Chap. 39, "Executive Compensation and Distributive Justice"](#) by Luc Van Liedekerke will focus on executive compensation.

The Market as a Morally Free Zone

To begin, when we ask ethical questions about duties of justice within the context of business, we implicitly assume that business, or better, the institutional structure within which people do business, i.e., the market, is not morally questionable as such. Whatever the ethical shortcomings of capitalism, and whatever market behavior we ultimately reject on moral grounds, the starting point of business ethics is that we at least accept the legitimacy of the market economy – just as historically the long outdated discussions about what it meant to be a good slaveholder or a bad one presupposed the legitimacy of slavery as such.

A framework of business ethics does not accept the market economy unconditionally though. There might be moral constraints on markets, limits of corporate activities and reach in these markets, as well as constraints on what business leaders may do within their own organizations. The aim of this chapter is to examine whether the set of conditions that make the capitalism morally legitimate includes that the main actors, i.e. corporation, should respect specific principles of justice.

Before we turn to moral restrictions and duties of justice in a business context, let us first spell out what makes business transactions *prima facie* morally defensible.

From an ethical viewpoint, the market systems have been defended on both consequentialist and deontological grounds [30]. The deontological argument is formulated in terms of liberty and in terms of self-ownership [21]. Every human being is born free and no one owns me. As a consequence I own my bodily strength and my talents which constitute my abilities to engage in the workforce. I also own whatever I produce, under the conditions that I do not monopolize the resources I need for this production (the Lockean proviso). Since I fully own these products, I am free to trade them with other free people who like to buy them. A nice consequence (but not a justification) of the fact that market transactions are free

is that, in principle, they lead to a Pareto-improvement: Buyer and seller are better off and no one is worse off, since no one will accept an exchange that makes him or her worse off. Again, the libertarians who defend this line of argument – we are free to trade stuff that we fully own – will accept a limit here: I am free to produce and to trade if these actions do not harm someone else.

In comparison, the consequentialist argument is that the free market leads to an overall outcome that is Pareto-superior compared to a state-run economy. This point needs some further explanation, also because the explanation will be useful to spell out the duties of justice. The market economy means that the major decisions about the production of goods and services are taken by the market, i.e., indirectly, by an innumerable amount of individual decisions to sell or to buy. As a decentralized decision mechanism it maximizes the subsidiarity principle, and thus also individual liberty. The price mechanism equilibrates offer and demand on the different markets. Markets are places where preferences meet. In fact, prices are the result of the expression of personal preferences. The price mechanism equilibrates offer and demand on the different markets. The motivation of the economic agent is to maximize their utility. For consumers this comes down to making the best deal with a given budget; for employees to get the highest wage that potential employers are willing to offer; and for investors to receive the highest return on equity. The market system combines the following key elements: private property of resources, voluntary exchanges, and the motivation to make profit. This motivation for profit (or higher wages or cheaper prices) leads to competition, which is actually the motor of the entire market mechanism. The combination of all these elements leads to efficiency, i.e., the maximal output with the minimal input of resources. Therefore, not only is the market a marvelous mechanism on a micro-level of individual transactions that make both buyer and seller better off, it is also wonderful on the macro-level.

The reason is that, in a “planned” economy, investment and production decisions, as well as the price of products are based on imperfect information, and therefore suboptimal. To illustrate this point, take the example of a competitive market: taxis in Yaoundé (Cameroon). Taxi drivers are continuously picking up and dropping off passengers. Passengers are on the side of the roads and yell their destinations toward the driver: “Mvog-Ada,” “Nkolbisson,” “Hôpital Central,” which are the names of neighborhoods. The drivers pick up as many as five passengers, who each pay 200 Francs. But if the destination is quite far, passengers have to raise the stakes and yell, typically: “Nkolbisson 400” to the driver. Inversely, if they try to find a taxi for a very short distance, they will add “100” to their destination. Drivers make frequent and rapid “economic man” decisions: They optimize in function of a complex set of parameters in order to decide whether or not to pick up a yelling passenger. Influences include the destination of the passengers already in the car; the likelihood of traffic jams on the way to the requested destination; the money passengers are offering for the ride (in order to limit gas consumption); the likelihood or knowledge that there will be police control on the way (police control means that drivers have to pay a fine, in any case); the expectation that they will find enough passengers on the way back to the

city center; and the likelihood that there will be competition from too many other taxis on the same road, etc. In other words, these taxi drivers are practicing a day-long “tâtonnement”: By aiming at maximizing their income, they create a very efficient and cheap transportation system.

One can immediately see that it would be impossible to plan a transportation system with the same efficiency, simply because no one knows beforehand which people will move to which destination. There may be some trends of course, but the permanent adjustment between offer and demand, made by the thousands of drivers who, individually, try to optimize, would be impossible. In his paper “The Use of Knowledge in Society” [12], Hayek writes: “What is the problem we wish to solve when we try to construct a rational economic order? On certain familiar assumptions the answer is simple enough. *If* we possess all the relevant information, *if* we can start out from a given system of preferences, and *if* we command complete knowledge of available means, the problem which remains is purely one of logic. [. . .] This, however, is emphatically *not* the economic problem which society faces. And the economic calculus which we have developed to solve this logical problem, though an important step toward the solution of the economic problem of society, does not yet provide an answer to it. The reason for this is that the “data” from which the economic calculus starts are never for the whole society “given” to a single mind which could work out the implications and can never be so given.”³

If free and voluntary exchanges, based on profit seeking, really the self-interest of the economic agents, lead to an optimum, there appears *a priori* no room for worries about ethical wrongdoing or injustice in business transactions. This is why David Gauthier [10] calls the market a “morally free zone.” Gauthier identifies morality with constraints on individual self-interested behavior that allows a cooperative surplus. As a consequence, when no such surplus is feasible, i.e., when the individuals’ pursuit of advantages leads to a Pareto-optimum, as it is the case in perfect market transactions, all constraints are out of place.

However, one should be careful when interpreting Gauthier’s slogan “Were the world such a market, morals would be unnecessary” ([10], p. 13). Gauthier is well aware that a perfectly competitive market presupposes a moral framework: “The morally free zone created by the market can arise only within a deeper moral framework” ([10], p. 102). He explains this framework, first of all, by pointing at the condition of mutual unconcern (in contrast with a moral framework based on affective ties), but also by mentioning that the market requires that a lot of rules which are commonly considered to be respected, for example, mutual respect of property.

Morals would be unnecessary in the *limited* sense that we would not need to think about an impartial division of benefits and burdens of collective actions. According to Gauthier, in perfectly competitive markets, impartiality is guaranteed to the extent that market interactions reflect each person’s freedom. In other words, echoing Adam Smith’s invisible hand, Gauthier shows that in the market, we do not need any moral motivation on behalf of economic agents *for their market transactions*: Sheer self-interest leads to a morally acceptable outcome.

However, there are issues. A perfectly competitive market is largely an idealization that has conditions that are never fully met. Yet, while a functional market is

the most efficient and fair distribution device, there are indeed cases in which the market fails. Market failure is identified by Gauthier with situations in which self-interested interactions do not lead to a Pareto-efficient outcome because of the presence of *externalities*. When an action, either of consumption, production, or exchange, affects the utility of people not involved in this action, economists call this effect an externality. Externalities may be positive or negative, i.e., beneficial or harmful. A standard example of a negative externality is the pollution of the environment by a firm: Part of the production costs of the goods this firm produces are displaced on other persons. Public goods, in the sense in which economists use this term, for example, street lighting, are characterized by positive externalities that cannot be internalized: People who did not contribute to their creation cannot be excluded from the beneficial effect.

The absence of negative externalities is an essential assumption of the perfectly competitive market. The coincidence of equilibrium and optimality is no longer guaranteed when there are externalities. The reason is obvious: Externalities upset the marginal matching of supply and demand. Goods with negative externalities will be oversupplied and public goods will be undersupplied ([10], p. 88).

The presence of externalities not only disturbs the harmony between rationality and optimality, it also disturbs the coincidence of equilibrium and impartiality, even if the starting point is impartial, in the sense of respecting the proviso. Related to both kinds of externalities, Gauthier defines his two types of immoral behavior: the free-rider and the parasite: “A freerider obtains a benefit without paying all or part of its cost. A parasite in obtaining a benefit displaces all or part of the cost on to some other person” ([10], p. 96). According to Gauthier, the aim of moral rules is the elimination of free-ridership and parasitism ([10], p. 113). Morality thus finds its rationale in market failure ([10], p. 84). Rational people will find a solution in order to reconcile impartiality and optimality. That solution is a new mode of interacting: cooperation, which implies a constraint on straightforwardly maximizing ([10], p. 117).

We will now use Gauthier’s argument as a starting point for the question whether or not it makes sense to impose duties of justice on companies. Two complementary points have to be made before, though. First, Gauthier focuses on externalities in his discussion of the implications of market failure. There are other forms of market failure with very similar implications with respect to the combination of optimality and impartiality, and therefore, in terms of the moral evaluation of market exchanges. Lack of competition (monopoly, oligopoly) and asymmetric information are the best known. To elaborate, let us return for a moment to the market of taxis in Yaoundé. The taxi market in Yaoundé is nearly perfect with regards to competition. Unlike in Paris where there is a rationing of taxis due to a limited number of operating licenses in order to keep the business very profitable, in Yaoundé there is a very low entrance barrier. One must purchase a second hand car, paint it in the required yellow paint, then pay a bribe to the administration in order to get the required stamps on the documents, and then one is a taxi driver. If entrance barriers are higher, suppliers of the desired product or service gain market power, which allows them to charge prices above market clearing levels. It is then

likely that overall efficiency decreases with a diminishing level of competition, resulting from high entrance barriers. Secondly, on the taxi market in Yaoundé, both clients and drivers know the distances, the usual prices, the gas price, the traffic problems, etc. All this information is common knowledge. Rarely is it possible for a taxi driver to take advantage of an ignorant tourist. However, in many other markets, there is information asymmetry that enables one party to take advantage of another one.

Gauthier's second point is that people, insofar they are rational, will restrain the maximizing of their interest on a voluntary basis. The question is whether this assumption makes sense in a competitive environment. In the next section we will look at how to cope with market failures and the possible injustices that may follow from them.

Against this background of a perfect competitive market that *prima facie* combines an optimal outcome, in terms of efficiency, with distributive fairness because the freedom of the exchanges implies their impartiality, we have now a framework that allows us to see how different questions about justice and possible duties of justice for corporations can be interrelated.

We will first ask whether or not, and if so, to what extent, corporations have duties of justice with respect to injustices that follow from market failures. Secondly, we will ask whether there is really no room for unjust transactions even in the absence of market failures: We will ask whether it is ultimately not possible that corporations behave in an unjust way, even if markets are perfectly competitive. More particularly, we will ask whether some corporations are not exploiting people. Finally, we will ask whether there may be duties of justice for corporations in a competitive market, if the unjust nature of the transactions is not caused by the immoral behavior of the corporations, but by the moral failure of other economic agents. In other words, the question is: To what extent may companies be complicit with injustices caused by others?

The State and the Market: Regulation Versus Self-Regulation

What are the remedies for injustices that are possibly created by market failures? The most obvious answer is *regulation*. Legal rules to resolve problems caused by market failures are paramount. Let us look at the way in which societies cope with externalities, with the lack of competition, and with asymmetric information.

The textbook example of negative externalities is pollution. In almost all countries there are legal norms that constrain companies to respect environmental norms. Implementation, control, and punishment in case of transgression are exerted by government officials. Especially when the pollution harms the immediate neighborhood surrounding the factory, companies that violate norms are often condemned to compensate the victims. The crucial duty of justice in these cases seems to be that the corporation should respect the prevailing legislation, *even if they could disregard it*.⁴ The underlying moral justification is that we all have an equal claim on a sustainable planet. Therefore, we may collectively limit or prohibit

actions that threaten the sustainability of our planet. Even if the normative foundation of environmental regulation seems unquestionable, there are huge implementation problems. For example, because of growing transnational economic activity we collectively face the problem of gaps in the international environmental legislation, despite a rapidly increasing number of international agreements. Some authors argue in favor of universal jurisdiction of national states with respect to environmental crimes, similar to the international rules with respect to maritime piracy in the high sea [28]. At this stage, though, from an ethical viewpoint, corporations should at the very minimum respect international norms.

The fundamental question here, though, is whether companies, for reasons of justice, should go *beyond legal constraints* in terms of sustainability. We believe that this is not the case, because a corporation would find itself in a prisoner's dilemma situation. We can compare it with the dilemmas that we all, as consumers, face every day. We know that driving our car contributes somehow to the deterioration of the environment. We could take public transportation or our bicycle, but it is raining, and, finally the well-being we gain by *our use of our car* does not weigh up against the infinitesimal contribution of our car to climate change. Individually, we do not have a large impact, but collectively we do. Similarly, the immediate gains of the company's *not investing* in less polluting technology (beyond legal requirements) trump the small long-term contribution to ecological damage. It is obvious that this typical prisoner's dilemma problem cannot be overcome by market mechanisms alone. As Joe Desjardins [6] has pointed out, "When the costs of market failure are as irreversible and permanent as global climate change and species extinction, we have strong reasons not to trust the market" ([6], p 61). Just like we cannot trust consumer choices to combat climate change.

Many business ethicists have stressed the responsibility of corporations for the natural environment. Environmental scandals like the Exxon Valdez or the catastrophe with the Erika are often used to illustrate unethical behavior of corporations.⁵ However, if we look more closely at these examples, they basically turn on either not respecting or circumventing legal norms, or problematic situations on the political level (corrupt governments, loopholes in the legislation, short-term economic priorities). Except environmental militants, no one is really scandalized by the observation that a company pollutes in a way that is compliant with the legal rules of a democratically governed country.

And yet, many companies take environment-friendly initiatives. During the last decades, many corporations have been proud to mention in their Corporate Social Responsibility (CSR) reports that they have taken steps to limit their environmental footprint *beyond* what is required by the law. In some cases, their declarations can be unmasked as "green-washing." In other cases, there may be good economic reasons for justifying their behavior. It even may happen that a corporation, i.e., its executives and its shareholders, is genuinely moved by concern for the natural environment. But whatever the underlying reasons or motives are, it seems difficult to require – as a duty of *justice* – that companies, in a competitive environment in which production costs matter, go further than what is legally enforced if measures

to pollute less are expensive. At most, we could claim that companies should make an effort to diminish their environmental impact, but rather as an *imperfect duty*, i.e., corporations should do it if it is reasonably possible, just like we consumers should take care of the planet.

Admittedly, we can make a convincing “business case” for sustainability. Nonrenewable resources will become more expensive over time, so companies that invest in currently expensive substitutes will unavoidably become profitable at one point. Consumers will expectedly become more aware of the bad consequences of climate change and be willing to pay more for environment-friendly products, etc. Desjardins underlines the massive opportunities of sustainable business with the following example of the potential automotive market in emerging countries like China and India. If corporations approach these markets with their current business model (cars with gasoline motors) in these densely populated regions, poorly equipped with roads, the result will be disastrous in terms of traffic congestion and pollution. A creative move toward more sustainable transportation by the automotive industry could, according to Desjardins ([6], pp. 90–91), lead to a competitive advantage. He refers to other eco-efficient moves by companies that have turned out to be profitable. We do not deny that there are market niches for eco-friendly products, and we agree that eco-efficient moves will undoubtedly become profitable one day, but it is wishful thinking that transition to eco-efficient products is always profitable here and now. Meanwhile, corporations who do business as usual, thereby respecting the law, cannot be blamed in terms of injustice. For example, automotive corporations who sell the same cars, currently driven by those in the West, to the Chinese and the Indians who can afford them, cannot be morally condemned because they should take the planet more into consideration as a duty of justice.

A last point has to be mentioned in this context. Big corporations are influential economic agents, unlike individual consumers. Therefore, although they should not, they do have political power to some extent. They can lobby, meet competitors of their sector of activity, and take initiatives to make the regulatory framework evolve in the direction of a framework that will make all of us better off. And they often do.⁶ In this sense we may blame companies, especially big ones, for not actively contributing to a better regulatory framework.

A second type of market failure, lack of competition, is opposed with antitrust and competition legislation. Again, paradoxically, entrepreneurs who usually praise the market economy and the benefits of competition enjoy situations in which they have market power, i.e., the possibility to fix prices above average cost. Mergers are made to gain market share but also in order to cut fixed costs. The latter has to do with scale effects. It may be the case that smaller units of production are less efficient than bigger ones. An extreme case is a situation of a natural monopoly: this is a situation in which it is most efficient (involving the lowest long-run average cost) for production to be concentrated in a single firm. The textbook examples here are the distribution of utilities like electricity and water. Since the distribution network is fixed and costly, it would not make economic sense to develop two or three parallel distribution networks for water or electricity. In such cases, “market

forces” cannot play their role, and, without a solution, monopolists can limit the output in order to maximize their profit, at the expense of the consumers who would pay too much for their energy. However, procedures have been invented which make it possible to realize part of the positive effects of competition in such a situation: A system of concessions for a fixed period of time negotiated with a regulatory agency (which defends the public interest and fixes the consumer price) is a second best solution. The regulation mechanism which is now generally considered to be the next best alternative to mirror market competition is called price cap regulation. The regulator fixes a price and a possible price evolution, which is determined by the inflation minus the average productivity gain in the sector. Price cap regulation is sometimes called “CPI – X”, based on the formula employed to set price caps. This formula indicates how the rate of inflation, measured by the Consumer Price Index (CPI), is taken into account – the underlying assumption is that the cost of electricity production follows, *ceteris paribus*, the general price evolution – but, on the other hand, the expected efficiency savings (X) should also be taken into account. If other electricity producers are able to increase productivity, there is no reason to suppose that the company which exploits the concession could not. Therefore, this formula, in which an expected efficiency gain is subtracted in the calculation of the accepted monopoly price, gives an incentive to the company to seek productivity gains, just like the market forces when there is no monopoly.⁷ Efficiency gains beyond the predicted rate X can increase the dividend paid to shareholders, at least until the price caps are next reviewed.

This second best solution is only one example to answer the lack of competition due to a lack of regulation. The division of labor between the government and publicly funded agencies on the one hand and private corporations is not always clear cut as in the stylized textbook examples. There are many variations and combinations of different forms of regulation (concessions, subsidies, public-private partnerships, etc.). Nonetheless, the example should make clear that the way in which the problem is solved is based on intelligent market regulation and not evoking duties of justice on behalf of corporations. The concern of justice is rather on the side of the policy makers.

The third type of market failure (we leave the other ones aside in this chapter), due to asymmetric information, is more complex. Here again, regulation is paramount. There are numerous regulations on mandatory information and disclosure that are a legal condition for the validity of market transactions, in many sectors of the economy: The pharmaceutical industry and the housing market are but two. The underlying ideal is that a fair and efficient market is one where there is as much information as possible available for everyone. As a consequence, every transaction in which there is asymmetric information would be unjust. It has been pointed out – in the context of the debate on insider trading [8, 18] – that this principle is not always relevant. For example, a journalist who discovers an interesting piece of news will not share it with his colleague and rather outmaneuver them in competition. In fact, there are many situations in which informational advantages are not only considered to be fair but even at the very

heart of the market economy. For instance, a doctor is charging for his services and earns money on the basis of an informational advantage but is not acting unfair. The very question is rather to find out when an informational advantage is used in an unfair way.

The example of the doctor suggests a crucial element. The doctor is allowed to charge the patient for the use of his informational advantage, but this use is limited to what is ultimately in the patient's interest. In other words, as a professional, a doctor has a *fiduciary duty* with respect to his patient. We can find many similar examples in other business, for instance, the financial industry or the consultancy sector. These sectors are plagued with conflicts of interest. For example, the investment advisor may get a high fee selling an investment that does not fit in with the risk profile of his client. The difficulty in such cases is that external control is extremely difficult and costly to implement and monitoring by the client is impossible. It is obvious that in these cases, the corporations and the professionals who work for them are definitely duty bearers. Professional standards should guide them in the fulfillment of their duties of justice. Market failures related to information asymmetry have therefore to be dealt with by a combination of regulation and self-regulation. As we all have noticed during the financial crisis of 2008, this is a delicate equilibrium.

To conclude, market failures may destroy the combination of efficiency and fairness that characterizes ideal market exchanges. As we will see in a moment, there may be other reasons why market exchanges are not ideal. The solution is regulation in the first place, and the duty of companies is to comply with this. However, there are two stronger duties that we may legitimately attribute to companies. First, especially if they are large corporations with influence on decision making, they should positively contribute to better regulation that is more efficient and fairer, thereby preserving a level playing field. Secondly, they should comply with the rules, also if monitoring by clients or external control is difficult to implement. It may be naïve to think that all corporations will respect this duty of justice, but that does not mean that it does not exist.

Justice and Exploitation

Can market transactions, in the absence of market failures like the ones discussed above, be unfair? There is a long-standing tradition of moral indignation about specific market transactions. Some indignation concerns the particular nature of some goods; their uniqueness, so it is argued, should not be distributed according to market principles. Examples are the sale of organs or other body parts (kidneys), education, friendship, etc., but for the purpose of this chapter we will leave this issue about moral limits to the market aside [31]. Other indignations, however, focus on the unfairness of the transaction as such, independent of the nature of the product. A transaction is judged to be unfair if one party exploits the other one. The most common example concerns very low wages when there is little opportunity for the worker to find other work, or to request a living wage.

The debate surrounding capitalism and the exploitation of labor goes back at least to Karl Marx. In chapter 18 of *Das Kapital*, Marx argues that the owners of the capital pay a wage per hour that does not correspond to the value that is created during that hour by the laborer. The price of labor includes a certain amount of unpaid labor, which, ultimately, constitutes the source of profit for the capitalist ([17], p. 572). Marx himself did not argue in terms of justice. He merely points out that the exchange is unequal, even if, according to Marx, neither the capitalist nor the laborer is fully aware of the inequality of the exchange. We leave aside here the question of whether or not the notion of justice is fundamental in Marxism, and focus on the question of whether very low market clearing wages can be unjust because they are exploitative, and, as a consequence, whether corporations have a duty, based on the notion of justice, to pay wages that are higher than market clearing wages, in order to avoid exploitation.

Prima facie, it is not obvious to pinpoint what exploitation means, since wages are agreed upon, in principle, by consenting, rational, and free adults. We may suspect that people will not spontaneously agree to an unfair deal, and, since people are rational, they will quickly become aware of its unfairness if they did not notice it from the start. Therefore, the first question is whether an exchange between labor and salary must be, by necessity, totally equal in terms of value. First of all, Marx did not take into consideration that a capital investor would have risks that require a risk-premium as a rewarding. Yet, more fundamentally, what were the point of hiring anyone if the net contribution for the company were zero? What matters is that *both* parties take advantage of the exchange, the worker as well as the capitalist. Marx's equal value criterion seems therefore not a viable outcome in a market economy.

However, a possible reason why rational and informed people would consent to an exploitative contract is that they are indeed "forced" to do so, perhaps not due to a gun pointing to their head, but then at least because there are no real alternatives. Although there is no coercion in a strong sense, if the "choice" is one between starving and accepting extremely harsh conditions, we no longer have a genuine choice. But limiting the concept of exploitation to cases in which people have no alternative at all seems too limited, since extremely harsh situations in which people would have only slightly different options would not count as exploitation, which hurts our intuitions.

John Roemer [26] has an interesting reformulation of Marx's concept of exploitation. Roemer argues that firstly, the equal value approach of exploitation does not fit in with our intuitions (for reasons other than those I advanced above), and that secondly, the approach in terms of coercion also misses the point. According to him, the underlying reason why we consider some exchanges as exploitative is related to the "initial" distribution of assets (capital). If the initial distribution of assets is very unequal, exchanges may become exploitative even if there is no strict coercion. The following example is adapted from [27]. Two people have a very unequal amount of assets. Ron has a big machine and Maggie has a small one. Maggie can barely survive with what she produces with the small machine used at capacity. However, she wants to consume a bit more, and she is hired by Ron to work for a number of hours using his big machine. Her pay is very low which allows

Ron to make a handsome profit. In this case there is no strict coercion and yet we could say that the very unequal initial distribution of assets limits Maggie's output, affecting her bargaining power in relation to her contract with Ron. This situation allows Ron to take advantage of her labor.

According to Roemer the baseline should be an initial distribution of equal shares of total assets. However, this is problematic, as the combination of free exchanges and different effort and luck will disturb this initial equality over time. Moreover, requiring total equality of assets as a background condition for nonexploitative exchanges seems too demanding again, because it would undermine the very incentive to start business. Notwithstanding the limits of a radical interpretation of Roemer's criterion, the background condition of extremely unequal assets, which makes people vulnerable, as a fundamental difficulty for the concept of "free" exchanges makes sense.⁸ This is all the more important to the extent that capitalism, as [21] demonstrates, upsets all schemes, and, as a consequence, may create enormous inequalities.

In the light of these considerations, let us look at the debate about decent labor conditions in so-called sweatshops. Some authors have argued for many years that we should not rely on market forces to determine wages and labor standards in supplier companies of multinational companies, particularly those based in developing countries. Market clearing wages are shockingly low and barely support survival. Multinational companies as well as their suppliers should pay, at least, a "living wage" [4] or some other minimal standard [7]. As both authors have pointed out, the background conditions of high unemployment and extreme poverty leave these workers without any alternative and without any bargaining power. Human rights activists and NGOs have, during the last decades, severely criticized the situation and many initiatives have been taken in order to establish international norms or to put pressure on companies so that they would only trade with suppliers that respect the ILO norms.⁹

However, it is not obvious to fix the notion of a "living wage," and even with it, inequalities may remain embarrassingly high. How could one possibly justify, in terms of justice, huge discrepancies in the standard of living between equally qualified "colleagues" in different subsidiaries of the same multinational company? Even if one were willing to pay a living wage, one should be careful and not overambitious. Maitland [16] has pointed to empirical evidence – that has even become more evident – that has to be taken into account. Admitting the validity of many points that the critics of sweatshops make, he underlines that, in general, multinational companies apply standards relating to wages, conditions of work and safety and health that exceed those of local firms. Secondly, we observe that the countries with large output created in sweatshops have high growth rates and experience sharp increases in living standards. Raising the wages too quickly might slow down foreign investments, diminish employment in the formal sector, and, as a consequence, depress the wages of the most vulnerable workers in the informal sector.

A major conclusion of the preceding discussion is that market exchanges may become problematic, from the perspective of justice, in a situation of extreme inequality. Some markets may tend to be exploitative – even if it seems difficult

to draw an exact line defining exploitative behavior – leaving companies to face the problem that the market clearing price of labor may be unjust.

However, situations of extreme poverty can also create other problems for justice besides exploitation. For example, they may lead to the emergence of markets that should not exist or at least be severely regulated for moral reasons, for example, the black market for kidneys. Another configuration is that some products that could increase well-being cannot be introduced to the markets, because they are not economically viable, and cannot get off the ground. An interesting example here is the appalling story of the eflornithine molecule. Eflornithine was initially developed for the treatment of colon cancer at Merrell Dow Research Institute in the late 1970s. It was not very effective but, a random effect – patients in coma unexpectedly woke up – was that it was found to be highly effective in the treatment of African sleeping disease. In 1995 Aventis (now Sanofi-Aventis), the company that had acquired Merrell Dow, stopped producing the drug, whose main market was African countries, because the drug would not be profitable. The eflornithine injections turned out to be too expensive for the African population. NGOs, especially *Médecins sans Frontières*, were horrified upon learning of the scandal. Around 2000, another pharmaceutical company, Bristol Myers Squibb, found a new, this time lucrative use for eflornithine. This molecule was found to be very effective as an ingredient in hair-removing cream, produced under license from Aventis, with the brand name Vaniqa. Under pressure to correct the situation – the life-saving drug based on eflornithine not being produced whereas the cosmetic application was – Aventis and the WHO formed a 5-year partnership in 2001. During this time more than 200,000 bottles of eflornithine were produced by Sanofi-Aventis, to be given to the WHO and distributed by *Médecins sans Frontières*.¹⁰

What is the problem here is that a company is blamed for not producing a good that the clients can simply not afford to pay. In other words, can we blame the baker for not delivering bread to starving people without resources? It is implausible to qualify the current situation of global inequality as just. And yet, it seems unfair to attribute duties of *justice* to companies with respect to extreme poverty.

The absence of a duty of justice, however, does not imply that we cannot hold corporations morally responsible for this situation from another perspective. Werhane et al. [35] have recently published a book about profitable partnerships between private for-profit companies and NGOs that have contributed to the alleviation of poverty: forms of social entrepreneurship, or corporations that enter into so-called Base of the Pyramid markets. They argue in favor of the involvement of for-profit corporations in developing economies, but not in the name of justice. They refer rather to “moral imagination,” defined as “a necessary ingredient of moral judgment [. . .] the ability to discover, to evaluate and act upon possibilities not merely determined by a particular circumstance, or limited by set of operating mental models, or merely framed by a set of rules” ([34], p. 93). The moral duties here are basically benevolence and altruism, mobilized to develop an open mindset that is alert to explore possibilities that may create well-being.

All things considered, doing business with people in vulnerable situations is, in Maitland words, a matter of “painful trade-offs.” It is difficult to fix, *a priori*, normative standards for deciding which business is exploitative or which one is

ultimately profitable for both parties. The fundamental duty of justice in this area might well be the obligation, for business leaders, to open their minds to “moral imagination.”

Complicity with Injustices

A last set of injustices are neither related to the market structure, nor to initial inequalities of assets, although they may be indirectly related to these issues. In some situations, corporations may be blamed because of their complicity with injustices *committed by others*. Two typical examples will be discussed: the omission to combat seriously discrimination (sexism, racism, etc.) when many of the clients have discriminatory preferences, and (2) doing business in a country with a political regime that violates human rights. In these cases, I will argue, companies are not committing acts that blatantly violate someone’s rights, but they may be “complicit” with such violations due to their behavior, or lack of it.

The duty of justice that we may attribute to corporations concerning discrimination is not about intentional discrimination. Discrimination is illegal – and even anti-constitutional in many countries – and the first duty of corporations is simply to respect the law. However, in this domain enforcement by law is extremely difficult to implement. For one thing, the burden of proof is on the side of the person who is the victim of discrimination. In practice, it is hardly ever the case that two applicants are identical except for an “irrelevant” discriminatory characteristic. It is easy for an employer to pretend to the victim of discrimination that he judged another applicant as more qualified with respect to a relevant aspect for the job, even if that was not the real reason. Secondly, discrimination is often unconscious. People, including militant antiracists, may be influenced by subtle and unconscious prejudices. The phenomenon is similar to what often happens with men who are convinced by feminist claims: they nevertheless “spontaneously” divide tasks according to traditional roles. In social psychological literature, many different theories have been advanced to explain unconscious negative attitudes and behavior toward members of an outgroup (for example, blacks or Muslims). We will not present these here but simply mention that it is a phenomenon based on the cognitive principle of implicit association. People with the right intentions may act on the basis of unconscious, racially biased cognitive categories. This is widely referred to in the literature within the context of employment discrimination.¹¹ This implicit form of discrimination, also called subtle, unconscious, or automatic ([2], p. 59), may bedevil even Human Resource Managers who try to do their jobs according to high ethical standards. Whether or not people endorse the validity of such associations is irrelevant to the existence of biases and the prediction of individual behavior. They play a role in decision making without one being aware of it. It is important to add, however, that we are not completely helpless. We can decide whether or not we should take our spontaneous associations into account. Although implicit or automatic processes operate outside of conscious awareness, and are therefore much more difficult to correct, it is not impossible. The

first step is to become aware of the stereotypes that impact our judgments. Secondly, this awareness will lead to greater suspicion about one's own "spontaneous" reactions [19]. In fact, once Human Resources staffs are made aware of their unconscious biases, they are able to overcome their influences. Kalev et al. (2007) have shown that, under specific conditions, diversity training has an impact.

Against the background of the limited impact of legislation and the prevalence of implicit discrimination, we can see there is a big difference between, on the one hand, not pleading guilty for intentional discrimination and, on the other hand, proactively anticipating possible unintentional forms of discrimination. As a consequence, a corporation may be unknowingly complicit to factual discrimination. A duty of justice, so it seems, especially for big corporations with formalized procedures of hiring and internal promotion, consists in systematically combating current forms of discrimination, including the unconscious ones. This requirement of justice is justified insofar as a genuine nondiscrimination policy is absolutely not expensive and, therefore, does not lead to competitive disadvantages.¹²

A second case of complicity with injustice concerns activities in countries where the local government violates human rights. Obvious examples are the activities of oil companies in Equatorial Guinea or Myanmar (Burma), or mining companies in Congo [24, 32]. Since multinational corporations play an important role in these countries, and because of the economic importance as employers and tax payers, even if they stay away from politics, they may *de facto* be contributing to the persistency of human rights violations. This issue has led the United Nations to nominate a Special Representative of the Secretary-General, John Ruggie, on the issue of human rights and transnational corporations and other business enterprises (SRSG). Ruggie has recently published the "Guiding Principles on Business and Human Rights" for corporations that are active in regions where nation-states fail to protect human rights through adequate legal enforcement. The "Principles" make a clear distinction between the state's duty to protect its citizens and the corporate responsibility to respect human rights. The duty of corporations consists, according to these principles, basically in (1) issuing a "policy commitment," (2) implementing "human rights due diligence," and (3) providing remedial action ([29], principle n° 15). The key issue is, of course, to define clearly what due diligence means. First of all, it consists of seriously considering the risk that the corporation might be involved in human rights violations in one of its subsidiaries, or via one of its suppliers, etc. Ruggie and his team make further on a distinction between "causation of," "contribution to," and a "direct link with' human rights violations." Unsurprisingly, it is unacceptable that corporations should cause or contribute to the violation of human rights. In these cases they should withdraw from the country and remediate for the harm they caused. The tricky issue is the "direct link." In this case, corporations should decide to remediate the situation or for instance, to leave the country or not depending on "how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences" ([29], p. 18). In some situations, it may be pointless for a company, in terms of consequences, to leave a problematic country if it is immediately replaced by an even less scrupulous competitor. However, from

a deontological viewpoint, ongoing direct links remain an issue. The all-things-considered judgment about what would ultimately be the best for the oppressed population in a particular situation is an issue for casuistry. In general, we can, like Ruggie, refer to general principles like “due diligence.” But there is an important assumption, not really mentioned and rather occult in Ruggie’s document. Unless business leaders are strongly committed to the moral principles that underlie human rights, there may be a bias, not to say a slippery slope, in the direction of giving more weight to economic interests to the detriment of human rights holders. We will come back to this point in the conclusion.

Conclusion

In a paper on equality of opportunity, Janette Richards-Radcliffe [25] compares two different situations. In both situations some people, for whatever reason, lack shoes. The first situation is a cold winter, the second a race. In the first case, there is no point in taking the shoes away from the people who have them to achieve equality; but in the case of the race, it would seem better that everyone should run without shoes, to make sure the expected outcome (i.e., to see who is the best runner) is not influenced by mitigating factors. In other words, fairness matters particularly if there is something at stake. The more unequal the outcome of a competition is, the more we will be concerned with just rewards and fair procedures. By extension, the market is a competitive environment which creates unequal outcomes. Even if inequalities are mitigated to some extent, by political institutions, the unequal outcome of the competition implies that norms of justice are important. Notwithstanding unequal outcomes, society as a whole benefits from fair and efficient markets; and companies, as major players in the market, fundamentally have a duty of justice to act in such a way that the market, as an institution, works correctly.

In this chapter, we have tried to sketch the scope of the duties of justice for corporations. We began by describing a stylized perfect market under ideal background conditions, in which no economic agents are extremely vulnerable and all transactions are made by informed, rational, and self-interested economic agents. With this background as a starting point, we explored three different configurations. First, we examined the cases in which the market mechanism fails; second, we considered the case in which the background conditions of free economic agents were not fulfilled because of extreme poverty; and third we questioned duties of justice in cases where injustices are caused by other actors and are unrelated to economic mechanisms or background conditions. The purpose was to evaluate to which extent corporations may accept complicity in human rights violations.

We have argued that the duties of justice may vary according to the specific settings of the three configurations. In general, it would be unfair (if one accepts the profit motive and the ethical legitimacy of the mechanism) to exaggerate the moral responsibilities, which include duties of justice, of corporations. Nevertheless, this set of duties is not an empty box. First and foremost, the main duty of justice is to comply with regulations. However, we have seen that there are

areas where justice should play a role in corporate decision making, especially in areas in which regulation should be implemented in principle, but where effective control and legal enforcement is difficult. Justice puts limits on what companies can and should do. Insofar as it seems impossible to have a perfectly regulated market – one of the duties, we argue, is that companies should contribute to its improvement – as well as promoting an airtight control system. In the end, a morally defensible market economy ultimately relies in part on human beings who take their ethical obligations seriously.

Cross-References

- ▶ [A Marxist Ethic of Business](#)
- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if any?](#)
- ▶ [Executive Compensation and Distributive Justice](#)
- ▶ [The Modern Social Contract Tradition](#)

Notes

1. However, this may be an optimistic assumption. See, for example, Paul Babiak and Robert Hare, *Snakes in Suits: When Psychopaths Go to Work*, Harper Business 2006. Thanks to Kim Tomasson for this suggestion.
2. See French [9], Arnold [1], Werhane [33].
3. Hayek explains this on Youtube : <http://www.youtube.com/watch?v=CNbYdbf3EEc>
4. We will reexamine this issue later.
5. See, for example, the four volumes of Lisa Newton and Catherine Dillingham's *Watersheds*.
6. An example of an initiative taken by corporations is the Business Social Compliance Initiative (<http://www.bsci-intl.org/>)
7. The system has been developed in the 1980s by the British economist Stephen Littlechild, and especially in [15].
8. For the link between vulnerability and exploitation, see [11].
9. An interesting initiative is Asia Floorwage (<http://asiafloorwage.org/>). Other well-known initiatives are Ethical Trading, Initiative Clause Sociale, . . .
10. Source: "Drug firm wakes up to sleeping sickness," by Sarah Boseley, health editor, in the *The Guardian*, Monday 7 May 2001. The French *Libération* reported under the cynical heading: "Des vies africaines ne tiennent qu'à un poil américain" (African lives depend on an American hair), Sandrine Cabut, *Libération* 21 February 2001.
11. Readers who think that unconscious bias may be true, but that they themselves are free from these automatic reactions, should go online and take the test on <http://implicit.harvard.edu>. Nosek et al. [20] analyzes in detail the results of research related to this "implicit" test.
12. See Demuijnck [5] for detailed argumentation on this issue.

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Abstract

From the 1990s onwards, the rise of executive pay is remarkable and clearly linked to the introduction of the agency model into the analysis of the role of managers. We point out that this need not be the only possible role model for managers and demonstrate that executive pay is not closely linked to performance. This is, from a distributive justice point of view, the main reason for public outrage against executive pay. Several studies indicate that unjust pay can also create havoc in the workplace. Unjust pay is also the feeding ground for political action against unlimited pay packages.

Introduction

In 1929, Eugene Grace, the president of Bethlehem Steel, caused a public outcry when it was revealed that he had received a base salary of \$12,000 and a bonus of more than \$1.6 million. That amounts in today's dollars to \$150,000 salary and a bonus of nearly \$20 million ([6], p. 3). Public anger over excessive payment is clearly nothing new. In fact, already in 1933, the American congress decided to create transparency in payment of top executives and demanded that every corporate income tax return include a list of salaries for top managers. When this list was made public in the following year, it provoked angry political reactions that mimic today's reactions. "For the captains of industry to be drawing down large salaries is unconscionable and unpatriotic," declared Sen. Burton Wheeler, "The practice must be curbed by legislation, through taxation and publicity ([6], p. 3)."

Executive pay is a sensitive issue, inside the corporation as well as for society at large. Deep seated feelings about distributive justice pop up easily and eventually

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translate themselves into legal rules. The U.S. Treasury and the Federal Reserve have introduced new rules for executive pay, particularly in firms that have received government assistance during the financial crisis. At EU level, the European Commission issued several recommendations that, among other things, advocated a shareholder vote on the remuneration policy, prior approval of stock option plans by the shareholders, the establishment of a remuneration committee as well as concrete guidelines on its composition and its role, and the publication of a remuneration statement with information on remuneration levels, remuneration instruments, performance criteria, etc. Member states were asked to translate these recommendations into their national regulatory contexts.¹ It is clear that over the past decade, suspicion and anger over executive pay have risen and resulted in, among other things, an avalanche of regulation (both in terms of hard and soft law). Unfortunately, so far, none of these initiatives succeeded in banishing extreme pay packages or eliminating public anger over executive pay.

In this contribution, I concentrate on the roots of the executive pay problem which can be traced back to two different views on the role of a manager, a continental view that is defended by (among others) Walter Rathenau and an Anglo-Saxon view, usually ascribed to Berle and Means. We go back to the basics of the agency problem as the root cause for a different philosophy about executive compensation and demonstrate weaknesses of this model. This brings us to the basic challenges that executive pay poses from a distributive justice point of view.

Two Models of Managerial Duty

After the First World War, Walther Rathenau published a trilogy about the new society which was to emerge from war in which he pondered the changed role of the corporation in twentieth century Germany.² Corporations like his own AEG (a huge industrial concern) had grown so large that their fate was intimately linked to the fate of the nation. At the same time, because of the increasing size of the company, a new class of workers emerged: the managers. They did not belong to what was still very much family capital or to the blue collar workers making up the bulk of the labor force. For Rathenau, their very existence was a blessing. A blessing because in between the shareholders and the company a different group of people formed who were well placed to take an objective look at the well-being of the firm, and by doing this, they at the same time took care of the nation since, as already mentioned above, these large firms were up (to a great extent) equal to the nation. It was clear to him that the fate of the firm had to be separated from the fate of its shareholders. This possibility was opened up by this new class of top managers.

The rising separation between ownership and control of the firm was clear to many of Rathenau's contemporaries and did not go unnoticed at the other side of the ocean. The seminal text in the USA is of course Berle and Means, "*The modern corporation and private property*." In this work, they state: "[T]he separation of ownership from control produces a condition where the interests of owner and of ultimate manager may, and often do, diverge, and where many of the checks which

formerly operated to limit the use of power disappear." ([3], p. 25). With this, the agency problem was born. For Berle and Means, the separation was a challenge and needed to be undone by installing the right incentives. For Rathenau, it was a blessing. Managers, in his perspective, could be conceptualized as a kind of Weberian bureaucrat, duty driven, with a clear mission to take care of the firm which might or might not coincide with the interests of the controlling families. Like any other civil servant, he would be paid a salary that reflected his position and responsibility.

Although it would be an exaggeration to say that in Europe, managers of large companies equaled civil servants, there was from a certain point of view not too much of a difference. And even if the salaries were high, they were until recently mainly salaries, not bonuses nor stock option plans. Remarkably enough, and despite the Berle and Means analysis, the situation was not much different for the large British or US companies. Big companies everywhere resembled administrations with their managers acting like bureaucrats and even being paid as such. That was precisely the diagnosis put forward by Michael Jensen and Kevin Murphy in their 1990 seminal contribution: "*CEO incentives – it is not how much you pay, but how* [11]." In this article, they calculated that for every 1,000 dollar increase in shareholder wealth, CEO wealth increased by only \$3.25. It provoked the following conclusion: "On average, corporate America pays its most important leaders like bureaucrats. Is it any wonder then that so many CEOs act like bureaucrats rather than the value-maximizing entrepreneurs companies need?" ([16], p. 138).³ Jensen and Murphy were instrumental in persuading shareholders and boards of directors to tie compensation more closely to performance by means of stock options and to accept high compensation as the price for creating greater shareholder value. With this, the wage rally of the 1990s had begun. At every bonus round wild stories reached the press. Public outrage organized itself in websites like "paywatch,"⁴ and politicians as well as academics started to take a closer look at the issue. Agency theory was and still is the dominant paradigm to analyze the issue of executive pay.⁵ We introduce the basics of this model in the next section.

The Agency Problem

Agency theory finds its roots in a view upon the firm as a nexus of contracts [30]. Agency problems can pop up with respect to any of these contracts, not just the contracts for top executives, but a lot of attention has been given to top executives basically because they are considered to be the strategic apex of the firm, bearing ultimate responsibility for resource allocation, market entry, acquisitions, product development, etc. Following standard economic theory, agents as well as principals are considered to be rational, self-interested, and risk averse. Once the split between management of the firm and ownership is a fact (usually connected to the evolution towards larger corporations), shareholders (the principals) will delegate decision making to a selected group of managers (the agents). This immediately invokes the possibility of misuse of this position for one's own advantage (remember that

self-interest is the only motivator). In order to limit misuse, the principal sees herself obliged to install control mechanisms, and these constitute the agency cost connected to the principal agent relation. The main instrument for controlling the agent is the contract; designing an optimal contract to limit agency costs is therefore a central concern of agency theory. Two elements of control are considered crucial for the building of an optimal contract: a monitoring system and an incentive system. Monitoring involves the direct or indirect observation of the agents' efforts and uses instruments like reporting (inside and outside), transparency rules, budgets, etc. The monitoring can be done by different agents, for example, co-managers, auditors, security analysts, and even the labor market for executives. In general, one presupposes that monitoring will not work well when ownership is highly dispersed (the US situation). At that moment, the share owners-principals have to fight a free rider problem whereby principals all look at each other to start up the costly monitoring system, and in the end, no or not enough monitoring takes place. This problem disappears in the case of concentrated ownership (Asia, Europe situation), and we see (also empirically) much stronger monitoring systems in place when ownership is concentrated. If monitoring is not functioning well, our dispersed owners-principals have a second option, which is to develop an incentive system that eliminates the need for close monitoring. It is here that we find executive remuneration as one possible option to incentivize managers to act in the interest of the shareowner-principal. An outcome-based contract makes the executive's remuneration contingent upon the performance of the firm. In general, there are two types of incentives available: cash bonuses that concentrate on the short-term, accounting-based value of the firm, and a share and stock option plan that mainly looks at the long-term, market-based value of the firm. Other elements in the pay package are the base salary, employee benefits, and perks (pension plan, life insurance, health insurance, company car, house, etc.). The variable part of the pay package (bonus and share or stock option plans) is the preferred instrument to incentivize the agent, and therefore the relative weight of this part of the compensation has to increase.⁶ This happened almost everywhere over the last two decades. The American market stands out, but the European and even the Asian market followed suit. Clementi and Cooley [5] estimate that in 2006, for every \$1,000 increase in shareholder wealth CEO wealth increased by \$34. That is more than 10 times higher compared to what Jensen and Murphy reported in 1990. Company boards have taken the Jensen-Murphy lesson at heart and dollar incentives clearly have increased. Whether this created more performing managers or better-run companies is however another matter.

One effect of this evolution that stands out and grasps the public eye is the opening up of the wage differential between workers and managers. The AFL-CIO, a federation of 56 US and international trade unions states that: "The chief executive officers of large U.S. companies averaged \$10.8 million in total compensation in 2006, more than 364 times the pay of the average U.S. worker, according to the latest survey by the United for a Fair Economy." Clementi and Cooley [5] report that the average compensation of CEOs of publicly traded US companies in 2006 was actually much higher than \$10.8 million (around 43.4 million).

This places the wage gap at an incredible 1.456, yet at the same time, one should realize that this figure is not very informative. The compensation distribution for top executives in the USA is so skewed that looking at averages is not revealing since they are so strongly determined by the outliers at the top. Much more informative is it to look at median earnings of CEO's and that stood at \$4.76 million in 2006, less than half of the average earnings reported by trade unions. The wage differential for most workers in the USA is thus much lower than the reported 364. But although the exact figures are under discussion, there is consensus that we have witnessed a staggering evolution in the wage gap compared to the pre-1990 situation when a wage gap of around 20 was much more common (this is also the wage gap between the American president and average wages in the USA).

A second effect of this evolution that is hardly ever reported in media is that the new pay system implies new risks for managers. Given that long-term variable pay (share and option plans) makes up the bulk of CEO compensation (at least in the USA), this creates of course the risk that CEO income will plunge with stock markets. Clementi and Cooley [5] look at yearly changes in executive wealth. For 2006, a year in which the S&P 500 index rose by more than 9%, as many as 264 CEO's saw their compensation dive. Losers were, among others, the bosses of Yahoo (-33%), Amazon (-20%), and Ebay (-30%), and though these losses do not necessarily materialize (the executive is not obliged to sell stock at that moment or she can hedge against these losses), the figures involved are so huge that they necessarily create unrest. We will argue later on that this is not unimportant from a psychological point of view.

Pay Without Performance?

From an agency point of view, the fact that executive salaries skyrocket is in itself not a problem; on the contrary, it helps to push managers towards a more risk-taking, more entrepreneurial style of management. Before the agency revolution salary was largely based on firm size, and bonuses were tied to accounting profits. Kevin Murphy [22] demonstrated that this pay practice discouraged, for instance, downsizing or in general any painful restructuring even if this was in the interest of shareholders. "Steady as she goes" was the slogan. Precisely, because of this relatively conservative, bureaucratic management style, opportunities opened up for company raiders in the 1980s. Companies were taken over, sometimes in a very aggressive way, split up, and sold again with huge profits for shareholders (though not necessarily for workers). If companies did not move, capital markets would. Jensen and Murphy wanted to give the initiative back to the company. By granting stock options to executives, they hoped for a radical change in management style which could, according to them, only profit shareholders. But precisely, this last point is hotly debated. After more than 20 years of stock options, it is far from clear whether more variable and higher CEO compensation equals increased shareholder wealth. Was the pay accompanied by performance?

Some studies support this link. Gabier and Landier [12] for instance show that although executive compensation increased sixfold between 1980 and 2003, this rise was completely matched by the sixfold increase in the capitalization of large US corporations over the same period. Others deny the link almost completely. Tosi et al. [28] for instance state that firm performance accounts for less than 5% in the variation of CEO remuneration. The most critical voice was undoubtedly Bebchuk and Fried [2] who published a book that carries the title of this section. For them, executive compensation is an unfulfilled promise and basically boils down to self-dealing. It is interesting to follow their main argument somewhat more closely. Executive remuneration is essentially a contract between shareholders and executives. Shareholders will not negotiate this contract themselves; they delegate this authority to the board of the company. Financial economists start out from the hypothesis that the board operates at arm's length from the executives and is thus capable to take an objective stance when it comes to rewarding top management. But that is precisely what Bebchuk and Fried challenge. Coming from a law and economics tradition, they tend to rely much more on actual observations of functioning boards and dismiss the idea that these boards operate at arm's length. Despite all the corporate governance initiatives, the problem remains that top management has too much influence on the board. To put it somewhat bluntly, we are confronted with a contracting process in which one side of the market (the shareholders who pay for the contract) is actually absent. All we have is top management and their slavish representatives in the board who decide how much they will get. Small wonder that compensations skyrocketed. The book continued to provoke reactions, and many financial economists have looked for adaptations of the agency model that allows one to take the anomalies suggested by Bebchuk and Fried on board.⁷ Despite the debate over the book, there is at the same time a general recognition that board independence is a challenge. Jensen and Murphy [17] for instance acknowledge the problem of board independence. They actually frame it as another agency problem. While the original agency problem concentrated on the relationship between executives and shareholders, they now acknowledge that there is a second agency problem opening up between shareholders and the board where the board essentially does not sufficiently represent or defend the interests of shareholders. And that in turn opens up the possibility of excessive remuneration. Again, this situation is linked to highly dispersed share ownership, but despite the fact that Europe and Asia have a different capital structure, the problem is definitely also present over there. This time, the victim is not so much the reference shareholder but rather the small shareholders who have little or no say in the contracting process with executives.

An interesting way to synthesize the relationship between performance and pay is offered by Clementi and Coley [5].⁸ Particularly revealing is the following graph (Fig. 39.1):

The scattered plot above shows net shareholder gain in billions of 2005 dollars (the horizontal axis) against total compensation for nine top executives of the firm (data gathered by the SEC) in millions of 2005 dollars (the vertical axis) and this for all sectors excluding finance, insurance, and real estate, collectively known as

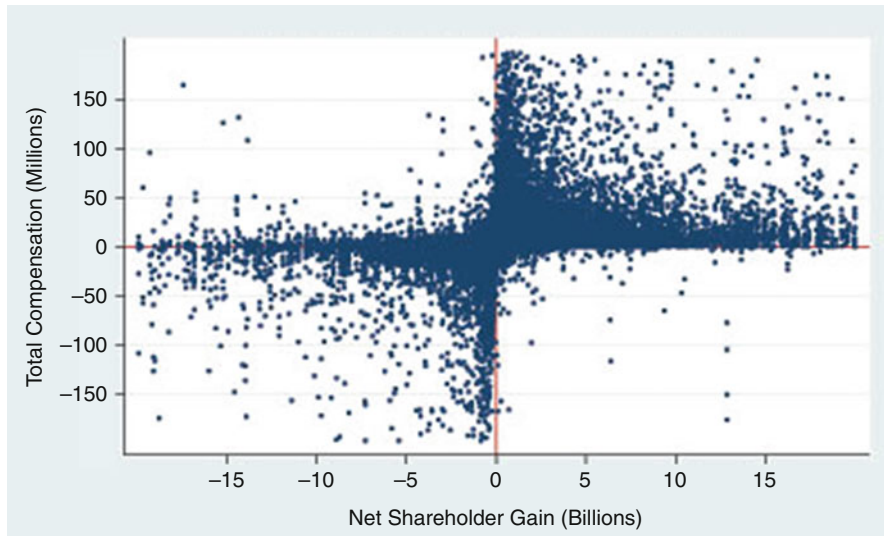


Fig. 39.1 Total yearly compensation and shareholder gain. All executives excluded FIRE – 2005 dollars

FIRE. If payment is strongly correlated with the creation of shareholder wealth (the goal of the agency approach), we would need to find all observations in the lower left and upper right quadrants, which by and large is the case. Observations in the upper left quadrant constitute the stories that make media headlines. Here, executives are being rewarded when shareholders are losing. Cooley identifies at least one observation from the top left, that is, the case of Douglas Ivester, the CEO of Coca-Cola Co. from October 1997 to February 2000. During the 1999 fiscal year, Coca-Cola’s shareholders lost about 14%, or about 22.5 billion dollars, while Mr. Ivester made about 74 million dollars ([6], p.12). Though the number of observations in the upper left quadrant is limited, it is not restricted to one or two occasional mistakes. From the point of view of shareholders, these observations are of course an outrage. Just as problematic, but this time from the executives point of view, are observations in the lower right corner. Here, shareholder value is created, but executives are punished instead of rewarded again going against the fundamental idea behind the agency model. Remarkably, these cases are far less covered in media. Cooley insists that despite both “mistakes” on the whole, the incentive system seems to work well, generating losses for managers when the company loses and generating profits when the company wins.

There is however another aspect of the plot that he fails to point out. If we isolate one vertical segment in the plot, say at that point where net shareholder gain reaches around \$13 billion, we find that this result can be connected with an executive pay package ranging from \$150 million gain to \$150 million loss! And reversely, if we

take a horizontal segment, we can observe that a marginal increase in executive pay of \$1 million can lead to an increase in company value of \$15 billion as well as a decrease of \$15 billion. That is quite bizarre and illustrates well the often repeated observation that company performance explains only 5% of variation in executive pay. To conclude, there is clearly a link between executive pay and company performance (the mass of the observations is in the lower left and upper right quadrant). However, it is not at all clear how much one has to pay in order to create shareholder value. In fact, strangely enough, one might even diminish the executive pay package and still produce shareholder value. In this sense, this plot is in no way a support for the extreme wages that have been paid over the past years. It also does not say anything about the alignment of managers' and shareholders' interests with those of employees, society, or taxpayers.

Distributive Justice and Executive Pay

We are now at a point that we can start a reflection on the relation between executive pay and distributive justice. I will not dive into the many distributive justice theories; suffice it to say that for academics as well as for the public at large, there are three fundamental criteria popping up in distributive justice problems: desert, need, and equality.⁹ We take a closer look at the first criterion. When my students work hard, they deserve a good mark. Effort in other words seems to entitle people to compensation. This immediately poses the problem, what is to count as effort (the index problem)?¹⁰ Should we measure the effort put into the job by the number of hours worked on the job? Clearly, this cannot be an instructive measure for top managers. We probably need to consider output figures, but precisely, what kind of output? The revenue of the company? Its market share? The satisfaction of employees or customers? The impact on the CSR record of the firm? Or can we simply look at shareholder value created? These are difficult questions tackled from many different sides by pay consultants. Academics devise all kinds of complicated systems in order to measure effort in a reliable way. There is no simple answer to this question, but so far in capitalistic societies, the impact on the final value of the firm (usually tracked as (phantom) stock value) seems to play a big part.

The Basic Problem: When Effort and Reward are Not Connected

As indicated above, the data so far do not support a strict, linear relation between executive pay and company value. Higher pay does not necessarily result in more shareholder value. The more explicitly we can demonstrate that pay is not connected to performance (the upper left quadrant), the more this challenges one of our deepest seated intuitions about distributive justice, and the more people will be scandalized by the practice.

Shareholder value is certainly not the only measure that people use in order to form an idea about whether the company is doing well or not. One of the most

visible signs of the state of the company is restructuring and layoffs. Shareholders might be pleased when deep cuts are announced, but in general, the employees and the public at large will associate massive layoffs with a badly performing company. Layoffs are a tangible picture of suffering, and it is therefore not surprising that outrage is at its deepest when a CEO receives an elaborated compensation package while the company is firing people.

Remarkably enough, these restructuring periods are for many CEOs the toughest periods in their career. It is at such moments that great personal efforts are being made. But how to explain to employees and the general public that a CEO deserves an extra bonus because he succeeded in eliminating 1,000 jobs? This is the tragic reality in which top executives find themselves. If the company is in a downturn, work can become particularly stressful yet you will not be rewarded for the extra effort; on the contrary, employees will expect a sign of solidarity and co-suffering, and executive pay might drop significantly (see lower left quadrant). Conversely, when the company thrives and pay packages are high, this does not necessarily reflect personal effort of top management; they might simply be lucky or profit from a prolonged bull market (as happened during the 1990s). Nevertheless, shareholders and public opinion will find it far less problematic to reward top executives in such circumstances. We connect top executives with the fate of the company like we connect top politicians with the fate of the nation. Effort is measured by external signs, for example, hiring new people or a growing economy for the nation, not by the personal efforts of the CEO or the prime minister. If executive pay follows company success, the paycheck seems to be justified from a distributive justice point of view.

Distributive Justice Inside the Organisation

The question whether executive pay is justified plays an increasing role inside organizations. Wade et al. [29] point out that perceived inequity between CEO pay and the pay of lower managers increases turnover among lower level managers. And if these managers cannot leave the firm (e.g., because the economy is in a downturn), counterproductive workplace behavior pops up in order to restore the justice balance. Examples of such behaviors include decreases in performance, failure to comply with organizational rules, stealing from the employer, taking excessively long breaks or loafing, frequent absenteeism, and interfering with the work of others ([18, 19]).¹¹ Employees are aware of and, for the most part, tolerate the large gap that exists between CEO pay and the pay of rank and file employees, but like everybody else, they have their limits. A highly publicized event, such as a large pay increase for a CEO combined with deep cuts in personnel, may call attention to the gap and create injustice perceptions.

Over the past years, two evolutions have increased the likelihood of such an event occurring. The first is an increased public and media attention for the topic of executive pay, and the second is the new availability of information on executive pay, mainly due to transparency regulation around executive pay. As

a consequence, employees are now far better informed. This increases the likelihood that employees will select executives as a referent when evaluating the fairness of their own pay.

Executive pay can also influence the relation between trade unions and management. A classical US example is negotiations at American Airlines when this company was in crisis in 2003. Large pay cuts were demanded from employees yet at the same time, top management were offered large retention bonuses. Daniel [7] points out how this situation determined the actions of the trade unions and influenced the attitude and behavior of their members. This type of “communication mistakes” is unfortunately no exception.¹²

Negative outcomes may be mitigated by paying attention to procedural justice considerations (fairness of process) and trust in top management. Effective communication of information related to how executive pay is precisely determined can help but is no assurance. If executive pay shows total disregard for the economic suffering of other employees in the firm, the reaction is likely to be revolt and outrage. People ask recognition from superiors for their effort.

Ressentiment Versus Mutual Cooperation

Revolt and outrage are not exclusive to the members of the organization; they are to be found in society at large. Especially in times of crisis, stories about bank bonuses sell well. The psychological mechanisms that drive reactions inside the organization also play their part in society. Extreme cases, where top management seems to profit from the suffering of low-rank employees, invoke strong feelings of injustice. But that is not the end of story. Even a very successful CEO who clearly benefitted the company, its employees, customers, and the shareholder but is compensated with what is considered to be an outrageously high reward will feature in the press. The height of the reward itself invites strong reactions. Many academics are suspicious of these public reactions. Harris [15], for instance, states that critiques of executive compensation should, in fact, focus on issues related to fairness and effectiveness concerns rather than sensationalizing the size of their pay packages. But when a public reaction keeps returning, it is hard to dismiss it as a simple “mistake.” The anger might have its reasons after all.

From a sociobiological point of view, such reactions can be related to the permanent battle for status that characterizes all social animals. Executive pay can, in this respect, be interpreted as a positional good sending a strong status signal to the rest of the group. This does not go unnoticed and provokes reactions that can be hostile as well as admiring. Some people will try to associate themselves with the winning person like one associates with the winning football team. Others will condemn this all too visible signal.

From a Nietzschean point of view, the critical reaction could be described as pure “ressentiment.” In a society in which the symbolic meaning of money and income has become all important, this signal exposes the failure of those who do not succeed in earning such an amount of money. The frustration, sense of weakness,

inferiority, and jealousy that it generates cause a rejection of the source of frustration. For Nietzsche, this resentment justifies itself through the creation of a (Christian) leveling morality that does not allow the strong to emerge.¹³ We talk about injustice, but in reality it is the revenge of the sheep against the birds of prey. The ego creates an enemy in order to insulate itself from admitting failure.

At the other end of the explanatory spectrum, we can refer to John Rawls *Theory of Justice* in order to understand the criticism. In his *Theory* and later on in *Political Liberalism*, Rawls makes a fundamental assumption about the nature of society. He believes society, or at least “the well-ordered society,” should be understood as a “cooperative venture for mutual benefit.” In the words of Philip Pettit: “Society is cast as an active association of people with a common goal and common resources of action. It is an association in which members recognize or should recognize a common goal – the cooperative advancement of their individual interests – and in which they can take jointly organized steps to promote that goal.”([24], p. 2). With their lavish compensation packages, executives seem to place themselves outside the scheme of mutual cooperation. One should not underestimate the long-term impact this can have on the reputation of business in society. Political pressure towards more regularity structure for executive pay thrives on this kind of strong emotional reactions.

Conclusion

Executive compensation has risen considerably almost everywhere in the world but especially in the USA. In 2006, the median total compensation of the top 150 US CEOs was \$10.1 million [8]. This is 314 times the \$32,142 earned by the median full-time private industry worker in the USA in 2006 (Bureau of Labor Statistics, 2007). Framing the problem from an agency perspective was clearly instrumental in the rise of executive compensation. This agency model is connected to an evolution in the ideal type of manager. From a Weberian type bureaucrat, she had to become a risk-taking entrepreneur. Increasing the weight of variable pay (mainly share and stock options) was considered to be the ideal instrument to push this transformation. There is some controversy whether this transformation succeeded, and it is not at all clear whether the transformation increased firm value. For a long time, any anomalies showing up (e.g., back dating of stock options) were considered the consequence of a non-optimal contract [14], and financial economists as well as pay consultants spend an enormous amount of energy devising better contracts in order to capture the right incentives. Others are convinced that the agency model itself is defective and should be replaced.¹⁴ What has remained constant over all these years is public outrage over executive pay. Looked upon from a distributive justice point of view, the “scandal” of executive pay is perfectly understandable when the pay is not connected to performance. Inside the organization, a failure to justify pay through performance can cause considerable disruption in the functioning of the organization. But also in society at large, such scandals provoke strong condemnation from the public and politicians and drive new regulatory efforts. Much more complex from a distributive justice point of view is a critical reaction to pay that is clearly connected to

performance but is simply considered indecently high. From a normative point of view, it is unclear whether these reactions are justified. A range of explanations are possible here. One can frame them as pure resentment at one end of the spectrum or, alternatively, as breaking up the fundamental scheme of social cooperation that characterizes society at the other end of the spectrum. This last explanation resembles very much the critique heard in 1933 when large salaries were considered “unpatriotic.” It just shows how little has changed when you look upon executive pay from a justice point of view.

Cross-References

- ▶ [Duties of Justice in Business](#)
- ▶ [The Modern Social Contract Tradition](#)

Notes

1. There were EU recommendations in 2004 (2004/913/EC) and 2005 (2005/162/EC) and again in 2009 (2009/3177). This last recommendation focused explicitly on the design of executive remuneration, more specifically variable remuneration (e.g., types of variables to be included, deferral of pay-out), share-based remuneration (e.g., vesting period, vesting criteria) and severance payments (i.e., limits on such payments). The financial crisis focused once again attention on executive pay and led to the introduction of new regulation and monitoring systems that specifically targeted the financial sector. For an overview of European soft and hard law initiatives in the EU and most of its member states see ([1], pp. 311–366).
2. Walther Rathenau was a German industrialist (leader of AEG), a minister of foreign affairs after the First World War, a German nationalist and a Jew. It was this last part that cost him his life as he was assassinated in 1922, as a minister of foreign affairs. The brutal murder was for Jewish intellectuals like Stefan Zweig a sign of things to come. The trilogy consisted off: *Der Neue Staat, Die Neue Wirtschaft, Der Neue Gesellschaft*.
3. The argument whether the ideal executive should be a bureaucrat or rather a risk seeking entrepreneur was recently revived by Englander and Kaufman [10] and Frey and Osterloh [11]. They argue in favour of the bureaucrat because the distant neutrality that characterizes him prevents conflicts between teams inside the organisation. Boatright [4] argues against this team production view.
4. <http://archive.afcio.org/corporatewatch/paywatch/>
5. Financial economists almost exclusively concentrate on the agency model. But even in general management journals the agency model is still the dominant way to look upon executive pay. Baeten [1] for instance follows three managerial journals for the period 1980–2010 and looks at publications on executive compensation or CEO compensation. He finds 48 contributions out of which 33 concentrate on the agency problem. As the anomalies around the agency model accumulated (mainly the missing link between performance and pay cfr. infra) other explanatory models, driven by a socio-psychological or a more institutional approach gained ground.
6. It is in principle of course possible to use fixed pay to incentivise managers. However, at least for the American market salary and even bonus pay account for a very small fraction of compensation and their cross sectional variation is very limited, indicating that this is not the preferred instrument to incentivise managers. It is stock and option grants that create the bulk of the compensation and also the variability in the dataset (see among others Clementi and Cooley [5]).

7. For a good overview of the extensive literature in financial economics that tries to capture the Bebchuk and Fried anomalies see Edmans and Gabaix [9].
8. Clementi and Cooley [5] use data from the EXECUCOMP database, maintained by Standard & Poor's. EXECUCOMP gathers data from 1992 to the present on the compensation of up to nine executives of all US companies whose stocks are traded on an organized exchange. The sources for the database are companies' filings with the Securities and Exchange Commission. The information about executives' securities holdings and their compensation packages is contained in the DEF14A forms (or Schedule 14A), filed annually by Corporations pursuant Section 14(a) of the Securities Exchange Act of 1934. Cooley restricts his attention to the years 1992 through 2006, and has a final sample of 31,587 executives, employed by 2,872 companies, for a total of 33,896 company–executive matches and 167,822 executive–year observations.
9. A good overview of distributive justice theories can be found in Miller [21]. Chapters 3 and 4 of the book gives a survey of socio-psychological research on public opinions about distributive justice.
10. General opinion will for instance look upon innate talent as a personal achievement (e.g., the talented footballer) and allow compensation for talent. Rawls and many other philosophers would disagree.
11. Over the past years the field of “organizational justice” has expanded dramatically. It is now used to explain a large number of attitudes and behaviours in the workplace [13, 23].
12. In the case of American Airlines the mistake was strengthened because the company had a strong cooperative culture. In cooperative enterprises the group feeling and thus also group solidarity is supposed to be high. When crisis strikes this solidarity is often invoked to support painful restructurings. However, when it became clear that the compensation arrow pointed in two different directions, depending on your hierarchical position it became painfully clear to employees that management was not very serious about the cooperative nature of the enterprise.
13. See On the Genealogy of Morals; esp §§ 10–11
14. For an overview of alternative explanations see ([1], Chap. 3).

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Part 11

Jewish Foundations of Business Ethics

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Abstract

Imitatio Dei (lit., imitation of God) is a behavioral ideal in Judaism to emulate God's attributes of mercy in our interpersonal conduct. This chapter demonstrates that the legal and ethical rules Judaism prescribes for the marketplace find their philosophical basis in *imitatio Dei*. Illustrations of that proposition presented here are Jewish law's approach to price fraud, monitoring employees' personal e-mails in the workplace, and consumer product warranties.

In a society governed by Jewish law, *imitatio Dei* is a mandate for government as well as the individual. The government must therefore foster a moral climate that promotes *imitatio Dei* conduct and minimizes opportunities to engage in veiled misconduct. One application of this mandate is for the government to play a vigorous role in enforcing a ban on insider trading.

By establishing the appropriate legal and regulatory framework, the government can advance *imitatio Dei* initiatives more effectively than could an individual. In particular, the financial limitations Jewish law sets for fulfilling the *imitatio Dei* imperative will be less of a constraint for the government than the individual because the government can spread the cost of an *imitatio Dei* expenditure over a large number of taxpaying households. Examples of such expenditures presented here relate to whistle-blowing and performance appraisal in the workplace.

Introduction

In Judaism, the duties and obligations relating to interpersonal conduct are set forth in the codes of Jewish law. Those prescriptions are, in turn, based on legal and

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ethical rules laid out in the Written Law and the rabbinic amplifications of those rules described in the Talmud.

According to Orthodox Jewish tradition, when God revealed the Pentateuch to Moses at Sinai, He concomitantly revealed to him the Oral Law, which provided a detailed interpretation of the Written Law.¹ The Written Law and the Oral Law together constitute the Torah.

Our purpose here will be to show that the legal and ethical rules the Torah prescribes for the marketplace find a philosophical basis in *imitatio Dei* (lit., imitation of God). *Imitatio Dei* is a behavioral ideal in Judaism to emulate God's attributes of mercy, described in the Scripture, as the guidepost for conduct and attitudes in our interpersonal relationships.

We will also show the central role that *imitatio Dei* plays in both setting the moral tone of the marketplace and formulating Judaism's approach to government regulation of the marketplace.

Parameters of *Imitatio Dei*

We begin with an exposition of what the *imitatio Dei* principle denotes for interpersonal conduct, recorded in the Talmud at *Sotah* 14a:

"After the Lord your God shall you walk" [Deuteronomy 13:5]. [R. Hama b. Hanina asks]: Is it then possible to "walk after" the Divine Presence? Has not Scripture already said, "For the Lord your God is a devouring fire" [Deuteronomy 4:24]? But it means: Walk after the attributes of the Holy One. Even as He clothes the naked [clothing Adam and Eve with the garments of skins (Genesis 3:21)], so must you provide clothes for the naked. The Holy One visited the sick [appearing to Abraham after his circumcision (Genesis 18:1)], so must you visit the sick. The Holy One consoled the bereaved [blessing Isaac after Abraham's death (Genesis 25:11)], so must you console the bereaved. The Holy One buried the dead [interring Moses (Deuteronomy 34:6)], so must you bury the dead.

Sifrei, an early rabbinic Midrash, further explicates the concept of *imitatio Dei* in a comment to Deuteronomy 10:12:

"To walk in all His ways" [Deuteronomy 10:12]. These are the "ways of the Lord," as it is written, "The Lord, the Lord, God, merciful and gracious, long-suffering and abundant in goodness and truth, keeping mercy unto the thousandth generation, forgiving iniquity, willful transgression and sin, and cleansing" [Exodus 34:6–7].

These Divine qualities cited by *Sifrei*, enumerated at Exodus 34:6–7, are referred to in the Jewish tradition as the "Thirteen Attributes of Mercy" (*yud-gimmel middot ha-rahamim*). A similar formulation of these attributes is found at Micah 7:18–20.²

Sifrei then continues its discussion of *imitatio Dei* with an exegesis of a passage from Joel 3:5:

"And it shall come to pass that whosoever shall call in the name of the Lord shall be saved" [Joel 3:5]. Is it then possible for a man to be called by the name of the Holy One? But this means: Just as He is called "merciful and gracious," so must you be merciful and gracious and give of your gifts freely to all; just as the Holy One is called "righteous," so must you be righteous. The Holy One is called "loving," so must you be loving. That is why it is said:

“And it shall come to pass that whosoever shall call in the name of the Lord shall be saved.” And it also is said: “Everyone who is called by My name, and whom I created for My glory, I formed him, yea, I made him” [Isaiah 43:7]. And it also is said, “The Lord has made everything for His own purpose” [Proverbs 16:4].

Given that the Pentateuchal verses cited above prescribe the parameters of *imitatio Dei*, what do the verses from the Prophets and the Hagiographia add to our understanding of the *imitatio Dei* imperative? Throughout the ages, the rabbis have offered various insights.

According to R. Naftali Tzvi Yehudah Berlin (*Netziv*, Russia, 1816–1893), the proof texts from Isaiah 43:7 and Proverbs 16:4 make *imitatio Dei* not merely a matter of nobility of spirit, but a God-given duty, the fulfillment of which is the very goal of creation. Moreover, as a behavioral imperative, *imitatio Dei* extends beyond a duty to emulate those aspects of God’s mercy explicitly enumerated at Exodus 34:6–7. By the exegesis of Joel 3:5, a duty to emulate *every* manifestation of God’s mercy is established.³

In R. Joseph B. Soloveitchik’s (New York, 1903–1993) thinking, *imitatio Dei* imposes specific conduct and sets a standard for character. The Talmud at *Sotah* 14a directs man to engage in *imitatio Dei* conduct. *Sifrei*, however, sets a standard for human character. Not only should man’s conduct be God-like, but he must nurture a God-like character, becoming worthy of being called by the name of God.⁴

Legal Principles and *Imitatio Dei* – Two Sides of the Same Coin

Let us now move to our proposition that the specific rules Jewish law prescribes for the marketplace are in general terms consistent with the *imitatio Dei* principles explicated above.

We begin with Nahmanides’ (*Ramban*, Spain, 1194–1270) discussion of the legal principle of price fraud (*ona’ah*). We then turn to the issue of monitoring employees’ personal e-mails in the workplace and the prohibition in Jewish law against misappropriating property (*oshek*) as it applies to warranty law.

Price Fraud (*Ona’ah*)

The law of *ona’ah* says that if a good is sold in a competitive marketplace, the sale may be overturned or the price terms adjusted if the price at which the deal was concluded diverged from the competitive norm. Based on that ethical norm, both the buyer and seller may have an *ona’ah* claim (See generally [1]).⁵

Since an *ona’ah* transaction falls within the category of *gezel* (theft),⁶ the parties must educate themselves about the competitive norm *before* the transaction to avoid committing price fraud unwittingly.

The notion that educating oneself about the marketplace is not just an exercise in self-interest, but must be done for the benefit of one’s counterparty, expands considerably in the case of the law of *mekah ta’ut* (transaction made in error). This law says

that if a transaction dashes the reasonable expectations of one of the parties regarding a material matter, the transaction may be canceled at the option of the disappointed party.⁷ Nahmanides avers that if a transaction is canceled on the basis of *mekah ta'ut*, the offending party violates the prohibition against price fraud.⁸

Nahmanides' comment makes the following business practice unethical: Einhorn runs an online men's sweater business and advertises that sweaters are available in red, brown, azure, purple, and blue. In fact, Einhorn has no azure sweaters in stock. If he receives an order for an azure sweater, he plans to send the customer a blue sweater instead. If the customer complains that he ordered an azure sweater but received a blue sweater, Einhorn plans to respond that he cannot fill the order. If the customer returns the blue sweater, Einhorn intends to refund the full purchase price.

Einhorn justifies his policy based on a judgment that blue is close enough to azure. Consequently, a disappointed customer will find that it is not worth his while to return a blue sweater to get a refund. In Einhorn's mind, his policy does not constitute price fraud because it is unlikely that a customer will demand a refund if he receives the wrong color and, in any event, Einhorn is willing to refund the full purchase price upon return of the blue sweater.

From the standpoint of Jewish business ethics, Einhorn's policy is unethical because it deliberately dashes the legitimate expectations of his customers. His policy of advertising azure sweaters for sale when that color is not available entails a misrepresentation regarding a material matter, with the intention to make amends only if and when the misrepresentation is discovered. Based on the law of *ona'ah* and Nahmanides' understanding of the principle of *mekah ta'ut*, Einhorn's policy constitutes price fraud, even though Einhorn intends to provide a refund if a customer complains.

Since *imitatio Dei* is the philosophical underpinning of Jewish business ethics, we must reject Einhorn's policy because it violates our duty to emulate God's attributes of mercy in our interpersonal conduct. The attribute that is violated here is the *raham* principle. *Rahem* is the aspect of God's mercy that spares us from a specific experience of suffering or disappointment, as opposed to relieving us of the suffering once it is already upon us.⁹

Monitoring Employees' Personal E-Mails

Let us now move to another illustration of our proposition that a particular legal principle in Jewish business ethics and a corresponding *imitatio Dei* principle are just two sides of the same coin. Our issue is under what circumstances may an employer monitor the personal e-mails of his employees. Elsewhere, we have taken up this issue and demonstrated a significant difference in approach between secular law and Jewish law with respect to this matter [2].

Diminished Expectation of Privacy

In examining the difference between secular law and Jewish law regarding whether an employer (*E*) may monitor the personal electronic communications of his

worker (*W*), let us note that *E* can easily create a diminished expectation of privacy in the workplace. For example, *E* may periodically announce that he is happy to grant his workers the privilege of sending personal messages over the company's e-mail system. At the same time, however, *E* warns his employees not to abuse that privilege by engaging in sexual harassment via e-mail or sending out e-mails containing racial slurs. Based on those warnings, *W* should conclude that *E* may monitor his personal e-mails.

Moreover, even if *E* is silent about the firm's policy for monitoring *W*'s personal electronic messages, *W* should reasonably expect that his personal e-mails will be monitored in some way. Why? Consider that *W*'s electronic communications are stored on the company's server. *W* should therefore anticipate that if a security breach occurs, a *bet din* (Jewish court) might allow *E* to examine *W*'s electronic records to ferret out the culprit. This theoretical right for *E* must exist. Without it, the personal e-mail privilege *E* confers upon *W* would create an opportunity for *W* to engage in veiled misconduct by leaking confidential information. Specifically, all *W* would need to do to leak confidential information is to send it in an e-mail marked "personal."

Based on the diminished expectation of privacy described above, American courts do not regard *E* as guilty of wrongful discharge if he dismisses *W* based on *W*'s electronic communications, even if *E* promised not to monitor *W*'s communications.

The oft-quoted case here is *Smyth v. The Pillsbury Company*, 914 F. Supp. 97 (E.D. Pa. 1996). In that case, an employee of Pillsbury, Michael A. Smyth, and his supervisor exchanged personal e-mails over Pillsbury's e-mail system. Pillsbury had repeatedly assured its employees that e-mails sent over its e-mail system would remain confidential. Despite those assurances, the company intercepted Smyth's e-mails and fired Smyth and his supervisor for transmitting "inappropriate and unprofessional" comments. Smyth sued Pillsbury on the grounds that his termination was based on a violation of his common law right to privacy.

The court rejected Smyth's claim. In support of its holding, the court presented two rationales. First, the e-mails were sent over an e-mail system that the entire company used. Consequently, any reasonable expectation of privacy was lost, despite the company's prior assurances of privacy. Second, even if Smyth had a reasonable expectation of privacy, that right was not absolute. Instead, the company was entitled to balance its employees' right to privacy against the company's interest in preventing inappropriate and unprofessional comments and illegal activity. The court held that a reasonable person would not consider the interception of Smyth's e-mails to be a substantial and highly offensive invasion of his privacy. As a result, the company's interest to prevent inappropriate conduct was considered paramount.

From the perspective of Jewish privacy law, *E* violates *W*'s privacy rights if he intercepts *W*'s e-mail. The relevant prohibition is R. Gershom b. Judah Me'or ha-Golah's (*Rabbeinu Gershom*, France, ca. 960–1040) edict against reading another person's mail without permission. The basis of that edict, according to R. Jacob Hagiz (Jerusalem, 1620–1674), is the admonition: "You shall not go as

a talebearer among your people” (Leviticus 19:16). That Biblical verse prohibits the bearing of someone’s private information, whether for self-consumption or to reveal it to someone else.¹⁰

While the workplace is a setting for a diminished expectation of privacy, R. Gershom’s dictum should still apply. This is so because R. Gershom’s prohibition against reading someone else’s mail applies not only when the message is contained in a sealed envelope but also when the message is written on a postcard.¹¹ If the edict applies to reading a postcard addressed to someone else, a diminished expectation of privacy is not enough to suspend the prohibition. What is needed is no less than an explicit or implicit waiver by both the sender and receiver of the private message.

***Imitatio Dei* and Monitoring of Personal E-Mails in the Workplace**

In his treatment of *imitatio Dei*, R. Norman Lamm notes that both the Jewish philosophic and mystical traditions speak of two aspects of Divinity. One is God’s knowability and the second is His unknowability, i.e., His transcendence. God’s transcendence is the aspect of His essence that will remain forever unknown to man. Those two zones of disclosure and concealment co-exist within God without contradiction [3].

But if this is true of the Creator, it is true of His human creatures as well. As God reveals and conceals, so too man withholds and discloses. Human privacy manifests itself with a desire to remain unknown, puzzling, and enigmatic.

The above analysis leads R. Lamm to assert that it is man’s duty not to be an open book. Instead, man must maintain a private side.

R. Lamm’s proposition that man has a duty to maintain a private side finds expression in Jewish law’s treatment of charitable giving. In Maimonides’ (*Rambam*, Egypt, 1135–1204) ranking of the levels of charitable giving, anonymity is given a premium, with the highest ranking achieved when the donor does not know the identity of the recipient and the recipient does not know the identity of the donor. But Maimonides also says that charity in its most noble form consists of preventing an individual from falling into the throes of poverty. The position of such a person must be stabilized, with his dignity preserved, by conferring a gift upon him, extending him a loan, or entering into a partnership with him. The most noble form of anti-poverty efforts is thus when the benefactor prevents the recipient from falling into the throes of poverty and conceals his identity from the recipient.¹²

Recall that from the standpoint of Jewish law, the diminished expectation of privacy in the workplace does not give an employer a license to monitor his workers’ personal e-mail correspondence. While the workplace is a setting for diminished expectations of privacy, R. Gershom’s dictum should still apply to that setting because the dictum is operative not only when a message is contained in a sealed envelope but also when it is written on a postcard.

Similarly, R. Lamm’s analysis shows that *W* should not readily agree to any policy *E* imposes on him for monitoring his e-mails. Guarding his privacy requires *W* to insist that any monitoring of his e-mails should be done in a manner that is maximally respectful of his privacy and be motivated by the purpose of preventing inappropriate employee conduct or disclosure of confidential information.

***Oshkek* and the Law of Warranty**

One more example of how *imitatio Dei* provides the philosophical basis for a particular legal principle in Jewish business ethics is the law of *oshek*.

Oshkek entails the misappropriation of property that comes into one's possession with the consent of the owner of the property. This objectionable conduct occurs, for example, when a creditor (*C*) attempts to collect a loan due to him from his debtor (*D*) but cannot recover it because *D* is overbearing and hard-hearted. The Biblical verse prohibiting such conduct is "You shall not oppress your fellow" ("*lo ta' ashok et re' akha*") (Leviticus 19:13).¹³

While decisors are in agreement that *D* violates *oshek* on a Biblical level only if he is overbearing or hard-hearted in resisting *C*'s efforts to obtain what is lawfully his, *oshek* is violated on a rabbinical level even if *D* resists *C*'s demands by telling him to go away and return. This rabbinical prohibition is alluded to in the verse: "Say not to your neighbor, 'Go and come back (*lekh va-shuv*), and tomorrow I will give you when you have [it] with you'" (Proverbs 3:28).¹⁴

The law of *oshek* finds a ready counterpart in American law in a consumer's rights in the purchase of a good under warranty. Under the Uniform Commercial Code (UCC), if *S* is a merchant and offers a written warranty for a good, he automatically guarantees that the good would "pass without objection in the trade" and is "fit for the ordinary purposes for which such goods are used."¹⁵ This guarantee is referred to as the implied warranty of merchantability. For example, if *S* sells an oven to *B*, *S* implicitly promises that the oven will bake food at controlled temperatures that *B* specifies [4]. If the oven fails to heat, or heats at the wrong temperature, *S* has breached his implied warranty of merchantability. Similarly, if *S* sells a water glass to *B*, *S* implicitly warrants that the glass will hold water. If *B* discovers that water leaks from the glass, *B* has a right to return the glass based on a breach of the implied warranty of merchantability.¹⁶

Under the UCC, *S* also provides an implied warranty of fitness for a particular purpose when *B* relies on *S*'s advice that a product can be used for a particular purpose.¹⁷ For example, if *B* specifically requests a washing machine that can handle 15 pounds of laundry in one load and *B* buys that model on the strength of *S*'s expressed recommendation that it can handle the load, *S* has made a warranty of fitness for a particular purpose. If the model that *S* recommended proves unable to handle 15-pound loads, *S* has breached his warranty of fitness for a particular purpose, even if the machine washes 10-pound loads well (See note [4]).

Whenever a good is sold under a warranty, a customer can potentially be victimized by *oshek*. One industry in which *oshek* is prevalent is the automobile industry. The widespread practice of abuse in this industry has led to the passage of state lemon laws. To illustrate, in the sale of an automobile, the seller owes his customer, at the very least, a duty to hear out a complaint. A customer who seeks relief under the lemon law, however, will at times encounter a runaround. For example, the customer may get shuffled back and forth between the manufacturer's customer service department and the dealership that sold the car. If the customer correctly sticks with the dealership to lodge a complaint, the dealer may respond

with an assortment of lies, such as claiming that the problem is not covered by the lemon law or that the state has no lemon law. Alternatively, the dealer's representative may promise to call back, but never does ([5], pp. 67–72).

The complaint may entail a demand for a repair job covered by the warranty, or if the customer is convinced that he bought a lemon, a demand for a refund or replacement vehicle. Stonewalling or responding to the complaint with dilatory tactics withholds from the customer a repair job or refund to which he may be entitled. Those tactics therefore violate the *oshek* interdict.

Another frustration a typical dissatisfied automobile customer encounters is when a dealer deflects a complaint about a flaw by producing a Technical Service Bulletin (TSB) issued by the manufacturer that claims that the flaw is trifling and cannot be corrected. As an example, Vince Megna, a prominent lemon law attorney, cites an official General Motors TSB stating that its power engineering department determined that engine knocking on cold starts “is not detrimental to the performance, reliability, or durability of the engine” ([5], p. 73).

In Jewish law, a dealer has no right to dismiss a customer's complaint by producing a TSB that says that a defect is trifling and irreparable. Rather, what constitutes a defect and therefore qualifies for a price reduction or a refund is determined by establishing the consensus of the users of the product.

Let us now show that the type of conduct the law of *oshek* prohibits also proceeds from the *imitatio Dei* duty. Let us focus on the Divine attribute of *emet* (truth). To understand how the attribute of *emet*, which ordinarily evokes the notion of strict, uncompromising justice, provides a guidepost for kindness in interpersonal relationships, it is necessary to see that mercy is an aspect of God's attribute of *emet*. R. Solomon b. Isaac (*Rashi*, France, 1040–1105) provides the key here by telling us that *emet* in the context of the Divine attributes of mercy means “to pay a good reward to those who perform His will.”¹⁸ *Rashi*'s interpretation clarifies the mercy element in *emet*. Preliminarily, consider that God endows humankind with free will. This means that neither virtue nor the avoidance of sin is for us compelling. If doing God's will would be compelling, we would not deserve a reward for virtue or for resisting sin.¹⁹ The reward God promises us for doing His will, i.e., “so that you will benefit and you will live long” (Deuteronomy 22:7), is infinite and offers us a delight beyond human imagination, a reward that one can experience only in the infinite world of the afterlife [6].²⁰

We note that in several instances, the Torah does promise that adherence to the Divine commandments will be rewarded with physical and material recompense and disobedience will be followed by punishment in this world. However, these material and physical rewards and punishments, according to Maimonides, are not for compliance and disobedience. Rather, if we desire with gladness to perform God's will, God will remove all obstacles to the performance of the commandments. These obstacles include war, disease, and poverty. If we fail to perform the commandments with alacrity, we may not merit to have these obstacles removed. The reward for performing God's will and the punishment for disobedience remain infinite and are therefore reserved for the world of the infinite.²¹

But it is undeniable that human beings have a positive time preference: We are quite willing to trade off an indefinitely deferred reward, even an infinite one, for a lesser reward that we can enjoy here and now. Our eagerness and even desperation to make this trade-off, however, are the result of our ignorance of the nature of the infinite reward that is awaiting us. Here, God displays His mercy element in *emet* and does not accept our willingness to trade our reward in the afterlife for an immediate reward. Instead, God is faithful in fulfilling His promise. Everyone who performs God's commandments will get his or her due in the form of an infinite reward.

What we have just said in theological terms about the mercy element of truth can be formulated in economic terms. Man's plea to God to trade at least part of his infinite reward in the afterlife for a lesser reward here and now is a situation of asymmetric information. God knows the nature of the infinite. We, by contrast, have no comprehension of the nature of this reward. Because we proffer our bargain out of foolishness and ignorance, God rejects our plea. In other words, God refuses to exploit our ignorance.

Recall that if *S* is remiss in his disclosure or fails to honor his implied warranty, he is guilty of theft and price fraud. The implication of these prohibitions is to require *S*, if he is an employer, to organize his business so that these prohibitions are not violated. The *imitatio Dei* imperative frames these duties in positive terms rather than as prohibitions.

***Imitatio Dei* and Economic Public Policy**

In this section, we will demonstrate that for Jewish law, *imitatio Dei* is the philosophy behind economic public policy and the regulation of the marketplace.

While the source texts cited above all relate to *imitatio Dei* in connection with interpersonal conduct, this behavioral imperative, according to Maimonides, applies not only to the private citizen but also to the ruler. Preliminarily, let us take note that Maimonides adopts this position without citing a source for it. Specifically, in his discussion of the monarch's criminal justice system, Maimonides says that the system should not be based on the passion of the moment but rather on a careful consideration of equity with the aim of promoting social welfare. Since the sovereign must perforce be involved in the administration of justice, *imitatio Dei* requires him to mete out punishment in the manner in which God metes out punishment [7]. As a private citizen, however, man is bidden to emulate only God's attributes of mercy. A private citizen is therefore prohibited from taking upon himself the role of meting out punishment, even if he uses *imitatio Dei* as his model (See [8]).

Supporting the proposition that *imitatio Dei* includes a social component is Abba Saul's dictum, expressed by his exposition of the verse "*zeh Ke'li ve-anvehu*" ("This is my God and I will glorify Him") (Exodus 15:2). Abba Saul understands *ve-anvehu* as consisting of two words, *ve-ani ve-hu* (and I, and Him), meaning that "I will be like Him; just as He is *raham* (merciful) and *hanun* (gracious), so too will I be merciful and gracious" (*Shabbat* 133b).

In light of the *imitatio Dei* lesson derived from Exodus 34:6–7, Abba Saul’s exegesis appears superfluous. Closer examination of the dictum, however, reveals that Abba Saul adds a social component to the principle of *imitatio Dei*. This follows from the consideration that the circumstance that inspired the Jewish people to proclaim *zeh Ke’li ve-anvehu* was the miracle of the splitting of the Red Sea. No one was singled out to experience the miracle. To the contrary, God wrought this miracle for the Jewish people in its entirety. Unlike the manna, whose benefit manifested itself on different levels according to individual merit,²² the miracle at the Red Sea benefited the Jewish people as a whole,²³ without distinguishing between the deserving and the undeserving [9].²⁴ Hence, Abba Saul expands the application of *imitatio Dei* beyond the interpersonal sphere by making it man’s duty to incorporate God’s attributes of mercy into the community’s social fabric and legal environment.

***Imitatio Dei* and the Moral Climate**

One aspect of God’s mercy is the weakening of the powers of the evil inclination, which He effects for those who strive for moral betterment. Expressing this dimension of God’s mercy, Reish Lakish states that “if one wishes to defile himself [with sin], the door is merely opened for him; but if one comes to purify himself, he is assisted.”²⁵ Divine assistance is triggered not only by great human initiative. An unexceptional act of spiritual striving also merits Divine assistance and so too, perhaps, does an unarticulated spiritual search. Evidencing this is the dictum that the Almighty demands only that we present to Him an opening of repentance no bigger than the eye of a needle. If we can manage this, God promises us that He will respond by expanding our opening so wide that even wagons and carriages can pass through it.²⁶

The immense degree of compassion inherent in God’s assistance in our battle against the evil inclination is expressed by Reish Lakish in the following dictum recorded in the Talmud at *Kiddushin* 30b:

The evil inclination renews its attack on man with increasing force every day, trying to kill him, as it says: “The wicked one watches for the righteous and seeks to execute him” [Psalms 37:32]. Were it not for God’s assistance, no man could survive the onslaught, as it says: “But God will not forsake him to his power, nor let him be condemned in his judgment” [Psalms 37:33].

The seductive power of the evil inclination is greatest when man is thrust into a setting involving either a conflict of interest or an opportunity to engage in hidden misconduct. It is here that cunning and shrewdness can often camouflage deceitful and fraudulent conduct and at the same time enable the perpetrator to avoid both legal consequence and social outrage.

To be spared the challenge of a test of piety is regarded in Jewish religious doctrine as ideal. Witness both the warning of the Sages not to deliberately enter into a situation that would involve us in a test of piety²⁷ and the plea we make to God in our daily prayers not to thrust us into a test of piety.²⁸

As private citizens, we are very limited in what we can do to assist our fellow man in his battle against the evil inclination. But *imitatio Dei* is a mandate for government too, and government can accomplish much in this area. The governmental duty here is to ensure that society's legal environment minimizes settings for hidden misconduct.

Support for the thesis that the government in a Torah society must be concerned with the elimination of hidden wrongdoing is R. Menahem b. Solomon Meiri's (*Meiri*, Perpignan, 1249–1316) interpretation of R. Judah's dictum recorded at *Sanhedrin* 43b:

"The secret things belong unto the Lord our God, but the things that are revealed belong unto us and to our children forever" [Deuteronomy 29:28]. Why are the words *lanu u-le-baneinu* [unto us and to our children] and the [letter] *ayin* of the word *ad* [forever] dotted? To teach that God did not punish for transgressions committed in secret until the Israelites had crossed the Jordan. This is the view of R. Judah. Said R. Nehemia to him: Did God ever punish [all Israel] for crimes committed in secret; does not Scripture say "forever"? But just as God did not punish [all Israel] for secret transgressions [at the time], so too did He not punish them [corporately] for open transgressions until they had crossed the Jordan.

Meiri rules in accordance with R. Judah's view. The practical implication of this view, he says, is that society's judges, sages, and leaders must do more than simply address the issues presented to them. They must also search out hidden wrongdoing and take measures to remedy any misconduct they discover. Failure to search out hidden wrongs makes the entire community vulnerable to punishment for the sins of evildoers.²⁹ It follows that government has the duty of ensuring that society's legal environment minimizes settings for invisible misconduct.

***Lifnei Ivver* and Legislation**

Another aspect of the government's responsibility for the moral climate is the prohibition against the enactment of laws that inherently generate settings for veiled misconduct. An analysis of the following dictum by Rav, recorded at *Bava Metzia* 75b, bears out this prohibition:

Said R. Judah in the name of Rav: Whoever has money and lends it without witnesses violates the prohibition of "Do not place a stumbling block before the blind" (*lifnei ivver lo titen mikshol*) [Leviticus 19:14]. Reish Lakish said: He brings a curse upon himself, as it is written, "Let the lying lips be out to silence, which speak grievous things proudly and contemptuously against the righteous" [Psalms 31:19].

When a loan is concluded without the formality of witnesses, the borrower can eliminate his debt by denying that the transaction took place. Consequently, lending money without witnesses is prohibited. To do otherwise, explains *Rashi*, would effectively tempt the debtor to repudiate his lawful debt and result in the lender violating the interdict against *lifnei ivver*.³⁰

Commenting on *Rashi's* remarks, R. Joel Sirkes (*Bah*, Poland, 1561–1640) and R. Joshua b. Alexander ha-Kohen Falk (*Sema*, Poland, 1555–1614) understand

Rav's dictum to be rooted in the concern that the debtor will *willfully* repudiate a debt that he knows to be lawful.

If the debtor is a rabbinical scholar (*talmid hakham*), the above concern does not exist. Therefore, lending money to a rabbinical scholar without the formality of witnesses does not violate the *lifnei ivver* interdict. The latter action is, nonetheless, prohibited by Reish Lakish's dictum. The concern here is that the scholar's preoccupation with his studies might cause him to forget his indebtedness and consequently lead him to deny the creditor's claim. Given the stature of the rabbinical scholar, his denials will find credence and the public will curse the lender.³¹

Disputing the preceding opinions, R. Abraham b. Moses de Boton (Salonika, ca. 1560–ca. 1605) and R. Jacob b. Moses Lorberbaum (Lisa, 1760–1832) understand Rav's dictum to be rooted in the concern that the debtor might forget the loan and consequently deny the debt, all along convinced that the creditor's claim is false. This rationale applies regardless of whether the debtor is a rabbinical scholar.³²

In defending his position that the concern for willful repudiation cannot stand at the basis of Rav's dictum, R. Boton invokes the Talmudic principle that exhortations are never directed at those who are predisposed to violate them willfully (*atu be-reshi'ei askinan*). The basis of the application of the *lifnei ivver* interdict to the making of an unwitnessed loan must therefore be the concern that the debtor might come to forget his obligation and consequently be led to deny it.³³

A narrower understanding of *atu be-reshi'ei askinan*, however, follows from *Rashi* et al. Given the inherent futility of exhorting the willfully evil who do not care if their misconduct is discovered, the Torah never ascribes this character trait to the subjects of its exhortations. This is what is meant by the Talmudic phrase *atu be-reshi'ei askinan*. The Torah does, however, direct its exhortations to the willfully evil who want to avoid social disapproval by covering up their misconduct. Witness that the phrase *ve-yareta me-Elokekha* ("and you shall fear your God") is employed by the Torah specifically in connection with those of its prohibitions that man convinces himself he can violate without detection.³⁴ In particular, the Torah uses the phrase in connection with the duty to bestow honor upon a rabbinical scholar (Leviticus 19:32), and the prohibitions against offering ill-suited advice (Leviticus 19:14), causing someone needless mental anguish (Leviticus 25:17), charging interest on a loan between Jews (Leviticus 25:36), and working an Israelite slave oppressively (Leviticus 25:43).

Supporting the narrow interpretation of *atu be-reshi'ei askinan* is the connection the Talmud makes between this phrase and the *ve-yareta me-Elokekha* exhortation employed in relation to the duty to give deference to a rabbinical scholar by standing up for him as he approaches.³⁵ Invoking *atu be-reshi'ei askinan*, the Talmud rejects the possibility that *ve-yareta me-Elokekha* adjures against closing our eyes and pretending that the scholar is not in our presence. Rather, *ve-yareta me-Elokekha* forewarns against closing our eyes just before the scholar arrives. Here, the willful sinner might be tempted to show the rabbinical scholar disrespect and yet imagine that by claiming that he simply did not notice his presence, he will escape social outrage for the misconduct. Thus, the Torah forewarns that the Almighty knows man's true circumstances and true intentions.³⁶

Proceeding from the concept of *atu be-reshi' ei askinan* is the following refinement of Rav's dictum: Lending money without the formality of witnesses is prohibited because it generates for the debtor a setting for hidden misconduct. Since denying the debt outright brands the debtor an ingrate, there is no concern that the debtor will adopt this tactic. Such a brazen approach is unthinkable by dint of the principle of *atu be-reshi' ei askinan*. Rather, the concern is that the unwitnessed transaction may lead the debtor to shrewdly evade payment by pleading ignorance of the indebtedness. By taking an oath affirming his ignorance of the debt, the defendant avoids the stigma of being branded an ingrate and at the same time escapes payment.

We see an application of Rav's dictum in the Torah's prohibition against enacting a law that inherently generates a setting for veiled misconduct.

Let us illustrate this proposition by drawing out the implications of R. Naftali Tzvi Yehudah Berlin's insight mentioned earlier. Recall R. Berlin's comment that *imitatio Dei* extends beyond the duty to emulate those aspects of God's mercy explicitly enumerated at Exodus 34:6–7. Instead, by the exegesis of Joel 3:5, a duty to emulate every manifestation of God's mercy is established.

Now, if *imitatio Dei* is a mandate only for private conduct but has no relevance to public policy, opportunities to affirmatively assist a fellow who seeks to take the correct moral path in his commercial interactions would be limited. The previous discussion regarding warranties illustrates this point. To be sure, educating himself and sharing the information with the customer generates goodwill for the salesperson, but it also increases the cost of doing business for his firm. Who will know of the salesman's plight and who will encourage him to thoroughly educate himself about the law of warranties and act on this information appropriately with his customers? However, *imitatio Dei* is a mandate for public policy as well as for an individual. Accordingly, the government can require that employers assure that their salespeople are conversant in the law of consumer product warranties. Insofar as economies of scale exist here, the government is well situated to facilitate the most effective and least-cost method of running these programs.

Legislation and *Imitatio Dei*: Insider Trading

One important consequence of making *imitatio Dei* a mandate for government as well as the individual is that the moral factor becomes a criterion in considering legislation. The best illustration of that contention is the debate in the economic literature over whether insider trading should be legalized. Let us examine the debate and show how *imitatio Dei* applies in this context.

Economic Debate over Legalization of Insider Trading

In the early literature of economics and law, economists hotly debated the issue of whether insider trading should be legalized.

Efficient Managerial Incentives

The chief advocate for legalizing insider trading was Henry Manne. Manne's argument was that insider trading was an indispensable method of compensating entrepreneurs. What makes this compensation scheme attractive is that it allows managers to profit from their efforts on behalf of the firm without having to negotiate with the owners of the firm. When managers believe that their entrepreneurial activities will enhance the value of the firm, they can invest in their company's shares at their discretion. Having acquired an interest in the future course of their firm's share price, managers will concentrate their efforts on behalf of the firm to ensure that its programs will succeed and the resulting enhanced performance be disclosed [10].

One major objection that this compensation scheme faces is that insider trading does not reward efficient managers as such. Rather, it rewards the *possessors* of confidential information, regardless of whether the information is favorable to the corporation's prospects.

Moreover, this compensation scheme gives insiders as much of an incentive to destroy a firm as to revolutionize it or to reduce earnings as much as to increase them. One can imagine cases where managers would have an incentive to accelerate the demise of their firm. Managers would be motivated to manipulate the disclosure of information about the firm in a manner calculated to produce sharp, if temporary, spurts in the price of the firm's stock. Their energies would be deflected from managing the firm to maximize its present worth to managing publicity about the firm to maximize the volatility of its stock [11].

In light of the extensive criticism leveled against Manne's argument that insider trading is an efficient means to compensate managers, Manne himself abandoned the argument close to 40 years after he first presented it. He then offered a new argument in defense of insider trading. In Manne's recent view, insider trading is a useful way to improve the flow of information to corporate decision-makers and thereby signal to them whether the proposals they are considering are good or bad ideas. Manne acknowledged, however, that his new argument was not founded on direct empirical or even anecdotal evidence [12].

Price-Efficiency Effects

Another facet of the economic case for legalizing insider trading is the price-efficiency argument. That argument emphasizes the importance to the economy of directing financial capital to those places where society values it most. Stock prices are considered to be at their true values when they reflect as accurately as possible the prospects of the corporate issuers. If a firm's value is underrepresented by its share price because, for example, the firm has strategic reasons for not divulging information about a valuable discovery, marketing strategy, or expansion or acquisition plan, it will be more costly than it otherwise would be for that firm to raise capital in the equity markets. The firm, therefore, will not engage in the optimal amount of investing, and resources will not flow to those uses that society values most.

Advocates for legalizing insider trading believe that insider trading moves share prices toward their true value more quickly than if insider trading were banned [13].

In a related argument, Jonathan Macey posits that insider trading can be more effective than whistle-blowing in signaling to the capital markets that wrongdoing is afoot [14].

The thesis that insider trading promotes efficiency in the capital markets faces several difficulties, however. One difficulty is that the empirical evidence regarding the price-efficiency effects of insider trading is mixed. Although some empirical studies conclude that illegal insider trading has a significant effect on stock prices (See, e.g., [15]), other studies reach the opposite conclusion. For example, a 1989 study that examined 172 successful tender offers concluded that a significant portion of the run-up in the stock prices of the target companies before the announcement of the tender offers could be explained by two legally available influences on pre-bid trading—media speculation and the bidder's foothold acquisition in the target [16]. A more recent empirical study also suggests that stringent regulation of insider trading, rather than legalization of insider trading, promotes stock price efficiency (See [17]).

Another criticism of the price-efficiency rationale for insider trading is that permitting insider trading may delay or distort the transmission of valuable information to the market. This would occur if insiders at lower echelons of management concealed information from their superiors to avoid the danger of an early price run-up that would diminish their gains and leave them with too little time to arrange financing for their trades. It might also occur if members of the firm deliberately released false information to take advantage of profits available from resulting price swings [18].

Transaction Costs

Another consideration in evaluating the thesis that insider trading promotes efficiency in the capital markets is an analysis of the transaction costs that arise from insider trading. A rule permitting insider trading can be expected to put into motion two opposing forces affecting transaction costs.

On the debit side, legalizing insider trading can be expected to cause an adverse selection problem for the specialist [19]. By maintaining an inventory of various stocks, the specialist provides continuous trading opportunities for investors. In a legal environment that permits insider trading, the specialist faces the risk that his opposite number may be an insider. Given the increased risk factor, the specialist can be expected to reduce his bid price or increase his ask price. Thus, a rule permitting insider trading would increase the spread between his bid and ask prices. The result for firms is that the cost of using the market for financing rises, thereby altering the proportions of the funds they choose to derive from debt and equity [20].

Counteracting somewhat this negative effect on transaction costs is that a rule permitting insider trading reduces duplicative information gathering in the marketplace. This follows from the proposition that the presence of insiders in the market exerts a disincentive for outsiders to engage in information gathering. Since insiders can capture gains from changes in market value associated with new information before outsiders, outsiders will be discouraged from engaging in information

gathering. Thus, insider trading reduces the overall amount of money that society spends to achieve an adjustment in share prices because it reduces the cost to society of duplicative information gathering by outsiders [21].

Insider Trading and Jewish Law

From the perspective of Jewish law, considering whether insider trading should be legalized based only on whether the practice promotes economic efficiency is misguided because it totally ignores the ethical dimensions of this issue.

Jewish law's approach to insider trading is generally consistent with the "misappropriation theory" applied by the U.S. Supreme Court in *United States v. O'Hagan*, 521 U.S. 642 (1997). In that case, James O'Hagan, a partner in the law firm of Dorsey & Whitney, learned that a client of his firm, Grand Metropolitan PLC (Grand Met), planned to launch a tender offer for the Pillsbury Company. O'Hagan then began purchasing call options on Pillsbury's stock, as well as shares of the stock. Following Dorsey & Whitney's withdrawal from the representation, Grand Met publicly announced its tender offer. The price of Pillsbury's stock rose dramatically, and O'Hagan sold his Pillsbury call options and stock at a profit of more than \$4.3 million.

An investigation by the Securities and Exchange Commission (SEC) culminated in a 57-count indictment alleging that O'Hagan defrauded his law firm and his client, Grand Met, by misappropriating material, nonpublic information for his own trading purposes. A jury convicted O'Hagan on all counts, and he was sentenced to prison. On appeal, the Eighth Circuit reversed all the convictions.

On further appeal, the Supreme Court reversed the Eighth Circuit on the basis of the misappropriation theory. Under that theory, the Court held that a company's confidential information qualifies as property to which the company has a right of exclusive use. Accordingly, misappropriation of that information in breach of a fiduciary duty owed to the source of the information constitutes fraud akin to embezzlement.

Jewish law's analog for the misappropriation theory is R. Yose's dictum, recorded in the Mishnah at *Bava Metzia* 3:2, that prohibits one from conducting business with another's property. Talmudic decisors follow R. Yose's dictum.³⁷

Application of R. Yose's dictum to insider trading is clear-cut. Given that inside information about a company is the property of all the shareholders of the company, no one may trade on this information. Doing so amounts to doing business with someone else's property. Disgorgement of the profits earned would therefore be required.

Moreover, legalizing insider trading would do violence to the *imitatio Dei* ideal. By opening the door for compensation schemes that allow employees to trade on inside information, deregulation creates opportunities for managers to profit from their own sloth, ineptitude, and destructive behavior. This drives a wedge between the interests of the managers and the interests of the shareholders of a firm.

Judge Frank H. Easterbrook explains how conflict of interest can be expected to become widespread under a rule permitting insider trading. Let us suppose that Firm A allows its employees to engage in insider trading, but Firm B contractually forbids insider trading. Given the absence of government involvement in the enforcement of a ban on insider trading, Firm B will find it very costly to enforce its prohibition. Most importantly, it will be very costly to detect an insider's trades because he can hide his trading activity. For example, an insider can buy stock in street name or through a nominee, or route orders through a chain of brokers to make tracing difficult—the list of evasive devices is long.

About the only thing a firm can do by itself to reduce the costs of enforcing compliance with a policy against insider trading is to prohibit all ownership of stock by its employees. This drastic approach would not prevent managers from passing tips to friends or family, or secretly trading through nominees. If a ban were enforceable, however, its costs might far exceed those of insider trading because stock ownership is very useful in aligning managers' incentives with those of other shareholders.

In Judge Easterbrook's assessment, an unenforceable ban on insider trading at Firm B will cause dishonest employees to drive out the honest employees at the firm. Dishonest employees will find employment with Firm B especially attractive because they will receive their salaries and will also be able to engage in insider trading with impunity. These dishonest employees will therefore be overcompensated relative to the honest employees who adhere to the firm's policy against insider trading. To avoid overcompensating its dishonest employees, Firm B will be forced to reduce salaries across the board. As a result, the honest employees will be underpaid and will leave. To attract honest employees, Firm B will have no choice but to rescind its unenforceable ban on insider trading [22].

Left to its own devices, the private sector would be bedeviled with difficulties in enforcing prohibitions against insider trading. Thus, in a society governed by Jewish law, the government's mission to suffuse the legal environment with *imitatio Dei* conduct requires that the government play a vigorous role in enforcing a ban on insider trading.

In an effort to rectify the ineffectiveness of the enforcement remedies available to the SEC for insider-trading violations, Congress enacted the Insider Trading Sanctions Act of 1984 (ITSA). Congress designed the ITSA to impose a severe monetary civil penalty as the primary means of deterring violations of insider trading. Under that legislation, the SEC has the authority to seek, and the courts have the power to impose, a penalty of up to treble damages for insider-trading violations subject to the ITSA.³⁸

In 1988, Congress passed the Insider Trading and Securities Fraud Enforcement Act (ITSFEA). That law significantly increased the maximum criminal penalties for insider-trading offenses. One provision of the ITSFEA empowered the SEC to award bounty payments to persons who furnish information leading to the imposition of civil penalties for insider trading. Without being subject to review, the SEC was empowered with broad discretion concerning the bounty payments.³⁹

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act created a new and broader program for bounty payments. Under the new program, the SEC is authorized to make awards to persons who provide the SEC with information regarding a violation of the federal securities laws that leads to the enforcement of a judicial or administrative action resulting in monetary sanctions in excess of \$1 million. Awards may range from 10% to 30% of the amounts collected as monetary sanctions.⁴⁰

These congressional enactments in the area of insider trading would be very much applauded by Jewish law.

Financial Limitations on *Imitatio Dei*

While the *imitatio Dei* mandate for government assures that this imperative will play a robust role in society, the financial limitations set by Jewish law for both the individual and government in fulfilling their religious obligations must be considered.

Preliminarily, let us note that in Jewish law, obligatory religious duties dichotomize into positive commandments (*mitzvot aseh*) and negative commandments (*mitzvot lo ta' aseh*). The extent of financial obligation inherent in each category is a matter of dispute. R. Moses Isserles (*Rema*, Poland, ca. 1525–1572) formulates the rule as follows: “To fulfill a *mitzvat aseh*, an individual is required, if necessary, to expend up to one fifth of his net worth. To avoid violation of a *mitzvat lo ta' aseh*, an individual must lose, if necessary, his entire net worth” (See also [23]).⁴¹ Disputing R. Isserles’ claim, R. Moses Sofer (*Hatam Sofer*, Hungary, 1762–1839) argues that the stringency for the *lo ta' aseh* category applies only when the negative commandment would be violated in an active manner (*kum va-aseh*); to avoid a passive violation (*shev ve-al ta' aseh*), the one fifth rule applies.⁴²

These wide-ranging financial obligations do not apply, however, to the *imitatio Dei* duty. *Imitatio Dei* mandates that we emulate the various forms of kindness described in the Jewish tradition regarding God’s compassion and mercy in His dealing with humankind. But the general rule is that the obligation to engage in acts of kindness, as opposed to fulfilling the charity duty to the needy,⁴³ extends only to the exertion of toil and effort, not to monetary expenditure.⁴⁴ The only exception is that when the expenditure is trifling, it is improper to take no action.⁴⁵ Consequently, there is a difference between acts of kindness performed by the government and those performed by the private person or business. Specifically, an amount that is substantial for a single household is often immaterial when shared by all taxpayers. For example, in the United States, which has a progressive income tax, the cost of an *imitatio Dei* measure could be spread equitably over approximately 80 million taxpaying households.⁴⁶

Since the financial limitations of the *imitatio Dei* imperative present less of a constraint for the government than the individual, the government is uniquely well situated to promote *imitatio Dei* conduct. We offer below two illustrations of how the government can foster *imitatio Dei* conduct more effectively than could an

individual: precluding the need for external whistle-blowing as a means to correct wrongdoing and mandating performance appraisal in the workplace.

External Whistle-Blowing

External whistle-blowing is an attempt by a current or former member of an organization to disclose wrongdoing in or by the organization to the media or the government. This practice is a phenomenon that causes much discord and disharmony in the workplace. Even when whistle-blowers have credible evidence to support their allegations, harm to the firm could have been minimized had the whistle-blowers reported the damaging information only within the firm and relied on management to take corrective measures and publicly disclose the wrongdoing, if necessary. Studies consistently show that whistle-blowers are regarded by co-workers and superiors as pariahs and, without government protection for their disclosures, may face blackballing from job opportunities for life.

In his treatment of whistle-blowing, Professor Michael Davis presents a number of ideas relating to organizational structure and the incentive system of the firm that are designed to encourage employees to report wrongdoing through internal channels. With respect to organizational structure, Davis recommends that the firm build invitations into its everyday routine to encourage employees to report bad news. One way to implement this idea is to include a space for “disadvantages” and “risks” in reporting forms that employees routinely complete. Along the same lines, the firm could schedule review meetings to identify problems.

Another idea is for the firm to create alternative channels for relating bad news so that no one in the firm is in a position to block its flow upward. One way to accomplish this objective is for the firm to submit to a regular outside audit. Another way is to adopt an “open door” policy that allows subordinates to approach senior officials directly. Still another method is to give employees routine access to more than one superior in the organization. These types of arrangements give a manager reason to be thankful that he has heard the bad news from a subordinate rather than from a superior and to respond in a way likely to satisfy the subordinate. At the same time, the subordinate has saved the manager from being “blindsided.” These arrangements would help correct the underlying problems and minimize the occurrence of external whistle-blowing.

Establishing the appropriate incentives for managers to accept bad news and to act upon it appropriately would help minimize external whistle-blowing and promote greater moral commitment from members of the firm. To achieve those objectives, the firm should hold a manager responsible for what he or she does on the job, even if the consequences of those actions occur in a time frame beyond the manager’s “watch.” Assigning responsibility in this way will incentivize a manager to encourage his or her subordinates to report bad news about a predecessor’s work as soon as they learn of it [24].

In theological terms, Davis’ thesis recognizes the moral weakness of members of a firm, particularly subordinates, to question, dissent, or speak out against what

appears to them as wrongdoing in the firm. Organizational structure and the proper incentive system can work, however, to make all members of the firm more committed to doing the right thing. Based on the principle of *imitatio Dei*, innovations that promise to fortify the moral fiber of the members of an organization should be implemented.

Professor Richard T. De George addresses the issue of precluding the need for whistle-blowing. One suggestion he makes is that a firm should establish the position of ombudsman. The purpose of the ombudsman would be to hear complaints or moral concerns of employees. The ombudsman would also participate in the formulation of company policy and recommend the appropriate course of action for the firm from a moral standpoint [25].

There can be no doubt that the Davis and De George ideas of how to preclude whistle-blowing are consistent with both specific Jewish legal principles and *imitatio Dei*.

Let us first take up the issue from the standpoint of legal principles. One aspect of the Biblical command of “And you shall love your fellow as yourself” (Leviticus 19:18) is the imperative “Seek out peace and pursue it” (Psalms 34:15). Indeed, without a proactive stance toward peace, Judaism’s ideal to achieve harmonious relations would be very elusive.

One implication of a proactive stance toward peace for the employer is implementation of Davis’ and De George’s ideas. But implementation of these proposals, particularly the hiring of an ombudsman, entails an expense for the firm. Consider “And you shall love your fellow as yourself” is a guidepost for the duty to perform deeds of loving-kindness, which does not operate under the stringencies of the one fifth net worth rule. Accordingly, if the expense is more than nominal, Jewish law would not require implementation of the policy.

Again, what stretches expenditures on policies indicated by *imitatio Dei* is that the imperative is a mandate not just for the individual but also for the government. Accordingly, the government, acting in the interest of society as a whole, can mandate that a firm hire an ombudsman when the firm reaches a certain size.

Performance Appraisal in the Workplace

Performance appraisal in the workplace is a labor policy for evaluating worker performance to help management decide whether to retain, promote, dismiss, or discipline a worker. The system begins when the worker is hired. The first step is to specify the firm’s expectations for the worker over the immediate time period and update the expectations in advance for each succeeding time period. The next step is to give the worker feedback on how successfully he or she completed the tasks and goals set out in advance. In the final step, if the worker failed to correct any issues identified in the previous feedback session, grounds for dismissal have been established.

Undoubtedly, without a performance appraisal system, the workplace would be riddled with dashed expectations and discord. Implementation of a performance

appraisal system would therefore go very far in eliminating needless mental anguish in the workplace. Accordingly, the textual analysis discussed above from which we derived the duty for an employer to set up his workplace to preclude the need for external whistle-blowing also supports the duty for an employer to implement a performance appraisal system.

Moreover, a basis in Jewish law for requiring a performance appraisal system can be derived from the Biblical interdict of “*Lo tonu ish et amito*” (Leviticus 25:17) (i.e., “Do not cause your fellow needless mental anguish”). If a performance appraisal system is not implemented, dashed expectations among members of the firm are inevitable.

Invoking Leviticus 25:17, as opposed to Leviticus 19:18, puts the obligation for implementing a performance appraisal system on a much firmer footing. Why? Because in contrast to the command at Leviticus 19:18 to love one’s fellow as oneself, which is a duty in the category of a deed of loving-kindness, the prohibition against causing someone needless mental anguish (*ona’at devarim*) at Leviticus 25:17 is a condemnation of an outright wicked act. As a result, the prohibition against causing someone needless mental anguish is an absolute prohibition to which the one fifth net worth rule applies. If failure to implement a performance appraisal system is considered a violation of that prohibition, an employer would presumably be required to implement the system even if it entailed a considerable expense.

Consider, however, that all the examples of causing someone needless mental anguish enumerated in the Mishnah, such as the prohibition against pricing an article with no intention of buying it,⁴⁷ entail affirmative and direct actions of wicked conduct rather than a failure to remove a condition of *ona’at devarim* that one is in a position to remove. Now, if implementation of a performance appraisal system falls only within the category of a deed of loving-kindness because it involves only the removal of a condition of *ona’at devarim*, the rule that an employer need not expend more than a nominal sum to achieve the desired goal appears to present a considerable obstacle to implementation of performance appraisal systems.

Recall that *imitatio Dei* is a mandate not just for the private citizen but for the government as well. What is an obstacle from the standpoint of an individual is not necessarily an obstacle from the *imitatio Dei* perspective of the government. The government need only mandate performance appraisal for the workplace. To be sure, one size does not fit all, and the system will require adjustments for different industries. But mandating performance appraisal for each and every industry should not result in a more than nominal cost for all parties involved. Indeed, the private sector might even enjoy a net economic benefit from the implementation of performance appraisal systems. Moreover, for countries such as the United States, where the employee-at-will doctrine is steadily eroding in the face of public policy concerns, the performance appraisal policy would benefit employees enormously. Specifically, if a worker is fired without validation from a performance appraisal form that the worker was performing below par, the firm would find little justification for firing the worker and the courts would probably order reinstatement of the worker.

Conclusion

In various Scriptural verses, the Torah lays out the notion of *imitatio Dei* (lit., imitation of God). This chapter has demonstrated that *imitatio Dei* is the philosophical underpinning of Jewish business ethics.

The import of having one's conduct fall within the ambit of *imitatio Dei* is to transform what some may consider a dry, legalistic set of rules and routines into the lofty and majestic realm of performing Divine-like actions.

While *imitatio Dei* and the corresponding legal or ethical requirement to undertake a particular action are, in a sense, two sides of the same coin, the determination of whether an action is obligatory and whether failure to perform that action carries with it certain punishments must be made by reference to Judaism's legal code. Similarly, resort to the code must be made to determine whether the action is a deed of loving-kindness and therefore not subject to the one fifth net worth rule or is an absolute obligation implicating that rule.

Imitatio Dei is a mandate for government as well as the individual. A number of consequences follow from this. First, if *imitatio Dei* were a duty only for the individual, undertaking this type of conduct would be entirely a matter of individual conscience. Moreover, conscience can be triggered only if one is well schooled in the duty by dint of one's educational background. Given the widespread ignorance in this area, how far would a system of voluntarism go? The outlook is entirely different, however, when *imitatio Dei* conduct becomes a matter for legislation. Within this milieu, the government must promulgate at least the minimum required duty for particular circumstances. With such legislation in place, performance of specific duties would not be entirely dependent on the individual's educational background or inspirational drive.

Relatedly, while the *imitatio Dei* imperative carries with it only a duty to exert toil and effort to accomplish the indicated deed, and the stringency of the one fifth net worth rule does not apply, one has no license to abandon the duty if only a trifling expenditure is needed to fulfill it. Herein lies another difference between the application of *imitatio Dei* to the government and to the individual. Unlike the individual, the government can spread the cost of an *imitatio Dei* expenditure over a large number of taxpaying households. Without forcing the economy to spend more than nominal sums per capita, the government thus has the power to make the practice of *imitatio Dei* much more pervasive and vibrant than it would be if it were left to a matter of voluntarism.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if any?](#)
- ▶ [Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

1. *Berakhot* 5a; *Megillah* 19b; *Shemot Rabbah* 47:1.
2. See R. Moses b. Jacob Cordovero (*Ramak*, Safed, ca. 1522–1570), *Tomer Devorah*, for a development of *imitatio Dei* based on Micah 7:18–20.
3. R. Naftali Tzvi Yehudah Berlin, *Sifrei im Be'ur Emek ha-Netziv*, Deuteronomy 10:12, *piska* 13 (Jerusalem: Solomon, 1961), p. 79.
4. R. Joseph B. Soloveitchik, *Shiurim le-Zekher Abba Mori z"l*, vol. 2 (Jerusalem, 1985), 170–71.
5. Leviticus 25:14; R. Joseph Caro (Safed, 1488–1575), *Shulhan Arukh, Hoshen Mishpat* 227:1–6.
6. *Bava Metzia* 61a.
7. Cf. *Shulhan Arukh, Hoshen Mishpat* 232:10.
8. Nahmanides to Leviticus 25:14.
9. See *Tosafot* to *Rosh ha-Shanah* 17b; R. Abraham b. Meir ibn Ezra (Spain, 1089–1164), *Ibn Ezra* to Exodus 34:6.
10. R. Israel Jacob b. Samuel Hagiz, *She'elot u-Teshuvot Halakhot Ketanot* 1:276.
11. R. Meir Judah Leibush b. Jehiel Michel Weiser (*Malbim*, Russia, 1809–1879), quoted in R. Aharon Yaakov Greenberg, *Iturei Torah*, vol. 3 (Tel Aviv: Yavneh, 1970), 181, s.v. “*ve-khi yiftah ish bor*” (Exodus 21:33).
12. Maimonides, *Mishneh Torah, Matanot Aniyyim* 10:7.
13. Maimonides, *Mishneh Torah, Gezeilah va-Aveidah* 1:4.
14. Rav Yosef, *Bava Metzia* 110b.
15. U.C.C. § 2–314(2)(a), (c).
16. See *Shaffer v. Victoria Station, Inc.*, 588 P.2d 233, 234–35 (Wash. 1978).
17. U.C.C. § 2–315.
18. *Rashi* to Exodus 34:6.
19. Maimonides, *Mishneh Torah, Teshuvah* 5:1–5.
20. Maimonides, *Mishneh Torah, Teshuvah* 8:7–8.
21. Maimonides, *Mishneh Torah, Teshuvah* 9:1. The exception to this rule is that the person who is called “God’s enemy” is given a reward for his good deeds in this world. See Deuteronomy 7:10, and *Rashi*, ad loc.
22. *Yoma* 75a.
23. *Mekhilta* to Exodus 15:2.
24. *Shemot Rabbah* 21:7; R. Samuel Jaffe b. Isaac Ashkenazi (Constantinople, 16th cent.), *Yefeh To'ar*, ad loc.
25. *Yoma* 38b.
26. *Shir ha-Shirim Rabbah* 5:2.
27. *Sanhedrin* 107a.
28. *Berakhot* 60b.
29. R. Menahem b. Solomon Meiri, *Beit ha-Behirah, Sanhedrin* 43b.
30. *Rashi* to *Bava Metzia* 75b.
31. R. Joel Sirkes, *Bah* to R. Jacob b. Asher (*Tur*, Germany, ca. 1270–1343), *Tur, Hoshen Mishpat* 70, n. 1; R. Joshua b. Alexander ha-Kohen Falk, *Perishah* to *Tur, Hoshen Mishpat* 70, n. 1.
32. R. Abraham b. Moses de Boton, *Lehem Mishneh* to Maimonides, *Mishneh Torah, Malveh ve-Loveh* 2:7; R. Jacob Moses Lorberbaum, *Netivot ha-Mishpat* 70, n. 1.
33. *Lehem Mishneh* to Maimonides, *Mishneh Torah, Malveh ve-Loveh* 2:7.
34. *Rashi* to Leviticus 19:14.
35. Leviticus 19:32; *Kiddushin* 32b.
36. *Kiddushin* 32b–33a.
37. R. Isaac b. Jacob Alfasi ha-Kohen (*Rif*, Algeria, 1013–1103), *Bava Metzia* 34b; Maimonides, *Mishneh Torah, Sekhirut* 1:6; R. Asher b. Jehiel (*Rosh*, Germany, 1250–1327), *Bava Metzia*

- 3:5; *Tur*, *Hoshen Mishpat* 307; *Shulhan Arukh*, *Hoshen Mishpat* 307:5; R. Jehiel Michel Epstein (Belarus, 1829–1908), *Arukh ha-Shulhan*, *Hoshen Mishpat* 307:5.
38. 15 U.S.C. § 78u–1(a) (2006).
 39. 15 U.S.C. § 78u–1(e) (2006) (repealed 2010).
 40. Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1841–49 (2010) (to be codified at 15 U.S.C. § 78u–6).
 41. R. Moses Isserles, *Rema to Shulhan Arukh*, *Orah Hayyim* 656:1.
 42. R. Moses Sofer, *Teshuvot Hatam Sofer*, *Hoshen Mishpat* 177; *Hatam Sofer to Shulhan Arukh*, *Orah Hayyim* 656:1.
 43. Leviticus 25:35; Deuteronomy 15:7–8, 10.
 44. Palestinian Talmud, *Pe' ah* 2a; R. Obadiah b. Abraham of Bertinoro (Italy, ca. 1456–ca. 1516), *Bartenura to Mishnah*, *Pe' ah* 1:1; R. Zalman Nehemiah Goldberg (Israel, contemp.), “*Be-Hiyuwei Gemilut Hesed*,” in *Yad Re'em: Kovetz le-Zekher Eliezer Meir Lipschitz Hy"d* (Jerusalem: Daf-Hein, 1975): 97–111.
 45. R. Judah in the name of Rav, *Bava Metzia* 33a; R. Joseph Hayyim b. Elijah al-Hakam (Baghdad, ca. 1834–1909), *Ben Yehoyada*, *Bava Metzia* 33a.
 46. See Internal Revenue Service, Publication No. 1304, Individual Income Tax Returns 2009, p. 33, Tbl. 1.1, col. (6).
 47. Mishnah, *Bava Metzia* 4:10.

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Part 12

Christian Foundations of Business Ethics

Traugott Jähnichen

Abstract

The chapter approaches the question of the significance of the Bible for business ethics, with two main emphases. First, it attempts to present an introduction to the hermeneutics of the Scripture based on a historically adequate understanding of the Bible. Second, it discusses some ways in how far the Scripture may enrich business ethics, considering four different levels of significance of biblical writings.

Introduction

Self-reassurance in the biblical tradition is essential for all Christian confessions, even though its importance is assessed differently, especially as it relates to ethics. Roman Catholic social teaching considers itself as “an integral part of Christian anthropology,”¹ so that the Christian idea of the human person provides the foundation of ethical reflections. As a consequence, human beings possess in their very nature certain inalienable rights, as they find their expression in natural law. “Natural Law as part of the general moral law is ultimately rooted in the Creator’s ‘eternal law’ (*lex aeterna*) and binds the conscience,”² as the requirements of the law are written by God “into the hearts” of all human beings (Rom. 2:15). As a rule, the distinction is made between primary natural law, such as the right to life, which is universally valid independent of the fall of humankind, and secondary natural law, such as private property, which is seen as a result of the fall and can be found in the general law of all people (*ius gentium*).

For Protestant traditions, on the other hand, a more direct reference to biblical traditions is characteristic, even though important representatives such as

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Melanchthon and – with reservations – Luther as well as Calvin acknowledged natural law as well. The principle of “*sola scriptura*” is one of the keystones of Protestant self-understanding, even though its range and importance have remained controversial since the time of the Reformation. This is true especially for the importance of the Bible for ethics, as the controversial discussions among the Reformers’ use of the law (*usus legis*) prove. While Luther did not attribute any decidedly normative function to the biblical legal texts besides the recognition of sin (*usus theologicus*) and an orientation for social living (*usus politicus*), which is understood according to natural law, Melanchthon and the Reformed tradition made use of the biblical law as a guideline for a Christian way of living (*tertius usus legis, usus in renatis*) [1].

Against this background, this chapter will discuss as a first step some basic lines of theological references to the traditions of biblical law. In particular, the problem of the “historical gulf” between biblical times and our present experiences – that is, the challenge of historicity of social orders – must be addressed. In a second, larger chapter, several examples of biblical orientation in the field of social and business ethics will be discussed in terms of their relevance for the present.

Theological and Hermeneutical Reflections on the Relevance of Biblical Ethics

The question of the relevance of biblical ethical instructions is a special challenge for Reformation theology as it programmatically relies upon the principle of “*sola scriptura*” in contrast to the Roman Catholic appreciation of the ecclesiastical traditions. Thus, “in accordance with scripture” is a central criterion for the meaning of theological and ecclesial comments, like the so-called Denkschriften (memoranda) of the Protestant Church of Germany (EKD).³ What is specifically meant by the concept “in accordance with scripture” is, however, controversial among Protestant theologians as well as in other denominations.

In this context, a distinctive difference between Catholic as well as Reformed traditions and Luther is the latter’s theological critique of the law: To be sure, the law is appreciated as a “good gift from God”; however, it constitutes an “obstacle” [2] on the way to salvation because the human person either despairs of his/her failure to meet the demands of the law or because he/she is lulled into a false sense of self-confidence. Only the way of humility, to which a person is led by the preaching of the law, will refer to grace. As a consequence, a Christian may totally depend upon the fulfillment of the law by Jesus Christ and is no longer under constraints of the law. Rather, the Christian is free to act spontaneously in the spirit of love and thus does everything necessary and helpful for his/her neighbor.

Luther specifies these thoughts with regard to the laws of the Old Testament, which were given to the people of Israel and not to the “heathen.” Therefore, these laws do not bind Christians, and consequently, “Moses does not concern me” [3]. However, Luther emphasizes that Moses’ commandments should be taken as “voluntary standards” (see [3], p. 375) whenever they display good judgment and

can be generally and convincingly founded. In this context, it is interesting that Luther lists mainly social and business ethical rules as examples of Moses' commandments which Christians should voluntarily put into practice. Thus, he holds tithing, the prohibition of high interest rates or the provisions of the so-called Jubilee year (cf. Lev. 25:10ff) as worthy of imitation, and he proposes their acceptance for the economic circumstances of his time. These rules are convincing because of their fairness and reasonable order, but theologically, they do not possess a specific relevance.

In addition to this interpretation of the law, the instructions of the Mosaic commandments are obligatory for Christians if they are in accordance with natural law, which applies to all humans. In these cases, the criterion is the consideration whether or not those commandments can be accepted as generally "natural," as for example, Luther's concept of the protection of marriage. Here, Luther makes use of the classical perception of the ancient and medieval theology and at the same time interprets the Ten Commandments innovatively by explaining the prohibitions primarily in the sense of positive commandments or rules, and therefore considers them as concrete instructions of ethics in the spirit of love. According to his perspective, Christian action is basically determined by the commandment of love, and therefore may be necessary as well as possible to establish "new Ten Commandments."

In certain manifestations of the Reformed tradition, Old Testament ethics is considered more with regard to its particular content rather than as a general foundation of Christian ethics. Here, the biblical guidelines were usually applied in a more immediate and obligatory fashion for the respective presence, as the ban on images or the sanctification of the Sabbath (Sunday) show. This basic position left an impact on the organization of Reformed churches until this very day and had repercussions on societies as exemplified by the strict observance of Sunday as it was especially practiced up to the nineteenth and even the twentieth century by the Reformed in the Netherlands.

According to Luther, the commandments of Jesus, especially those of the Sermon on the Mount, must be distinguished from these considerations. Jesus' commandments do not apply to the general public, and therefore, they do not apply to politics either. They help, on the one hand, to recognize one's own sinfulness (*usus theologicus*), and they function, on the other hand, as examples for acting in the spirit of love within one's private life. Thus, the individual Christian may lend money from his/her private earnings even to the point that he/she may not have a chance to get any return, but with regard to the public, the Christian must engage for the protection and security of private property. The foundation of these considerations is the Reformation doctrine of the two kingdoms, which among other things accounts for the distinction of the Christian as an official person and as a private person [4]. The Roman Catholic tradition argues differently as it concentrates the relevance of the Sermon on the Mount on the spiritual and monastic life, whereas for Christians in everyday life, the Ten Commandments with their natural morality serve as a rule. The confessional plurality of the interpretations of the Sermon on the Mount can be further

exemplified by taking the Protestant free churches into consideration, which in some manifestations, such as the Mennonites, committed themselves directly to the ethos of the Sermon on the Mount and therefore decline to swear or to take up arms, for example.

These divergent references to the biblical ethos within the different Christian confessions indicate that an absolute formal authority of the biblical commandments in sense of their biblicistic relevance can hardly be claimed in a meaningful way. The Protestant principle of “sola scriptura” fulfills indeed a central role in Protestant theology within the framework of differentiated hermeneutic considerations, but not as a direct impulse for action derived from isolated biblical texts, as is the case in some free churches and in Christian fundamentalism (especially in the USA).

Such a reference to biblical ethics is highly problematic and does not do justice to the biblical texts. This can be demonstrated with the help of an analysis of the differentiation and the plurality of New Testament statements concerning ethical problems, which result from their “situational setting” [5]. In the New Testament, it is possible to distinguish a spontaneous situational ethics which is guided by the commandment of love (in this way, the ethics of the Gospel of John can be described), an ethics of Christian freedom that is fundamentally based on love and marked by a criticism of the law (this is Luther’s theological interpretation of Paul’s ethics), an ethical approach which is marked by casuistic elements in the synoptic Gospels (especially Matthew), or the ethics of the Epistle of James which refers to the Jewish piety of the poor. Therefore, a theological hermeneutic of biblical ethics must face the task to orientate itself within this diversity of New Testament ethics. The challenge consists in determining convincingly the unity, the differentiations, and, finally, the limits of the pluralism of biblical ethics.

The fundamental principle and therefore the unifying perspective of biblical ethics in all New Testament traditions is the commandment to love one’s neighbor, which is not simply mentioned as one commandment among others but is understood as the sum of the entire biblical ethos. Therefore, this commandment is the basis of all Christian ethics and must be understood as a fundamental attitude of the manner of living, including thoughts and actions (see [5], pp. 73–92). It is closely related to the “golden rule,” which classically expresses reciprocity and includes an ethics of solidarity to each other: “In everything do to others as you would have them do to you” (Matt. 7:12). The commandment to love one another, especially in its radical application to love even one’s enemies (cf. Matt. 5:44), and the “golden rule” should be reciprocally related to each other because the requirement to love one’s enemies serves as an incentive to overcome a merely utilitarian interpretation of the “golden rule.” This perspective is meant by the demand of a “better righteousness” (cf. Matt. 5:20) [6]. Consequently, the ethos of reciprocity of the “golden rule” must not be limited to “solidarity among friends” but also includes the other, even the enemy.

The fundamental direction of the New Testament ethos can thus be clearly elucidated, while at the same time, important differentiations must be made in

view of some distinctions within the New Testament which disclose a specific ethos. The different exhortations and commandments must be distinguished according to their degrees of obligation and specifications. As examples, one could think of the obligation to keep the Sabbath or the problem of eating meat that had been sacrificed to idols. The intensity of the New Testament controversies surrounding these issues can be explained by the fact that both were classic Jewish identity markers.

Even with regard to these problems, the plurality of ethical convictions within the New Testament can easily be demonstrated by taking the example of meat sacrificed to idols. A strict prohibition (e.g., Rev. 2: 14) and Paul's interpretation of Christian freedom (cf. 1 Cor. 8:4 ff.) can be found side by side. Both positions cannot be harmonized and can hardly be communicated together; yet even here, a critical boundary of plurality must be mentioned: Whenever through the eating of such meat the conscience of a Christian experiences a deep conflict, one has to refrain from demonstrative consumption because, otherwise, the Christian fellowship would, in fact, be denounced (cf. Rom. 14:1ff; 1 Cor. 8). For this reason even Paul marks a clear boundary of plurality in this regard. However, a strictly negative and a more open approach to this issue coexists within the New Testament, so that, theologically, the appropriateness of possible positions must be decided. Paul's interpretation may demand greater importance (see [5], pp. 198–201) as an expression of Christian freedom and is in line with the preaching and practice of Jesus, even though the solution of Rev 2 may be more convincing in a particular context. This New Testament way of dealing with controversial ethical perspectives can help to overcome ethical conflicts in today's Christian churches as well.

A biblically founded ethical decision cannot be reached by simply referring to particular words and letters of scripture in an authoritarian way but in detecting the direction of its impulses in processing different traditions and in handling concrete problems. Time and again, Christian ethics is faced by the challenge to clarify its specific profile which is mainly derived from Paul's interpretation of the Christ event. A fundamental criterion of its orientation will be the "peculiar freedom of Jesus" [7] regarding tradition and even regarding Scripture itself. It is of importance for the present time to interpret Christian freedom, based upon Jesus' unique freedom as a child of God, with regard to the individual's manner of life as well as the design of social institutions.

This perspective is also evident in recent theological and ethical publications that especially try to come to terms with the consequences of an historical approach to the Bible. To avoid an immediate use of particular words of Scripture for ethical decisions, it is necessary to remember a key result of the historical-critical research: "Biblical statements are to be understood first of all in their historical context" [8]. The immediate use of biblical texts would mean to declare the historical context also as binding which apparently would be very difficult, if not absurd. As a consequence of historical criticism, therefore, any reference to a particular biblical commandment does not constitute an argument for current theological ethics as the conditions of understanding as well as the social circumstances of ethical behavior have totally changed [9].

Modern societies are characterized by functional differentiation, that is, they are driven by mostly independent capital markets, by a modern economy and by science and technology. Thus, modern societies differ in a fundamental way from living conditions in biblical times. Most recent social-historical exegesis reflects more clearly than before the social and economic contexts of the biblical statements and helps to understand some specific biblical, especially Old Testament, regulations of the economy in their mode of functioning in ancient societies. Nevertheless, the relevance and meaning of these rules must be made clear in a most reflective manner. The assertion of an enduring relevance of the biblical regulations of economy [10] remains superficial, even when indicating some parallels between the beginnings of an emerging market economy in ancient times and today's social and economic situation.⁴ The agricultural production-centered, patriarchal and family-structured *oikos* economy in ancient times differs extremely in their modes of operation from the capitalist-organized global market economy of the present. Therefore, the biblical economic and social regulations can hardly be directly applied to today's problems, although one should ask for their potential of giving impulses or new ideas. The specific biblical regulations may also stimulate research of their meaning, their intentions, and their consequences regarding the conditions of social life within their contemporary context.

Therefore, Christian ethics is faced with the task to ask for biblically based standards of behavior beyond a mere "love ethic of pure spontaneity" [11], without relativizing the historical transformation of social orders and values. To achieve this end, one has to ask for the particular relevance of biblical texts; in other words, different levels of importance of biblical traditions must be established (see differences and similarities with [9], p. 213).

Of special importance are the basic texts of a Christian understanding of the world and the human condition which interpret the world as creation and the human person as a creature that is alienated from its Creator. The hope of overcoming this alienation is expressed in the message of the Kingdom of God, which Jesus proclaimed and which has already begun in his life, death, and resurrection. The hope of the Kingdom of God motivates and encourages Christians for a life in the spirit of love. This includes a responsibility for making the world a better place aiming at fragmentary realizations of the Kingdom of God.

In this perspective of Christian faith, the human person as created in the image of God is endowed with an inalienable dignity which finds expression in basic human rights as well as in a common responsibility for human life. The meaning of human rights and common responsibility is based on fundamental biblical norms such as individual freedom, solidarity as a form of love of one's neighbor, and justice as rule of organizing social institutions. In this sense, individual, social, and cultural human rights are inextricably linked. Furthermore, human rights can be specified with the help of biblical basic principles, as reflected in the Ten Commandments (cf. Ex. 20; Deut. 5) and other lists of rules (Ex. 22:24ff; Lev. 19:10, 33ff; Deut. 15:7ff; Amos 8:4ff; cf. Proverbs 23:10f et al.) [12]. These basic principles protect on the one hand the material and social life of the free, land-owning population – this is the primary function of the Ten Commandments – and on the

other hand protect the people with minor rights, the marginalized and underprivileged: in biblical times especially widows and orphans, strangers, or physically impaired people such as the deaf or the blind. The fundamental norms and the basic principles form together a kind of constitution of community life. These fundamental norms and rules are to be regarded as a kind of “basic law” of life together: the basic norms are constitutive, and the basic rules are to be looked at as a first level of specification under the conditions of ancient societies.

On a second level of importance of biblical traditions, one can find exemplary regulations for particular areas of social life of ancient societies. Especially the social and economic regulations of the Old Testament are to be remembered in this perspective. They can neither claim absolute importance in a theological sense nor should they be transferred directly to the present for reasons of their historical distance. However, according to Luther’s point of view, these regulations are to be considered as good examples for organizing the society. Thus, one can ask about the intentions of these rules. If one can argue that they are sensible and if their intentions may serve as a model under current conditions, one could search for social and economic parallels today.

Furthermore, on a third level, the Bible includes a variety of instructions concerning individual behavior. These instructions can claim importance under certain conditions for individual people. Thus, the invitation to the rich young man to sell all his possessions and give the money to the poor (Mk. 10:21) is not to be understood as a universal call for a complete renunciation of property or for leading an ascetic life. Rather, such an appeal must be interpreted as an exemplary result of the Christian attitude, which shows in a specific situation – as the historical example of Francis of Assisi demonstrates – a “freely chosen renunciation” [13] as an alternative way of living.

Finally, the Bible transmits normative statements which for reasons of theological criticism, or because of the complete change of social conditions, or because of new scientific evidence cannot be considered relevant today. This concerns the broad field of purity and dietary laws, polygamous marriage law, or large parts of martial law in the Old Testament, such as the request for enforcement of the ban. New Testament arguments can be found that criticize the relevance of these statements. On the basis of such theological insights and in view of totally different social structures, some normative statements regarding gender or sexual ethics must equally be changed. Whether certain statements of biblical writings should be subject to criticism or whether their normative importance should be accepted are debatable questions. Many controversies among Christian denominations concerning the role of women or sexual ethics show the urgency of this problem.

As result of these hermeneutical reflections, it is to emphasize that “any use of the Bible as a methodological starting-point for Christian Ethics, or a source of self-authenticating raw material, is impossible to maintain in theory and in practice is bound to impoverish both the Bible and Christian Ethics” [14]. Nevertheless, theologians should try to integrate Biblical insights into contemporary moral debates by a “relaxed and imaginative approach” because the Bible “might have the potential of enriching our ethical imagination in unexpected ways”.⁵

The following chapter is an attempt to discuss in this way biblical basic norms, principles, and statements on issues of social and economic ethics and their theological relevance and meaning in contemporary societies.

Biblical Perspectives for the Organization of Social and Economic Life

Fundamental Norms of the Biblical Tradition for Economic Behavior

According to the four levels of biblical ethical traditions and their claims to importance, it is now the task to specify those with regard to social and economic questions. On the level of the fundamental Christian view of human persons and the world, the question of the relevance of the commandment to love one's neighbor concerning economic behavior shall first be discussed. This central thought of New Testament ethics is often portrayed as opposed to a capitalistic economic system. While in the NT, the point of departure seems to be the need of the other, the modern economic system is characterized by a problematic principle, that is, the pursuit of self-interest. Self-interest is frequently identified with self-love or even with egoistic greed and is understood as contrary to the love of one's neighbor [16].

This contradiction is, however, too simple and does not do justice either to the principle of self-interest or to the commandment to love one's neighbor. Self-interest must not be equated with following one's aims in a ruthless manner; it rather presents an incentive for successful economic behavior, which may secure one's way of life and may lead, at the same time, to economic progress and a growing common economic wealth. Only an excess of self-interest is disqualified as unethical, so the classical voices of economic theory say, and must be restrained by the ethical principle of goodwill and sympathy on the one hand and by public laws and sanctions on the other hand (see [16], pp. 56–61). Also, the commandment to love one another may not be interpreted as pure altruism; it aims at integrating self-love and a behavior that may lead to overcoming the other person's poverty. Self-love "must not be suppressed, but serve as a basis for further action. Not its denial is the program, but its compensation" [17]. However, in biblical perspective, the love of one's neighbor does not serve one's own perfection like in Stoicism, but it is instead focused on the well-being of the other.

The theologian Paul Tillich took up this intention of the commandment to love one's neighbor by appreciating the individual search for self-integration while simultaneously emphasizing that "the other self [means] the ultimate limit for one's own wish to assimilate the whole world" and that "the experience of this limit [marks] the experience of the moral imperative" [18]. Through this integration of self-reference and orientation on the other person's need, the human gains a "mature relation to him/herself" (see [18], p. 270). Regarding economic behavior, this means that the "care for one's own life (self-interest) and love of one's neighbor do not exclude each other" [19]. The EKD memorandum "Common Good and Self-Interest" pointedly took up these considerations and demanded that there is the need

to develop “forms of intelligent self-interests as intelligent love of one’s neighbor” (see [13], p. 47), so that the care for one’s own life is connected with the care for the other and with respect to the common life of all humankind.

From these general considerations, ethical consequences may be derived for the economic behavior of market participants. The transaction on markets corresponds to a particular ethos of formal legality because – following Max Weber’s description of a “market community” – the exchange partners “have an interest in the continuation of the exchange relationships in the future, be it with the current partner or with other exchange partners, so that they adhere to given commitments and refrain at least from flagrant violations of mutual trust and faith” [20]. Thus, the actions on markets which are dominated by self-interests do not take place in an “a-ethical area” but require an ethical attitude, which is characterized by fairness and the will to cooperate. In the Bible, appropriate standards of behavioral norms can be found, in particular the demand of correct weights and measures: “You shall not cheat in measuring length, weight, or quantity. You shall have honest balances, honest weights, an honest ephah, and an honest hin: I am the Lord your God, who brought you out of the land of Egypt” (Lev. 19:35f). The mutual trust in economic transactions is based on mutual fairness which was in ancient times mainly realized through “honest” weights and measures. This attitude of reliability of mutual agreements finds an expression in the traditional German merchant rule “Auf Treu und Glauben” (“in good faith”) even at present. To support this attitude, one can refer to the commandment of the love of one’s neighbor and especially to the “golden rule” (Matt. 7:12), which have proven to be fundamental, especially for economic behavior.

Equally fundamental as the commandment to love one’s neighbor are in an ethical perspective the biblical considerations about the importance of human labor and the protection of property.

According to biblical understanding, labor is the mandate of the creative God to the people whom he created in his own likeness (Gen. 1:26f). God himself is described as active, when, for example, he puts the stars in the sky (Gen. 1:16f). The mandate to work is a fundamental characteristic of human life and corresponds to the acting and actively engaged God: humankind receives the mandate to have dominion over the world (cf. Gen. 1:28 f.) and to till and keep the Garden of Eden (Gen. 2:15). As trustees, humans are supposed to take tender care of God’s creation while they remain dependent upon the blessings of the Creator. God’s blessing makes the plants grow for humans and animals; both are under the direct blessing of God’s promise (Gen. 1:22 and 28). Even after the expulsion from Paradise, which entails the curse of the land (Gen. 3:17), humanity remains under the blessing of the Creator’s promise (Gen. 9:1), although now labor is experienced in the tension between blessing and curse. Thus, the ambivalence of human labor is accurately expressed because it is commonly experienced by individuals in the tension of hardship and burden on the one hand (cf. Ps. 90:10 “toil and trouble”) and of self-development and success on the other hand. With regard to the social effects of labor, there is the ambiguity of successfully shaping the world and of problematic world destruction. That caring for the world may have destructive results is shown

in the Bible through its critical perspective on megaprojects of the ancient world (cf. Gen. 11:1 ff. “tower of Babel”; Ex. 1:11ff “ruthless Egyptians”).

The biblical appreciation of human labor as told in the creation accounts corresponds to the biblical images of hope for the fulfillment of creation: Unlike in ancient utopias that tell the hope of the liberation of humankind from work all together (as, e.g., Virgil), the biblical images of hope describe the liberation of human work from the curse, that is, from subjugating coercion and exploitative structures. Fulfillment means that people can work without coercion and enjoy the fruits of their labor.

In biblical perspective, all human activities which are performed in the service of common human life according to the mandate of dominion are expressions of the divine mandate, regardless of their degree of compensation. The blessing of God and the labor of humans are closely related to each other, as the parables of Jesus show. Although labor cannot adduce or ensure the identity of human beings, it nevertheless is part of the fundamental fact of their existence and remains “as a target-oriented activity in dealing with the gifts of nature fundamental for his own well-being in this world” [21]. Hence, labor is a necessary human action, from which no one who can actually work shall withdraw. This duty to work is underlined in many passages of the New Testament (2. Thess. 3:10; 1 Thess. 2:9; Acts 20:35; 1 Cor. 9:3 ff. et al.) in order to enable individual and collective human life.

In addition to the dignity of human labor, its limits must also be emphasized, as it is already discussed in the first creation account, where the limit finds its expression in the commandment of the Sabbath. In this perspective, labor and rest are a unity: On the seventh day, God rested from all the work that he had done in creation, and so he completed his works (Gen. 2:2). Labor and rest are not considered as contradictory in themselves – as the strict opposition of leisure and labor in the Greek tradition assumes – but as complementary. Resting can be described as completion of labor; labor without resting would be incomplete and would prevent the fulfillment of work. In a historically unique way, the biblical tradition protects the Sabbath resp. Sunday and the holiday because these interruptions of the working rhythm enable the experience that humans are more than their work; at the same time, labor finds its “measure and order” (see [13], p. 115) through the Sunday.

It is one of the basic assumptions of the biblical tradition that the work which humans must perform in order to fulfill the Creator’s command is to be totally distinguished from slave or compulsory labor. At the beginning of the Exodus tradition, the experience of suffering through slave labor is mentioned, which is overcome through divine intervention (Ex. 3:7ff). Consequently, the Exodus motif which is fundamental for the Old Testament tradition must be interpreted as essentially a liberation from the “slave house of Egypt,” literally “from the work-house” of Egypt.

Labor is the basis for the formation and growth of private property, and in this assessment, the biblical perspective is similar to modern thinking. If there are just social conditions, the workers will enjoy the fruits of their labor, and they will enlarge their possessions. The Bible perceives this as an effect of divine blessing.

The biblical statements on property must be interpreted under the assumption that there is no abstract concept of property but that there is a linguistic distinction between the ownership of animals, land, household, goods, etc. The basic forms of property are the property of animal and of land, which is the reason why most of the statements in the Old Testament refer to these two forms of ownership. Today, the significance of these forms of ownership is limited; nevertheless, the biblical statements are widely applicable to a theological understanding of property.

The fundamental presuppositions of the Old Testament's considerations on property are theological confessions. The confession of God as the Creator implies that heaven and earth and all that is therein belongs to him (cf. Deut. 10:14f, Ps. 24:1, etc.). God is the ultimate owner of all of his creation. This faith in God as creator sets limits as far as the human control over creation is concerned as it is explicitly mentioned by reference to the independent right of wildlife (cf. Job 38f, Ps. 104). In this respect, an absolute right of property as expressed in the Roman "*ius utendi et abutendi*" is considered inappropriate. Property, especially private property, is always to be understood in relation to God and to one's neighbor.

The specific regulations at that time (see section "[Exemplary Social Regulations in the Biblical Traditions Within the Context of Ancient Societies and Their Meaning Today](#)") have today to be seen and to be appreciated as exemplary implementations of this thinking in ancient society. The basic intention of the Old Testament concept of property can best be described by referring to the postulates of social obligation and of ecological sustainability [22].

Under the condition that an absolute understanding of property is theologically relativized, the protection of property is widely discussed in the biblical scriptures. Beginning with the oldest collection of laws in the Book of the Covenant (Ex. 21–23), a large section is devoted to property crimes (Ex. 21:37–22:16). Essentially, the indemnification for stealing and the compensation of property are listed, and especially ownership of livestock is put under protection (Ex. 21:37ff). In a fundamental way, the protection of property is referred to in the Ten Commandments, and in two of the Commandments, this protection is mentioned explicitly. In Exodus 20:15 (par. Deut. 5:19), the verb "stealing" is used without an object, so that any form of stealing is prohibited as a violation of the legal order. Any unlawful damage to one's neighbor's property is thus excluded so that the basis of one's existence is safeguarded. The protection of property is reinforced in Ex. 20:17 (par. Deut. 5:21), where even the "desire" of basic forms of ownership of one's neighbor is explicitly prohibited. "Desire" in Ex 20:17 means not so much an envious disposition but – in accordance with the original Hebrew word – a planned and executed attack on someone's property. Only the later version Deut. 5:21 takes a strong desire also into account. As all the possessions are listed in this commandment, any possible attack on any property of one's neighbor is thereby totally excluded (see [12], pp. 72f, 75–78).

Property is no less protected in the New Testament. The prohibition of stealing is reiterated by Jesus; in Luke 10:19, it is expressed very pointedly and mentioned twice with differing wordings. However, the effort to maximize one's wealth (cf. Lk. 12:16–21) and the constant efforts to ensure one's wealth (Mt. 6:19) are

condemned with a noticeable ironic undertone as a wrong attitude toward one's life. Jesus clearly warns against the deceitfulness of riches (cf. Mk. 4:19) and the problematic orientation of one's lifestyle around "earthly treasures" (Math. 6:19–21). This idea is put straightforward in Math. 6:24: "No man can serve two masters: for either he will hate the one, and love the other; or else he be devoted to the one and despise the other. You cannot serve God and mammon." From this insurmountable contrast, it is evident that in the relationship to possessions, both the human condition and the service humans owe to their creator are at stake. When money and property turn into Mammon and therefore to the ultimate point of reference of the human person, access to the Kingdom of God is impossible (Mark 10:25).

Exemplary Social Regulations in the Biblical Traditions within the Context of Ancient Societies and Their Meaning Today

The basic rules of biblical social and business ethics were concretely realized through a variety of exemplary regulations within the context of their time. Because the social and economic situation has since been completely changed, these practical arrangements are no longer applicable today. However, it is important to understand their intentions and to look for equivalents in the present.

The land, that is, in particular the ownership of soil and other forms of real estate, is a hereditary gift from God (cf. Deut. 4:38.) that secures the material basis of Israel's existence, especially of the tribes and their families. As a peasant's private property (the so-called patrimonium), it was to be held in permanent possession, that is, the free sale of this property was limited by the right of preemption, and clan members had the duty to buy it back in case of indebtedness (cf. Jer. 32:6f). These regulations are in insoluble tension to the modern idea of private property. It was the intention of these regulations to secure the land permanently for the families and clans as it was then the determining factor of an independent and autonomous way of living. Today, this is realized through access to paid work. In order to realize the intention of the biblical regulation today, it would be imperative to qualify people for the job market and, at the same time, to open up possibilities of jobs for those who have at times or permanently been out of work. Such an attempt could possibly be realized through publicly funded employment programs.

Another biblical feature is the relativizing of private property as the following example from Deut. 23:24f shows: "If you go into your neighbor's vineyard, you may eat your fill of grapes as many as you wish, but you shall not put any in a container. If you go into your neighbor's standing grain, you may pluck the ears with your hand, but you shall not put a sickle to your neighbor's standing grain." This regulation amounts to a criticism of Roman rights of property. Anyone is allowed to take fruits for the immediate need because the vineyard and the grain field of the neighbor are part of God's gift. In modern times, a reflection of this regulation is the approval of the theft of food by starving people. Today, however, this is no longer a natural right, as in the Old Testament, but an exception for which good reasons must be found.

Besides, the religious and socially motivated tax practice makes the meaning of property in the Old Testament clearer. The starting point is the ritual visit of the temple three times a year for the great festivals which are determined by the harvest seasons (see Ex. 23:14–17; 34, 18, and 22ff; Deut.16:16.): The feast of unleavened bread at the beginning of the grain harvest, the Feast of Weeks at the end of grain harvest, and the Feast of Tabernacles. It was obligatory to participate in these festivals, and it is written three times in the Old Testament (Ex. 23:15; 34:20 and Deut. 16:16): “One should not appear before my face empty-handed.” Thus, the idea was institutionalized that everyone had to return parts of the land and its fruits to God.

A further development which in historical perspective can hardly be overestimated is the practice of tithing. Since the times of monarchy, the “Tenth” was originally in Israel a kind of tax on the yields of the harvest; it may well have been both a state tax for the royal family and a gift for the temple cult. This institution was considerably changed by the Deuteronomist Reform in the sixth century BC. From then on, for 2 consecutive years, the “Tenth” of the harvest was to be consumed at the temple in Jerusalem. Thus, it was no longer a state tax but totally devoted to financing the festivities at the holy temple (cf. Deut. 14:22ff). During the third year, the “Tenth” should be spent for strangers, widows, and orphans (the socially most vulnerable groups in ancient societies) at their homes, as well as for the landless Levites (cf. Deut. 14:28 f.). In addition a significant development of the Deuteronomist Reform must be mentioned. Even for the temple feasts, all people began to be invited, especially widows, orphans, and even slaves and strangers. Therefore, the religiously motivated “Tenth” was not only a return to God or to serve the maintenance of the royal family and the cult personnel, but it also became a regular and expected gift for helping underprivileged groups. For this reason, this rule is in world history the first traceable social tax and a proof of the social responsibility of property in biblical times [23].

In addition to these regulations, further regulatory mechanisms can be found in the Old Testament which underline the attitude that private property carries with it a social responsibility. Especially the Jubilee year at the end of seven cycles of Sabbatical years must be mentioned. In the Jubilee which would regularly occur and was therefore predictable for creditors and debtors alike, all debts were to be canceled. In ancient economies, the problem of indebtedness was often dramatic and must be seen as a major threat to an autonomous way of living. Frequently after bad harvests, people had to ask creditors for help with the dire consequence of total financial dependency which could result in the creditor’s sons and daughters or the creditor himself being forced into slavery (cf. Neh. 5:1–5). Accordingly, the discussions concerning indebtedness and its cancellation played a central role in ancient societies.

The regulations of the Old Testament pointed a way out of this often inescapable cycle of indebtedness and enslavement by developing the old institution of the Sabbatical. The Sabbatical, initially a year in which the land was required to be left fallow, was extended to the rapidly escalating problems of indebtedness and

slavery. Slaves – although only Hebrew slaves as members of the people of Israel and thus as true “neighbors” – had to be released in the seventh year. They were to receive some basic supplies to help them start a new life (cf. Ex. 21:2ff). Later, this regulation was to include Hebrew slaves who were to be treated like indentured servants and also set free during the seventh year.

Furthermore, the attempt was made to solve the issues of indebtedness and slavery with the help of a 7-year cycle: “Every seventh year you shall grant a remission of debt. And this is the manner of the remission: every creditor shall remit the claim that is held against a neighbor, not exacting it of a neighbor, who is a member of the community, because the Lord’s remission has been proclaimed” (Deut.15:1 f).

That this remission of all obligations was put into practice in Israel, at least in certain times, can be derived from Neh. 10:32 as well as from Deut.15:9: “Be careful that you do not entertain a mean thought, thinking, ‘The seventh year, the year of remission, is near’, and therefore view your needy neighbor with hostility and give nothing; your neighbor might cry to the Lord against you, and you will incur guilt.” Obviously, the willingness to lend money declined rapidly shortly before the appointed Jubilee, so that this particular admonition was thought necessary. In view of this situation, Deuteronomy calls upon creditors to grant a loan even within a short period before the seventh year so that the necessities of life can be obtained. The reason for this attitude is as follows: “Give liberally and be ungrudging when you do so, for on this account the Lord your God will bless you in all your work and in all that you undertake” (Deut.15:10). The blessing of God, the giver of all gifts, is based directly on the willingness to help the impoverished neighbor. Once again, the close connection between theological statements of belief and social practice becomes evident (see [23], pp. 262–268).

Finally, the regulations in Leviticus 25 must be discussed; it is one of the youngest texts of the Old Testament with specific economic regulations. Based on the regulations of the Sabbatical years, rules are laid down for a great Jubilee in verses 8–34. In essence, the aim of the Jubilee is a periodic restitution: Everyone shall return to his property and to his family after seven times 7 years. The institution of a Jubilee is to grant every person a chance for a new beginning every 49 years. This idea that every person is given a periodically recurring opportunity for a new beginning is obviously determined by the social postulate of an egalitarian society.

The specific formulation of these regulations is rooted in an economically comprehensible argument: The amount of money for buying and selling is guided by the great Jubilee. Buyer and seller must include in their negotiations the expected Jubilee: “When you buy from your neighbor, you shall pay only for the number of years since the jubilee; the seller shall charge you only for the remaining crop years. If the years are more, you shall increase the price, and if the years are fewer, you shall diminish the price; for it is a certain number of harvests that are being sold to you” (Lev. 25:15 f.). Interestingly, urban residential buildings are exempt from the rules of the

Jubilee (cf. Lev. 25:30), so that the biblical text clearly reflects the difference between agricultural and urban conditions of living [24].

Whether or not these regulations were ever realized is unknown. The information given in Neh. 5:11 could be a one-time restitution in the perspective of Lev. 25. As there are no other examples, the idea of a periodic restitution probably remains a mainly utopian ideal. Jesus included in his inaugural sermon in Nazareth (Luke 4:19) the announcement of a great Jubilee as found in Isaiah 61:2. This is part of his proclamation of the Kingdom of God. Therefore, the idea of a Jubilee is deeply rooted in the biblical tradition, although there are no demands for its concrete realization in the New Testament.

If one interprets the regulations of the Jubilee – as indicated above – in the sense of a right to a new beginning, the question may be asked if this could be applied today and new institutional arrangements could be found. One example would be the German “Privatinsolvenzrecht” (a law to help insolvent consumers), which has been in effect for about 10 years. Faced with a dramatic increase of heavy indebtedness of private households in the Federal Republic of Germany, this regulation was instituted to help “the honest debtor” after a time of good behavior “to get rid of his remaining liabilities” (§ 1 Insolvency Act). Similar to the Old Testament rules, this law is to enable heavily indebted individuals to begin a new economic and social life. It can be understood as a modern implementation of the intentions of the biblical law.

Finally, some surprisingly interesting information on the relationship between ecology and economy can be found in the Bible. A difficult passage in the Book of Job (31:38–40) says that the “land cried out” against its owner and refused to bear fruits, if it is not treated properly. Here, one finds the idea that a part of the economic product should be redirected to nature as a basis for future products. Furthermore, the sermon of God in the Book of Job (Job 39f) and Psalm 104 indicates that not all creation is made for the benefit of human beings [25]. In this perspective, for example, the creation of the Leviathan (Job 40:25ff, Psalm 104:26) defies the principle of rationality or the principle of human usability. Instead, these biblical texts clearly mark the limits of human power over creation. Based on this idea, one should discuss and set limits to the human use of nature today.

Individual Case–Related Demands of the Biblical Ethos

In contrast to section “[Exemplary Social Regulations in the Biblical Traditions Within the Context of Ancient Societies and Their Meaning Today](#)”, where historic regulations of the Old Testament, their intentions, and their present meanings were discussed, other demands can also be found in the Bible that apply only to specific situations or to individuals. A typical example is the story of the “rich young man” (cf. Mk. 10:17ff), whom Jesus asks to sell all his possessions and give the money to the poor. This demand is based on the specific situation of the “rich young man,” who only through this act can prove the seriousness of his desire for discipleship. However, the story of the conversion

of Zacchaeus shows another way of being a disciple of Christ. He paid back four times as much to those whom he defrauded and gave half of his possessions to the poor (Luke 19:8). Therefore, a basic principle of the biblical message is the willingness to support the poor or the congregation and to behave correctly in everyday business life. An ascetic way of living is not necessarily connected with the discipleship of Christ, but in individual cases, it can be a freely chosen way as exemplary form of Christian existence. Even the situation in the early church in Jerusalem may serve as a proof of this thesis. Their community of goods was not caused by a general obligation to get rid of all possessions. Ananias and Sapphira were not punished because they held back some of the proceeds when they sold a piece of property but because they lied in front of Peter and the church (cf. Acts 5:1 ff).

If taken together, Christians understand material goods as an expression of God's blessing. However, these goods do not guarantee the promised fullness of life (see Mark 8:36). On the contrary, the orientation of life around material goods is seen as a great danger because one may forget the needs of the others (cf. Luke 12:13ff). More generally, greed is criticized as a root of all evil (cf. 1 Tim. 6:10) or as idolatry (see Col. 3:5; Eph. 5:5, etc.). To overcome these dangers of private property and wealth, Christians have to be prepared in their private lives to help others in time of need without thinking of their own interests first; this is the meaning of Luther's fundamental distinction between the life of Christians in public office and as a private person. Some of the demands of the Sermon on the Mount must thus be understood, that is, to give freely to those who are in need (cf. Matthew 5:42; 6:19) or to lend money without charging interest (see Luke, 6:34). These options are not general rules but individual ways of living as a disciple of Christ.

The Prohibition of Interest in Ancient Societies and Changed Economic Conditions Since Early Modernity

The increasing importance of money marked a new level of economic activity in ancient societies which led to increasing social inequality. In view of this situation, specific regulations were introduced into the Old Testament codices of law with the express aim to limit structures of power and dependency caused by a monetary economy. In ancient times, interest rates could often be as high as 50% or 60%, and, therefore, the prohibition of interest was a method to avoid extreme poverty and indebtedness.

In the Book of the Covenant (Exodus 21–23), it is prohibited to take any interest from the poor: "If you lend money to my people, to the poor among you, you shall not deal with them as creditor; you shall not exact interest from them" (Ex. 22:25). This text explicitly refers to the connection between poverty, which necessitates the borrowing of money or seed, and the tightening of the plight through usury, which was frequently to follow. The later codices of law in the books of Deuteronomy and Leviticus no longer speak of the "poor" as recipients

of loans but, in general terms, of the “brother” as another Israelite (cf. Deut.23:19). By the prohibition to charge interest, citizens in distress should be given the opportunity to rectify their situation. However, it should be noted that the range of this prohibition was limited to people of Israel (cf. Deut. 23:21) (see [23], pp. 217–219, 232).

The prohibition to charge interest was theologically justified. Lev. 25:38 reminded the people that God had brought them out of the land of Egypt and given them the land of Canaan. This liberation from slavery was not to be reversed by economic indebtedness. Deut. 23:21 combines the blessing of God – that is, a good harvest or farming year – with the prohibition of charging interest. Those who hope for the blessing of God may not lead their neighbors into economic dependency.

Prohibition to charge interest was a concrete expression of the social obligation of property in ancient times. The right of the economically stronger person was to be limited with regard to the right of existence of the poor. In the preaching of Jesus, the prohibition to charge interest is taken for granted; even the lending of money without expecting anything in return is proclaimed (cf. Lk. 6:34 f).

In church history, following both the biblical tradition and the Aristotelian philosophy, the prohibition to charge interest was strictly enforced up to the late Middle Ages. Gradually, however, because of scholastic theology and Luther’s thinking, the situation was changed. A new level of discussion was achieved through John Calvin, who approved taking interest under certain conditions. Calvin argued against Aristotle that the taking of interest is clearly not “against nature” since money was not unproductive, as Aristotle had claimed, but “that one could make very lucrative business with money” [26]. Calvin unconditionally accepted the possibilities of productive dealings with money and authorized the charging of interest as an economic incentive for improving the general supply of commodities. Thus, money can generate money; money, not least, is necessary for people to find employment so that they can earn their living.

In his opinion, the biblical prohibition to charge interest was to protect “poor people,” but “the taking of interest is well permitted, when one does business with wealthy people” (see [26]). Thus, Calvin differentiates between the social basis of the prohibition to charge interest in the Old Testament and the economic situation of his time. Interest can be understood as a proper share in a business profit using other people’s money.

According to Calvin, the best way to arrange the interest rate is by referring to the “golden rule,” so that creditors and debtors are newly challenged every time they enter into a contract to examine the situation in detail and to evaluate the appropriateness of interest rates. Calvin’s intention was to distinguish interest rates from all forms of usury. Therefore, the interest rate must never exploit the misery of others. Given the complexity of the circumstances and the risk of misuse, the distinction between the legitimate interest and usury remains a problem. This distinction must be clarified time and again and remains a task of permanent moral education of the economically active person.

To limit the dangers of misuse, a maximum interest rate was fixed in Geneva during Calvin's lifetime and possibly approved by himself at 5% which was increased in 1557 to 6.66%. In Geneva, efforts for moderate interest rates were generally made; they differed significantly from officially prohibited, yet, in reality, very high interest rates in other communities. Calvin supported lowest possible interest rates since his fundamental concern was the idea of a social balance between creditors and debtors to avoid a social gap between the rich and the poor. Through the approval and state regulation of interest rates, Calvin's ethical demands are, in the words of Josef Bohatec, "not just an effective step towards the liberation of economic life from traditional inhibitions, but also a way to open business life for new moral standards" [27].

Gradually, an "interest economy" was approved in Europe since the early modern period. This led, in effect, to moderate interest rates; thereby, the intention of the Bible and of church tradition which both remarkably condemn usury was better realized than by a strict prohibition to charge interest rates. This may serve as a good example of how a repeal of biblical rules, in this case the prohibition to charge interest rates, maintains precisely its intentions and enables successful economic activities.⁶

Conclusion

In order to summarize the meaning of biblical foundations of economic ethics, it is helpful to distinguish at least four levels of importance: The basic principles (see section "[Fundamental Norms of the Biblical Tradition for Economic Behavior](#)") express the biblical view of human life, which can be made plausible today. Besides, there are regulations that are derived from these basic principles but clearly apply only to a particular time and context. They either have heuristic value (see section "[Exemplary Social Regulations in the Biblical Traditions within the Context of Ancient Societies and Their Meaning Today](#)") or they should be removed provided that good reasons can be given and that their original intentions are taken into account (see section "[The Prohibition of Interest in Ancient Societies and Changed Economic Conditions Since Early Modernity](#)"). Finally, there are claims for specific situations and individuals, which may be accepted case by case (see section "[Individual Case-Related Demands of the Biblical Ethos](#)").

In addition to the biblical regulations of business ethics, there is a broad field of problems that could not be within the scope of biblical authors. Thus, no direct input of biblical regulation can be found for many questions of modern business ethics. Therefore, it must be discussed how far the basic principles of biblical ethics may serve as normative guidelines for Christian ethics. It is the task of theological reflection to relate this perspective to current questions of social and business ethics. Therefore, "Scripture alone is never the final court of appeal for Christian ethics." But its "understanding of God and his purposes, of man's condition and needs, of precepts, events, human relationships . . . do provide the basic orientation toward particular judgments" [28].

Cross-References

- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)
- ▶ [Imitatio Dei and Jewish Business Ethics](#)
- ▶ [The Traditional Christian Social Ethics](#)
- ▶ [Scholastic Business Ethics: Thomas Aquinas Versus William of Ockham](#)
- ▶ [Scholastic Thought and Business Ethics: An Overview](#)

Notes

1. Enzyklika “Mater et Magistra,” Nr. 4.
2. Joseph Höffner, *Christliche Gesellschaftslehre* (Verlag Butzon and Bercker, Kevelaer 1965, 4. Aufl.), 51. John Barton, *Understanding Old Testament Ethics*, Louisville 2003 emphasizes the “natural law” as “one of the three basic models” (47) of understanding Old Testament Ethics, the other models are the “obedience to God’s declared will” and the “imitation of God” (Enzyklika “Mater et Magistra”, Nr. 4.).
3. “Das rechte Wort zur rechten Zeit.” Eine Denkschrift des Rates der EKD zum Öffentlichkeitsauftrag der Kirche (Gütersloher Verlagshaus, Gütersloh 2008), 13 in accordance with the older memorandum “Aufgaben und Grenzen kirchlicher Äußerungen zu gesellschaftlichen Fragen” from 1970.
4. Kuno Füssel/Franz Segbers, *Die Bibel zu Rate ziehen. Einleitung*, in: diess. (ed.), “. . . so lernen die Völker des Erdkreises Gerechtigkeit.” Ein Arbeitsbuch zu Bibel und Ökonomie (edition exodus, Luzern/Salzburg 1995), pp. 9–19.
5. John W. Rogerson [15], who emphasizes to integrate as much of the Old Testament Ethics as possible.
6. This result is according to Charles H. Cosgrave, *Appealing to Scripture in Moral Debate. Five Hermeneutical Rules*, Grand Rapids etc. 2002.

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Abstract

This chapter discusses the contribution of Christian metaphysics to the concept of business ethics and puts forward the following theses: (1) Christian metaphysics supports the *ontological* assumption that there is a God, and reasonable theistic ethics has the concept of God, which is the ideal observer regarded as actual (“moral realism”). Despite this moral realism in theistic ethics, *epistemically* the point of “moral realism” does not obviate the need for rational deliberation about ethical issues. (2) We have to distinguish between the level of *justification*, the level of *application*, and the level of *implementation*. The business of comprehensive doctrines like Christian metaphysics is primarily located on levels of justification and application. (3) There always has been, and there still is, a certain, limited impact of religion(s) on the economic sphere. As a result, the global economic system has become “pluralistic capitalism.” (4) If these effects of religion(s) on the economy are (economically) productive ones, their impact on business activities becomes “spiritual capital.”

Introduction

Religions are comprehensive worldviews which involve the notion of an ultimate reality. This stands in contrast to the “ultimate reality” of the natural sciences, where the “[u]ltimate reality [. . .] is the reality described by chemistry and physics” [1], the “ultimate reality” of religions – whether it is God in the theistic religions or nirvana in Buddhism – is an evaluative concept: “In full-fledged religions, the ultimate reality with which harmony is desired is explicitly conceived to be *holy* or *sacred*” ([2], p. 12; [3]).¹ According to religious worldviews, the evolution of the

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universe is not just a succession of bare facts, because there is an ultimate reality, which is conceived as the holy soul of the world and which qualifies “the world as a realm of adjusted values, mutually intensifying or mutually destructive” ([3], p. 59; [4]).²

Because this idea of an ultimate or divine reality is an evaluative concept, all contemporary world religions contain certain *ethical* belief systems. And it is this feature of the religious worldviews in which their relevance for the construction of social institutions in modern societies, including the institutions and organizations of the economy, is founded.

Modern Christian Metaphysics

There are two reasons why it is reasonable for religions to generate a rational metaphysical system to justify their beliefs:

- One reason is a *theological* one: Religions need a theology to validate the theological and philosophical reasonableness of their assumptions. “Thus rational religion must have recourse to metaphysics for a scrutiny of its terms” ([3], p. 79).
- And the other reason is a *political* one: Modern societies are inevitably pluralistic societies. And in view of the fact that there is a variety of different and incompatible worldviews and religious, philosophical, and moral values, we need a political conception for social coexistence that is supported by these different worldviews. As John Rawls put it in his concept of “political liberalism”: We need an “overlapping consensus,” which is affirmed by the different “comprehensive doctrines” (e.g., religious worldviews) (cf. [5]). And it is pretty clear that only rational religious worldviews, backed by a reasonable metaphysics – in Rawls’ words: only “reasonable comprehensive doctrines” – are capable of supporting this modern “overlapping consensus” (cf. [5], p. xvi f.). “A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens. Political liberalism assumes that, for political purposes, a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Political liberalism also supposes that a reasonable comprehensive doctrine does not reject the essentials of a democratic regime. Of course, a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society” (cf. [5], p. xvi f.). So, only rational religions are able to make a constructive contribution to the stable flourishing of modern societies – and therefore, rational metaphysics is needed.

Metaphysics

There is no way to escape “metaphysics.” There are, of course, some philosophers who are in favor of a “post-metaphysical thinking” or a “post-metaphysical culture” (cf. [6]; [7]), but they use the term “metaphysics” in a different way than I do. For them, “metaphysics” is a premodern and idealistic matrix for one’s thinking, a tendentially totalitarian and therefore outdated worldview, in which everybody and everything has to fit in. In contrast to these philosophers, I am using the term “metaphysics” in a strictly *epistemological* sense. In this context, Karl Popper’s philosophy of science distinguishes three types of theory: “*First*, logical and mathematical theories. *Second*, empirical and scientific theories. *Third*, philosophical or metaphysical theories” [8]. It is the empirical falsifiability which distinguishes scientific theories (natural sciences) from metaphysical theories: “According to this view [. . .] a system is to be considered as scientific only if it makes assertions which may clash with observations” ([8], p. 256). While theories of natural sciences are therefore empirically falsifiable, it is the characteristic of metaphysical theories that they are not falsifiable empirically: “[N]on-testable theories [. . .] may be described as metaphysical” ([8], p. 257). According to Popper, “philosophical theories or metaphysical theories will be irrefutable by definition” ([8], p. 197).

But that does not mean that they are senseless or useless. Quite contrary to any positivistic rejection of metaphysical statements, Popper considers them as very important: “But metaphysical hypotheses are important for science in at least two ways. First of all, in order to have a general picture of the world we need metaphysical hypotheses. Secondly, in the actual preparation of our research we are guided by what I have called ‘metaphysical research programmes’” [9]. Popper regarded even Darwinism not as a testable scientific theory, but as a metaphysical research program: “And yet, the theory is invaluable. I do not see how, without it, our knowledge could have grown as it has done since Darwin. In trying to explain experiments with bacteria which become adapted to, say, penicillin, it is quite clear that we are greatly helped by the theory of natural selection. Although it is metaphysical, it sheds much light upon very concrete and very practical researches. It allows us to study adaptation to a new environment (such as a penicillin-infested environment) in a rational way: it suggests the existence of a mechanism of adaptation, and it allows us even to study in detail the mechanism at work” [10].

Popper explicitly showed that the God hypothesis (“There is a God.”), which he calls “the arch-metaphysical assertion” ([8], p. 275), “can be constructed as a well-formed or meaningful sentence” ([8], p. 275) – although this “arch-metaphysical formula cannot be submitted to any scientific test: there is no hope whatever of falsifying it [. . .]. For this reason I describe it as metaphysical – as falling outside the province of [*natural*] science” ([8], p. 276). But a nonscientific theory (a theory that does not belong to the realm of *natural* sciences) need not be irrational: “[E]very rational theory, no matter whether scientific or philosophical, is rational in so far as it tries to solve certain problems. A theory is comprehensible and reasonable only in its relation to a given problem-situation, and it can be rationally discussed only by

discussing this relation” ([8], p. 199). And may be this, “the arch-metaphysical assertion” – the theological God hypothesis – is a rational and metaphysical research program, too, because it is capable of solving certain problems much better than other metaphysical systems. For materialistic philosophies, say – which are other examples of “metaphysical” doctrines – the ontological status of numbers is a more or less unsolvable problem. As philosopher Reuben Hersh declares: “Ideal entities independent of human consciousness violate the empiricism of modern science” [11]. But numbers *are* “ideal entities” – and at the same time there is a metaphysical necessity to assume the objective existence of numbers. As philosopher Colin McGinn puts it: “Abstract things exist necessarily. [. . .] In every possible world it seems like numbers have to exist and logic has to exist [. . .]. There’s got to be logic and numbers. Because they have that kind of completely necessary existence everywhere. Every world contains numbers” [12]. So, despite the fact that, with regard to mathematical objects, materialistic metaphysics has run out of steam, Quine is affirming an exceptional existence of numbers simply on the basis of his “indispensability argument”: “Physicalism [. . .] is materialism, bluntly monistic except for the abstract objects of mathematics” [13]. But how is it possible for numbers to exist in a materialistic universe? Quine “clarifies” this problem with the following “explanation”: “Physical objects in this generous sense constitute a fairly lavish universe, but more is wanted – notably numbers. Measurement is useful in cookery and commerce, and in the fullness of time it rises to a nobler purpose: the formulation of quantitative laws. So we assume abstract objects *over and above* the physical objects” [14]. Because it is not reasonable to accept an “explanation” this flabby, process philosopher Alfred N. Whitehead introduces the God hypothesis into the metaphysical interpretation of the universe: “Everything must be somewhere [. . .]. Accordingly the general potentiality of the universe must be somewhere [. . .]. This ‘somewhere’ is [. . .] the primordial mind of God” ([15], p. 46).

So, on the one hand, metaphysics is inevitable – we need metaphysical hypotheses; on the other hand, we always have to ask if the metaphysics in question is reasonable, that is, if it is really problem-solving. Precisely in this sense, Alan Greenspan, former Chairman of the Federal Reserve of the United States from 1987 to 2006, used the term “ideology” for a mental framework that is meant to solve certain problems in the area of modern economy (respectively financial markets) – and that can fail dramatically. In October 2008, Greenspan declared (“Greenspan’s Confession”): “[A]n ideology is [. . .] a conceptual framework with the way people deal with reality. Everyone has one. You have to exist, you need an ideology. The question is whether it is accurate or not. And what I’m saying to you is, yes, I’ve found a flaw [. . .] a flaw in the model that I perceived as the critical functioning structure that defines how the world works, so to speak. [. . .] That’s precisely the reason I was shocked, because I had been going for 40 years or more with very considerable evidence that it was working exceptionally well” (See, e.g., [16]). In addition, “Greenspan’s Confession” reminds us of a serious danger of any “ideology” or “metaphysics”: “The defect of a metaphysical system is the very fact that it is a neat little system of thought, which thereby over-simplifies its expression of the world” ([3], p. 50, p. 79). Without doubt, this applies to every religious metaphysics, too. Despite the fact that religions in particular often gave in to the temptation to

imagine that their dogmatic worldviews are infallible (usually referring to revelations), it is important to realize that all the attempts to create Christian metaphysics are hypothetical and refutable constructs.

Christian Metaphysics and Theistic Ethics

Christian metaphysics supports the ontological assumption that there is a God and therefore an objective moral order, too. Nevertheless, even religious metaphysics has to concede that this moral order is not in plain view. There may be moral facts, but epistemically it is up to us to put forward some ideas about this moral truth. And indeed, Christian metaphysics represents some crucial suggestions about the divine and moral structure of the universe.

Christian religion involves a *theistic* view of the world and therefore supports the *ontological* assumption that there is a God. And because this God is seen as the epitome of goodness, the ultimate reality of the universe embodies a moral order. Contrary to this theistic conjecture, most modern worldviews assume that there are no objective values. As physicist Steven Weinberg put it trenchantly: “It is wrong to torture children. And the reason it is wrong to torture children is *because I say so*. [...] I mean that not only I say so, [...] probably most of us say so. But it is *not a moral order out there*. It is something *we impose*” [17]. The world as such is seen – in Max Weber’s words – as “ethically irrational” ([18], p. 122). So, there is a broad consensus among nontheistic philosophers that the universe as such contains no moral order. For example, John L. Mackie declared clearly: “There are no objective values. [...] [V]alues are not part of the fabric of the world” ([19], p. 15). The ethical distinction between right and wrong is an invention, made by humans. As John Rawls put it: “Apart from the procedure of constructing the principles of justice, there are no moral facts” [20]. The *ontological* assumption that there are no objective values implies the *epistemical* conclusion that there can be no such thing as “moral realism”: “there are no moral facts, no moral truths, and [therefore] no moral knowledge” [21]. From an atheistic point of view things could not be different, because only “if the requisite theological doctrine could be defended, a kind of objective ethical prescriptivity could be thus introduced” ([19], p. 48).³

If Christian religion encourages – in contradiction to this view of the world’s ethical irrationality – a morality-supporting cosmology, of course the problem of moral *heteronomy* immediately arises. The two background problems are Plato’s famous dilemma and the notorious “is-ought” problem:

- Plato’s argument consists in the dilemma that theistic ethics either has to say that the good is good merely because God wills it – this would make the good arbitrary, or that God wills the good because it is good in itself – then the good would be independent of God.
- If theistic ethics would make, first, an *is*-statement about the will of God, and would then declare that everybody *ought* to obey this will of God, then “we would still need an independent argument that we ought to obey the will of God” ([2], p. 314).

Modern Christian ethics has to be very clear about this issue: This independent argument has to be a genuine *ethical* argument, because if the only reason why we ought to obey God's will would be to gain heavenly rewards or to avoid eternal punishment, then on the one hand God would be nothing but a blackmailer, and on the other hand we would, morally, be "a sorry lot indeed" [22]. So, it is fairly clear that "Theistic Ethics without Heteronomy" [23] is needed. The moral order which is embodied in the ultimate reality of the universe (God) cannot be arbitrary.

An answer to this (alleged) "dilemma" can be given in terms of the ethically pertinent "ideal observer theory" or the theory of the "impartial sympathetic spectator": "The main idea [of this 'ideal observer theory'] is that ethical terms should be defined after the pattern of the following example: 'x is better than y' means 'If anyone were, in respect of x and y, fully informed and vividly imaginative, impartial, in a calm frame of mind and otherwise normal, he would prefer x to y'"[24]. This theory was endorsed by Adam Smith or David Hume and is still presupposed by all major contemporary ethical concepts. For example, the "original position" with its "veil of ignorance" (in Rawls' theory of justice or in Harsanyi's utilitarianism) is actually an equivalent of this "ideal observer" (see [25], pp. 185–192).⁴ Although the ethical validity of this theory does not, therefore, depend on the actual existence of a real ideal observer (or "ideal feeler" ([2], p. 314, p. 316)), theistic ethics holds, *ontologically*, the "notion of God, which is simply the ideal observer regarded as actual" ([2], p. 314, p. 314f.). So, in a theistic universe, God is the actual representation of the moral ideals ("moral realism").

But despite this moral realism in a theistic ethics, *epistemically* there is no difference to any other ethical approach. Religions are not providing any privileged access to truth. Human knowledge is always irreducibly hypothetical (or conjectural). So, the point of "moral realism" does not obviate the need for *rational* deliberation about ethical issues.

Although Christian metaphysics always has to be open for cooperative reasoning and theological progress, there are some crucial points which can be described as theologically corroborated:

1. The central hypothesis of Christian religion about God is that "God is love" (1 John 4:8). So, according to Christian metaphysics, the ultimate reality of the universe is love. Metaphysically, this notion of divine love implies the conjecture of a "social structure of existence": "This is the social structure of existence. The primacy of love-means that there is no possible value that any being could have simply in and by itself, or simply by its own decision" ([26], p. 45). If the structure of existence is indeed a social one, then the Christian God of love cannot be totally immutable. On the contrary, God has to be conceived as the "soul of the universe" and the universe as God's "body" ([26], p. 59: "God, the World Soul"). Given this metaphysical description, God's goodness or love is not logically contingent (Contrary to: [27]; [28]); for the God of love is not just an "ideal observer" but also an "ideal feeler" ([2], p. 314, p. 316). This is "the philosophic-theological vision of cosmic mind as cosmic love" ([29], p. 86).
2. The notion of a "social structure of existence" leads to the Christian injunction to *love our neighbors* as we love ourselves: "Thou shalt love thy neighbour as

thymself” (Matthew 22:39). This request is not a mere moral injunction but a matter of the successful self-realization of all human beings. But obviously we are not living in a world of universal neighborly love. And it is at this point that the problem of evil arises: The history of mankind is worlds apart from this vision of cosmic love. So, Jesus’ religious vision of a reality of cosmic love (the “kingdom of God”) is the inversion of these mundane circumstances: “But I tell you: Love your enemies and pray for those who persecute you” (Matthew 5:44). The rule of love is extended even to enemies. As a result, Christian metaphysics takes the view that without any exception *all* men are “neighbors” and are therefore deserving of respect.

3. The religious vision of cosmic love which leads to the ideal image of mankind shaped by mutual love in order to attain the successful self-realizations of all human (or living) beings also has consequences for the institutional framework of human societies: “*The sabbath was made for man, and not man for the sabbath*” (Mark 2:27). Social institutions are not an end in itself, but a means to another end – and this end is man.

Religions are worldviews with an impact on people’s *identity*: “You use arithmetic, but you *are* religious” ([3], p. 15, p. 79). In modern societies, there is a plurality of such worldviews, a market of nonreligious and religious comprehensive doctrines. But only “*reasonable* comprehensive doctrines” (Rawls) are capable of providing people with “*semantics of identity*” that does not undermine the unity of modern society. With respect to the Christian religion, rational Christian metaphysics is needed to make sure that Christian religion is such a “*reasonable* comprehensive doctrine” which is useful for a stable and flourishing coexistence. The three points mentioned above are theologically corroborated and therefore (probably) reasonable. So, in this sense, Christian metaphysics forms part of a useful moral culture of society.

Christian Metaphysics and the Modern Economy

Modern societies are characterized by a functionally differentiated structure (cf. [30]; [31]). Christian religion has to face the fact that, in contrast to medieval societies, there is no such thing as a primacy of religion over politics or the economy. The modern economic system is governed by an *economic* code (“to pay or not to pay”) and not (directly) by any religious view. So, in a second step, we have to ask: What is the possible contribution of religion or Christian metaphysics for modern societies or modern economies?

Applied Ethics and Christian Metaphysics

In order to specify the possible contributions of Christian metaphysics to the business ethics debates, it is useful to distinguish three different levels of ethical reasoning (Table 42.1).

Table 42.1 Three different levels of ethical reasoning

Justification level	Ethical principles (dignity, solidarity, justice, ...)	Ideal
Application level	Flexible justice	Real
Implementation level	Economics	Actual
	Law	
	Ethics	
	...	

On a first level, we can formulate certain basic ethical goals or fundamental principles. This level of moral argumentation (the “discourse of *justification*”) is about the justification of a certain moral norm in principle (e.g., “You shall not lie”). The norms or values formulated on this level function as *ideal* aims which a society or a community actively pursues as ethical goals, for example, dignity of men, justice, or honesty. So, on this level, we (can) define some “ideal” or fundamental ethical principles, which are setting the agenda for solving the greatest and most urgent problems of society (“heuristics”).

But on a second level, we often have to face the fact that in certain local situations there might be a conflict between different ethical goals (values). So, a “discourse of *application*” is needed: This is a discussion about the appropriateness of conflicting moral norms in a certain local situation, for example, the inhibition to lie versus the protection of life: It is not appropriate to tell a killer truthfully where he can find his victim; in this conflict the protection of life is the higher value. Or, to give another example: On the one hand, ultimately, there should not be any exploitative child labor (justification discourse I: the principle of humanity), but on the other hand the children and their families need the wages in order to survive (justification discourse II: the value of being alive). So, with regard to a local situation a mixed solution – for example, children in India working in the morning and going to school in the afternoon – is the ethically more appropriate option (application discourse). A distinct application discourse is needed to argue about the question of which option might be the most ethically “realistic” norm for a certain local situation (= “flexible justice”).

Both of these discourses (“discourse of justification” and “discourse of application”) are *ethical* ones (cf. [32]).⁵ The problem is: Moral norms may be ethically justified (justification level) and appropriate in a certain local situation (application level). However, this valid ethical justification and application only establishes a *moral reality* (a mere moral existence), but not yet an actual existence in the “physical” world we live in. By the term “reality,” a potential but achievable existence is designated, something that *could be* ([15], p. 46, p. 214f.). Reality is something that *can* become actual. On the one hand, this moral reality of moral norms is (more or less) independent from the actual status quo, and actuality cannot wipe this moral reality out of existence. On the other hand, this moral reality of justified and appropriate moral norms alone does not bring about their implementation in the actual world. And the reason for this is the poly-dimensionality of the world we live in.

This leads us to the third level: the “level of implementation.” The world we live in (= the “actuality”) is a polydimensional one: It might not only be the moral point of view that matters, but also the economic point of view or juridical conditions and so on. Concerning usual, profit-oriented business companies, the most important point of view is surely the economic one. So, if we want certain ethical claims to become actual, it is surely not sufficient to indicate only the moral point of view, since the economic code is crucial, especially in business. The implementation of a justified and ethically appropriate goal is a polydimensional process, which always has to take several aspects into account, moral aspects as well as economic or juridical ones. Usually, the implementation of an appropriate ethical goal becomes more likely if we succeed in bringing the moral claims and the economic aspects into a closer alignment. Shirley Chisholm was surely right in saying: “When morality comes up against profit, it is seldom profit that loses.”

1. *Justification Level: Christian Metaphysics as an Optional Heuristics.* In order to rethink the question about the possible contributions of Christian metaphysics to the business ethics debates, in the light of this distinction between three levels of ethical reasoning, it seems pretty clear that the business of comprehensive doctrines like Christian metaphysics is primarily located on the justification level: “The justification of morals takes place in the philosophical and theological discourse. It appears to be the function of moral philosophy [*and theology*] to provide the society with tenable justifications for moral propositions” [33]. Every society needs a sufficient supply of moral values which function as ideal ethical goals. “Without these achievements a cooperative society cannot exist, and to render these services is an autonomous task of theology and philosophy” [33]. The general justification of reasonable moral rules and values is an essential part of the moral culture of any well-ordered society. In every modern society, there exists a pluralistic “market” for those theological or philosophical justifications. And Christian metaphysics is one of these offers that can function as a guiding heuristics.
2. *Application Level: Ethical Discourses and “Flexible Justice.”* A separate application level is needed, because we are faced, in many local situations, with the existence of a conflict between *different* justified ethical goals. So, a cooperative rational deliberation concerning the question of which of these justified reasonable moral values is appropriate in this particular situation is inevitable. This unavoidable search for justice on the application level is an explicit feature of the Christian view: “But *seek* first the Kingdom of God and his righteousness” (Matthew 6:33). As a result, the understanding of justice in Christian metaphysics can be termed as “*flexible justice*” (or “local justice”). There is no such thing as *the* one and only path to justice, because different situations require different solutions: “[L]ocal justice is above all a very messy business. To a large extent it is made up of compromises, exceptions, and idiosyncratic features” [34]. According to Amartya Sen, this is “the problem of the non-existence of an identifiable perfectly just social arrangement” ([35], p. 15). Christian metaphysics agrees: Theology always emphasizes the point that perfect justice is simply not feasible here on earth. So, what is needed on the application level are *flexible* rankings “of [*ethical*] alternatives that can be realized” ([35], p. 17).

3. *Implementation Level: Actual Business Transactions.* Business transactions are *multidimensional* processes. Invariably, the economic dimension is crucial in business, but other dimensions matter, too. Many years ago, John R. Commons put this poly-dimensionality of (business) transactions in a nutshell: “Thus the ultimate unit of activity which *correlates law, economics and ethics* must contain in itself the three principles of conflict, mutuality, and order. This unit is a transaction” [36]. To get a more realistic view of actual business transactions, it would be completely inadequate to reduce this *multidimensionality* exclusively to the economic aspect. But exactly this reduction was, for example, made by Oliver Williamson. In his Nobel lecture, Williamson quoted Commons, but dropped the aspects of law and ethics: “John R. Commons, who was a leading institutional economist during the first half of the twentieth century, formulated the problem of economic organization as follows: »The ultimate unit of activity . . . must contain in itself the three principles of conflict, mutuality, and order. This unit is a transaction« (Commons 1932, 4)” [37]. Williamson believes that economic transactions are in fact “mono-dimensional,” because under economic circumstances an actor would behave in a purely economic (self-interested) or “opportunistic” way: “The upshot is that personal/trust relations and commercial/calculative relations differ in kind” [38]. If Williamson was right, then this would be the end of any business ethics.

Another (and well-known) attempt to shrink Commons’ poly-dimensionality of business transactions to an economic one-dimensionality is Milton Friedman’s claim that within a free market system or capitalism a business company cannot have any other corporate social responsibility than simply making money: “That responsibility is to conduct the business in accordance with their desires, which generally will be to *make as much money as possible*” [39]. But this is nothing but a sleight of hand, because Friedman continues the quotation above in the following way: “. . . to make as much money as possible *while conforming to the basic rules of the society*, both those embodied in law and those *embodied in ethical custom*” [40]. Friedman is smuggling in this “ethical custom” – without making clear what he means, precisely, by “ethical custom.” But the entire business ethics consists of this question, and we are faced with this question because actual business transactions are *not* just economic operations, but *multidimensional* processes. The moral dimension is empirically relevant in business transactions, and therefore there is the possibility that the moral beliefs of Christian metaphysics can be an appreciable issue on the actual level of implementation.

Pluralistic Capitalism: The Impact of Religions

Unquestionably, the modern economic system is not governed by religion, but by an *economic* code (“to pay or not to pay”). But there always was – and is – a certain, limited impact of religion(s) on the sphere of economy.

Religious Beliefs, Moral Cultures, and Different Types of Capitalism

Since Max Weber published his groundbreaking studies in economic sociology, the evidence for cultural influences of world religions on the economy is almost irrefutable. Weber examined the cultural causes for the different ways various societies developed, and recognized that religions belong to the core forces which shape men's behavior and the emergence of institutions. For example, he satisfactorily showed the impact of the Protestant Ethic on the Spirit of western Capitalism ("money-making mentality") or the effects of Confucianism on the Chinese economy [41, 42]. According to Weber's theoretical reconstruction of the paths by which these religious "world images" are influencing the domain of economies, these "ideas" are determining the "interests," which are guiding men's decisions directly: "Not ideas, but material and ideal interests, directly govern men's conduct. Yet very frequently the 'world images' that have been created by 'ideas' have, like switchmen, determined the tracks along which action has been pushed by the dynamic of interest" ([18], p. 280). So, religions shape economies only in a mediated way [43].

Religious worldviews are *one* of several factors in the cultural environment of economic institutions. "Economic institutions do not exist in a vacuum but rather in a context of social and political structures, cultural patterns, and indeed, structures of consciousness (values, ideas, belief systems). An economic culture then contains a number of elements linked together in an empirical totality" [44]. Religious belief systems are part of the specific (moral) culture that is capable of framing the shape of economic institutions and business activities. These belief systems belong to the realm of *informal* institutions: "In the modern Western world, we think of life and the economy as being ordered by formal laws and property rights. Yet formal rules, in even the most developed economy, make up a small (although very important) part of the sum of constraints that shape choices; a moment's reflection should suggest to us the pervasiveness of informal constraints. In our daily interaction with others, whether within the family, in external social relations, or in business activities, the governing structure is overwhelmingly defined by codes of conduct, norms of behavior, and conventions. Underlying these informal constraints are formal rules, but these are seldom the obvious and immediate source of choice in daily interactions" [45]. This impact of culture and religion on the economy must be taken into account: "If the propositions of economic science are to be useful in drawing normative inferences concerning the constitutional-organizational structure of society, cultural parameters that describe the behavioral attitudes of participants must be taken into account. In this sense, there is indeed an Economics that must be culture bound" [46].

Since Max Weber's groundbreaking studies further research delivered abundant evidence for the (mediated) impact of religious belief systems on the economic performance and institutions at the level of the individual, group, or nation (cf. [47]; [48]). As a result, the world of global capitalism is a *pluralistic* one: There is not only the Anglo-American type of capitalism, but also the German "social market

economy” (based on the economic philosophy of Ordoliberalism) or the Chinese network (guanxi or crony) capitalism. So, we are living in a world of a *pluralistic capitalism*.

Religious Beliefs, Ethical Integrity, and Management

After many years in which “religion and spirituality have been literally exorcised from modern forms of institutional organization” [49], in recent years, there has been a rise in interest in the impact of religion and spirituality on individual behavior and the organizational structure of business companies. However, the results are contradictory:

- Some empirical research could *not* find a considerable positive relationship between religious beliefs on the one hand and moral behavior on the other [50].
- Whereas the results of other studies indicate a *significant* relationship between religion and higher ethical standards: “[B]usiness professionals who considered their religious faith to be highly important to them are significantly less accepting of ethically questionable behavior” [51].

So, there is a need for further innovative and interdisciplinary empirical research. “Overall, there is good reason to think that religiosity does influence ethical behavior in [*business*] organizations, but also good reason to think that creative and interdisciplinary research will be needed to discover just what that relationship is” [52].

Homo Oeconomicus Culturalis (HOC)

To reconstruct the impact of religious worldviews on business behavior, we need a theoretical rationale that is taking the different interests of real people into account. Concerning this, it is appropriate to draw on the economic approach by Gary S. Becker: “Unlike Marxian analysis, the economic approach I refer to does not assume that individuals are motivated solely by selfishness or material gain. It is a *method* of analysis, not an assumption about particular motivations. Along with others, I have tried to pry economists away from narrow assumptions about self-interest. Behaviour is driven by a much richer set of values and preferences. The analysis assumes that individuals maximize welfare *as they conceive it*, whether they be selfish, altruistic, loyal, spiteful, or masochistic. [...] [T]hey try as best as they can” ([53], pp. 385–386).

- In this statement, Becker takes a plurality of substantially *different* interests into account (“a much richer set of values and preferences”) and does *not* claim that, say, moral interests are ultimately economic interests.
- He then correlates his methodological assumption of “Homo Oeconomicus” to the rational pursuit of these different interests only (“maximize welfare as they conceive it,” “try as best as they can”).

However, the trouble is that Becker lumps together personal interests (self-interests) on the one hand and moral or religious interests on the other. In his approach, there is no content-related differentiation of these distinct interests.

Table 42.2 Different interests and homo oeconomicus

Different interests (preferences)	Self-interests		Moral interests religious interests . . .
	Monetary interests	Nonmonetary (self-)interests	
Pursuit of these different interests	Homo oeconomicus		

Because of this fault, the model misses the point, namely, to predict human behavior – because a person with narrow monetary interests will behave differently from a person whose identity is shaped by the Christian love (love of neighbor) or – because “[r]eligion is by no means necessarily good. It may be very evil” ([3], p. 17, p. 79) – by the delusions of religious fundamentalisms. So, an adequate model of Homo Oeconomicus and his *different* interests would look like in Table 42.2.

Three additional remarks on this subject:

- (a) It is empirically important to *differentiate* these various interests substantially. John C. Harsanyi is completely correct in doing this. He draws a principal distinction between at least two kinds of preferences: “[E]ach individual has two sets of preferences. One consists of his *personal* preferences, defined as his *actual* preferences, which will be typically based mainly on his own personal interests and on the interests of his closest associates. The other consists of his *moral* preferences, defined as his *hypothetical* preferences that he *would* entertain if he forced himself to judge the world from a moral, i.e., from an impersonal and impartial, point of view. Mathematically, an individual’s personal preferences are represented by his *utility function*, whereas his moral preferences are represented by his *social welfare function*” [54]. In addition to Harsanyi’s distinction, we should add the possibility of other interests, for example, religious or aesthetic interests, which are usually influencing moral interests.
- (b) All kinds of interests are *attractive* for the person equipped with certain interests. If the desire comes to fulfillment, the person is feeling the warm glow of satisfaction. This is also true for moral interests. So, it would be a misconception to locate moral interests only on the side of (opportunity) costs.
- (c) A third remark is concerned with the problem of *rationality* in pursuing these different interests. Gary S. Becker is right in saying: “[T]hey *try* as best as they can” ([53], p. 386 (emphasis mine)). Behavioral Economics has shown sufficiently that human behavior is often not rational, but “predictably irrational” [55]. So, humans are not *doing* the best they can, they only *try*.

To sum up, there is a wide range of different interests that can shape individuals’ behavior. And among those, religious interests can play an empirically relevant role.

Spiritual Capital: Business Ethics and Modern Christian Metaphysics

In human life, different interests matter – economic and political interests as well as scientific or aesthetic, moral, and religious interests. As the Dalai Lama

briefly put it: “Everybody loves *money*, including myself. In order to live you need money. Without money you can’t work. [. . .] [*But:*] Beside money, there are *other values*” [56]. Surely, it is legitimate to pursue economic interests, but there are legitimate moral or religious interests, too. All of these interests really matter. The *different* problems of human life cannot be solved by drawing on only *one* of these interests. Humans are *multidimensional* beings.

This plurality of different values is inescapable – not only in individual lives, but in society, too. And in modern societies, the *structural* way of dealing with this plurality of key interests is called *functional differentiation*. To satisfy each of these interests in an efficient way, modern societies have differentiated several distinct social “systems,” which are working strictly according to their very own code. So, the code of the economic system (\pm pay) is an adequate frame for economic transactions (e.g., shopping or business decisions), but this code would not be adequate for political purposes (e.g., the decision who is going to be the president of the USA).

But, and this is the point here – there are adequate and less adequate ways to satisfy these interests. For example, there is every indication that market competition is a (much) more useful way to satisfy *economic* interests and create economic values than a centrally planned economy. And democracy is an adequate means for *political* ends, whereas dictatorship is not. Quite the same applies to *religious* interests: Modern societies contain not only reasonable religious doctrines, but unreasonable, irrational, or mad ones, too. And if there is an impact of religion on the sphere of business, then we have to face the fact that religion can have productive or counterproductive effects in economy. So, only in the case that these effects are (economically) productive, the impact of religion on the economy or on business activities becomes “spiritual capital.” In this case, religion pays (or: spirituality pays). Religion becomes a beneficial contribution to prosperity. “Spiritual capital” is the title of a research program which investigates the question, under which conditions religious worldviews are capable of being such a productive factor in business or society. Below, I designate three features of a rational Christian metaphysics, which have the potential to be such “spiritual capital.”

The Difference Between God and the World

The “arch-metaphysical assertion” ([8], p. 275) of Christian metaphysics is the God hypothesis: There is a God, and this “God is love” (1 John 4:8). The flipside of this proposition is the cognition that the world is not God, that the love of humans is always a fragmentary one. “The consciousness which is individual in us, is universal in him [*God*]: the love which is partial in us is all-embracing in him” ([3], p. 79, p. 152). On the one hand, the metaphysical concept of God implies an essential relationship between God and the world, but on the other hand it leads to the distinction of God and the world: “God and the World are the contrasted opposites” ([15], p. 46, p. 348). Insofar, this theological distinction between God and the world

leads to a nonutopian or realistic view of all mundane things: Everything in the world is *imperfect*. And this imperfection applies to ourselves as humans as well as to all the social institutions we are creating (e.g., markets). In other words, the God-world-differentiation makes it clear that the world as a whole, and everything in it, is a *contingent* fact. The function of the theological distinction between God and the world consists in a fundamental “opening up of contingency.” It keeps things open, or should – in contrast to religious fundamentalism – keep things open.

The Imperfection of Humans

To err is human. In contrast to the methodological model of Homo Oeconomicus, recent research in the field of behavioral economics found overwhelming evidence for the fact that real humans are imperfect and frequently irrational beings (See, e.g., [55]). The theological view on this imperfection enters into the equation when (business) people claim a godlike (= perfect) status for themselves. Two examples:

- Jeff Skilling, former COO and CEO of the American energy company *Enron*, claimed to be the right hand of God: “It wasn’t a job – it was a mission [. . .]. We were changing the world. We were doing God’s work” [57].
- Similarly, Lloyd C. Blankfein, CEO of the American Investment Bank *Goldman Sachs*, stated in 2009 (*after* the misery of the financial crisis!): “We’re very important. [. . .] We help companies to grow by helping them to raise capital. Companies that grow create wealth. This, in turn, allows people to have jobs that create more growth and more wealth. It’s a virtuous cycle. [. . .] We have a social purpose. [. . .] I’m just a banker doing God’s work” [58].

In cases like these, the core concern of Christian metaphysics is the criticism of such economic “replacement theologies.” Whenever people are claiming a godlike status for themselves, society will have to pay dearly for the conceit. And so, the job of a rational religious metaphysics, namely, to criticize any pseudo-theological pretentiousness, can be a beneficial contribution to prosperity.

The Imperfection of Markets

There is no doubt that free markets are a very useful and efficient instrument to create wealth. The reason for this is the fact that markets are functioning as “discovery procedures,” as Friedrich August Von Hayek famously put it: “[C]ompetition systematically [*is*] [. . .] a procedure for discovering facts which, if the procedure did not exist, would remain unknown or at least would not be used” [59]. As a result, modern capitalism made technological innovations and material possible, as well as social progress of a kind never seen before. But that is only half the story. Unfortunately, it is the same market competition that can force companies to ignore ethically desirable goals: The cost pressure may force companies to discount the problem of child labor or ecological production. And so, it is nothing but another economic “replacement theology” when the same Friedrich August Von Hayek puts the critique of some effects of market freedom under a taboo: “A successful defense of freedom must therefore be dogmatic and make no concessions to expediency; even where it is not possible to show that, besides the known beneficial effects, some

particular harmful result would also follow from its infringement” [60]. It seems to me that the opposite is the case: Concerning markets, everything is a question of expediency. If markets fail to produce the socially desired results, a change of market rules is indicated. Von Hayek’s dogmatic divinization of contingent market processes is another case of a mistaken “replacement theology,” which has to be criticized – by any rational theology.

Humans as the End of the Economy

Markets are useful, but they are not an end in itself. They are only a means to another end – and this end is man: “[I]ndividual human beings are the foundation, the cause and the end of every social institution” [61]. This is a key point of any Christian ethics. Markets are made for men – and in Christian metaphysics, this means *all* men, without exception. This is the Christian answer to the question of “solidarity”: *All* men are “neighbors” and deserving of respect, *everybody* belongs to the community of solidarity of mankind. And therefore, the construction of social institutions has to take the interests of *all* these humans into account.

Concerning this matter, there is a systematic difference between the understanding of “solidarity” in Christian metaphysics on the one hand and, for example, the ethical approach of John Rawls on the other. Famously, Rawls defines “society” as “a cooperative venture for mutual advantage” ([25], p. 4). But his “original position” is *not* open for everybody. In fact, he restricts the access to the “original position” to parties “within the normal range” (cf. [5], p. 25). Rawls justifies this decision as follows: “[S]ince the fundamental problem of justice concerns the relations among those who are full and active participants in society, and directly or indirectly associated together over the course of a whole life, it is reasonable to assume that everyone has physical needs and psychological capacities within some normal range” (cf. [5], p. 272, fn. 10). As a result, the interests of other people are *not* taken into account: “Thus the problem of special health care and how to treat the mentally defective are aside” (cf. [5], p. 272, fn. 10). The admitted parties of the “original position” are capable of active contributions to this “cooperative venture for mutual advantage.” Rawls’ construction of the original position resembles a working meeting of the cooperative venture “market society”; this economic approach shapes the design of the problem and its solutions (See [62]). In this respect, the concepts of Rawls and James Buchanan are very similar, because Buchanan is concerned exclusively with gains from cooperation: “[T]he political economist’s task is completed when he has shown the parties concerned that there exist mutual gains ‘from trade’” [63]. Both Rawls and Buchanan are advocates of a conception of ethics in which moral rules are just an investment in mutual cooperation gains. But this reduces the moral point of view to productive exchanges, that is, to “business.” Contrary to this reduction, Christian metaphysics maintains that access to the “original position” should be granted for *all* human beings, because *all* men are seen as “neighbors,” deserving of the same respect. Therefore, the interests of *all* humans should be taken into account.

Markets Beyond Vulgar Capitalism: The Metaphysics of Different Interests

In contrast to the differentiated sciences which are usually focusing on (only) *one* research perspective in reconstructing social problems (e.g., “opportunity costs” in economics), it is a central feature of metaphysics that it has to deal with the broad variety of ontologically *different* interests in human life: A complete metaphysics is a system of ideas which brings the religious and moral interests into relation with those concepts of the world and of society which have their origin in natural or social sciences (See [15], p. xiii).⁶

As already said above, doubtlessly free markets are a very efficient instrument to create wealth. But capitalistic systems tend to reduce the variety of different interests, which are important for human flourishing, to one single type: *monetary* interests. As a result, human beings tend to degenerate into money-making robots, which are ignoring other important values of human life. An example of this is the statement which was made by Richard Fuld, former CEO of *Lehman Brothers*, in an internal video tape. In 2007, Fuld said that *Lehman* is going to “squeeze some of our shorts [*short-sellers*], and squeeze them hard. Not that I want to hurt them. Don’t get that, please, cause that’s just not who I am. I’m soft, I’m lovable. But what I really want to do is that I want to reach in, rip out their heart and eat it before they die” [64]. This is some kind of one-dimensional “vulgar capitalism,” which has forgotten all other values, in this case especially moral values. The insights of neuroeconomics cast some light on the fact that such a slipping into “vulgar capitalism” happens faster than we can think (literally): “the neural activity of someone whose investments are making money is indistinguishable from that of someone who is high on cocaine or morphine” [65].

Religions as such represent other values than money. As a contemporary religious leader, the Dalai Lama, briefly stated: “Everybody loves money, including myself. [...] Beside money, there are other values” [56] – namely, moral and religious values. So, naturally, religions are functioning as a counterpart to any reductionist form of capitalism (“vulgar capitalism”). No question – economic values are very important in human life, but they are not the only ones. Human nature is a polydimensional thing. Muhammad Yunus declares: “The biggest flaw in our existing theory of capitalism lies in its misrepresentation of human nature. In the present interpretation of capitalism, human beings engaged in business are portrayed as one-dimensional beings whose only mission is to maximize profit. [...] [*But:*] [H]uman beings are not money-making robots. The essential fact about humans is that they are multidimensional beings. Their happiness comes from many sources, not just from making money” [66]. So, in the end, everything comes back to the philosophical and theological endeavor to capture the essence of human nature. The religious awareness of a transcendent ultimate reality can save us from “vulgar capitalism,” which has forgotten that there are other values besides money.

Conclusion

(Reasonable) religions are a part of the moral culture of society. There has always been a certain cultural impact of religion(s) on the economic sphere. If the effects of religion(s) on the economy are both *economically* productive ones and *ethically* a contribution to the project of building up a humane global economy, their impact on business activities becomes “spiritual capital.”

Cross-References

- ▶ [A Conceptual Framework of Business Ethics in Islam](#)
 - ▶ [Adam Smith on Morality and Self-Interest](#)
 - ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
 - ▶ [Faith](#)
 - ▶ [Imitatio Dei and Jewish Business Ethics](#)
 - ▶ [Scholastic Business Ethics: Thomas Aquinas Versus William of Ockham](#)
 - ▶ [Scholastic Thought and Business Ethics: An Overview](#)
 - ▶ [The Capability Approach as Guidance for Corporate Ethics](#)
 - ▶ [The Influence of Thomistic Thought in Contemporary Business Ethics](#)
 - ▶ [The Philosophical Foundations of the Capabilities Approach](#)
 - ▶ [The Traditional Christian Social Ethics](#)
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Notes

1. Griffin David R. ([2], p. 12) with reference to the theory of religion by process philosopher Alfred North Whitehead; see Whitehead Alfred N. [3].
 2. Whitehead Alfred N. ([3], p. 59). In contrast to the subject matter of natural or social sciences this deepest reality of the universe assumed by religions cannot be proven empirically, so biologist Stephen Jay Gould compares theology with “exobiology, that great subject without a subject matter (only theology may exceed us in this)” (Gould, Stephen Jay [4]).
 3. Mackie JL ([19], p. 48) “Since I think that theism cannot be defended, I do not regard this as any threat to my argument” ([19], p. 48).
 4. See Rawls, John ([25], pp. 185–192). But, in contrast to Rawls, I don’t think that a rational and impartial spectator necessarily leads to utilitarianism.
 5. cf. Habermas, Juergen [32] speaks of *moral* justification- and application-discourses.
 6. See Whitehead’s definition of “cosmology”: “Also, it must be one of the motives of a complete cosmology [*or metaphysics*] to construct a system of ideas which brings the aesthetic, moral, and religious interests into relation with those concepts of the world which have their origin in natural science” ([15], p. xiii).
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Abstract

The term and the function of the entrepreneur were, for a long time, disregarded in Christian Social Ethics. Nevertheless, Christian Social Ethics has already dealt, on the basis of its understanding of the human being as a person, endowed with freedom and dignity, and the social principles that follow from this, with questions such as private property, freedom of contract and fair wages, as well as market and competition within its own tradition. The entire development of the social proclamation of the Church and of academic Social Ethics points toward a market economics order. Specifically with regard to business ethics, primary approaches can be found as early as in the 1960s, which remain interesting to the present day. Under Pope John Paul II, and also Benedict XVI, the function and significance of the enterprise and the entrepreneur are also honored in the social proclamation *expressis verbis*. With the central aspects “human being first,” social responsibility of the entrepreneur and a regard for that which is beyond the market, Christian Social Ethics can make an important contribution in the present societal and academic debate.

Introduction

An article on Christian Social Ethics in a Handbook of the Philosophical Foundations of Business Ethics – this may seem surprising to some, and for twofold reasons: firstly because one wonders why the Church and theology comment on questions like these at all, and why they feel entitled to do so, and secondly because

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at *classical* Christian Social Ethics it seems obsolete, as it ignores, seemingly at least, the person of the entrepreneur, the institution of the enterprise, and with that, business ethics in the strict sense of the word.

The first question will not be dealt with extensively in this article; the following points only are significant, which are presented in summary.

Considering the question of economy in a Christian life and in the thoughts of theology is not done to express a sort of “clerical” claim to power. The Church and its theology is not concerned with getting involved in political or economic matters which do not pertain to her expertise and would thus be presumptuous. Her statements are, rather, based in the genuine care for the well-being and the salvation of humankind. The realization of the salvation which the Church proclaims to the people happens, after all, not in a separate or parallel world, but in *this* world under its conditions. This is why the respective socioeconomic conditions play a not so insignificant role and need to be shaped by a Christian spirit. For this, however, it is necessary to have reliable parameters on which people can base their decision, for one, but which is also capable of offering alternative viewpoints for shaping just conditions in society and also in the economic system. Christian Social Ethics sees, in this, its contribution to shaping society in a humane way. This is why it thinks itself entitled to – as something that follows from the core of the Christian message – and also sees its duty to comment on questions of society and economics, and takes the individual dignity of the person as its measure on which everything is centered.

According to this differentiated position, there is another important aspect: “[T]oday Christian intellectuals have at their disposal a more subtle and realistic approach to economic life – at the same time that economic specialists exhibit more openness to the importance of culture, morality, and religion than at any other time in the last century” ([1]; cf. too [2]).

The following article shows, as an initial step, what the intention and the content of (classical) Christian Social Ethics, or teaching, is. A second part will deal more closely with the central topoi of the statements of Christian Social Ethics, while the third part specifically addresses the questions of business ethics. Finally, a short conclusion will be given at the end.

Intention and Fundamental Approaches of Christian Social Ethics and Ecclesial Proclamation on Social Questions

The title of the article uses the term “Christian Social Ethics.” To avoid a Babylonian confusion of languages with regard to this term, a short clarification of usage will form the start of the following paragraph.

Christian Social Ethics is a term which is correct from a philosophy of science point of view and has, by now, become usual to describe the ethical discipline within the range of subjects of Protestant and Catholic theology which reflect systematically on the question of the justice of institutions of human society and their contribution to the conditions for a successful, good life for each individual.

In the Catholic tradition, there are still synonymous terms such as Christian Social Studies or Catholic social doctrine. This term includes, in many instances, in addition to the theological discipline, the pastoral and magisterial social teaching of the Church, which constitutes a fundamental point of reference for the academic reflection of the respective topics. These are the social encyclicals and writings of the Popes which are relevant too, and which deal – to put it briefly – “with basic questions of the order of life in society” [3] while looking at concrete economic, political, or social situations. The social proclamation as well as classical social teachings is to be considered in the following with their respective positions.¹

The Social Question as a Question of Social Justice

Christian Social Ethics or Social Studies developed in the nineteenth century when the Church dealt with the social question, that is, the question of the workers in the context of the industrialization and the social problems that stand in its wake, with which the Church was confronted – at first without having a defined social ideal – and the solution of which she strived for. The impulse for the manifold and concrete reflections was the frightening conditions of the working class, which were marked by poverty, exploitation, and lack of rights, as Pope Leo XIII commented in his first social encyclical *Rerum novarum* 1891 [5].² In his passionate plea for conditions worthy of human beings in work relationships, he does not only speak up for the interests of defenseless workers but also shows options for building a more just society. This is why this social encyclical becomes, in the further course of development, the point of departure for a large number of publications that continue and further this topic.

On a more abstract level too, the social question can be said to be the material object of Christian Social Ethics; the Nestor of Catholic social teaching, Oswald von Nell-Breuning, defined the term as “social criticism put into questions” (This quote could not be verified in the original, which is why it is quoted, here, according to Stieglitz et al. [6]).

Only as a consequence of the modern focus on the subject did it become obvious that societal institutions and structures are not necessarily elements of an unchangeable divine order but were open to human design and responsibility. Due to this, it becomes clear why the question of shaping a just social order becomes a (quantitatively and qualitatively) dominating problem in the statements of the Catholic Church only from the nineteenth century onward.

The definition of the social question was broadened quickly to go beyond equating it with the question of workers: The social question “was already seen, before the turn of the century, as a question of economic and social order as a whole by social criticism that was open to reality. It had, thus, entered its second stadium. The industrial economy had negative consequences, one after the other, for almost all groups of society.” In the third stadium, during and after the Second World War, it “experienced a global expansion, as it is from this that a smouldering fire originates, which troubles, worries and scares peoples all over the world . . .” [7].

Social criticism is evoked by the fact that the respective real societal conditions are in contrast to the ideal of a reasonable order of society, one that is justifiable to reason, and which gives a fair share in material and immaterial goods to all people. The social question is thus the question of social justice of any societal structure, procedures, and areas of life, which is, in turn, tied back to the human being as “individual human beings are the foundation, the cause and the end of every social institution” [8].

The plural that has, by now, become usual, that is, talk of “the new social questions,” sets the signal that, within a framework of a very complex and many-layered open society, there is, in contrast to the nineteenth century, not just one social problem but a variety of aspects which cannot, in turn, be analyzed in isolation. Problems that are discussed at the moment that have relevance to business ethics are, among others, the restructuring of the welfare state, stabilizing social security systems, a more transparent and more just shaping of the tax system, the shape of family politics, the creation of new work places, and the politics of education (cf. [9]). These are questions and topics, the challenge of which does not lie, for Christian Social Ethics, in technical aspects concerning the labor market, tax political or social security rights aspects, which are specific to a certain subject; they are tasks for the experts in these fields. Christian Social Ethics is neither willing nor able to provide “technical revolutions” [10] for the urgent economic and social problems. It is pursuing, instead, the aim, while taking into account the “autonomy of earthly affairs” [11], that is, the autonomy and the individual value of the different areas, to establish its competence chiefly regarding the “real, ‘concrete’ and ‘historical’ man” [12] and to raise attention to the moral foundations of the life of society.

In trying to do this, Christian Social Ethics does not only appeal to Christians, or just Catholics, but since the encyclical *Pacem in terris* of 1963, “all Men of Good Will” are addressed too all who subscribe to the same central intention, namely, the creation of structures which serve human dignity and the development of human freedom.

Christian Understanding of Humans and Social Principles

“From the knowledge that everything that exists can be a *matter* of ethical acts, but that only humans can be the *subject* of ethical acts, the special importance of the concept of humanity for all ethics results” [13]. This prerequisite of all Christian Social Ethics is to describe now as a basic orientation.

“This teaching rests on one basic principle: individual human beings are the foundation, the cause and the end of every social institution. [...] this basic principle [...] guarantees the sacred dignity of the individual” ([8], no 219f). The central norm, on which all is built, the human being as a person (cf. also [14]), as creature and image of God, serves as the short formula for any description of the Christian concept of humans. In this, however, this short formula is not meant to describe one single firm image of person, but it is exactly the specific case which shapes the Christian concept of humanity so that certain indispensable dimensions of the Christian concept of humanity can be shown.

It is important to state that it is not necessary to believe in God to be able to recognize that every human being is a person with her unalienable dignity. Immanuel Kant has, in his seminal work on the metaphysics of morals, with the derivation of his Formula of the End In Itself of his Categorical Imperative, practically provided a secular reasoning for this concept of humanity: “Act in such a way that you treat humanity, whether in your own person or in the person of any other, always at the same time as an end and never merely as a means to an end” ([15], p. 36). Since Kant, a differentiation between two forms of value is relevant with regard to this, too: “In the kingdom of ends everything has either a price or a dignity ([15], p. 40). Whatever has a price can be replaced by something else as its equivalent; on the other hand, whatever is above all price, and therefore admits to no equivalent, has a dignity.” It is, accordingly, the human being which does not have a price, no equivalent, but a dignity, which demands recognition without any conditions, and respect.

Concern about structures of society which do justice to the dignity of the human being, about the realization of social justice, has led, in the tradition of Christian Social Ethics, to the formation of some central social principles (cf. [16]), which allow for a critical observation of conditions and ideologies as they are and which form signposts for the right direction.

For Catholic social teaching, the principle of the common good has held central significance since its beginnings in the nineteenth century, but in the later Social Ethics it is sometimes subsumed in the principle of solidarity. In its classical definition, the common good is understood as the epitome of the means and chances, structures, institutions, and social systems which have to be provided in social cooperation so that “the individuals, the families and social groups” can attain their own values and aims “more fully and quickly” ([11], no. 74; 26; as well as [7], no. 65; PT 58 and [17]). This is not only about the perfection of each individual but also about the different groups in society. The common good does not contain the sum of *all* values, but only of those values that are a prerequisite for a situation where everyone can realize *their* individual values. Specifically for the area of economy, this means, for example, that the fundamental civil rights and liberties are granted and codified, but also that a corresponding infrastructure is made available so that people can make use of their economic and entrepreneurial freedom (cf. [18, 19]).

The principle of solidarity should also find mention, which starts with the equality in terms of being, and equal value of all people at the same time as them being, in reality, unequal. The point of departure is the social dimension of being a person, which is the mutual relatedness of people to each other and to society as a whole, which then means that there is a mutual obligation to be with each other. The principle of solidarity does not only concern acts with others, but fundamentally the directedness to the good of all, the common good. John Paul II defines solidarity, accordingly, as “a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all” ([10], no. 38). Solidarity means, accordingly “the will, motivated from shared prerequisites, to do what one owes one another” [20]. Showing solidarity is, thus, the duty that is based on one’s humanity, to realize the common good or social justice.

The field of the principle of subsidiarity, which was, for the first time, explicitly mentioned in the social encyclical *Quadragesimo anno* of 1931 in no. 79 by Pope Pius XI, in the face of the ideologies that were threatening freedom and personal rights and which were establishing themselves in the European context, has enjoyed, in the recent years, a societal renaissance: It is no longer seen as a typically Catholic principle, but representatives of different positions used it in their reasoning – in debates concerning economy, social matters, but also European politics.

According to the original conception, the principle of subsidiarity has a twofold content; the reduction of which, if only on one side, leads to a misdevelopment of societal and social order. Its most significant feature is that it clarifies responsibilities in society. Its negative or critical side stresses – addressed to the bigger unit – the law of noninterference, which is the right of individuals and social groups to be able to manage and order their own affairs within the framework of their actual potential. The recognition of competence is articulated for this: Those who are immediately involved have a primary competence, for example, the private initiative in economies, with the state only determining a framework. In this regard, the principle of subsidiarity aims to fight off any interference of bigger units, especially of the state, with the liberties of smaller units or individuals. This right of self-determination corresponds to a duty of responsibility for oneself. The positive or constructive side of the principle of subsidiarity has a thrust toward strengthening the freedom of the individual and of social groups, or of enabling them to develop: Where their powers are insufficient, the bigger societal units – again, in many cases, ultimately, the state – are charged with helping and supporting. The primary aim of this “subsidiary assistance” (L. Schneider) is to enable the individuals or smaller units, in the sense of helping to help oneself, to be able, where possible, to take care of affairs themselves (again) – which implies the duty for the bigger unit to pull out again after successful assistance. It is possible, accordingly, to call the principle of subsidiarity a principle of enabling freedom.

In Christian Social Ethics, the principle of sustainability becomes more established as a further new social principle. “The methodological key of the concept of sustainable development lies in the connected perspective which understands social balance, ecological sustainability and economic efficiency as mutually determining factors” [21]. The paradigm of sustainability has developed into an integrative concept which assumes that the entire development toward the future should be in accordance with the needs of today’s generation, without at the same time endangering the options of future generations. The decisive social-ethical point of departure is, above all, intergenerational justice, which is widened, chronologically, to include future generations as well as, geographically, to include all people. From this perspective, a lot can be said for the understanding of the concept of sustainability as a widening of the principle of solidarity by a diachronic dimension and to integrate it, thus, into the classic trio of social principles.

Central Statements on Institutions of a Just Economic Order in the Social-Ethical Tradition

On the background of the thoughts on dignity and freedom of human beings as well as on the principles that make it more concrete, it follows, almost inevitably, that the Social Ethics of the Church, in its tradition, mainly envisage a market economy, and thus, a liberal order (cf. to this debate, e.g., [22]). In the following, three fundamental aspects of a market economy that is just and human will be shown. In this, the focus is to be especially on the corresponding statements in the social proclamation.³ To conclude, the relationship between Christian social teaching and social market economy will be examined.

The Institution of Private Property and Its Social Function

The institution of private property is a fundamental principle in classic Christian social teaching (cf. [23]), as, with this, not only is a person's possession of a thing acknowledged but also, fundamentally, the status of individual acts within the overall structure of economic decisions is strengthened and, with that, finally the meaning that has to be assigned to the freedom of the individual in this economic system.

In the first social encyclical *Rerum novarum* of 1891, Pope Leo XIII placed the question of property at quite an exposed place, namely, the beginning of the document and did, thus, stress the particular importance of this institution with regard to the solution of the social question. The confrontation with the position of Marxism, in particular, which saw private property as the root of all evil and expected a diffusion of all problems by the state taking over all private property⁴ in capital goods, formed the central focus of the conflict at the time.

The understanding of property of Karl Marx had to be seen, however, first and foremost as a reply to the liberal concept of property which rested mainly on the thoughts of John Locke (cf. [24], the question of property is being dealt with in the second treatise) which were later taken over by Adam Smith. According to Locke, private property has to be justified by human work, and it is the task of the state to protect the order of property that developed in this way as an unalienable and holy right.⁵

As Marxism now framed a decisive counter position to this theory of property, it was not only met by criticism from the liberal side but also from Catholic social teaching. This was because, for the Church, abolishing private property was not a solution for the social question but rather a way to cause more unrest in society, as Thomas Aquinas, in particular, had framed it as early as the Middle Ages (cf. [25]).

Based on the foundation that all goods of the earth are there for all people (*destinatio communis*), Thomas Aquinas makes a distinction between the use of the outer goods (*usus*) and the right of use (*potestas*). Regarding the use, "the person may not see the outer goods as private property, but as common property, by sharing them generously with people in need" ([26], p. 54). Thomas thus expressly stresses the social duty that comes with private property.

Matters are different for the right of use of certain things. Thomas makes a case, here for individual allocation, for three reasons: *firstly* regarding the strengthening of self-responsibility of people, *secondly* with regard to avoiding disorder within the social sharing of life, and *thirdly* because of the peacemaking effect of property.

Overall, it can thus be stated that “In the face of the *conditio humana* which is shaped by Original Sin, and which is imperfect, the private order of property is unavoidable and necessary for the common good” ([26], p. 55), which means that the right of property is merely a decision of purely human agreement. It is in accordance with this that Thomas subsumes the order of private property under *ius gentium*.

When framing the encyclical *Rerum novarum*, Pope Leo XIII did adopt primarily the thoughts of Thomas Aquinas, while the Pope did, however, stress the individual function of private property more strongly than Thomas. As the Pope also stressed the meaning of work as the means of acquiring property, thoughts relating to liberal conceptions of property also found their way into this Papal encyclical: Through work, the person gave the matter worked on, as it were, the “impress of his personality” ([5], no. 9).

The connection that was made, in the encyclical, between these two traditions led to the misunderstanding. Some workers got the impression that the Church was legitimizing the current conditions of property distribution. However, it was true, in the words of Nell-Breuning, “that Leo XIII. did not ‘sanctify’ the property of the owners, but the claim of the have-nots to property” [27].

It is not least this clarification which expresses what, in addition to the dimension of *private* property, has the same meaning and is constituted equally in the Christian concept of property: the dimension of social duty. Pope Pius XI also stated again, expressly, particularly regarding the social dimension of the right to property, in his encyclical 1931 the “twofold character of ownership, called usually individual or social according as it regards either separate persons or the common good” [28].

This connection to the common good which is fundamental to the position of Christian Social Ethics can be found very clearly in the last social encyclical of the last Pope John Paul II *Centesimus annus* of 1991 in which he explains that “ownership of the means of production, whether in industry or agriculture, is just and legitimate if it serves useful work.” In contrast, “[i]t becomes illegitimate, however, when it is not utilized or when it serves to impede the work of others.” All of this leads, according to John Paul II, to the consequences of the “breaking of solidarity among working people. Ownership of this kind has no justification, and represents an abuse in the sight of God and man” ([12], no. 43).

The basic disagreements on the question of property are not carried out any more, today, with equal ideological sharpness in Catholic social teachings. They do, however, remain of great importance for reflections on Social Ethics, particularly because new questions arose, for example, because of the change and the further differentiation of the meaning of property.

Thus, a particular form of property relationship is entered into the conversation again and again, namely the so-called capital wages, that is, “a part of the gained

from the work [is] not being paid out, but used to create capital, thus invested” [29]. In this way, workers share in the productive capital, ideally in their own company – John Paul II speaks, in his first social encyclical *Laborem exercens*, which is seminal for the whole field, of the fact that workers can thus “be aware, at the same time, that they are working in their own company” [30], but investment funds are also a possibility. With capital wages, the stark contrast between the capital owner and the employee is diffused, and is giving the employee the chance to get a share of the productive capital (of an economy) and to come, thus, to a “for a more just and equitable distribution of property” [31]. Overall, this option connects back to a demand of Catholic social teaching that was already made in the encyclical *Quadragesimo anno*, namely, the aim of “the work-contract be somewhat modified by a partnership-contract” ([28], no. 65). The Evangelical Church in Germany sees the “share of the workers in the capital, and particularly in the profit” firstly with regard to the entrepreneurs, then with regard to the “fairer distribution of wealth”, but does, finally, also warn of the “high risks for the employed” ([32], no. 66).

A different aspect which has to be taken into account regards the manner of property itself. “It is the ownership of knowledge, of technical details and of ability. The wealth of the industrial nations rests on this sort of property to a far greater extent than on natural resources” (CA 32). The fact that a sort of unjust “distribution of property” can develop in a society if people are deprived of educational opportunities because of a lack of financial resources shall only be hinted at.

The Principle of Freedom of Contract and the Care for a Just Wage

In the beginnings of Catholic social teachings, the question of the legitimacy of a wage working contract was an important topic. The background to this was the following.

One of the core tenets of “liberal freedom rights” was, undoubtedly, also the unlimited freedom of contract as condition sine qua non of the liberal system of economics.

The problem with this liberal maxim was unveiled in confrontation with the reality at the time, for example, with regard to the legal shape of the (working) relationship between entrepreneur and worker. So the worker, normally without any funds, had to make sure that his daily needs were met, and thus he had to accept any working conditions, no matter how bad they were. Exploitation of workers was thus very easily possible, even if the work contracts were, by purely formal standards, certainly valid. But the formal validity does not say anything about the material legality of such a contract. This has to fundamentally fulfil the demand for natural justice in accordance with *Rerum novarum* and is valid independently of the free will of the people making the agreement (cf. [5], no. 45). With regard to this, the wage workers of the early time of the industrialization were exposed to the power of the entrepreneurs without any protection.

In the face of such conditions, the social proclamation makes its position very clear. The principle of the wage contract is not seen, by the ecclesial magistrate as “unjust of its own nature” ([28], no. 64), but at the same time, the demand is made for limitations on the freedom of contract to protect workers from merciless exploitation. It says in *Rerum novarum*:

If we turn not to things external and material, the first thing of all to secure is to save unfortunate working people from the cruelty of men of greed, who use human beings as mere instruments for money-making. It is neither just nor human so to grind men down with excessive labor as to stupefy their minds and wear out their bodies. Man’s powers, like his general nature, are limited, and beyond these limits he cannot go. ([5], no. 42)

Overall, in this encyclical, the most urgent demand is for an extension of employee protection laws – something that is asked of the state – to improve the situation of workers.

But it is not only the conditions of work that have to be exempt from a limitless freedom of contract but also certain conditions have to be met when shaping the wage: In reality the wage was determined by the market law of supply and demand alone. Because there was an oversupply of people looking for work, a very good market position came about for the employees so that lower wages – and, with that, widespread poverty – came to determine the living conditions of the workers. It is necessary to also see the so-called iron wage law (Ferdinand Lassalle) in this context, namely, that the wage for workers should be determined by what the worker needs as a necessity for himself and his family so that his physical existence is not destroyed, but not according to criteria that are mentioned in *Rerum novarum* as decisive for a just wage: “Let the working man and the employer make free agreements, and in particular let them agree freely as to the wages; nevertheless, there underlies a dictate of natural justice more imperious and ancient than any bargain between man and man, namely, that wages ought not to be insufficient to support a frugal and well-behaved wage-earner” ([5], no. 45).

With regard to the aim of a “just amount of pay” ([28], no. 66), there is a need to balance the interests: The situation of the employer is to be taken into account, but primarily, there is a different criterion, namely, the criterion that the wage has to be enough to ensure a living for the worker and his family (cf. [28], no. 71).

In the Second Vatican Council, in addition to the criterion of being able to shape one’s “own material, social, cultural, and spiritual life and that of his dependents,” there is, also, the aspect of “the function and productiveness of each one, the conditions of the factory or workshop, and the common good” ([11], no. 67). The decisive factor is that, over and above the criteria that have been named already, the principle of the common good is focused upon.

Additional aspects are being taken into account by the Papal social proclamation too, which limit the freedom of contract, and thus lower the principal superiority of the employer against the individual employee at least in part. To this end, intervening with the individual freedom of contracts is justified, while nowadays it is not only actions of the legislator that are asked for, but, in the context of free collective bargaining, the social partners are also assigned definite duties.

The Institution of the Market and the Competition

“The free market [seems] the *most effective tool* for the use of resources and the best gratification of needs” ([12], no. 34; emphasis by U. N.-W). This sentence, which gives a short description of the coordinating functions of the market, may not be something unusual for a student of economy, but it does mean a significant step forward for the field of Christian social teachings, in particular for ecclesial social proclamation, and a clarification that was not given until the point in time in 1991 when the text was published, regarding the question of market economy order. This is because recognition of competition as the central instrument of shaping this market order goes hand in hand with this statement. This does not mean that, in the tradition of Papal social proclamation, free competition was ever wholly rejected, but in earlier versions, this principle is, mostly, judged to be very ambivalent: “Destroying through forgetfulness or ignorance the social and moral character of economic life, it held that economic life must be considered and treated as altogether free from and independent of public authority, because in the market, i.e., in the free struggle of competitors, it would have a principle of self direction which governs it much more perfectly than would the intervention of any created intellect. But free competition, while justified and certainly useful provided it is kept within certain limits, clearly cannot direct economic life” ([28], no. 88).

The main focus of the criticism does not, however, lie on the meaning of competition within a certain mode of economics, but primarily on the question of the societal relevance and consequence of the principle of competition. And on this level, competition as “the unlimited freedom of struggle among competitors has of its own nature produced, and which lets only the strongest survive; and this is often the same as saying, those who fight the most violently, those who give least heed to their conscience” ([28], no. 107). This does, finally, describe a social Darwinism that has nothing but contempt for human beings, an image of economy which certainly had a degree of plausibility in the nineteenth century social reality, and makes it understandable why the ecclesial social proclamation registers quite so strong an objection to the principle of freedom of competition. This is because, from the point of view of the magisterium, the human being may not become an object of economic interests. This also corresponds to a further classical tenant of Catholic social teaching, the principle “work before capital,” which – as clarified by John Paul II – is synonymous with the “principle of the primacy of the person over matter.”

In *Quadragesimo anno*, a solution for this misinterpretation of understanding competition to be the highest principle of socioeconomic relations is, however, also offered: “Therefore, it is most necessary that economic life be again subjected to and governed by a true and effective directing principle. [. . .] it [i.e., the freedom of competition. U. N.-W.] is a headstrong power and a violent energy that, to benefit people, needs to be strongly curbed and wisely ruled. But it cannot curb and rule itself” ([28], no. 88).

To attain this goal – in the end, this is about a humane form of economics – it does not only need the freedom of competition but also the “higher and more noble

powers,” which “give a strict and wise discipline to it”: There is talk, in this regard, of “social justice and social love” ([28], no. 88). Freedom is, with this, embedded in an understanding of the human being that is an individual and a social being; freedom is not understood “in the sense of an individual autonomism, which only corrects the misuse of human freedom after the fact” ([33], p. 165; cf. as well [34]). Even when a representative of the Freiburg school says that, “competition is the means, not the final end” [35], it becomes clear that, with regard to the fundamental thought of a “wise steering” of economy and the critique of the social consequences of a limitless liberal economy, a connection can be made between Christian Social Ethics and the model of a social market economy, especially through the direction of this market economy toward the target of the common good.

The present Pope Benedict XVI continues the market-positive attitude of his predecessor, but does accentuate it in his own manner.

He pays tribute to the market place, in his first proper social encyclical *Caritas in Veritate* of 2009: “the market place is, if there is mutual and general trust, an economic institution which makes it possible for people to meet, which, as actors of the economy, regulate their relationship by contract and exchange goods and services which can be set off against each other, to satisfy their needs or wishes” [36]. The satisfaction of needs or wishes is, quite clearly, given as the aim of economic acts; the market development is not just grudgingly tolerated, but is paid tribute to as an institution. This positioning is a fundamental condition for judging the consequences of the most recent crisis of economics and financial markets in a way that does justice both to the human and the factual side and makes it possible to deal with recent developments in a differentiated manner.

It is important, for the ethics of economy approach of the Pope, that the economic life “[has] to be directed towards the attainment of the common good, which the political community, too, has to take care to achieve, and especially so” ([36], no. 36,1). The market is not everything; there is a “beyond the market”, without which, however, the market cannot be imagined, and without which it cannot work either. That means that there are areas and problems which are related to the market, but which cannot be left to market forces. Particular mention should be made of the people who are weak and passive in the market, the people who do not have the ability to participate in the events of the market, so particularly, the (long term) unemployed, those who have few qualifications, and those who are hard to place. Social justice and the justice of distribution are part of the aims which the market alone cannot realize. The state has the duty, here, to give the framework pertaining to a constitutional and social state that is needed to solve the problem. The dimensions of human life, on the other hand, which are not directly covered by possibilities of the market, but which have at least an indirect influence on it, should also be mentioned, for example, the passing on of values, the human longing for meaning and home, for an aim to life that goes beyond this reality.

Finally, the “beyond of the market” is, directly, as influential as the market itself. To achieve precisely its own aims, the market may not – as says Benedict XVI – “only be left to the principle of the equivalence of the exchanged goods” because then, according to the Pope, the market is “unable to create the social

cohesion that it needs, however, to work well” (CiV 35). What people hold to be significant virtues in the rest of their lives does not have to remain on the outside of this, but is, in the Pope’s approach, connected with the events of the market at the very core: “Without a type of behaviour that is shaped by solidaric and mutual trust at its core, the market cannot fulfil the economic function which is its own” (CiV 35). Particularly, the dimension of trust, which seems to have been lost in many places during the latest finance market and economic crisis, gains central significance in this context.

It is also necessary to integrate ethical aspects into the market economy order itself. The fact that the Pope – knowing full well the meaning of the laws of the market and the logic of the exchange – promotes the altogether different logic of the gift (cf. CiV 37) and the principle of the unpaid for so strongly set different accents in many places. It is the civil society which, according to Benedict XVI, introduces this dimension of the unpaid for. “In the times of globalisation economic events cannot be without matters that are unpaid for, which nurtures and spreads the solidarity and the feeling of responsibility for justice and the common good in its different subjects and actors” (CiV 38). The Pope knows that this element of the unpaid for cannot be ordered to happen. He does, however, stress with great clarity that the market as well as politics need people who are prepared to provide this unpaid for element – particularly in the age of globalization.

Catholic Social Teaching, Neoliberalism, and Social Market Economy

The system of social market economics has already been mentioned in a number of places above, as a reference value. In theory as well as in the concrete implementation, this system describes a way which could lead to a closer connection between Christian Social Ethics and economy.⁶ There are many commonalities – Joseph Höffner says that “Catholic social teaching [...] [holds] market economics [to be] the right basic form of the economic order” [37] under the condition that it is given a “humane orientation” [37].

A more precise synopsis does however also show divergences, which led, particularly at the beginning of social market economics, to some serious disagreements.⁷

Nell-Breuning does, as well, not argue with the success of the rebuilding of postwar Germany that was achieved by the economic system of social market economics; he also talks, positively, of a “certainly welcome general affluence” ([39], p. 227); most of all he criticizes is the use of the attribute “social”: the market forces, he explains, still had “entirely free range; this is only meant to be secured by the fact that they are not allowed to have alliances with each other or to start a conspiracy to enable them to evade competition” ([39], p. 227). According to his opinion, the “social” does not have to imply a correction, after the fact, of individual, personal emergencies, but can mean, more broadly, a “different game of the market forces” with a “distribution of income and funds that is more just from the outset” ([39], p. 227). Finally, it is important to him that “economics are not just a pure market process, but, in the fullest sense of the word, a social process.” It was

social cooperation he was talking about, “the participation not in the result, but in the process of the economy” ([39], p. 229; cf., also, on this argument [40]). Competition is then not enough either as a principle of order or as an instrument to make sure that the economics is working. Economy has to, rather, be shaped on the basis of a “multidimensional world of values” [41] and corresponding politics of order.

Joseph Höffner engages in a different manner, but also intensively, with neoliberalism and social market economics. One of his central critical questions aims at the “neoliberal thesis of free competition as the regulative principle of economics” and its compatibility with “Catholic business ethics” ([42], p. 193). The material end of the economy consists, according to him, “in a permanent and secured creation of those material prerequisites that render possible a development worthy of man, for the individual and the social structures” [43]. To reach this target, freedom and self-determination of the individual are needed as well as the social orientation of society. As Höffner does not see the economy as something automatic, but very much as a “cultural process,” it has to be shaped; it is “possible and necessary to steer it” ([42], p. 193). For this, however, according to his conviction, “neither the pure freedom of market economy nor the monopolistic creation of power” ([42], p. 193) is adequate. He states, in this way, that “the target of the economy [...] does not automatically equal the sum of the individual interests” ([42], p. 193) and so defines a clear contrast to the liberal position. The will to order of the human being was, rather, necessary; the necessary principle to give an order to competition too has to be the common good. The social market economy (which should not automatically be equated with neoliberalism) carried the term “social” correctly if a decision as to which means and interventions were needed and appropriate for the market in a “politics of economics” sense was made based on the principle of the common good.

In the social proclamation of the Church, it was the social encyclical of 1991, *Centesimus annus*, which perceived and judged the economic form of “capitalism” in a more differentiated way. Pope John Paul II voices the following scheme of assessment: “If by ‘capitalism’ is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative [...] But if by ‘capitalism’ is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative” (CA 42). The social proclamation of the Church does, definitely, give its blessing to a market economy, but it demands at the same time that the market is ordered, by a framework of the constitutional and social state, so that it focuses on humanity and the common good because it cannot achieve this on its own. This understanding corresponds, roughly, to the basic tenants of the concept of social market economics, while in the encyclical *Centesimus annus* this model itself

is, however, not directly mentioned. With this, the social proclamation remains true to its principle of not preferring certain programs, but it speaks instead – less specifically – of “business economy” or also of “free economy” (cf. [12], no. 42).

Development of Specific Aspects of a Business Ethics as the Subject of Christian Social Ethics

The term that has just been used, “business economy,” taken from the encyclical *Centesimus annus*, puts the focus on the question about the central figure of the market economics order and also of business ethics, namely, the entrepreneur or the central institution, the enterprise.

Entrepreneurs and Enterprise as Forgotten Factors of Social Ethics

It is, at first glance, not consequent, and not understandable, that these were largely disregarded in the social proclamation of the Church until the third social encyclical of Pope John Paul II *Centesimus annus* of 1991, when taking into consideration how close, otherwise, the tradition of Christian social teaching is to liberal and socially responsible market economics. The Council of the Protestant Church in Germany, too, said in its memorandum of 2008 that, in the face of economic development and to “be able to cope with increasing global social and ecological problems,” it was necessary that “the Protestant Church, too, specified its relationship to entrepreneurial acts” ([32], no. 13). In the academic field within Christian business ethics, there are at least a few interesting approaches.

Johannes Messner, for example, voices the following criticism in 1968: “In the social teaching of the Church the entrepreneur in the proper sense is not mentioned, she just talks of employers, one partner in the employment contract” ([44], p. 6). When looking for an explanation of this deficit, he lists different aspects: for one, social teachings are, in this, a mirror image of the general development of economic theories, which only discovered the entrepreneur before the First World War and, in the time following this, still did not do justice to his function entirely. Secondly, economics generally, and with that the “entrepreneur [as the] primary mover of the economic process” ([44], p. 13) especially “in Catholic thought” ([44], p. 12) and because of the “social ideology of Catholic associations” ([44], p. 10) had been completely underestimated for a long time. Lastly, the social teachings of the Church had always primarily dealt with the *social* question, in the context of which considerations came out of a contemplation of the employment contract – and, with that, of the two factors involved here – the conditions of work. Joseph Höffner identifies “three slogans against entrepreneurs”: “profit-driven exploitation” – “enslavement to the machine” – “undignified heteronomy”, which led to the understandable, but regrettable “distorted image of the entrepreneur” ([45], p. 107).

Company Ethos and Elements of Entrepreneurial Ethics

Höffner was looking, as early as in the 1960s, distancing himself from the distorted image, for the “true character of the entrepreneur” or for the typically “entrepreneurial.”⁸ For the professional ethos of the entrepreneur, he stresses central characteristics: (1) “professional excellence” ([47], p. 406); (2) the “readiness to serve” ([47], p. 407), which articulates itself in the concern for the own employees and their security as well as in the creation of new work places but also for human relationships; as well as (3) the “concern for the common good” ([47], p. 410) – an aspect which, in the debate of the moment, is dealt with under the buzz word “Corporate Social Responsibility” or “Corporate Citizenship” (cf. [48]). Finally, a last point deserves mention: Höffners “warning of the ‘total’ entrepreneur” ([45], p. 411), that is, of the entrepreneur who allows himself to be completely subsumed under his – in the purely economic sense – entrepreneurial role and does not have any time left over for the higher values such as family, the beautiful and the religious, leisure, and finally God. Concern for a sense of direction based on these values is, for Höffner, in a wide sense an important aspect of the service of the (Christian) entrepreneur. Taking into account the “beyond of entrepreneurial acts” is what first leads entrepreneurial acts toward their full sense.

In the more recent social-ethical debate, the question about the meaning of the ethos and the individual (virtuous) morals has been an important aspect. Karl Homann, who had a significant influence on Christian social-ethical thinking, states, again and again, that the ethics of order were now taking the place of the previous model of virtue ethics (cf. [49]); he defines economics as a continuation of ethics with other (read: better) means (cf. [50]). The experiences of the most recent finance market and economical crisis however have, at the latest, made it very clear that economics alone with morals that are incorporated into the framework cannot work, in addition to all economic laws and institutions, a consciousness of values and a corresponding attitude of the individual form a significant part of the equation. A memorandum of the EKD, regarding current developments, makes the following criticism: “If, in actual fact, less and less is invested into the innovation and the future of an enterprise because high profits have to be achieved quickly and dividends have to be paid out, the values of great entrepreneurial figures such as Robert Bosch, Ernst Werner von Siemens or Carl Zeiss are left behind. If only companies that already exist are taken over to get as much money out of them as possible for the short term, the responsible entrepreneurial ethos dissolves” ([32], no. 26). Individual morals, however, will not replace the structural ethical aspects or the relevance of the de facto context of economics: “A system of morals that thinks that it can pass over the technical knowledge of economic laws is not moral, but moralizing, and thus the opposite of a moral system. A factualness which thinks that it can survive without the ethos misunderstands the reality of human beings and becomes, thus, unfactual” [51].

Typical Entrepreneurial Elements and Aspects of Structural Ethics

Höffner makes an important contribution to localizing and determining entrepreneurial elements in the context of structural ethics: While the social conflicts in Germany were carried out, for a long time, as if “economics only had the two aspects of capital and of work,” it was important to stress the third aspect, namely, the one who leads the enterprise, directs the development, “and [brings] resources and executing work into the best technical, commercial and personnel-related balance” ([47], p. 404).

Johannes Messner refers (also as early as 1968), in his treatment of the concept of the entrepreneur in Catholic social teachings, to a talk given to Christian entrepreneurs in Italy by Pope Paul VI in 1964. In it, a “celebration of the service of entrepreneurs” ([44], p. 20) by the magisterium can be found that had, up to that point, been unheard of. Paul VI deals, at the same time, critically with the “capitalist” system and its defects. Messner stresses, as the central position of the Pope and the tradition as a whole, that the accent lies on the social aspect of the question of the entrepreneur in favor of the economic one (cf. [44], p. 21), or that the ranking had to be the following: “The human being first, then everything else” ([44], p. 21). This is quite similar to Pope Benedict’s sentence, “that the *primary capital to be safeguarded and valued is man, the human person in his or her integrity*” ([36], no. 25). From the perspective of the fundamental principle, Messner arrives at some interesting, constructive insights and new evaluations with regard to the development of the economic system: (1) Power and egoism (of interest) are, according to him, not located, solely on the side of the entrepreneurs (cf. [44], p. 21), and in addition, the creation of interest groups in a liberal society were precisely a consequence and an expression of exactly this freedom. Conflicts of interests were, because of this, unavoidable in an entrepreneurial society and should even be seen as positive, as a motor of social and economic progress, if all groups involved saw the common good as their target. (2) The principle of the “precedence of work over capital” did not mean, simply, the precedence of the employer, but was valid for all participants in the economic process, insofar as all work always also served the development of the personal values of each individual (with reference to [11], no. 67). Thirdly, the role of the entrepreneur, which means the concern to “make the process of production more productive” ([44], p. 26), was not limited to the leadership of the company alone, but actively involved all participants in the enterprise at the place “where something can be achieved for the productivity of the company” ([44], p. 26); Messner speaks, here, of an “entrepreneurial social partnership” ([44], p. 28), which needed an effort from both sides (with reference to [11], no. 68). This aspect of the entrepreneurial at all levels of the company can be taken as a point of departure for the debate about the development of a company culture today.

For Messner, this also implies that the solution of the social problem of the industrial society has to be found in codetermination. Codetermination, in turn – this is the result of Messner’s analysis – did not mean interfering with the

ability to make decision of the management, but to give employees “by entrepreneurial engagement the possibility of the creative development of life and personality” on all levels of the company.⁹ With this distinctive intensification of the principle of Christian Social Ethics “person first” for the area of companies, Messner, in particular, showed a new horizon for the debate of the social question, which had always been seen, primarily, as a question of distribution.

For present-day Social Ethics from a Catholic perspective, the diagnosis regarding approaches of entrepreneurial ethics is still “speechlessness” – “the ethical orientation of, and in, companies is a little explored sideline of Christian Social Ethics” ([52], p. 3). This is true, according to Habisch, for the academic discourses (exceptions prove the rule (cf., e.g., [53] and [54])) as well as for the institutionalized dialogue between Church and economy (cf. [52], p. 3f.). Habisch himself posits companies, within a working market order, as a decisive factor of the order of society: For him, it is “only the entrepreneurial achievement of innovation in the context of a competitive order” which makes “possible, in the long term, an enormous raise in living standards especially, too, for workers in industrial countries. This is because opportunities for personal development replace fixed roles and status relationships” ([52], p. 5). It is only in the context of such an order that the solidarity system became possible, with people from families that are weak socially having opportunities for education and participation.

Companies, Their Economic Functions, and Social Responsibility

It was only a quarter of a century later, close, chronologically, to the failure of the communist system, that the Polish Pope John Paul II first grappled with the question of companies from the perspective of social proclamation. He makes the positive role of the company a decisive criterion for the assessment of “capitalism” (cf. [12], no. 42,2). The economic aspects of a company are of great importance – the “Church acknowledges the rightful *role of profit* as an indicator for the good state and running of a company” ([12], no. 35). This is, of course, not about dealing uncritically with economic processes. It is not solely profit which is an indication of the good state of a company; a company was able to be efficient in the long term only if “humans, which are the most valuable asset of the company” ([12], no. 35) were treated according to their dignity. If he addresses, here, mainly “the legitimacy of the effort of the workers, [...] the full respect for their dignity and the option to gain more participation in the life of the company” (43), this evokes the understanding, developed by Messner, of the entrepreneurial element in all levels of a company. The Church does not develop her own model for managing a company, but she does want to give guidelines for arrangements in the concrete situation with her central ethical statements.

Pope Benedict XVI pays attention to the question of the responsibility of businesses in particular against the background of the crisis of the finance market and the economy. Knowing full well of the processes of structural change that are to come for many globally acting businesses and, at the same time, of the

opportunities of the international capital market, he stresses, in the same breath, the “social responsibility” ([36] no. 40) of the entrepreneur. The so-called stakeholder approach is a consequence of this perspective which can be found where Benedict stresses the social responsibility of the entrepreneur for “the employees, the customers, the suppliers of different elements of production, the corresponding community” ([36], no. 40), an approach which is of great importance at the moment in the business ethical debate and exploration of the shareholder-value approach. A fundamental guideline is, here, the common good, and the direction toward it. Taking into account the global development of today, it remains to be seen whether the companies/entrepreneurs hold a “co-responsibility in political order terms, and, if the answer is positive, in which way are companies to participate actively in shaping global frameworks?” [55].

The point of departure for Pope Benedict XVI is, when thinking about the responsibility of entrepreneur, not the classical demonization of capitalism, of profit, and similar, but the clear thesis that “*an investment always has a moral meaning in addition to an economic one*” ([36], no. 40). No direct instruction to act a certain way follows from this, but a differentiated consequence: Investments in foreign countries are definitely seen as a chance to “do good”; work and technical knowledge were needed everywhere. At the same time, the Pope urges the use of criteria of justice: “The demands that follow from justice have to be fulfilled, while also taking into account how this capital was formed and which damage is done to people if it is not used in the place where it was created” ([36], no. 40). This makes it clear that the securing of the long-term company assets and the use of the real economy are deciding factors for justice, but, in the same context, the “care for the appropriate and convenient support of economic initiatives in developing countries” ([36], no. 40) is mentioned. It is obvious that speculating with a view to a short-term gain alone is condemned in this context.

Let us go back, here, to the aspect of social responsibility of businesses: Pope Benedict XVI speaks, in his encyclical, of the fact that “in addition to private profit-oriented businesses and the different kinds of state enterprises, [...] production communities who strive for mutual and social targets [should] be able to find a place and act” ([36], no. 38). It is precisely from these “social entrepreneurs” that he hopes for a tangible influence “on a *civilising of economics*” ([36], no. 38). With this, too, the Pope refers to a current debate on company and society ethics: the one about entrepreneurs in the social sector, social entrepreneurs, who develop “innovative forms of solving problems, e.g. in the area of international health provision, the societal integration of children and teenagers, the creation of better opportunities for education for wide swathes of the population etc.” [56]. If these entrepreneur personalities, in the space of the civic society, fight for the humanizing of living and working conditions of people with their entrepreneurial potential, and thus give impulses for innovation in the field of social politics (cf. [57], pp. 76–78), they realize exactly that which the subsidiary and solidarity principles intend.¹⁰

The memorandum of the EKD also takes up the question of the voluntary taking on of responsibility in the field of social politics, which is outside the direct purpose of the company. The text stresses, however, at the same time, that this activity of the

entrepreneur and of the enterprise benefit, in turn, the image of the company. The term “Corporate Social Responsibility,” which has become international, deserves mention and should be understood as a “form of dialogue which each company has to engage in with its societal surroundings, to be able to perceive and realise its needs” ([32], no. 105). The memorandum does, however, also rightly point out that the engagement as defined by CSR is not a *carte blanche* for misbehavior in the narrower area of the duties that relate to the business (cf. [32], no. 105).

Conclusion

Johannes Messner was not wrong in his article from 1968: The classical Social Ethics of Catholic and Protestant provenance has only made progress toward a clarification of its relationship to entrepreneurs and business ethics, as far as it focuses on this term and this function, in recent times. With the encyclical *Centesimus annus* at the latest, a significant step was made – as shown – toward acknowledging an order of entrepreneurial economics by the Papal social proclamation. The memorandum of the EKD also takes up a relevant position. For Catholic social teaching, these undoubtedly important learning processes mean that finally the undifferentiated talk of “capitalism” comes to an end, and, at the same time – even if it is not mentioned *expressis verbis* – the model of social market economics, especially regarding its anthropological and ethical foundation, has become much more well founded (cf. [33]). That does not mean, by any means, that Christian Social Ethics has not dealt with elements that are fundamental to social market economics: Central elements such as the understanding of (private) property and the question of liberty of contract and fair wages as well as market and competition belong to the central *topoi* and fundamental statements of the Christian tradition of Social Ethics, and it is thus possible to state, on this background, that a turning of Christian Ethics toward a market economics order did not only happen very recently. This position of Christian Social Ethics is rather the result and the logical consequence of the Christian understanding of human beings, who are endowed, as the image and creature of God, with dignity and freedom, and need, because of this, freedom for their development in the market, and thus the entrepreneurial. At the same time, the understanding of humans implies a focus of the individual on the community, which, again, has clear consequences for the order of economics, for example, the social accountability of property or an understanding of the labor market which has to be surrounded, for the sake of the human being, by a corresponding order of a social and constitutional state and cannot just be left to the law of supply and demand. The rule is always the human being first! The meaning of this needs to be concretized with regard for the situation in each case. The tradition of Christian social teaching does, however, point clearly toward a socially responsible market economics order.

With the rule “the human being first,” the obligation of the entrepreneur for “social responsibility,” and with including this which is “beyond entrepreneurial acts,” Christian Social Ethics has developed a clear program regarding

economics and business ethics, a contrast position to the position of Milton Friedman's "Business of business is business." The business of the entrepreneur does not focus, in the Christian perspective, on short-term maximum profit, but on the running of the business while taking into consideration all people involved (stakeholders). Particularly, taking into account the most recent crisis of the finance market and economics, it has become increasingly clear how much an understanding of economics which, without regard for people, solely focusing on profit, is obsolete. This is why Christian Social Ethics, especially the ethics of economy, is suitable and prepared for the dialogue that is to happen in the face of the great challenges of economy and society; it can make, with its positions, an important contribution to the foundation and implementation of a humane socially responsible model of economics.

Cross-References

- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)

Notes

1. Protestant social ethics cover a wide area, which is not contained by specific definitions or magisterial proclamation. For the Protestant field, this means that "it is difficult to reconstruct an ecclesiastic social ethics or social teachings. Individual Protestants and individual groups and clubs of Protestants were those who made a very special contribution to the questions of business ethics and the shape of a social state with their work on concepts and their practical socio-political work" [4]. Although the following does not claim to speak for both confessional theologies, aspects of Protestant social ethics will be included where this is possible.
2. Texts of the social proclamation are quoted with paragraphs, not page, numbers. In this early document, the numbers do not belong to the official text version, so they may be different in the several versions.
3. As this part is essentially about an exploration of social *proclamation*, it is obvious that, here, fundamentally, only the Catholic perspective can be portrayed.
4. Private property is defined here, primarily, as the ownership of capital goods. The right of owning goods for consumption was never seriously doubted even in socialist states.
5. No particular social duties were associated with this understanding of property.
6. Overall, it is mostly the problems discussed within the context of the economy which have to remain undiscussed here, which result in detail from the target of a social market economy, especially the question whether, within this concept, the "social" is just an "annex" of free market economics, or whether the attempt to achieve an integration of both elements can really be successful. From the perspective of Catholic social teaching and its concept of humanity, it is, however, absolutely necessary to try and achieve a synthesis.
7. A detailed synopsis of both positions can be found in [38].
8. On this terminological distinction between entrepreneurial ethics and the ethics of enterprises, cf. [46].
9. Messner [44] refers to the speech of the Pope given to Italian Christian entrepreneurs and, among others, to GS 68. Interestingly, the memorandum of the EKD goes back, again, to the topic of codetermination for creating a "capital of trust" ([32], no. 61–65).
10. Even if the debate about social entrepreneurs and the reflection about their contribution to society is fairly recent, this is not true for the idea of the social entrepreneur in general because

even that which many members of the Christian social movement in the nineteenth century achieved as an innovative solution to social problem can be understood as the origin in of this idea. As an example, the entrepreneur from Mönchengladbach, Franz Brandts, should be mentioned here (cf. [57], p. 70–74).

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Part 13

Islamic Foundations of Business Ethics

Jawed Akhtar Mohammed

Abstract

The ethical system in Islam is presented in light of *Shariah* – the Islamic social/legal system. According to Islam, whatever leads to welfare of the individual or society is morally good and whatever is injurious is morally bad. The ethical system prescribed in Islam is eternally divine and forms the foundation of an Islamic society. Islamic ethics prescribe its followers to zealously guard their behavior, words, thoughts, and intentions and observe certain norms and moral codes in their family affairs; in dealings with relatives, neighbors, and friends; in their business transactions; in their social affairs; and in private and public life. The unique feature of the Islamic ethical system is that it permeates all spheres and fields of human life. Islam also has its own distinctive value-based ethical system for business dealings. It prescribes certain specific guidelines governing business ethics, which are dictated primarily by the notion of *halal* (lawful or permitted) and *haram* (unlawful or prohibited) as per Islamic jurisprudence (*fiqh*). This chapter explores the ethical system in Islam, which is essentially a reflection of the divine commandments and guideline for the right and wrong and enumerates the general ethical rules of business conduct.

Introduction

This study seeks to explore the ethical system of a major world religion – Islam – and how it influences business and socioeconomic life. Indeed, values and principles that have been central to Islam since the time of the holy Prophet Mohammed (peace be upon him)¹ 14 centuries ago may serve as a foundation for ethical norms

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and behavior. For example, the holy *Qur'an* has enjoined that the economic success of business will flourish if it is underpinned by morality and businesses are reminded to “. . . give full measure when you measure, and weigh with a balance that is true. . .” [1]. Thus, the convergence between Islam’s focus on morality and the economic orientation of business is very apparent.

There is almost a general consensus among human societies about certain fundamental ethical or moral values. However, the main problem is how to operationalize and implement them and to decide what kind of force could be used for promulgating them. Islam offers its own solution to this problem. It prescribes certain specific guidelines for governing businesses based on the legality of transactions as per Islamic jurisprudence (*fiqh*) of lawful (*halal*) and unlawful (*haram*) activities. It identifies ethically desirable forms of business, specifies the undesirable modes of transactions, and enumerates the general ethical rules of business conduct.

Much of the business ethics movement, however, draws on a humanist tradition, concerned with respect for the dignity of man, and writing in the field of moral philosophy more generally rather than religion. Those involved with moral and ethical issues in Muslim countries cannot ignore the contributions of the Islamic traditions. Laura Nash [2] has described good business behavior as “ethics without the sermon” [2], but perhaps there is a case for including the sermon.

Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances. To achieve these rights, Islam provides not only legal safeguards but also a very effective ethical system. According to Islam, whatever leads to welfare of the individual or society is morally good and whatever is injurious is morally bad.

The concept of ethics or morality has been the foundation of an Islamic society since its advent in the seventh century. The holy Prophet Mohammed (PBUH) exemplified the principles of morality and ethics embedded in the holy *Qur'an* through his practices (*Sunnah*) in personal as well as public life to establish a social system that was just and harmonious and, thus, ethical. These principles that permeate every aspect of a Muslim’s life also govern Islamic business and commercial practices and have been present for the last 14 centuries.

Islam places the highest emphasis on moral values in human life. In a way, Islam is basically a moral code of conduct for human life. The holy Prophet Mohammed (PBUH) said:

I have been sent only for the purpose of perfecting good morals. [3]

Moral codes and ethical norms discernible from the verses of the holy *Qur'an* and the teachings of the Prophet (PBUH) are numerous, far reaching, and comprehensive. Islamic teachings strongly stress the observance of moral principles and ethical codes in human behavior. They are repeatedly stressed throughout the holy *Qur'an* that says:

You are the best nation that has been raised up for mankind;
you enjoin right conduct, forbid evil and believe in Allah. [4]

The above verse implies (1) faith, (2) doing right, being an example to others to do right and having the power to see that the right prevails, and (3) eschewing wrong, being an example to others to eschew wrong and having the power to see that wrong and injustice are defeated. Islam therefore lives not for itself but for humanity and lays out a clear guideline for Muslims to be righteous and, thus, socially responsible through their actions in life [5].

Thus, the ethical system prescribed in Islam is eternally divine and forms the foundation of Islamic society, placing great emphasis on social responsibility and justice. Given the comprehensive nature of Islamic morality and the principles governing it, it would be beyond the capacity of one study to fully discuss the subject. In the following pages, the effort will be to confine the discussion to some specific principles of ethics in Islam that relate to business practices.

This study will highlight the presence of a rich vein of ethical values and principles according to *Shariah* the sacred law of Islam derived from the holy *Qur'an* (book of divine revelation), *Hadith* (sayings and deeds of the holy Prophet Mohammed [PBUH]), *Ijma* (consensus), *Qiyas* (reasoning by analogy), and *Maslaha* (public interest). The purpose of the Islamic social/legal system (*maqasid al Shariah*) is material as well as spiritual. The goal of an Islamic social/legal system is based on *hayat tayyibah* (good life) and *falah* (human well-being), both of which stress brotherhood and socioeconomic justice, as well as a balance between the material and spiritual requirements of all human being that is necessary to preserve and enrich faith, life intellect, posterity, and wealth ethically.

The Islamic Ethical System

Ethics is an age-old discipline that has been considered as one of the four branches of philosophy along with logic, metaphysics, and epistemology. Defining ethics in general terms is relatively simple. Ethics may be defined as a set of principles of right conduct or a theory or system of moral values. It may also be defined as the study of the general nature of morals and of specific moral choices to be made by a person (moral philosophy), or as the rules or standards governing the conduct of a person or the members of a profession, for instance, medical ethics [6–10].

From an Islamic point of view, there is no direct translation or meaning of ethics or ethical behavior. The term most closely related to ethics in the holy *Qur'an* is "*Khuluq*." Depending on the translation, this could be interpreted as "character" (Abdullah Yusuf Ali – English translator of the holy *Qur'an*). The *Qur'an* mentions *Khuluq* in Sura Al-Qalam:

...and thou (standest) on an exalted standard of character. ... [11]

Mohammed Asad [12] rendered the same *Qur'anic* verse as

...for, behold, thou keepest indeed to a sublime way of life...

Asad [12] states that the term *Khuluq*, rendered a "way of life," describes a person's "character," "innate disposition," or "nature" in the widest sense of

concepts as well as “habitual behavior.” Identification of *Khuluq* with “way of life” is based on the explanation of the above verse by Abd Allah ibn Abbas (as quoted by Tabari in *Hadith*), stating that this term is here synonymous with “*din*” and one must remember that one of the primary significances of the latter term is “a way or manner of behavior” or “of acting.” Moreover, there are several well-authenticated traditions in the *Hadith*, according to which the widow of the holy Prophet – Aisha (Allah be pleased with her) speaking of the Prophet Mohammed (PBUH) many years after his death – repeatedly stressed that Mohammed’s (PBUH) “way of life (*Khuluq*) was the *Qur’an*. . .” [12].

However, the *Qur’an* uses many terms to describe the concept of goodness or good behavior, all of which contribute to the formation of character: *Khayr* (goodness), *birr* (righteousness), *qist* (equity), *adl* (equilibrium and justice), *haqq* (truth and right), *ma’roof* (known and approved), and *taqwa* (piety). Allah (the most exalted) describes people who attain felicity or success in life as those:

. . .inviting to all that is good, enjoining what is right, and forbidding what is wrong. . . [13]

This verse suggests that Allah (TME) enjoins all Muslims to learn the difference between right and wrong, good and bad, and righteousness and loathsomeness and to do good work throughout the life. Allah (TME) also warns:

O you who have attained to faith! Do not devour one another’s possessions wrongfully in vanities – but let there be amongst you traffic and trade based on mutual agreement – and do not destroy (or kill) one another: for behold, God is indeed a dispenser of grace unto thee! And as for him who does this with malicious intent and a will to do wrong – him shall We, in time, cause to endure (suffering through) fire: for this is indeed easy for God. [14]

Interpreting the preceding verse reveals profound meaning pertaining to ethical conduct. It asserts that all the property or wealth one possesses is in trust, whether it is in one’s own name or belongs to the community, or to people over whom one has control. To waste it is wrong. This verse also cautions against greed. It encourages one to increase property or wealth by economic use (traffic and trade), recalling Christ’s parable of the talents (Matt.xxv. 14-30), where the servants who had increased their master’s wealth were promoted and the servants who had hoarded were cast into darkness. This verse also warns that violence leads to self-destruction (“do not destroy or kill one another. . .”). One must be careful of theirs as well as other people’s lives. Violence is strongly abhorred. Violence is preposterous as Allah (TME) has loved and showered His mercies on all His creatures [15].

It must be stressed that ethical behavior in management of a household, corporate enterprise, or nation comes from the examples set at the top [16]. As Muslims, one only has to look to the example set by the holy Prophet Mohammed (PBUH) as the means and method to garner respect and don the robes of leadership. He led by example and his people followed out of respect for the man, first and foremost, and respect for the message he was chosen to deliver. Without that respect, he surely would have had difficulty convincing his fellow Arabs to follow. He was respected for many qualities but most importantly for his integrity and honesty. Integrity and honesty is the cornerstone of ethical behavior. For in this state, one stands in

the “exalted standard of character” – the exalted character of Mohammed; may Allah (TME) deliver His blessings upon him.

Many writers believed that by studying either the scripture or nature, man would become ethically aware. Islam takes a different approach. The Islamic ethical model places its emphasis on the Creator of the Worlds – Allah (TME) – because Allah (TME) is perfect and omniscient. Muslims have a code that is neither time-bound nor biased by human intervention. Basing himself on the *Qur’anic* verses 96:1–5; 68:1–2; and 55:1–3, Jabir Al ‘Alwani [17] concludes that humankind has been enjoined by Allah (TME) to perform two different kinds of readings simultaneously: a reading of Allah’s (TME) revelation (the holy *Qur’an*) and a reading of the natural universe [17]. Those who undertake only the first become ascetics. Sometimes, such a reading makes them imbalanced and incapable of independent thinking. Those who stress only the second reading are powerless to answer the “ultimate” questions and generally dismiss everything beyond their abilities to perceive by means of the senses as supernatural. Thus, the knowledge from both types of readings must be complementary rather than contradictory.

There is a general consensus among different societies about certain fundamental ethical values. However, as a result of the knowledge from both divine and natural sources, the Islamic ethical system substantially differs from those of others. Islam does not advocate withdrawal from the world by stressing piety and meditation, but stresses active participation in the world through the struggle of this life [18]. While participating in this life, a Muslim must remember to be consistent in both acts of worship and other dealings in daily life. Observing the five pillars of Islam (*Imaan*, faith in one God; *Salat*, obligatory prayers; *Zakat*, Islamic tax; *Saum*, fasting in the month of *Ramadhan*; and *Hajj*, pilgrimage to Makkah) is not enough; one also needs to conform to the Islamic code of ethics in daily life, which stresses on the social responsibility and justice to be maintained under all circumstances.

According to Islamic ethics, Muslims have to zealously guard their behavior, words, thoughts, and intention. Islam asks its believers to observe certain norms and moral codes in their family affairs; in dealings with relatives, neighbors, and friends; in their business transactions; in their social affairs; and in private and public life.

The unique feature of the Islamic ethical system is that it permeates all spheres and fields of human life. Adherence to ethical behavior is part of *Imaan* (faith) itself, and as such, social responsibility and justice is considered as an offshoot of a Muslim belief system. It provides a strong internal sanctioning and enforcing authority for observing social standards. The concept of ethics in Islam is not utilitarian and relative; rather its principles are eternal and absolute. This ethical code of conduct also applies equally to the commercial aspects of human life.

Islamic Ethics: Implications for Business Practices

Islam, through the example of the holy Prophet (PBUH) and the rightly guided Caliphs, acknowledges the importance of trade or business. The holy Prophet (PBUH)

himself was a merchant involved in international trade prior to his divine duty. The first three rightly guided Caliphs were Abu Bakr (Allah be pleased with him), who ran a cloth business; Umar (Allah be pleased with him), who had a corn trading business; and Uthman (Allah be pleased with him), who also ran a cloth business. The Ansars (people of Yathrib, now Madina al Munawwara in Saudi Arabia, who gave shelter to Prophet (PBUH) and his companions and were among the first communities to accept and convert to Islam) engaged in farming. In fact, except for trades that have been prohibited, Islam encourages Muslims to get involved in all sorts of business and commerce.

Islam fully recognizes the desirability of engagement in business activities. It is a religion that is pro-business. The *Qur'an* states:

Allah has made business lawful for you. [19]

It does not denounce business or other worldly activities as such. According to Islam, there is nothing wrong in fair trade and commerce. In fact, a businessperson who performs his business operations with honesty and in accordance with the commands of Allah (TME) deserves to be rewarded by Allah (TME) in the life hereafter (*Akhirah*). Business activities can become a part of worship and obedience (*Ibadah*) of Allah (TME) if the same are performed in accordance with the commands of Allah (TME) in line with the Islamic code of conduct. One can even engage in business during the pilgrimage (*Hajj*) which is the highest form of worship in Islam. Thus, there is no inherent conflict between fair business and Islam. Islam declares that the search for one's livelihood through fair business is like the pursuit of the blessing of Allah (TME).

Islam has its own distinctive value-based ethical system for business dealings. It prescribes certain specific guidelines governing business ethics. It

1. Enumerates the general ethical rules of business conduct
2. Identifies ethically desirable forms of business
3. Specifies the undesirable modes of transactions

These guidelines are dictated primarily by the notion of *halal* (lawful or permitted) and *haram* (unlawful or prohibited). Material pertaining to this subject (of *halal* and *haram*) can be found scattered throughout various chapters in several books of Islamic jurisprudence (*fiqh*) and between the lines in the commentaries on the *Qur'an* and *Hadith*. A brief discussion of the concept of the lawful (*halal*) and unlawful (*haram*) behavior in Islam that is the foundation of any business transaction according to *Shariah* will follow as a precursor to an examination of the precepts of business transactions in Islam, to be discussed in the following chapter.

Ethical Conduct: The Lawful (*Halal*) and Unlawful (*Haram*) Behavior in Islam

The *halal* and *haram* are significant parts of the total legal system in Islam – *Shariah* – a system whose primary objective is the good of humankind. Its principles are designed to protect man from evil and to benefit him in all aspects of life.

They are also designed to benefit everyone in the community and the wider society in every period of time throughout the succeeding generations. Thus, morality in Islam is authorized by divine decree [20].

In describing the ethical code of Islam, it is important to understand that actions can be categorized according to their degree of lawfulness (*halal*) and unlawfulness (*haram*). The basic philosophy is that the things which Allah (TME) has created and the benefits derived from them are essentially for man's use and, hence, are permissible (*halal*). Nothing is prohibited (*haram*) except what is prohibited by a sound and explicit verse of the *Qur'an* or a clear and authentic *Sunnah* (practice or saying) of the Prophet Mohammed (PBUH). In Islamic jurisprudence (*fiqh*), five such classes are identified:

1. *Fardh* (required) – represents the class of actions that are mandatory on every person claiming to be a Muslim, such as *salat* (prayers), *sawm* (fasting during the month of Ramadhan), and *zakat* (Islamic tax).
2. *Mustahabb* (recommended) – describes the class of actions that are not obligatory but highly recommended of Muslims, such as supererogatory fasting beyond Ramadhan, praying *nawafil*, etc.
3. *Muhab* (indifferent) – these actions are neither mandatory nor forbidden, such as having personal preference for one type of *halal* (permissible) food over another, or a Muslim may like to garden.
4. *Makruh* (reprehensible) – these actions are not absolutely forbidden, but are detested. The *makruh* is less in degree than *haram* (prohibited), and the punishment for *makruh* is less than for those acts which are *haram*, except when done in excess. For example, smoking is not expressly forbidden (like drinking alcohol), though it is in itself an action that is *makruh*. It should be noted, however, that there are many *ulemas* (religious scholars) that regard smoking as *haram*.
5. *Haram* (prohibited) – actions are unlawful and prohibited and committing them is a major sin, such as murder, adultery, drinking alcohol, etc.

The boundaries between the five mentioned categories are not absolute. For example, what is *haram* (prohibited) under one set of circumstances may become *halal* (permissible) under others. For example, a Muslim is not allowed to eat pork. However, should he fear death from starvation and nothing but pork is available, he is allowed to eat pork in that specific situation. In Islam, the sphere of prohibited items is very small, while that of the permissible is extremely vast. There are only a small number of sound and explicit texts concerning prohibitions, while whatever is mentioned in the *Qur'an* and *Hadith* as being lawful or unlawful falls under the general principle of the permissibility of things and within the domain of Allah's (TME) favor [21].

Based upon this categorization and principles, a first rule to be observed is: that which is lawful (*halal*) is wholesome and pure, and what is unlawful (*haram*) is harmful or can hurt. For example, Islam has long discouraged Muslims from drinking alcohol. It is only recently that childbirth studies have revealed that any amount of alcohol consumed during pregnancy may harm the unborn fetus. The most severe of these is *fetal alcohol syndrome* (FAS), a combination of physical and mental birth defects [22] and [23]. Implicitly, what is lawful is also moral, and what is unlawful is immoral. As such, adultery is both unlawful and immoral. A second

rule is that what leads to an unlawful action is also unlawful. Hence, pornography is unlawful and immoral because it may lead to adultery.

Furthermore, Allah (TME) gives a clear warning in the *Qur'an*:

Say: The things that my Lord hath indeed forbidden are: shameful deeds whether open or secret; sins and trespasses against truth or reason. . . . [24]

The forbidden things mentioned in the above verse can be interpreted in four categories [25]:

1. What is shameful or unbecoming: The sort of things which have also legal and social sanctions, not of a local but of a universal kind, may be called offenses against society.
2. Sins against self and trespasses or excesses of every sort: These are against truth and reason which include indiscipline, failure in doing intangible duties not clearly defined by law, and being selfish and self-aggrandized, which may be condoned by custom and not punished by law, etc.
3. Erecting fetishes or false Gods: This is treason against the true God.
4. Corrupting religion by superstitions, etc.

In mapping out one's ethical behavior, it is important for Muslims both to avoid *haram* (unlawful) and to avoid making *haram* (unlawful) as *halal* (lawful), and vice versa. Allah (TME) Himself says in the holy *Qur'an*:

Say: Have you ever considered all the means of sustenance which God has bestowed upon you from on high – and which you thereupon divide into “things forbidden” and “things lawful”? Say: Has God given you leave (to do this) – or do you, perchance, attribute your own guesswork to God? [26]

Muslims should not make unlawful what Allah (TME) has labeled lawful. For example, a buffalo may be an endangered species. One may stop hunting it in order to allow its herds to grow back, but one cannot say it is forbidden to eat buffalo meat or to trade in buffalo skins. The holy *Qur'an* states in this regard:

O ye who believe! Forbid not the good things, which Allah hath made lawful for you, and transgress not. Lo! Allah loveth not transgressors. [27]

To elaborate on the above verse from the *Qur'an*, in the pleasures that are good and lawful, the crime is excess. There is no merit merely in abstention or asceticism, though the humility or unselfishness that may go with asceticism may have its value. In verse 82 of the 5th chapter of the *Qur'an* (Sura Al-Maidah), Christian monks are praised for their particular virtue, though here and elsewhere monasticism is disapproved. Allah (TME) encourages mankind to use His (TME) gifts of all kinds with gratitude, but Allah (TME) does not approve of excess as evident from the above verse of the holy *Qur'an*.

Allah (TME) has set the boundaries (*Hudood*) very clearly in the holy *Qur'an*. Everything that is *haram* (prohibited) is clearly stated, and everything else is *halal* (permissible), except in matters of worship. It has defined all aspects of human life in great detail, leaving no aspect without guidelines. Similarly, business practices in Islam are based on this concept of the lawful (*halal*) and unlawful (*haram*).

Conclusion

The ethical system in Islam, which is essentially a reflection of the divine commandments and guideline for the right and wrong, permeates every aspect of an Islamic society, including business and commerce, and guides them to be socially responsible and deal with justice.

Accordingly, business dealings in Islam must be carried out in adherence to the Islamic social/legal system – *Shariah*. The motive of a Muslim businessperson should not be only profit but also to be useful to the environment he/she operates in by being socially responsible in all aspects of society. This is well embedded in the ethical system of Islam as demonstrated throughout this chapter. The concept of *halal* (lawful/permissible) and *haram* (unlawful/prohibited) must be strictly adhered to in all business dealings. The following chapter will further enumerate ethical business transactions according to the business precepts of Islam.

Cross-References

- ▶ [A Conceptual Framework of Business Ethics in Islam](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)

Notes

1. Abbreviations: *PBUH* peace be upon him, *TME* the most exalted.

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Business Precepts of Islam: The Lawful and Unlawful Business Transactions According to Shariah

45

Jawed Akhtar Mohammed

Abstract

The lawful or permissible (*halal*) and unlawful or prohibited (*haram*) transactions in Islamic jurisprudence (*fiqh*) are presented in this chapter. The rationale behind all of these tenets of business practices in Islamic economic system is bound by the fact that everything that is good and beneficial for the society is lawful and permissible and anything that causes harm or menace to the society is unlawful and prohibited. This is the foundation of Islamic business precept and quintessentially forms the ethical system in Islam. Some of the general rulings regarding the tenets of business transactions will be discussed in light of the *Shariah* – Islamic social/legal system and the basis for such decrees.

Introduction

The ethical system in Islam was discussed in the preceding chapter, which provided an overview of the divine decree pertaining to the ethical code of conduct in Islam. As the ethical system in Islam permeates every aspect of human lives, this chapter will further discuss the business transactions according to Islamic jurisprudence (*fiqh*).

The concept of the lawful (*halal*) and unlawful (*haram*) has been known to every people since ancient times. However, people have differed in defining the scope, variety, and causes of taboos and prohibitions, most of which were a product of their primitive beliefs, superstitions, and myths. Then came the divinely revealed religions, with their laws and injunctions concerning the lawful (*halal*) and

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unlawful (*haram*), uplifting the human being from the level of superstition, myth, and tribalism to the level of dignity which befits a human being [1].

However, in the religions revealed prior to Islam, there were some prohibitions and permissions which were legislated for temporary period in relation to the specific conditions of the people and their environments. For example, Allah (the most exalted)¹ prohibited some good things to the Children of Israel as a punishment for their rebellious attitude. Thereafter, Jesus (peace be upon him) told the people that he had come. . .

. . .confirming the truth of what was before me of the Taurat and to make lawful to you some of what was prohibited.... [2]

Finally, when mankind had reached the stage of intellectual maturity and was ready to receive the last message from Allah (TME), Islam came with its complete, comprehensive, and eternal *Shariah* – Islamic social/legal system for the whole of mankind. Concerning this, after mentioning what He (TME) has prohibited as food, Allah (TME) says in the Qur’an:

. . .This day I have perfected your religion for you and have completed My favour upon you, and have chosen Islam for you as the religion.... [3]

The Islamic view of the lawful (*halal*) and unlawful (*haram*) is very simple and clear. They are part of the total social/legal system of Islam, its *Shariah*, a system whose primary objective is the good of mankind. The Islamic *Shariah* removes from society harmful, burdensome customs and superstitions, aiming to simplify and ease the business of day-to-day living. Its principles are designed to protect man from evil and to benefit him in all aspects of his life. They are designed to benefit everyone in the community – the rich and the poor, the rulers and the ruled, the men and the women – as well as to benefit the whole of humanity throughout the earth in various countries and climes, with its multitude of groupings, and in every period of time throughout succeeding generations.

This chapter will highlight some of the Islamic tenets concerning business transactions and the rationale for their legitimacy (*halal*) or illegitimacy (*haram*).

Islamic Tenets Concerning Business Transactions

Islam demands a certain type of behavior from economic agents – the consumers and the producers. The behavior prescribed for the economic units of the society is so devised as to lead to a happy state of affairs, which is the ultimate goal of Islam. An Islamic market is characterized by certain norms that take care of the interests of both the buyer and the seller. There are a number of rules of ethical discipline in Islamic commercial transactions without which business contracts would be regarded as lacking perfection in light of the code of good manners, decency, and ethical excellence. They are all pursuant to the concept of lawful (*halal*) and unlawful (*haram*) and reflect features of ethics and social responsibility in every aspect of the transactions (see [Table 45.1](#)).

Table 45.1 List of lawful (*halal*) and unlawful (*haram*) business transactions in Islam

<i>Halal</i> business transactions	<i>Haram</i> business transactions
Keeness to earn legitimate (<i>halal</i>) earnings	Interest (<i>riba</i>)
Trade through mutual consent	Dealing in prohibited (<i>haram</i>) items
Truthfulness	Sale of <i>Al-Gharar</i> (uncertainty, risks, speculation)
Generosity and leniency	Arbitrarily fixing the prices
Trustworthiness	Hoarding of foodstuff
Honoring and fulfilling obligations (<i>Uqud</i>)	Exploitation of one's ignorance of market conditions
Fair treatment of workers	Cheating and fraud

Although there are numerous rulings on Islamic business transactions, a number of them are listed in Table 45.1 in context of this study. A brief discussion of each follow to provide the basis for such decrees.

Keeness to Earn Legitimate (*Halal*) Earnings

Islam places great emphasis on the ethical code of lawful (*halal*) and unlawful (*haram*) in business transactions. The holy Prophet Mohammed (peace be upon him) endorsed the importance of legitimate ways of earning in the following words:

Asked what form of gain is the best? The Prophet (PBUH) said, a man's work with his hands, and every legitimate business transaction. [4]

From the above statement, it is clear that a Muslim trader must be determined to earn only through legitimate means. He should not only avoid illegitimate means in earning his provisions and livelihood but also distance himself from matters dubious and doubtful. The Prophet (PBUH) is also reported to have said:

Leave what makes you doubt for things that do not make you doubt. [5]

Things legitimate and illegitimate are clearly defined in Islam, and in between them are doubtful things which should be avoided. A true Muslim businessman should be wary of the doubtful things in order to keep himself clear in regard to his faith and his honor because one who falls into doubtful matters is sure to fall into that which is unlawful (*haram*). A tradition of the Prophet (PBUH) states:

A time will come upon the people when one will not care as to how he gets his money whether legally or illegally. [6]

Therefore, earning money through *halal* trade is vastly preferred in an Islamic society. Begging is strongly abhorred in Islam. This principle is emphasized in the following Hadith:

A man of the Ansar came to the Prophet (PBUH) and begged from him. The prophet asked, "Have you nothing in your house?" He replied, "Yes, a piece of cloth, a part of which we wear and a part of which we spread (on the ground), and a wooden bowl from which

we drink". The Prophet (PBUH) said, "Bring them to me". He then brought these articles to him and the Prophet (PBUH) took them in his hands and asked, "Who will buy these?" A man said, "I shall buy them for one Dirham". He (PBUH) said twice or thrice, "Who will offer more than one dirham?" A man said "I shall buy them for two Dirhams".

He (PBUH) gave these to him and took two Dirhams and giving them to the Ansari, the Prophet (PBUH) said, "Buy food with one dirham and hand it to your family, and buy an axe and bring it to me". He then did and asked for. The Apostle of Allah (PBUH) fixed a handle on it with his own hands and said, "Go and gather firewood and sell it, and do not let me see you for a fortnight". The man went away and gathered firewood and sold it. When he had earned ten Dirhams, he came to the Prophet (PBUH) and bought a garment with some of them and food with others.

The Apostle of Allah (PBUH) then said, "This is better for you than that begging should come as a spot on your face on the Day of Judgment. Begging is only for three kinds of people: one who is in grinding poverty; one who is seriously in debt; and one who is responsible for compensation and finds it difficult to pay". [7]

Agriculture and farming has always been regarded as legitimate (halal) forms of work. Allah (TME) describes in the *Qur'an* (55:10-13) the process underlying agriculture and farming – how He (TME) sends rain down and how it flows throughout the earth, making it fertile and ready for cultivation; how the winds play a role in scattering seeds; and how crops grow. This *Qur'anic* verse and many others (7:19-20; 80:24-8; 15:19-22) provide motivation for agricultural work. Besides agriculture, Muslims are encouraged to develop proficiency in industries, crafts, and professions that are instrumental to the survival and betterment of the community. In fact, development of these skills represents *Fardh Kifaya* (responsibility). Imam al Ghazzali (n.d.) [8], a renowned Islamic philosopher, stresses this point:

Sciences whose knowledge is deemed Fardh Kifayah comprise every area which is indispensable for the welfare of the world. [9]

Many professions that are ordinarily looked down upon have been given dignity in Islam. For example, the Prophets of Allah – Moses (PBUH) worked as a hired hand for 8 years to gain the hand of his future wife, and Jesus (PBUH) and Mohammed (PBUH) also worked as shepherds for several years.

In general, Islam looks on work, which fills a legitimate (*halal*) need in a society as good provided that the person performs it in a legitimate (*halal*) manner conforming to the norms of the Islamic way of earning.

Trade Through Mutual Consent

Mutual consent between the parties is a necessary condition for the validity of a business transaction. It, therefore, follows that a sale under coercion is not acceptable in Islam. A sale transaction is to be regarded as legal only if it is made through the mutual consent of the parties concerned. Taking advantage of someone's plight and charging high prices are also forms of pecuniary exploitation and as such are forbidden in Islam. The Holy *Qur'an* says:

O you who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual goodwill: nor kill [or destroy] yourselves: for verily Allah has been to you Most Merciful. [10]

Thus, two key elements of the general theory of contract are endorsed emphatically in these verses: mutual consent and gainful exchange. One can also find the importance of mutual consent for the legality of a business deal. The Prophet (PBUH) is reported to have said:

A sale is a sale only if it is made through mutual consent. [11]

Further, in order to avoid any future misunderstanding, Allah (TME) has enjoined them to put contractual obligations in writing:

O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time, reduce them to writing. [. . .] Let him who incurs the liability dictate, but let him fear his Lord Allah, and not diminish aught of what he owes. [12]

Commercial morality is here on the highest plane and yet in the most practical manner, both as regards the bargains to be made, the evidence to be provided, the doubts to be avoided, and the duties and rights of scribes and witnesses. Probity even in worldly matters is to be not a mere matter of convenience or policy, but a matter of conscience and religious duty. Even everyday transactions are to be carried out as in the presence of Allah (TME).

Truthfulness in Business Transactions

Honesty and truthfulness are qualities which a Muslim businessperson should develop and practice. Truth, for example, has a self-reinforcing effect. The holy Prophet Mohammed (PBUH) said:

Truthfulness leads to righteousness, and righteousness leads to Paradise.

A man continues to tell the truth until he becomes a truthful person.

Falsehood leads to al fujwr (i.e. wickedness, evil-doing), and al fujwr (wickedness) leads to the fire of Hell. [13]

The holy Prophet (PBUH) has also exhorted the believers to strictly adhere to truthfulness in business transactions. He (PBUH) said:

The seller and the buyer have the right to keep or return the goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities (of the goods), then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost. [14]

Islam encourages truthfulness in business transactions and raises the status of a truthful merchant so much so that he will be at par with the holy warriors and martyrs, in the Hereafter. The Prophet (PBUH) is reported to have said:

The truthful merchant (is rewarded by being ranked) on the Day of Resurrection with prophets, veracious souls, martyrs and pious people. [15]

The tradition implies that Allah (TME) blesses business dealings if both the buyer and the seller are true to each other. Telling lies and hiding facts will result in the loss of divine blessing.

Trustworthiness in Business Transactions

Trustworthiness is one of the most important principles of ethical discipline in commercial transactions. Trust is a moral virtue and duty incumbent on a Muslim in the performance of his affairs. It demands sincerity in work and purity of intention from every believer. A true Muslim trader will not, therefore, barter his *Akhirah* (hereafter) for worldly gains. He will avoid fraud, deception, and other dubious means in selling his merchandise. The sense of mutual trust demands that the pros and cons of the commodity be revealed to the buyer so that he purchases the commodity in full satisfaction. The holy *Qur'an* states in this regard:

O you believers! Do not betray the trust of Allah and the Messenger nor misappropriate knowingly things entrusted to you. [16]

A detailed commentary of this verse in the *Qur'an* [17] suggests that trust may be of various kinds: for instance, property, goods, credit, etc.; plans, confidences, secrets, etc.; knowledge, talents, opportunities, etc., which are expected to be used for one's fellowmen. Men may betray the trust of Allah (TME) and His Prophet (PBUH) by misusing property or abusing the confidence reposed in them or the knowledge or talents given to them. On that special occasion, when the plans for the protection of Allah's (TME) worshippers against annihilation were of special importance, the holy Prophet Mohammed's (PBUH) trust and confidence had to be guarded with special care. Occasions for scrupulously respecting the trust and confidence of one's fellow men occur everyday in one's life, and few can claim perfection in this respect, hence the special distinction of the Prophet of Allah (PBUH), who earned the title *Al-Amin* (trustworthy), the one who was true to every trust reposed in him.

Generosity and Leniency in Business Transactions

One should be lenient and generous in business transactions. For instance, whoever demands his debt back from the debtor should do so in a decent manner. The Prophet (PBUH) invokes Allah's (TME) mercy thus:

May Allah's mercy be on him who is lenient in his buying, selling and in demanding back his money (or debts). [18]

The Prophet's exhortation to Muslims means that a creditor should be lenient and generous in demanding back his money. The debtor, in turn, should also give

back the debt to the creditor on time with due thanks and politeness. The Prophet (PBUH) was the best of all people in repaying the debts.

Abu Rafi reports that the Prophet (PBUH) took a young camel on loan. When camels came to him in charity, he asked *Abu Rafi* to give the creditor a young female camel. *Abu Rafi* pointed out that there was no young camel except for a 4-year-old camel of a very good quality. The Prophet (PBUH) said:

Give him the best one, for the best amongst you is he who repays the rights of others handsomely. [19]

Honoring and Fulfilling Business Obligations (*Uqud*)

Islam attaches great importance to the fulfillment of contracts and promises. Islamic teachings require a Muslim trader to maintain his trusts, promises, and contracts. The basic principles of truth, honesty, integrity, and trust are involved in all business dealings. The Holy *Qur'an* emphasizes the moral obligation to fulfill one's contracts and undertakings. A verse thus states:

O you who believe! Fulfil (your) obligations. [20]

A tradition of the Prophet (PBUH) states:

The Muslims are bound by their stipulations. [21]

Another tradition condemns promise breaking as the hallmark or trait of a hypocrite:

If he makes a promise, he breaks it, and if he makes a compact he acts treacherously. [22]

In order to safeguard the interest of both the buyer and the seller, it is desirable, according to the Islamic teachings, to clearly define all the necessary details concerning the business deal. Each business contract should clearly specify the quality, the quantity, and the price of the commodity in question. Thus, in a business contract, the offer and acceptance should be made between the parties concerned on a commodity which is with the buyer and which he is able to deliver. Any commodity that is nonexistent or not deliverable is not allowed to be transacted. A contract must be explicit with regard to the rights and obligations of the parties concerned so that it does not lead to disputes and disagreements between them.

Fair Treatment of Workers

Islam puts certain conditions and restrictions to obviate the chances of bitterness between the employer and employees. Islam encourages and promotes the spirit of love and brotherhood between them. According to the Islamic teachings, it is

the religious and moral responsibility of the employer to take care of the overall welfare and betterment of his employees. Fair wages, good working conditions, suitable work, and brotherly treatment should be provided to the workers. The last Prophet (PBUH) of Allah (TME) has explained this principle in the following words:

Allah has placed them (workers) under you. Those are your brothers. So, if anyone of you has someone under him, he should feed him out of what he himself eats, clothe him like what he himself puts on, and if that be the case, let him not put so much burden that he is not able to bear, then lend your help to him. [23]

The holy Prophet (PBUH) also said:

I will be foe to three persons on the Day of Judgement
one of them being the one who does not give him his due when he employs a person
who has accomplished his duty. [24]

The holy Prophet (PBUH) is also reported to have said:

The wages of the labourers must be paid to him before
the sweat dries upon his body. [25]

Thus, all of these quotations from the *Hadith* provide an example of Islam's emphasis on the type of treatment of employees, which is a significant part of the social responsibility and justice and forms part of the overall ethical system in Islam.

Prohibited (*Haram*) Matters in Business Transactions

So far, one aspect of the business ethics has been focused on guidelines prescribed by Islam for conducting lawful or permissible (*halal*) business transactions. Another aspect of business transactions according to Islam is the various forms of unlawful or prohibited (*haram*) business practices Muslim businesspersons must avoid. Discussion of some of these prohibited and undesirable business practices follow.

Interest (*Riba*)

Foremost among the unacceptable business practices strongly condemned in Islam is interest earned on money (*riba*). *Riba* by definition is the extra sum the money-lender charges from the borrower for deferred payment. While earlier there was a debate as to whether *riba* relates to interest or usury, there now appears to be consensus of opinion among Islamic scholars (*Ulemas*) that the term extends to all forms of interest [26, 27]. Islam has forbidden all forms of interest (*riba*) since it involves both oppression and exploitation, violating the norms of social responsibility and justice. Islam strictly forbids this form of tyrannical dealings and condemns it in severe terms. The holy *Qur'an* says:

...Allah has permitted trading and forbidden *riba*. ... [28]

It further states:

O you who believe! Fear Allah and give up what remains of your demand for usury if you are indeed believers. If you do it not, take notice of war from Allah and his Messenger: but if you turn back you shall have your capital sums; deal not unjustly and you shall not be dealt with unjustly. [29]

A detailed commentary of the above verse clarifies that the threat of war in the above verse is not war for opinions. It is an ultimatum of war for the liberation of debtors unjustly dealt with and oppressed [30]. In another verse of the holy *Qur'an*, Allah (TME) commands:

O ye who believe! Devour not *riba* doubled and multiplied. . . [31]

The *Sunnah* is equally emphatic in denouncing *riba*. The holy Prophet (PBUH) is reported to have said:

May Allah send down His curse on the one who devours *riba* and the one who pays it and on the two witnesses and on the person writing it. [32]

These and many other verses of the *Qur'an* and traditions of the Prophet (PBUH) clearly demonstrate that all those business transactions, which involve interest in one form or other, are unlawful (*haram*) in the sight of Islam. According to the *Qur'anic* teachings, there is a clear distinction between genuine business profits and interest; while the former is recommended and desirable, the latter is hated and undesirable.

In banning interest (*riba*), Islam seeks to establish a society based upon fairness and justice. A loan provides the lender with a fixed return irrespective of the outcome of the borrower's venture. It is much fairer to have a sharing of the profits and losses. Fairness in this context provides the supplier of capital a right to reward, but this reward should be commensurate with the risk and effort involved and thus is governed by the return on the individual project for which funds are supplied. Hence, what is forbidden in Islam is a predetermined return. The sharing of profit is legitimate, and that practice has provided the foundation for Islamic banking.

Dealing in Prohibited (*Haram*) Items

Dealing in unlawful items such as carrion (dead meat), pigs, intoxicants, and idols are strongly prohibited in Islam. Dead meat would mean the flesh of any bird or animal dead from natural causes, without being properly slaughtered in an Islamic way. A Muslim, therefore, will not eat the flesh of such an animal or bird. Flesh of an electrocuted animal, or of an animal killed by the blow of a blunt weapon, and of the strangled one is also proscribed in Islam. Also forbidden is the flesh of the animal that has been killed or slaughtered in ways other than Islamic. A verse of the holy *Qur'an* says:

. . .Forbidden to you (for food) are: dead meat, the blood, the flesh of swine and that on which name of other than Allah has been mentioned. [33]

The scholars of Islamic jurisprudence (*fiqh*) work out the details of the above verse with great elaboration. However, the purpose here is to present general principles and not technical details. Carrion or dead meat and blood as articles of food would obviously cause disgust to any refined person. So would swine's flesh where the swine live on offal. Where swine are fed artificially on clean food, the objections remain: (1) that they are filthy animals in other respects, and the flesh of filthy animals taken as food affects the eater; (2) that swine's flesh has more fat than muscle-building material; and (3) that it is more liable to disease than other kinds of meat, for example, trichinosis, characterized by hairlike worms in the muscular tissue. As to food dedicated to idols or false Gods, it is obviously unseemly for the Children of Unity to partake of it [34].

It is, therefore, not permissible for a Muslim to trade in dead meat. Likewise, trading in pork or intoxicants (e.g., alcohol) and sale of idols and statues are not permitted in Islam. The Holy *Qur'an* also says:

O you who believe! Intoxicants and gambling (dedication of) stones and (divination by) arrows are an abomination of Satan's handiwork: so avoid it in order that you may prosper. [35]

The Prophet (PBUH) is reported to have said:

Allah and His Messenger made illegal the trade of alcoholic liquors dead animals, pigs and idols. [36]

The Prophet (PBUH) also said:

If Allah makes something unlawful, he makes its price also unlawful. [37]

Thus, incomes from the sale of such illegitimate transactions are also unlawful (*haram*) and must not be part of a Muslim's earning or business transactions.

Sale of *Al-Gharar* (Uncertainty, Risks, Speculation)

In Islamic terminology, this refers to the sale of a commodity or good which is not present at hand; or the sale of an article or good, the consequences or outcome of which is not yet known; or a sale involving risks or hazards where one does not know whether at all the commodity will later come into existence. Such a sale is strictly prohibited in Islam because the quality, whether good or bad, is not known to the buyer at the time of the deal and there is every possibility that the contract may give rise to disputes and disagreements between the concerned parties.

The Prophet (PBUH), therefore, prohibited the sale of what is still in the loins of the male, or sale of whatever is in the womb of a female camel, or sale of birds in the air, or the sale of fish in the water and any transaction that involves *Gharar*. (i.e., anything that involves deception). He also forbade the sale of fruits before they look healthy and also the sale of crops until the grain hardens. Nevertheless, such advance sales would be acceptable if the element of *Gharar* does not exist and the quality and the quantity of the goods are well known and predictable.

In contemporary financial transactions, the two areas where *Gharar* most profoundly affects common practice are insurance and financial derivatives [38]. Jurists often argue against the financial insurance contract, where premiums are paid regularly to the insurance company and the insured receives compensation for any insured losses in the event of a loss. In this case, the jurists argue that the insured may collect a large sum of money after paying only one monthly premium. On the other hand, the insured may also make many monthly payments without ever collecting any money from the insurance company. Since “insurance” or “security” itself cannot be considered an object of sale, this contract is rendered invalid because of the forbidden *Gharar*. Conventional insurance also suffers from prohibition due to *riba* since insurance companies tend to invest significant portions of their funds in government bonds, which earn them interests (*riba*) [39].

Arbitrarily Fixing the Prices

Islam grants absolute freedom to traders provided they adhere to the ethical code of lawfulness. It does not, therefore, encourage the practice of price-fixing and leaves the traders to earn the profits from each other within the lawful limits. As a matter of principle, public authorities are not allowed to fix the prices of commodities by force. This is because rise and fall in the prices are linked to various factors other than the greediness of the traders and fixing the prices may endanger both public and private interests.

It is reported that on one occasion prices increased dramatically during the period of the holy Prophet (PBUH). The people asked the Prophet (PBUH) to fix the price for them. Thereupon the Messenger of Allah (PBUH) said:

Allah is the One Who fixes prices, withholds, gives lavishly, and provides and I hope that when I meet Allah, none of you will have any claim on me for an injustice regarding blood or property. [40]

However, the role of public authorities comes into play if it becomes absolutely essential, especially in order to prevent exploitation and other unjust practices in the market. Thus, if a trader adopts unfair means, charges unjust prices, and indulges in undercutting with a view to doing harm to the smaller traders, public authorities have the right to intervene in the market. They can and should take steps to fix or control the prices so as to eliminate injustice from the market and allow the trader to earn reasonable profits and the buyer to pay a just and equitable price.

Hoarding of Foodstuff

The Arabic word for hoarding is *Ihtikar*. It means storing foodstuffs or withholding them in expectation of a rise in their prices. Sometimes, a handful of traders operating in the market may buy the entire quantity of an item, rice for example, and store it up with the object of selling it later at a time of scarcity to draw

maximum profit. The consumers are left with no choice but to purchase the article concerned from the one who hoards as he is the only one in the market who holds it. At other times, a trader may collude with suppliers who will only sell their merchandise to him. As a result, he holds the entire stock of the essential items that other traders do not possess. He is, therefore, in a position to dictate his terms in the market and sell them at an exorbitantly high price to the needy people. This is an unjust practice and a clear case of exploitation and deservedly condemned by Islam. The Prophet (PBUH) is reported to have condemned the hoarders when he said:

No one hoards but the traitors (i.e. the sinners). [41]

The Messenger of Allah (PBUH) also said:

The importer (of an essential commodity) into the town will be fed (by Allah), and the hoarders will have (Allah's) curse upon him. [42]

Exploitation of One's Ignorance of Market Conditions

One of the most common unethical practices in modern business is to exploit one's ignorance of market conditions. Sometimes it may happen that a buyer arrives in a town with objects of prime and general necessity. A local trader may persuade the newcomer to transfer all of the goods to him so that he will sell them on his behalf in the market. He obtains the commodities on a price that is lower than market price and then sells them at a high or exorbitant price. Islam condemns this act of intermediary intervention, which involves exploitation of one's ignorance of market conditions. The practice was prevalent in pre-Islamic society. The Prophet (PBUH) has prohibited this practice through a number of instructions. A tradition reads:

A town dweller should not sell the goods of a desert dweller. [43]

Cheating and Fraud in Business Transactions – Trickery (*Al-Najsh*)

The traders and businessmen generally have a tendency to induce customers by adopting fraudulent business practices. Islam strongly condemns all such practices in business transactions. The Messenger of Allah (PBUH) has commanded the believers not to indulge in cheating and fraudulent practices in business transactions. The term *Al-Najsh* means an action in which a person offers a high price for something without intending to buy it but just to cheat or defraud another person who really means to buy it. The person practicing it may collaborate with the seller to offer high prices merely as a means to cheat other buyers. This type of fraudulent transaction is totally prohibited in Islam. The holy Prophet (PBUH) is reported to have said:

Do not harbour envy against one another; do not outbid one another (with a view to raising the price); do not bear aversion against one another; do not bear enmity against one another; one of you should not enter into a transaction when the other has already entered into it; and be fellow brothers and true servants of Allah. [44]

It is clear from the preceding *Hadith* that Islam also forbids the practice of sale over sale and purchase over purchase. This means that it forbids someone to offer a higher price for a commodity after the deal has been accomplished between the parties. Obviously he is offering a higher price in order to spoil the agreement reached between the parties. As a result of this offer, the buyer may feel tempted to cancel his contract to sell it at a higher price. It may give rise to disputes and disagreements between brothers and thus is unethical. Hence, it is strictly prohibited in Islam.

Similarly, dubious and vague transactions, manipulating the prices, selling the items belonging to a desert dweller by a townsman, false eulogy, and concealment of defects are all examples of cheating and fraud (*Al-Ghashsh*). The Prophet (PBUH) has strongly condemned all such practices in a number of traditions and instructed the faithful to abstain from them. The Prophet (PBUH) is reported to have said:

The seller and the buyer have the right to keep the goods or return them as long as they have not parted. He also said that if both the parties have spoken the truth and described the defects as well as the merits thereof (the goods), they would be blessed in their deal. If they have told lies or concealed something, then blessings of their transaction would be lost. [14]

Another form of deceit is to manipulate weights and measures. It refers to the act of taking full measures from others and giving them short measures in your turn. Giving short measures was a common malaise plaguing the pre-Islamic days. The community of the Prophet *Shu'ayb* (PBUH) was known for practicing it with impunity. Consequently, they were destroyed for their persistence in deceit and disbelief in Allah (TME) and His Messenger (PBUH). Allah (TME) the almighty has repeatedly commanded exactitude in weights and measures. One of the verses in the holy *Qur'an* says:

And give full measure when you measure, and weigh with a just balance.
That is good and better in the end. [45]

As can be seen in the above verse of the holy *Qur'an*, a balanced transaction is also equitable and just. *Qur'an* uses the term "*adl*" (equilibrium) in this sense. Giving just measure and weight is not only right in itself but is ultimately to the best advantage of the person who gives it as he fulfils his social responsibility according to the will of Allah (TME).

Conclusion

This chapter highlighted the important matters which are permissible/lawful (*halal*) or prohibited/unlawful (*haram*) pertaining to the tenets of business transactions in Islam, especially those matters which people neglect or consider insignificant due to their ignorance of the reasons behind a prohibition or

permission. The rationale behind each divine decree discussed shows the deep wisdom of Islamic Shariah in its legislations concerning the *halal* and *haram*, so that anyone can observe that Allah (TME) is not arbitrary in His commandments, neither permitting things in order to be indulgent to people nor prohibiting them in order to make their lives miserable. Rather, He has legislated for them what is in their own best interest, safeguarding their lives, intellect, property, morals, and honor and guiding them toward success in this world and in the Hereafter by being ethical.

This is what Muslims around the world believe concerning what Allah (TME) has made *halal* and *haram* and what He (TME) has legislated in relation to every aspect of human life, including business transactions. He therefore accepts it with a convinced mind, a contented heart, and with a strong determination to implement it. Indeed, a Muslim believes that his happiness in this world and his success in the Hereafter depend entirely upon his observing the limits set by Allah (TME), following His injunctions and observing His prohibitions. In order to secure happiness and success in both the worlds, therefore, a Muslim must restrain himself from transgressing these limits.

Cross-References

- ▶ [A Conceptual Framework of Business Ethics in Islam](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)

Notes

1. Abbreviations: *PBUH* peace be upon him, *TME* the most exalted.

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Abstract

This chapter introduces a set of axioms that systematize and summarize the concept of ethics in Islam. The fundamental ethical axioms of *unity*, *equilibrium*, *free will*, and *responsibility* are discussed in detail in light of the holy *Qur'an* and *Hadith*. Propositions and business expectations/applications based on the ethical axioms have been presented to elaborate a possible conceptual framework of business ethics in Islam.

The axiom of *unity* forms the foundation of Islamic faith. Belief in one and only Allah (the most exalted) and submitting to His will is the essence of the Islamic belief system. This creates a relationship between the Creator and the creation where Allah (TME)¹ through His mercy, provides everything on earth for the benefit of mankind and assigns them as His vicegerent (*Khalifah*) on earth. However, mankind holds these resources in trust (*amanah*) and is obliged to utilize them responsibly in accordance to Allah's (TME) will.

The axiom of *equilibrium* is the horizontal dimension of Islam. It can be a sense of balance among the various aspects of a man's life to produce the best social order. God has created everything in the universe with a balance to maintain the equilibrium. As a vicegerent of God on earth, mankind is supposed to reflect His qualities and, thus, (ideally) must maintain a balance in every aspect of socioeconomic behavior.

The axiomatic principle of *free will* gives mankind the freedom to choose between the right and the wrong, the knowledge of which is clearly provided in the divine commandments in the holy *Qur'an* and *Hadith*. As a trustee (*al 'amin*)

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of Allah's (TME) resources on earth, mankind can utilize them in accordance to the divine commandments or misuse them as Allah (TME) has given them the freedom to choose. Although mankind is free to do whatever they wish, Islam provides this freedom to mankind with elements of discipline and dignity to reflect man's vicegerency (*Khalifah*) of Allah (TME). A Muslim's free will to choose is guided by the will of Allah (TME) and His divine commandments.

The final ethical axiom of *responsibility* is logically related to *free will*. Freedom must be counterbalanced by responsibility and having opted for the power to choose between good and evil, man must endure its logical consequences. Since he/she is responsible for all that he does, man must be accountable for his actions.

The four axioms, which are foundation of the Islamic ethical framework, are based on *Qur'anic* injunctions and provide clear guidelines for an ethical system in Islam.

Introduction

The effort in the two preceding chapters has been to present the Islamic perspective of ethical system and its implications on business practices. The fundamental codes of moral behavior, e.g., truthfulness, trustworthiness, generosity and leniency, adherence to business commitments and contracts, fair treatment of workers, and avoidance of evil practices such as interest (*riba*), fraud, cheating, deceit, hoarding of food stuff, exploitations, giving short measures, etc., in accordance to the Islamic jurisprudence (*fiqh*) concerning the lawful (*halal*) and unlawful (*haram*) are essential elements of ethical system in Islam and are part of the overall Islamic faith. Observing them will not only lead to a happy state of affairs in this world but also holds the promise of manifold returns in the hereafter (*Akhirah*).

Islamic morality or ethical codes thus create a sense of responsibility and accountability in the mind of the believers. This is consistent with the purpose of the Islamic system – *maqasid al Shariah*, which is based on *falah* (human well-being) and *hayat tayyibah* (good life). The discussion in the preceding chapters demonstrates that there are many elements of ethical code of conduct within Islam. However, these elements remain scattered, incoherent, and unsystematic. The task therefore is to elaborate a higher-order framework to organize and systematize these elements, thereby constructing a more coherent statement of the ethical system in Islam that may be considered more properly as a conceptual framework of business ethics in Islam.

This chapter will introduce a set of axioms that will systematize and summarize the concept of ethics in Islam. The fundamental ethical axioms of *unity*, *equilibrium*, *free will*, and *responsibility* will be discussed in detail in light of the holy *Qur'an* and *Hadith*. Propositions and business expectations/applications based on the ethical axioms will be presented to elaborate a possible conceptual framework of business ethics in Islam.

Fundamental Ethical Axioms in Islam

The Islamic ethical system as illustrated in the preceding chapter is multidimensional, far-reaching, comprehensive, and all encompassing. Islam encourages humankind to experience *tazkiyah* (spirituality/morality) through active participation in this life. By behaving ethically in the midst of the tests of this world, Muslims prove their worth to Allah (the most exalted). Ethics or morality is repeatedly stressed throughout the holy *Qur'an* and *Hadith* as a guideline in all spheres of life including business and financial dealings.

Much of the Islamic ethical behavior is concerned with elements of social responsibility and justice. In order to determine the efficacy of these elements and systematize them in a coherent framework, it is important to first establish the foundational elements. This foundation will form the basis of the conceptual framework of business ethics in Islam that will address not only the nature of the ethical elements but also the rationale behind them.

The Islamic view of life processes is unique not only for its predominant emphasis on ethical norms but also due to its being “complete.” In addition, since this view is internally consistent, it can form the basis of scientific generalizations about an Islamic economy. However, to turn it into an operational tool of scientific analysis, an ethical philosophy must be reduced to a set of axioms, which can then serve as a point of departure for making logical deductions with respect to valid rules of social and economic behavior according to Islamic precepts.

Thus, an axiom system that reflects the Islamic view of ethics needs to be constructed as an essential first step in determining the rules of social and economic behavior in an Islamic society. Syed Nawab Haider Naqvi [1], in his book *Ethics and Economics: An Islamic Synthesis*, tendered a theory of Islamic economics in which he addresses the need for an Islamic economic system and how it can be generated from the ethical statements in the *Qur'an* and *Hadith* [1]. He presents the four ethical axioms – *unity*, *equilibrium*, *free will*, and *responsibility* – that together form such a logical system and argues that from these four axioms, all statements regarding Islamic society and economics can be generated.

As Naqvi is one of the few scholars who address the foundational issue of theory building in Islamic economics, this study will use his axiomatic principles, along with some other scholars' work, to elaborate the conceptual framework of business ethics in Islam (see Table 46.1). Based on the description of each of the ethical axioms, propositions will be developed, and expectations/applications in business practice arising out of them will be discussed in this chapter to present a coherent ethical foundation representing a potential framework.

Naqvi [1], in his investigation of the basic principles of Islamic economic and social life, identified four fundamental elements to be key pointers to the unique perspective of Islam – *unity*, *equilibrium*, *free will*, and *responsibility*, as presented in the above table. He explains that the concept of *unity* is derived from the belief in one God. *Equilibrium* represents social ideals and justice. *Free will* is individual freedom, and *responsibility* is the obligation each individual has toward God,

Table 46.1 Axioms of Islamic ethical philosophy [1]

Axiom	Definition
Unity (<i>tawhid</i>)	Related to the concept of <i>tawhid</i> . The political, economic, social, and religious aspects of man's life form a homogeneous whole, which is consistent from within, as well as integrated with the vast universe without. This is the vertical dimension of Islam
Equilibrium (<i>al 'adl</i>)	Related to the concept of <i>al 'adl</i> . A sense of balance among the various aspects of a man's life mentioned above in order to produce the best social order. This sense of balance is achieved through conscience purpose. This is the horizontal dimension of Islam
Free will (<i>ikhtiyar</i>)	Man's ability to act without external coercion within the parameters of Allah's (TME) creation and as Allah's trustee on earth
Responsibility (<i>fardh</i>)	Man's need to be accountable for his actions

oneself, and the wider society. These axioms are meant to be the basis of all Islamic ethical concepts, forming the foundation of any socioeconomic theory in Islam.

Unity (*Tawhid*)

The source of all Islamic ethical notions comes from the faith in the unity (*tawhid*) of God – Allah (the most exalted). All other axioms of Islamic ethics and principles of theology, according to Naqvi [1] originate from this concept of unity (*tawhid*).

Islam's ethical system, which encompasses man's life on Earth in its entirety, resides eternally prefigured in the concept of unity, which, in an absolute sense, relates only to Allah (TME). The fundamental belief that *there is no God but Allah (TME) and none is worth worship except Him* is the foundation of Islam and the essence of *the divine message* sent to mankind through various Prophets of God from Adam, Noah, Moses, and Jesus to Mohammed (peace be upon all of them). In accordance to this belief, a Muslim surrenders unconditionally to the will of Allah (TME):

... the decision rests with Allah only, Who hath commanded you that ye worship none save Him. [2]

The foundation of Islamic faith is belief in one God – Allah (TME), which is in line with the divine commandment mentioned above. Everything else follows from this belief. This will become a crucial point because if the entire system of Islamic socioeconomic should rest on the concept of unity (*tawhid*) as a fundamental principle, then one needs to see how faith in one God – Allah (TME) – entails the principles that follow from it.

Faith in only one, the almighty God is at the top of the goal of *Shariah*, for in Islam, faith is crucial for human well-being (*falaha*). Faith in God provides a proper basis for relations with others, allowing human beings to act in a respectful and

caring manner. Faith in God also provides a moral filter, necessary for the allocation and distribution of resources based on brotherhood and socioeconomic justice. Further, faith in Islam is a motivation for equitable need fulfillment and wealth distribution [3].

On the plane of human existence, this concept also provides a powerful integration principle, for all mankind is united in submission to Him. The unity of Allah (TME) not only reiterates His qualities of being all-powerful and all-knowing but also reflects man's submissive relation to Allah (TME):

Say: Truly, my prayer and my service of sacrifice, my life and my death are all for Allah, the Cherisher of the Worlds. [4]

Mankind has been united not only in submission and the knowledge of Allah (TME) but also in man's knowledge of one another. Indeed, the two modes of knowledge are facets of the common pursuit of the ultimate truth:

O mankind! We have created you from a single (pair) of male and female, and have made you into nations and tribes, that ye may know one another. . . . [5]

This verse in the *Qur'an* is addressed to all mankind and not only to the Muslim brotherhood, though it is understood that in a perfect world (in an Islamic vision), the two would be synonymous. As it is, mankind is descended from one pair of parents – (Adam and Eve). Their tribes, races, and nations are convenient labels by which one may know certain differing characteristics. Before Allah (TME), they are all one, and he gets most honor who is most righteous. This is further stressed in the holy Prophet Mohammed's (peace be upon him) last sermon during his farewell pilgrimage (*Hajj*) where he declared:

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Also a white has no superiority over a black nor does a black have any superiority over a white – except by piety and good actions. [6]

The holy Prophet (PBUH) set an example of this message by giving the most honorable job of calling people to pray (*Adhan*), for the first time in the newly established mosque (*Masjid-e-Nabawwi*) in Madinah to a black person – Bilal (may Allah be pleased with him) – who used to be a slave in the immediate past. This was an exemplary example of social justice in society, as during those days, black slaves were looked down upon in a derogatory manner in Arab society. This implies that Islam considers all human beings to be equal, except in righteousness in the eyes of God. These features of unity strongly reflect the concept of social responsibility and justice in Islam.

The concept of unity has been well portrayed by Iqbal [7] in his most famous work in Urdu, *Shikwa and Jawab-i-Shikwa* translated by Khushwant Singh in 1981 [7]. The excerpt from this work illustrates the unity of God and unity of mankind in God's worship (Urdu poem – English transliteration followed by translation):

Aa gaya ain larhai mein agar waqt-e-namaz
Qibla- ruh ho ke zamin-bos hui qaum-I-Hijaz
Ek hi saf mein kharhe ho gaye Mahmud o ayyaz

Na koi banda raha, aur na koi banda nawaz
 Banda-o-sahib-o-muhtaj-o-ghani ek huey
 Teri sarkar mein jo pahunche toh sabhi ek huey.

Translation

In the midst of raging battle if the time came to pray,
 Hajazis turned to Makkah, kissed the earth and ceased from fray.
 Sultan and slave in single file stood side by side,
 Then no servant was nor master, nothing did them divide.
 Between serf and lord, needy and rich, difference there was none.
 When they appeared in Your (God) court, they came as equals and one.

Worshipping one God by Muslims in congregational prayer during *salat* (prayers) five times daily exemplifies the concept of unity. Through this unison in worship, Muslims demonstrate that Islam rejects all manner of prejudices, oppression, and discrimination, instead championing the cause of social responsibility and justice in accordance to the divine will. This concept lays the foundation of universal brotherhood in Islam. An example of the concept of universal brotherhood is demonstrated at the time of the annual pilgrimage (*Hajj*) in Makkah – Saudi Arabia, where nationality, race, color, wealth or status, etc., play no role – whatsoever. All mankind is submissive in unison before Allah (TME) exemplifying universal brotherhood.

In a deeper sense, the concept of unity constitutes the vertical dimension of Islam. It integrates, along a vertical line, the political, economic, social, and religious aspects of man's life into a homogeneous whole, which is consistent from within as well as integrated with the vast universe without. Within the compass of one immaculate, divinely revealed vision, unity shows the interrelatedness of all that exists. The relationship between the Creator and the created is based on this concept. Allah (TME) has put humankind at the helm of everything He created. Accordingly, man occupies the central place in the universe. He is not just one element in the vast expanse of God's creation but provides the *raison d'etre* for all that exists. The holy *Qur'an* states:

See ye not how Allah hath made serviceable unto you whatsoever is in the skies and whatsoever is on the Earth. ... [8]

Interpreting the above verse (commentary in the holy *Qur'an*, p. 1,216), everything created by Allah (TME) has a purpose. Allah's (TME) creation is independent of man. But Allah (TME), in his infinite mercy, has given man the faculty to subdue the forces of nature and to penetrate through high mysteries with his powers of reason and insight. But this is not merely a question of power. For in His universal plan, all are safeguarded. But man's destiny is noble to the highest degree of being responsible toward others. It is this purpose which gives meaning and significance

to the existence of the universe. Allah (TME) further assigns mankind with the task of being his vicegerent (*Khalifah*) on earth and to use the resources provided responsibly:

It is He (Allah) Who hath made you inheritors of the earth. ... [9]

Inheritors in the above verse imply vicegerency (*Khalifah*) of Allah's (TME) resources on earth. This element in Islamic ethics establishes a connection between the infinite and perfect being (Allah-TME) and the finite (mankind) and imperfect world. By uniting man's social, political, and economic aspects, his life becomes consistent and it contributes to a universal brotherhood.

Chapra [3] points out that universal brotherhood is a direct result of the fact that everyone is a *Khalifah* (vicegerent) of Allah (TME). He maintains that the principle of *Khalifah* (vicegerency) follows directly from the concept of unity (*tawhid*) in that it describes man's purpose and behavior of maintaining social responsibility and justice as an essential part of faith [10]. The model of interaction is that of mutual sacrifice and cooperation to fulfill the basic needs of all, to develop the entire human potential, and to enrich human life.

Chapra [3] further posits that all the resources provided by Allah (TME) are a "trust" to mankind and man should utilize them equitably, in the spirit of the purpose of the Islamic social system (*maqasid al Shariah*) that is based on *falah* (human well-being) and *hayat tayyibah* (good life), both of which stress universal brotherhood and socioeconomic justice [10]. The notion of *Khalifah* introduces meaning and mission to mankind. The meaning is provided by the conviction that mankind has not been created in vain, but rather to fulfill a mission. The mission is to act in accordance with divine tenets commanded by Allah (TME). This is what is implied by worship (*ibadah*) in the Islamic sense (Qur'an, Sura Az Zariyat-51: 56) – an invariable imperative of which is fulfilling one's obligations/responsibility toward other human beings (*huquq al ibad*), to promote their well-being and to actualize the *maqasid al Shariah*.

A second corollary of *Khalifah* is that man is the trustee (*al 'amin*) of Allah's (TME) resources. Chapra [3] explains that this trusteeship does not entail the negation of private property. However, it does alter the relations that individuals have with each other and with property [10]. The holy Qur'an authenticates this and states:

...to Allah belongeth the dominion of the heavens and the earth. ... [11]

The above verse suggests that mankind only owns material wealth or property temporarily during their short life here on earth. So all gifts of Allah (TME) to mankind are in trust only (*amanah*). They ultimately revert to Allah (TME), to Whom belongs all that is in the heavens and on earth [12].

Chapra ([3]:207) further outlines the following implications of trusteeship [13]:

1. Resources should be utilized and allocated equitably, as they are for everyone's benefit, not just the benefit of a few individuals who have more "rights" about the property.

2. Resources must be acquired honestly, in the manner indicated by the *Qur'an* and *Sunnah* (the lawful – *halal* earnings).
3. Resources must not be destroyed.

The third corollary of *Khalifah* is the humble lifestyle. One's lifestyle should not reflect arrogance, pomp, and grandeur or moral laxity because it unnecessarily drains resources and promotes inequality.

The fourth implication of *Khalifah* is human freedom. Although Allah (TME) is the owner, humans still have freedom, and it is up to them to decide how to exercise it. However, this freedom is qualified by the rules of the *Shariah*. Humans are thus free only within the bounds of *Shariah*. Therefore, any economic system that either subjugates human beings to a situation of serfdom or slavery, or allows excessive rights that contradict the limits imposed by the *Shariah*, cannot contribute to the social system in Islam. Thus, *Khalifah* is a direct implication of unity, which results in human freedom and the trusteeship status of man. Humans are considered as trustee of Allah's (TME) wealth on earth and should use it accordingly fulfilling their moral and social obligation toward fellow creatures. Thus, the concern for ethical fulfillment results in the individual raising one's level of consciousness to a higher plane.

In summary, the axiom of unity forms the foundation of Islamic faith. Belief in one and only Allah (TME) and submitting to His will is the essence of the Islamic belief system. This creates a relationship between the Creator and the creation where Allah (TME), through His mercy, provides everything on earth for the benefit of mankind and assigns them as His vicegerent (*Khalifah*) on earth. However, mankind holds these resources in trust (*amanah*) and is obliged to utilize them responsibly in accordance to Allah's (TME) will.

Proposition

Based on the axiom of unity, there is only one God – Allah (TME) – and everything in the heavens and on earth belong to Him. Man is considered to be the vicegerent (*Khalifah*) of Allah (TME) on earth and thus trustee (*al 'amin*) of Allah's (TME) resources as everything bestowed upon mankind by the Almighty is held in trust (*amanah*).

Expectation/Application in Business of the Axiom of Unity

The expectation here is that a faithful will be trustworthy and truthful, will not hoard his wealth avariciously, and will not discriminate in any form. This is consistent with Allah's purpose for creating mankind. As Islam prescribes a unified code of behavior – both individually and collectively, this code is equally applicable to corporations adhering to Islamic business precepts.

A Muslim businessperson will not be coerced into unethical practices, since he has only Allah (TME) to fear and love. He follows the same, unified code of

behavior whether he is in the mosque, earning a living or acting out other aspects of one's life. He will be content in his submission to Allah's will:

“Say: Lo! My worship and my sacrifice and my living and my dying are all for Allah, Lord of the Worlds” [4].

Accordingly, a Muslim businessperson will not discriminate among his employees, suppliers, buyers, or any other stakeholder on the basis of race, color, sex, or religion. This is consistent with Allah's (TME) purpose for creating mankind mentioned earlier in this chapter:

O mankind! Lo! We have created you male and female, and have made you nations and tribes, that you may know one another. [5]

Beekun [14] contends that the general principle of unity (*tawhid*) applies to all aspects of relationship between a firm and its employees [14]. Muslim businessmen should not treat their employees as though Islam is inconsequential during business hours. For example, Muslim employees should be given time off for prayers, should not be coerced into acting against the Islamic moral code, should be given respite if they are sick and cannot perform, and should not be harassed sexually or otherwise. This principle is reflected in the fair treatment of workers discussed in the previous chapter.

Similarly, many ethical issues characterize the relationship of the employee to the firm, especially with respect to honesty, secrecy, and conflicts of interest. Thus, an employee must neither embezzle the funds of the company nor reveal company secrets to outsiders. Another unethical practice occurs when managers add false charges for meals and other services to their company expense accounts. Some of them cheat because they feel underpaid and wish to restore equity. At other times, it is pure greed. For example, Albert Miano who embezzled \$1 million from his employer admitted that his primary motivation was greed [15]. For Muslim employees, Allah (TME) gives them a clear warning in the *Qur'an*:

Say: The things that my Lord hath indeed forbidden are: shameful deeds whether open or secret; sins and trespasses against truth or reason. [16]

This is again consistent with the tenets of trustworthiness and truthfulness concerning business transactions discussed in the previous chapter. Muslim employees, cognizant of the above verse in the *Qur'an*, should never intentionally act in unethical manner as it is clearly prohibited (*haram*) to be dishonest according to Islamic jurisprudence (*fiqh*).

Similarly, the faithful Muslim will not hoard his wealth avariciously consistent with the principle of hoarding. The concept of *amanah* or trust is of critical importance because any worldly merit is transient and must be used wisely. A Muslim is not solely guided by profits and is not seeking to accumulate wealth at any cost. He realizes, in accordance to the commandments of Allah (TME), that:

Wealth and sons are allurements of the life of this world;
but things that endure - good deeds - are best in the sight of your Lord,
as rewards, and best as (the foundation for) hopes. [17]

Al Qaradawi further points out that the market system is free in Islam and is allowed to respond to supply and demand [18]. However, Islam does not tolerate interference in the market system by hoarding or other forms of price manipulation. Allah's (TME) Messenger Mohammed (PBUH) said:

He who hoards is a sinner. [19]

In cases where businessmen are engaging in hoarding and other forms of price manipulation, Islam allows price control in order to meet the needs of the society and to provide protection against greed. However, if a commodity is being sold without any hoarding and its price rises because of natural shortages or scarcity or an increase in demand, then this circumstance is due to Allah (TME). Businessmen cannot then be compelled to sell at a fixed price.

Buyers, on the other hand, should expect to receive goods that are in working conditions and priced fairly. They should also be notified of any deficiencies. Islam prohibits any kind of fraudulent transaction whether during a purchase or a sale. The Muslim businessman must be truthful and trustworthy at all times. The following *Hadith* exemplifies how the Islamic moral code views deceptive business practices:

The Messenger of Allah (PBUH) happened to pass by a heap of eatables (corn). He thrust his hand in that heap and his fingers were moistened. He said to the owner of the heap of eatables (corn), "What is this?" Messenger of Allah (PBUH), these have been drenched by rainfall.' The Holy Prophet (PBUH) remarked, "Why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower)." [20]

A similar situation took place when the second caliph of Islam, Umar ibn al Khattab (may Allah be pleased with him), punished a man who was selling milk diluted with water. Umar spilled the man's milk not because it was unfit for consumption but rather because the buyer would not know the relative quantities of milk and water [21]. Hence, Islam encourages Muslim businessmen to be forthright and reveal any defects prior to the sale. Should either party then decide that they do not wish to participate in the contract, they may do so.

In summary, the axiomatic concept of unity (*tawhid*) creates a sense of social responsibility and justice in mankind due to its vicegerency (*Khalifah*) of Allah's resources on earth. This makes them trustee (*al'amin*) of all the resources which he holds in trust (*amanah*). This concept, thus, raises certain expectations/applications in business practice – trustworthiness, truthfulness, and avoidance of hoarding and other dishonest means in business. Adherence to these principles of business practice will fulfill the purpose of the Islamic social system (*maqasid al Shariah*), which is to create a harmonious society by means of maintaining social responsibility and justice. The next axiom of equilibrium will further discuss the ways in which this harmony can be achieved in line with the divine commandments.

Equilibrium (*Al 'Adl*)

The axiom of equilibrium (*al'adl*) corresponds to the axiomatic concept of unity. In addition to the vertical dimension of the axiom of unity (*tawhid*), equilibrium (*al'adl*), which in a deeper sense denotes a balance of forces, constitutes the horizontal dimension of Islam. This dimensional characterization of Islam is briefly noted, but in a different context by Frithjof [22]. He notes that “it is the aim of Islam to combine the sense of the absolute with the quality of equilibrium” [22].

At the absolute level, equilibrium is the supreme attribute of Allah (TME). In fact, its denial constitutes a denial of God Himself. It follows that, at the relative level, the quality of equilibrium must also characterize all its creation, which must reflect all His qualities. Accordingly, the Islamic view of life is derived from a divine perception of an all-pervading harmony in the universe:

He who created the seven Heavens, one above another: No want of proportion wilt thou see in the creation of the most Gracious. So turn thy vision again: Seest thou any flaw? Again turn thy vision a second time: (thy) vision will come back to thee dull and discomfited, in a state worn out. [23]

The implication of the above verse is that Allah (TME) has created everything impeccably with a balance. All this is possible because Allah (TME) is almighty and can perfectly carry out His will and purpose, which are love, mercy, and goodness to His creatures. As a vicegerent (*Khalifah*) of Allah (TME), man must replicate these qualities and fulfill his obligation through social responsibility and justice in order to maintain equilibrium in the society. Indeed, divine perfection, reflected in the quality of equilibrium, exists in the very order of the universe that hangs together in a delicate balance, as the holy *Qur'an* states:

It is not for the sun to overtake the moon, nor doth the night outstrip the day. They float each in an orbit. [24]

From an Islamic perspective, various elements of life must be equilibrated to produce the best social order:

. . .He hath created everything, and hath meted out for it a measure [25]

and also

Lo! We have created everything by measure. [26]

Various *Qur'anic* commandments suggest that Allah (TME) has created the universe with a balance to maintain equilibrium in nature. Mankind, as vicegerent (*Khalifah*) of Allah (TME) on earth should be conscious of this balance and act accordingly. The concept of equilibrium is at the heart of the following *Qur'anic* verse:

And thus have We willed you to be a community of the middle way, so that (with your lives) you might bear witness to the truth before all mankind, and that the Apostle might bear witness to it before you. [27]

Interpreting the preceding verse [28], “community of the middle way” can also be interpreted as “middlemost community,” i.e., a community that keeps an equitable balance between extremes and is realistic in its appreciation of man’s nature and possibilities, rejecting both licentiousness and exaggerated asceticism. This balanced attitude, peculiar to Islam, flows directly from the concept of God’s oneness and, hence, of the unity of purpose underlying His creation.

To avoid confusion, it should carefully be noted that the word “equilibrium” has been used in this context in a very special sense denoted by *al’adl*. It is interesting that another meaning of *al’adl* is justice and equity [29]. To the possible objection that *al’adl* means “justice” and not “equilibrium,” there is a simple answer: if justice is introduced everywhere, which is what Islam would insist upon, then a delicate balance that is equilibrium – will hold throughout such a society.

Social equilibrium (*al’adl*) is a crucial element of an Islamic system, as one cannot conceive a Muslim society where justice does not prevail. Furthermore, it is justice that gives the notion of brotherhood its meaning. The holy *Qur’an* addresses the role of justice and the elimination of all forms of injustice as the primary mission of all God’s Messengers [30].

Thus, equilibrium represents a social ideal of the virtues of legal, political, and economic institutions in Islam. This must be based on the principles of social justice in accordance to the will of Allah (TME). The holy *Qur’an* states:

Verily, God has enjoined justice and kindness. [31]

In the economic sphere, the concept demands that the configuration of production, consumption, and distribution activities be based on social equilibrium, in particular, with the clear understanding that the needs of all the least privileged members in society constitute the first charge on the real resources of society [32]. Thus, social equilibrium could be defined as being concerned with both improving the economic lives of the least privileged members of the community and them being worthy of all of the resources of the society. In order to further understand this concept, the meaning of the antonym of *al’adl*, which is *zulum*, needs to be examined. Naqvi explains *zulum* to denote a social disequilibrium in the sense that the resources of the society flow from the poor to the rich [33]. This is not permitted in Islam because of the following verse in the holy *Qur’an*:

...so that it (i.e. wealth) does not concentrate in the hands of those who are rich among you... [34]

This verse combined with the earlier one from *Sura An Nahl* (16:90) (see [31]) demands that in a state of disequilibria, it is societal responsibility to ensure that equilibrium is reached and maintained and wealth and income are distributed fairly. Thus, the concept of equilibrium includes both the goal of equilibrium and the process, the reordering of production, consumption, and distribution of wealth and income so that the basic requirements of the least privileged are met. Although moral discussions often take an air of absolutism, the proper application of equilibrium requires an awareness of the actual circumstances.

Four elements of the Islamic system pertaining to equilibrium, Chapra suggests, are relevant for this discussion [10]:

1. Need fulfillment
2. Respectable source of earning
3. Equitable distribution of income and wealth
4. Growth and stability

Chapra [10] holds that from the importance of brotherhood and the trustee nature of ownership, it follows that resources must be utilized for the needs of all members of society and provides a standard of living that is humane and respectable. The Islamic notion of need fulfillment is not based on a Western economic concept. Rather, it has a place in Islamic jurisprudence (*fiqh*), and as jurists maintained, it was a collective duty (*fardh kifayah*) for the Muslim society to provide the minimum needs of the poor. This point has been accepted unanimously by modern Muslim scholars [35].

Furthermore, there is a personal obligation (*fardh al ayn*) for each individual to provide for himself/herself and his family. Without this, he cannot fulfill his devotional duties. Therefore, there is a collective obligation on a Muslim society to provide equal opportunities to earn an honest living in keeping with members' ability and effort. If individuals cannot support themselves due to being handicapped or any other inability, there is a collective obligation to fulfill their needs. The responsibility goes first to a family and friends or altruistic organizations. The state comes in as a last resort. This is consistent with the Islamic tenet of keenness to earn legitimate (*halal*) earnings discussed in the previous chapter (*Business Precepts of Islam. . .*).

Chapra [10] explains that inequalities are permitted in an Islamic society, as long as they are the result of differences in skill, initiative, effort, and risk [10]. However, this can be criticized in a contemporary context, for instance, considering the following situation where at time $t = 0$, an Islamic economy has been successfully generated and the only inequalities that exist are due to differences in skill, initiative, etc. What happens after several generations at time $t = 150$? Clearly in most societies today, if one's parents suffered economic inequality due to one or more of the above circumstances, then it is often passed on to the children through deficiencies in accommodation, nourishment, and education.

In an Islamic economic system, this cannot be allowed for two reasons: first, the inequalities experienced by the children are not due to the lack of certain qualities, but instead, they would be due to the hardships of the parents; second, the basic needs of the poor must always be provided. In order to combat this, an Islamic system requires a continuous process of redistribution in order to avoid the problem of inequalities being passed from one generation to the next. Thus, although economic inequalities resulting from skill and initiative may exist, an Islamic social system would still bring all individuals to a minimum standard of living.

Chapra further contends that gross inequalities in wealth will lead to the destruction of brotherhood [10]. It is the general opinion of Muslim scholars (*ulemas*) that if the social behavior pattern and economy are restructured in accordance with Islamic precepts, there cannot be extreme inequalities of income and wealth in

a Muslim society. It is crucial to notice that what Chapra [10] is talking about to maintain equilibrium in a society is a restructuring of the economy and behavior.

In order to achieve the objectives of the Islamic economy, a high level of efficiency and a high rate of growth are needed. Economic stability would reduce the inequalities of distribution that is normally brought about by recession and inflation. The realization of an optimum rate of economic growth and minimization of economic instability would be necessary to fulfill the implications of *Khalifah* (vicegerency) and *al'adl* (social justice).

In summary, the axiom of equilibrium is the horizontal dimension of Islam. It can be a sense of balance among the various aspects of a man's life to produce the best social order. God has created everything in the universe with a balance to maintain the equilibrium. As a vicegerent of God on earth, mankind is supposed to reflect His qualities and, thus, maintain equilibrium in society through social responsibility and justice to produce the best social order. A middle path must be maintained in all the socioeconomic affairs of a Muslim society. Accordingly, none should discriminate socially and must avoid miserliness and spendthriftiness economically, as all are condemned in Islam. Adherence to this principle will create social harmony, which is consistent with the purpose of an Islamic social system (*maqasid al Shariah*) that emphasizes human well-being (*falah*) and good life (*hayat tayyibah*).

Proposition

Based on the ethical axiom of equilibrium, in an Islamic society, various elements of life must be equilibrated to produce the best social order, which is an aggregation of natural and social forces creating social harmony.

Expectation/Application in Business of the Axiom of Equilibrium

The foregoing suggests a faithful must practice distributive justice within the socioeconomic environment. Equilibrium in business as per the Islamic precept must be practiced by means of fair competition in an open market, treating others fairly and maintaining fairness in wage distribution.

The principle of equilibrium or balance applies both figuratively and literally to business. For example, Allah (TME) admonishes Muslim businessmen to:

Give full measure when you measure and weigh with a balance that is straight: that is the most fitting and the most advantageous in the final determination. [36]

As can be seen in the above verses of the *Qur'an*, a balanced transaction is also equitable and just. The *Qur'an* uses the term *al'adl* in this sense. Overall, Islam does not aim to create a society of martyr-like merchants, doing business for purely philanthropic reasons. Instead, Islam wants to curb man's propensity for

covetousness and his love for possessions. As a result, miserliness and a spendthrift mode of conduct have both been condemned in the *Qur'an* and *Hadith*.

Beekun notes that Islam promotes equal treatment of all living beings [37]. For example, in hiring, promoting, or any other decision where a manager is evaluating one person's performance against another's in an organizational setting, fairness and justice are a must. Allah (TME) directs to do so:

Allah commands you to render back your trusts to those whom they are due; and when you judge between man and man that you judge with justice. ... [38]

Furthermore, in relation to the privacy of an employee, Beekun [37] suggests that as per Islamic principles, if an employee has a physical problem, which prevents him or her from performing certain tasks, or if an employee has committed a blunder in the past, the employer must not publicize it. This would breach the privacy of the employee [37]. The holy Qur'an further authenticates this:

Whether you publish a good deed or conceal it or cover evil with pardon verily Allah doth blot out (sins) and hath power (in the judgment of values). [39]

Ibn Taymiyah further suggests that an employer is under obligation to pay a fair remuneration to his employees [40]. Some employers may take advantage of a worker and underpay him or her because of their need for profit. Islam is against such exploitation. If the wage level is too low, the individual may not feel motivated to put in an adequate amount of effort. Similarly, if the wage level is too high, the employer may not be able to make a profit and keep the business going. In an Islamic organization, wages must be set in an equitable manner both with respect to employees and the employer. Although both the employer and employee can willfully cheat each other behind each other's back, they are both accountable for their actions in front of Allah (TME). For example, the holy Prophet Mohammed (PBUH) never used to withhold the wages of any person [41].

On the Day of Judgment, the holy Prophet Mohammed (PBUH) said that:

He will be a witness against one who employs a labourer and gets the full work done by him but does not pay him his wages. [42]

The emphasis on wage equity, Beekun [37] suggests, has permeated Islamic history for centuries. During the time of the four rightly guided caliphs and until the advent of Western colonialism, the institution of the *Hisbah* was developed to uphold the public law and order and oversee the relationship between buyers and sellers in the market. The mission of the *Hisbah* was to safeguard right conduct and guard against dishonesty. The *Hisbah* was under the guidance of the *Muhtasib* who was responsible for the maintenance of public morality and economic ethics [43]. One of the duties of the *Muhtasib* was to arbitrate in disputes over wages. In such cases, the *Muhtasib* would often propose the *ujrat al mithl* (wage acceptable for a similar work by others) as an equitable wage [44]. This is an example of the principle of equity or justice at work again in an Islamic society. All the above examples demonstrate the notion of social responsibility and justice in Islam.

Another example of a just and equitable Islamic society is the prohibition of *riba* or interest. Islam encourages businesspersons to augment their capital through trade; it explicitly prohibits them from capital expansion through lending on interest. The size of the rate of interest charged is inconsequential; *riba* or interest is absolutely prohibited. The lender is making money without any fear of loss. Further, since the lender is likely to be wealthy and the borrower poor, *riba* or interest simply increases the gap between the rich and the poor, causing disequilibria in society. However, Islam encourages the circulation of wealth through trade. The holy *Qur'an* states:

Those who devour usury will not stand except as stands one whom the Evil one by his touch has driven to madness. That is because they say: "Trade is like usury," but Allah has permitted trade and forbidden usury. . . . [45]

Benevolence (*al 'ihsan*) is another quality of Allah (TME), which man as His vicegerent (*Khalifah*) is expected to mirror in his everyday life so that he is just and equitable. This has been elaborated in detail in the preceding chapter. The principle of benevolence (*al 'ihsan*) should permeate the relationship between business and employee. At times, the business may not be doing well, and the employee may have to endure a temporary reduction in his wages for the same amount of work hours. This is authorized in the *Qur'an*:

. . . Help you one another in righteousness and piety,
but help you not one another in sin and rancour. . . . [46]

At the same time, Islam encourages debtors themselves not to procrastinate in repaying their debts. This is especially true in the case of wealthy debtors. The holy Prophet (PBUH) has proclaimed the procrastination (delay) in paying debts by a wealthy man as an injustice. If the businessman himself has incurred some debt in financing his business, he needs to repay them. In Islam, repayment is so important that all the sins of a martyr are forgiven except for his unpaid debt [47].

Another aspect of benevolence is not to place undue pressure on employees to conform blindly to unethical business practices. For instance, a survey of 1,227 Harvard Business Review readers revealed that superiors often placed pressure on their subordinates to sign false documents, disregard superiors' mistakes, and conduct business with friends of their bosses. When faced with pressure from above, employees feel compelled to compromise their integrity [48]. This is not permitted in Islam.

To foster equity and balance and thus maintain equilibrium, non-Muslim employees' beliefs should also be similarly respected. The *Qur'an* specifically points out to the virtue of justice in the following verse:

Allah forbids you not, with regard to those who fight you
not for (your) faith nor drive you out of homes, from dealing kindly and justly with them:
For Allah loves those who are just. [49]

Thus, the property of equilibrium is more than a characteristic of nature; it is a dynamic characteristic that each Muslim must strive for in his or her life.

Allah (TME) stresses the need for balance and equilibrium when He labels the Muslim *Ummah* as *Ummatun Wasatun*. To maintain a sense of balance between those who have and those who have not, Allah (TME) stresses the importance of giving and condemns the practice of conspicuous consumption:

And spend of your substance in the cause of Allah,
and let not your own hands throw you into destruction;
but persevere in doing good: behold, Allah loves those who do good. [50]

In summary, the axiomatic principle of equilibrium admonishes selfishness and a Muslim society (ideally) must maintain a balance in every aspect of socioeconomic behavior and thus maintain social harmony. The next axiom of free will further elaborates on freedom of choice in Islam – either to act in accordance to the divine commandments or otherwise.

Free Will (*Ikhtiyar*)

One of the most original contributions of Islam to social philosophy is the concept of a “free” man. Only God is absolutely free, but, within the limits of His scheme of creation, man is also relatively free. Being relative in no way diminishes the quality of human freedom. As Frithjof has profoundly pointed out, God alone has absolute freedom, but human freedom, despite its relativity, in the sense that it is relatively absolute, is nothing other than freedom any more than a feeble light is something other than light [51].

Free will (*ikhtiyar*) is an element that each individual has, and it provides humankind with the ability to make choices in situations where there may be opposing issues involved. Naqvi maintains that the individual’s freedom is “unrestricted and voluntary”; therefore, it is possible to make wrong choices, even though it is an individual’s best interest to make the right choice [33]. The *Qur’an* states:

Say: O mankind! Now hath the truth from your Lord come unto you. So whosoever is guided is guided for the good of his soul, and whosoever is erreth, erreth only against it. ... [52]

The holy *Qur’an* also states that:

... Verily God does not change the state of people till they change their inner selves. ... [53]

Interpreting the above verses in detail highlights the free will of man within God’s scheme of freedom for humankind. Allah (TME) is not intent on punishment. He created man virtuous and pure; He gave him intelligence and surrounded him with all sorts of instruments of His grace and mercy. If, in spite of all this, man distorts his own will and goes against Allah’s (TME) will, yet Allah’s (TME) forgiveness is open to him if he will take it. It is only when he has made his own sight blind and changed his own nature or soul away from the beautiful mold in which Allah (TME) formed it that Allah’s (TME) wrath will descend on him and

the favorable position in which Allah (TME) placed him will be changed. Thus, an individual's blessings are conditional upon making the right choice. The basis of one's freedom is his or her ability to make the right choice [54].

Islam teaches a person not to be the slave of his or her desire. A person has been endowed with a free will to make his or her own choices, thereby making his or her own way of achieving success in this life and salvation in the hereafter. These outcomes are not mutually exclusive. Islam teaches its followers to make such supplication to Allah (TME):

Our Lord! Give us in this world that which is good and
in the Hereafter that which is good. ... [55]

Naqvi further explains that very much related to one's ability to make the right choice is man's role as Allah's (TME) vicegerent (*Khalifah*) on earth [33]. This vicegerency is more of virtuality than an actuality. However, it is an individual's goal to act in a manner such that this situation obtains.

Man in Islamic perspective is not chained to predestination in the literal sense. Having been given the faculty to choose, mankind has the freedom either to become Godlike and thus His vicegerent (*Khalifah*) on earth or deny God. This freedom to accept or reject whatever is on earth followed from man's acceptance, even before creation, of a burden, which no one else could endure. As the holy *Qur'an* states:

Lo! We offered the trust unto the heavens and the earth the hills, but they refused to
undertake it and were afraid of it: and man assumed it. ... [56]

Interpreting the above verse [57], trust is something given to a person, over which he has no power of disposition. He is expected to use it as directed or expected, but he has the power to use it otherwise. There is no trust if the trustee has no power, and the trust implies that the giver of the trust believes and expects that the trustee would use it according to the wish of the creator of the trust and not otherwise. Thus, God's omniscience encompasses all man's actions throughout his sojourn on earth, but man's freedom is also God-given.

By accepting to act as the receptacle of God's power of discretion, man has been assigned to the most distinguished niche in the universe. The emphasis on the central importance of the individual, not only in the society but also in the universe, is one of the hallmarks of the teachings of Islam, which makes it the most progressive religion of the world. Sir Mohammed Iqbal has brought out this aspect of Islam in his book: *Reconstruction of Religious Thought in Islam* [58]. His deductions are based on three *Qur'anic* propositions about the place of the individual in the universe:

1. That man is the chosen of God
2. That man, with all his faults, is meant to be the representative of God on earth
3. That man is the trustee of a free personality, which he accepted at his peril

Syed Amir Ali [59] also emphasized this aspect of man. He notes that the Arabian philosophy, nurtured afterward in other cradles, drew its first breath in the school of Madina al Munawwara. The freedom of human will, based on the doctrine that man would be judged by the use he had made of his reason, was

inculcated in the teachings of the Master, along with an earnest belief in a supreme power ruling the universe [59].

It should be emphasized that human freedom applies both to the “individual” and the “collective” man, emphasizing a correct balance between the two. In a non-Islamic setting, the individual’s (almost unlimited) right to private property provides a set of institutions, which can make the maximum contribution to social good. However, Islam does not accord unqualified sanction to an individual’s right to private property, because all property belongs to Allah (TME) and man is only His trustee (*al’amin*) on earth. Hence, an individual does not have an exclusive “natural” right to what he earns and has even less to what he can inherit. Furthermore, the roots of human freedom, according to Islam, cannot be traced to an uncertainty about who knows best, but flows naturally and serenely from a perspective of certainty:

..Allah knoweth, ye know not. [60]

According to Western social philosophy, individuals should be allowed the freedom to choose because no one individual has the exclusive right to reason, and hence, what is best can be discovered only by a process of trial and error [61].

In the classical economic model, this works out through the atomistic market behavior of the individual, each significant, coupled with the institution of private property. The inadequacy of this argument can be shown by pointing out that what the system of free markets can at best achieve is to lead the competing individuals on to the “efficiency locus,” i.e., a configuration of a whole set of points which are consistent with the utility-maximizing behavior of the freely acting individuals. However, not every point on this locus coincides with the best social welfare. To discover the “bliss” point, a social welfare function must be found, representing the preferences of “who knows best” [62].

In the Islamic framework, valid deductions based on the *Qur’an* and the *Sunnah* condition the preferences of those who know best. Thus inevitably, by the sheer logic of Islamic reasoning, ethical constraints delimit the area of choice both for the “individual man” and for the “collective man.” This perspective is basically much more unified and productive of better social results by comparison with the one which affects the marriage of unconstrained selfish interests of the atomistic market agents with those of “who knows best.” It is for this reason that there is no warrant in the Islamic system for fears that conscious attempt to make people equal may lead to “a new form of servitude.” For if human freedom is God-given, and individuals act in accordance with the ethics of this freedom, the element of coercion involved in reconciling private and social interests must be minimal. By the same token, it follows that if such a conflict between private and social interests does exist, then it must be removed to satisfy the preconditions of an Islamic society.

In summary, God’s celestial character, combined with free will, sanctifies in the clearest possible terms the principle of human freedom, which is innate in human nature. The God-given freedom of man not only cannot be taken away from him, but must also be safeguarded through the creation of institutional safeguards that

prevents its desecration by unnatural authoritarianism. Thus, no Magna Carta is required to confer on man his God-given freedom. By the same token, any such attempt to relieve man of the burdens of slavery becomes ennobled in the eyes of God, simply because it constitutes a fulfillment of the divine purpose. It also follows that to deprive man of his natural freedom is to degrade him below his God-given stature, producing disequilibria in society. Any such act is, therefore, a cardinal sin. Thus, in an Islamic framework, although humans are free to choose, he or she is expected to abide by the commandments of Allah (TME) in order to gain His favor and blessings and avoid His wrath by disobeying Him.

Proposition

As a trustee (*al 'amin*) of Allah's (TME) resources on earth, humankind has been given the free will to steer his or her own life. Unlike other creatures in Allah's (TME) universe, humans can choose their behavior to be either ethical or unethical. However, to achieve Allah's (TME) favor and blessings, every believing Muslim must manage his or her free will to act according to the moral code laid out by Allah (TME) in His divine commandments (*Qur'an*).

Expectation/Application in Business of the Axiom of Free Will

In view of the above, a faithful is expected to fulfill all obligations, contribute to the well-being of society, and most important – be benevolent (Godlike) – watching over the welfare of weak and destitute members of society.

Based upon the axiom of free will, businesspersons have the freedom to make a contract and either honor or break it (Islamic tenets concerning business transactions relating to honoring and fulfilling obligations (*uqud*) have been discussed in detail in the preceding chapter). However, a Muslim businessperson, who has submitted to the will of Allah (TME), will honor all contracts in accordance to the divine commandment:

O you who believe! Fulfil (all) obligations. [63]

It is important to note that Allah (TME) is directing the preceding verse explicitly to Muslims. As Yusuf Ali (translator of the holy Qur'an) suggests, the word *uqud* (obligations) is a multidimensional construct. It implies (a) the divine obligations that spring from one's spiritual nature and his or her relation to Allah (TME), (b) one's social obligations such as a marriage contract, (c) one's political obligations such as a treaty, and (d) business obligations such as a formal contract to perform certain tasks or a tacit contract to treat the employees decently, etc., which every man of faith must discharge conscientiously. The man who deserts those who need him and goes to pray in the desert is a coward who disregards his obligations. All these obligations are interconnected. Truth and fidelity are parts of religion in

all relations of life. A Muslim must curb his free will to act according to the moral code laid out by Allah (TME) [64].

From an economic standpoint, Islam rejects the principle of *laissez faire* and the Western reliance on the concept of the “invisible hand” [65]. Since a key part of the makeup of man is the *nafs ammarah* (implying freedom), he is prone to abuse such a system. The examples of Ivan Boesky, Michael Milken and the junk bonds fiasco, the savings and loan scandal in the United States, the BCCI debacle, the corruptive practices of the government and the Mafia in Italy, the *baqshish* (tips) system in the Middle East, the stock market scandals in Japan, etc., all demonstrate the deficiencies in the capitalistic system [37]. *Homo Islamicus*, as presented by Zarqa [62], guided by Allah’s (TME) will consciously chooses to be ethical.

When dealing with suppliers, Islamic business precepts suggest that one should negotiate a fair price and not take advantage of one’s larger size or clout. To avoid any future misunderstanding, Allah (TME) has enjoined to put contractual obligations in writing:

O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time, reduce them to writing. [...] Let him who incurs the liability dictate, but let him fear his Lord Allah, and not diminish aught of what he owes. ... [66]

According to Beekun ([67]: 43), despite the permissibility of agency in general, merchants are prohibited from interfering with the free market system through a specific type of brokering. This type of brokering may lead to price inflation. An example would be that of a farmer going to the marketplace in a town to sell some of his goods. A townsman may approach the farmer, asking that the goods be left with him until the prices rise. If the farmer had sold the goods without the interference of the townsman, the public would have purchased them at the current lower price. Both the public and the farmer would have benefited. However, when the townsman stores the goods until prices increase and then sells them, the public has to pay more, and the broker makes excess profits. This type of brokering is forbidden in Islam.

Al Qaradawi [35], however, points out that brokerage are generally permissible except when there is interference in the free market system – as in the case just cited. There is nothing wrong with brokers charging a fee for services. This fee may be a fixed amount or proportional to the volume of sales or whatever is agreed among the parties involved.

A businessperson also has a special obligation if he provides essential supplies to the public. For example, the public has a need for farming produce, clothes, and dwellings. Since these are essential commodities, the businessman needs to price fairly. Islam is against the idea of price controls [40] and [35]. The scholars who rule out price control altogether base themselves on the following *Hadith*:

A man came and said, “Apostle of Allah, fix prices.” He said, “No, but I shall pray.” Again the man came and said, “Apostle of Allah, fix prices.” He said, “It is but Allah Who makes the prices low and high. I hope that when I meet Allah, none of you has any claim on me for doing wrong regarding blood or property.” [68]

Ibn Taymiyah [21] points out, however, that this *Hadith* does not discuss a situation where a merchant refuses to make a sale when under obligation to do so or to perform an action legally required of him. He concludes that should the businessman refuse to sell his goods at a fair price, he may be coerced by the Imam (religious leader) to perform and may also be punished for noncompliance.

Any business project which aims at benefiting the individual or society or which removes some evil is righteous, especially if the intention of the investor is righteous a priori. Al Qaradawi [18] points out that such project is blessed by Islam and will receive Allah's (TME) help, based on the following *Qur'anic* commandment:

... Help you one another in righteousness and piety,
but help you not one another in sin and rancour. ... [46]

The Islamic code of ethics requires all partners to be fair and to avoid cheating one another. The Messenger of Allah (TME), Mohammed (PBUH) said:

Allah, most high and exalted, says, "I make a third with two partners as long as one of them does not cheat the other, but when he cheats him, I depart from them." [69]

Another key focus area is the concept of competition, which in Islam is quite distinct in comparison to the Western style of competition. Islam discourages cutthroat competition harming each other in the business world. Although the businesses are free to choose the way of practice according to the code of ethics in a Muslim society, they are also responsible for the well-being of the consumers as well as the business community. A balance needs to be maintained to foster a congenial environment for the stakeholders both within and outside the firm.

Beekun points out that although the West claims to be in favor of market competition, a cursory reading of key business publications will reveal that businesses are constantly seeking to assert themselves over and eliminate their competitors [37]. By eliminating their competitors, firms can then reap above average economic returns through hoarding and monopolistic pricing. As discussed earlier regarding hoarding, Islam strongly discourages monopoly in businesses. One of the four Islamic schools of jurisprudence (the *Hanafi* school) further contends:

It is abominable to monopolize the necessities of life, and food for cattle,
in a city where such monopoly is likely to prove detrimental. [70]

Besides behaving responsibly toward their stakeholders, Muslims and the organizations they work in are expected to care about the general welfare of the society they live in. As mentioned earlier, as part of the community, Muslim businessmen need to watch over the welfare of its weak and destitute members:

And why should you not fight in the cause of Allah and of those who, being weak, are ill treated (and oppressed)? - men, women and children. ... [71]

The reward for taking care of the destitute and the weak is stressed in this *Hadith*:

The Prophet (PBUH) said, "The one who looks after and works for a widow and for a poor person, is like a warrior fighting for Allah's cause or like a person who fasts during the day and prays all night." [72]

On the other hand, if any person spends the night hungry, the community shares the blame because it did not attempt to take care of him [73] and [74]. Thus, Islam strongly emphasizes the social responsibility of businessmen toward the needy in the society in which it operates. Islam encourages donating generously in showing the unity among the faithful and the responsibility toward a fellow human being. Very often, the needy approach a businessman and ask for *sadaqah* or charity. Sometimes, a businessman gives leftovers or spoiled goods that he would never consider using himself. Allah (TME) warns about this type of donation:

O you who believe! Give of the good things, which you have (honourably) earned. And of the fruits of the earth which We have produced for you, and do not even aim at getting anything which is bad, in order that out of it you may give away something, when you yourselves would not receive it. . . . [75]

Hence, Muslim businesses should give to the poor from what is wholesome and earned in a *halal* or righteous manner.

In summary, the axiomatic principle of free will gives mankind the freedom to choose between the right and the wrong, the knowledge of which is clearly provided in the divine commandments in the holy *Qur'an* and *Hadith*. As a trustee (*al 'amin*) of Allah's (TME) resources on earth, mankind can utilize them in accordance to the divine commandments or misuse them as Allah (TME) has given them the freedom to choose. Although mankind is free to do whatever they wish, Islam provides this freedom to mankind with elements of discipline and dignity to reflect man's vicegerency (*Khalifah*) of Allah (TME). A Muslim's free will to choose is guided by the will of Allah (TME) and His divine commandments. Thus, in accordance to the divine law, a faithful is expected to fulfill all obligations, contribute to the well-being of society, and most important – be benevolent (Godlike). These constitute an essential part of the faith contributing to the principles of social responsibility and justice in Islam.

The last of the four fundamental ethical axioms further elaborates this notion of freedom in Islam with the sense of responsibility in line with the fulfillment of their religious obligations.

Responsibility (*Fardh*)

Logically related to free will is the axiom of responsibility (*fardh*). Free will does not go freely, but with responsibility. This sets a limit to what man is free to do since he is responsible for all that he does:

Whosoever interveneth in a good cause will have the reward thereof, and whosoever interveneth in an evil cause will bear the consequences thereof. . . . [76]

Naqvi [32] states that the two axioms (*free will* and *responsibility*) come together as a pair balancing each other. Naqvi [32] further maintains that the concept of responsibility has two elements, the first is the individual's trustee (*al 'amin*) status on earth, and the second is the voluntaristic aspect. The individual should strive to

realize the position of being God's vicegerent (*Khalifah*) on earth. This clearly involves performing actions that improve the welfare of the least privileged in society. The holy *Qur'an* clearly states:

You will never come to piety unless you spend (freely) of things you love. . . . [77]

The test of charity is that does one give something that he or she values greatly. Sacrificing one's life in a good cause is the greatest gift. Personal efforts, talents, skill, and learning come next in degree. Another means of charity is giving away from one's earnings, property, and possessions, for many people love them even more than other things. There are less tangible things, such as position, reputation, the well-being of those one loves, etc. It is unselfishness that Allah (TME) demands, and there is no act of unselfishness, however small or intangible, but is well within the knowledge of Allah (TME) [78].

It is the responsibility of every individual to care for the needy in society. Denial of such responsibility is equivalent to denial of faith:

Have you seen him who denies the Day of Judgement?

It is he who pushes the orphan away, and does not induce others to feed the needy. [79]

By exercising one's responsibility to oneself, God, and society, the individual is securing his or her freedom and exercising faith.

Many Islamic scholars have emphasized this aspect of Islamic ethics, i.e., responsibility. Sir Iqbal derives the position of the individual in the Islamic framework from the consideration that man is the trustee of a free personality, which he accepted at his peril (see [58]). However, Syed Amir Ali [59] in his book *The Spirit of Islam* looks into the complete development of the central importance of the doctrine of responsibility in the Islamic perspective. He contends that the cult of unethical, unbridled individualism is not allowed in Islam. Even pure logic should convince one that unlimited freedom is an absurdity; unlimited freedom implies unlimited responsibility [80]. This is a contradiction because both these statements cannot be true at the same time. Freedom must be counterbalanced by responsibility if only to satisfy the dictates of nature's equilibrium. Man, having opted for the power to choose between good and evil, must endure its logical consequences, as stated in the *Qur'an*:

Every soul is a pledge for its own deeds. [81]

Once Allah (TME) has shown the way, the responsibility for going astray is wholly man's, and he will have to suffer for his wayward behavior:

Say: O mankind! Now hath the truth from your Lord come unto you.

So whosoever is guided is guided only for (the good of) his soul, and whosoever erreth is only against it. And, I am not a warder over you. [52]

Interpreting the above verse [82], the criterion between right and wrong has been sent to mankind from Allah (TME) in the form of *Qur'an*. If one accepts guidance through this divine book, it is not as if one confers favor on those who bring

guidance (the holy Messengers of God). They (the Messengers) suffer unselfishly for the well-being of mankind that they may be guided for their own good. On the other hand, if one rejects the guidance, it is their own loss. Humankind, in Islam, has a certain amount of free will, and the responsibility is his or hers and cannot be shifted to anyone else.

Because of the universal quality of social justice (*al'adl*), every individual must be held responsible for his actions. No one can escape the consequences of his misdeeds just by pointing to a convenient scapegoat:

... Every soul earneth on its own account, nor doth any laden bear another's load. [83]

The above verse reflects the doctrine of personal responsibility again. Every individual is fully responsible for their acts themselves and cannot transfer the consequences to someone else. Nor can anyone vicariously atone for others sins, and man can also be held responsible for the evil that goes around him. Accordingly, man has been forewarned in the *Qur'an*:

And guard yourselves against a chastisement which cannot fall exclusively on those of you who are wrongdoers. ... [84]

This warning against internal discord or tumult was necessary in the civil wars of early Islam and is arguably even more necessary now. It is every individual's responsibility to stop evil in any form. Except for the sick, the children, and women, the rest cannot escape Allah's (TME) retribution on the excuse that they were too weak to stop evil in society. If one cannot do anything about what goes wrong in a particular society, then he is commanded to migrate from that society. The holy *Qur'an* testifies:

Lo! As for those whom the angels take (in death) while they wrong themselves, (The angels) will ask: In what were ye engaged? They will say: We were oppressed in the land. (The angels) will say: Was not Allah's earth spacious that ye could have migrated therein? As for such, their habitation will be hell, an evil journey's end. [85]

The doctrine of responsibility in fact constitutes a dynamic principle in relation to human behavior. It is interesting to note at this point the difference between Muslim scholars (*ulemas*) regarding the dynamic nature of an Islamic society. For instance, Sir Iqbal singles out *Ijtihad* or "the principle of movement" to be the primary dynamic force, as he calls it in the Islamic system (see [58]). However, this is only a partial view. Naqvi contends that the dynamic force instead is the responsibility of the individual to maintain the quality of equilibrium in an Islamic society (see [1]). *Ijtihad* is only one of the means to restore equilibrium on the intellectual plane; the other is *Jihad*, which does this on the social plane, the latter being more basic of the two. In a deeper sense, *jihad* (literally: struggle) includes waging war not only against the infidels but also against the evil both within and without oneself. Indeed, the holy Prophet Mohammed (PBUH) declared that the fight against evil within one's self is a higher form of *jihad* (struggle).

Another important responsibility of every Muslim is acquiring knowledge so that they are aware and able to reason. It is incumbent upon every Muslim (male and female) to acquire knowledge, and thus, there is no room for ignorance. In fact, the first verse of *Qur'an* revealed to the holy Prophet Mohammed (PBUH) was:

Read! In the name of thy Lord and Cherisher, who created. ... [86]

In the above verse, one is commanded to read so that one comes out of darkness (illiteracy) to light (literacy). It is also important to note that it is mentioned to read in the name of God because knowledge without divine morality could lead one astray, as Sutherland [87] states:

Educate men without religion and all you make of them is clever devils. [87]

Islam places great emphasis on systematic enquiry for the pursuit of knowledge. For knowledge is light and power for mankind and must be used for the benefit of all creation and social welfare. Science and technology should be used responsibly for moral ends and serve all legitimate needs of mankind [88]. Businesses should invest in educational projects in society so that individuals benefit from acquisition of knowledge and, thus, reduce all evil in the society.

Thus, a free individual is not one who is insensitive to his environment but one who fulfills his responsibility by contributing to society by his presence. "Each man on his own" is not how Islam looks at human freedom. Hence, there cannot be any contradiction, within the Islamic perspective, between individual freedom and collective freedom. The distance between the two is bridged by the sense of social consciousness and responsibility. Those who are socially conscious have been exalted in the eyes of Allah (TME) over all others who are not so motivated:

And there may spring from you a nation that invites to goodness,
and enjoins right conduct and forbids indecency.
Such are they who are successful. [89]

The ideal Muslim community is happy, untroubled by conflicts or doubts, sure of itself, strong, united, and prosperous. This is because it invites to all that is good and enjoins the right and forbids the wrong. It is incumbent upon every individual to fulfill this responsibility.

In summary, the ethical axiom of responsibility is logically related to free will. Freedom must be counterbalanced by responsibility and having opted for the power to choose between good and evil, man must endure its logical consequences. Since he is responsible for all that he does, man must be accountable for his actions.

Proposition

Every individual is accountable and ultimately responsible for his own actions.

Expectation/Application in Business of the Axiom of Responsibility

This accountability ties in with the propositions arising from the other three ethical axioms – *unity*, *equilibrium*, and *free will* – and holds one responsible for his or her own deeds. According to Islam, every soul is accountable to Allah (TME), and thus, a faithful's actions are motivated by achieving Allah's (TME) favor and blessings. Hence, a Muslim businessman acts responsibly and fulfills the expectations arising out of all the other three ethical axioms.

In an Islamic society, it is the responsibility of an individual as well as businesses to earn a living in a permissible (*halal*) way. Muslim businessmen must be trustworthy and truthful in their transactions. It is their responsibility to trade through mutual consent and fulfill all their obligations. Businesses must treat their employees fairly and deal with generosity and leniency. It is also their responsibility to take care of basic needs of the poor and needy in the society. Furthermore, businesses must be cognizant of the prohibitions in their business dealings in adherence to business precepts of Islam. Accordingly, businessmen must act responsibly, e.g., avoid interest (*riba*) in their financial transactions, avoid dealing in prohibited items, must not hoard resources or wealth avariciously or fix prices, must not be involved in sale of *gharar* (uncertainty, risks, and speculation), must not exploit market conditions, and must avoid cheating and fraud in business transactions. It is incumbent upon every believing Muslim businessperson to adhere to these tenets of business in order to achieve Allah's (TME) favor and blessings.

All the above-mentioned responsibilities of Muslim businesspersons have been discussed in detail both throughout this and the previous chapter.

Furthermore, businesses are required to contribute to society by paying *zakat* (Islamic social tax), which is one of the five pillars of Islam and is part of fulfilling social responsibility. The rich are required to spend their wealth for the benefits of the poor. Wealth, after all, does not belong to them; they are only the trustees – *al 'amin* (as discussed earlier). Redistribution of wealth is, thus, an economic necessity as well as part of a spiritual journey, which a Muslim must fulfill responsibly [90].

Zakat is a proportionately fixed contribution collected from the wealth and earnings of the well to do as per the holy *Qur'an* – Sura Al Baqarah-2: 3, 43, and 83. It is spent on the poor and needy and for the welfare of society. The meaning of the word *zakat* is both “purification” and “growth” in a *Qur'anic* sense. The wealth is held in trust (*amanah*) with humankind from God. This wealth is purified by setting aside a portion and giving it to those who have less or no wealth. It is like the pruning of plants, the cutting back balances and encourages new growth. This payment is compulsory (*fardh*) – fulfilling certain conditions. The payment of *zakat* creates in the mind of the giver the virtue of sharing wealth with others. It uplifts the giver from a life of material pursuits to a life endowed with moral purpose. The payer pays it as an act of worship, while the destitute receives it as a matter of right.

This is how Islam integrates business and commerce with ethics. The holy Prophet Mohammed (PBUH) urged Muslims to be moderate in their lives:

Work for your worldly life as if you were going to live forever, but work for the life to come (Hereafter) as if you were going to die tomorrow. [91]

This balance in human endeavors is necessary to ensure social well-being and continued development of human potential. Islam encourages individual initiative, drive, efficiency, and enterprising attitudes along with a right to make profits and own private properties and businesses; it condemns greed, unscrupulousness, and an attitude of disregard for the rights and needs of others. The individual profit motive is not the chief propelling force [92]. Hence, an excessive personal gain in the form of profit without fulfilling the responsibility of social obligations is discouraged. Society is the primary institution in Islam. Society's interests need to come first. Societies would be better safeguarded if the individuals forming the society perform all their duties in accordance with the frameworks given by Islam.

Thus, the axiom of responsibility forms an essential core value of the conceptual framework of business ethics in Islam. This is demonstrated by its correlation with all the other three fundamental ethical axioms and its application in business.

Summary of the Four Fundamental Ethical Axioms

The distinctive character of Islamic ethics rests largely on its conception of man in relation to God, his own self, the universe, and the society. Through the essential multidimensionality of an integrated personality, Islam points to a responsible man. He must be guided by a conscious purpose, exercising to the full his powers of discretion in a balanced way. In this perspective, human behavior takes on a new character in that it has providentially freed from any sense of "guilt." By virtue of his distinctive qualities, mankind has been aligned with his environment, indeed with the universe at large. As a consequence, within the panoramic Islamic vision, man can neither go adrift by aimlessness nor be alienated from his surroundings. At the same time, his unaltruistic behavior is tempered because Islam requires man to be sensitive to his socioeconomic environment for the betterment of which he bears full responsibility. Furthermore, he is not allowed to be tradition-bound: he has no responsibility for the past in which he had no part to play. Thus, man, in an Islamic perspective, must be forward-looking and dynamic, a quality which derives from his deep consciousness of the decisive nature of his actions and a sense of responsibility.

The four ethical axioms have been summarized in the table below (see [Table 46.2](#)) to present a potential framework of business ethics in Islam.

The four ethical axioms, which are foundation of the Islamic framework, are based on *Qur'anic* injunctions and provide clear guidelines for an ethical social system in Islam. These divine commandments lead to the proposition and further expectations/application of such injunctions in business practice.

Table 46.2 Summary of the fundamental ethical axioms that constitute the conceptual framework of business ethics in Islam

Axioms	Qur’anic injunction	Proposition	Expectation/application in business practice
Unity (<i>tawhid</i>)	“...to Allah belongeth the dominion of the heavens and the earth...” (3:180; 5:17)	There is only one God – Allah (TME) – and everything in the heavens and on earth belongs to Him. Man is considered to be the vicegerent (<i>Khalifah</i>) of Allah (TME) on earth and thus trustee (<i>al ‘amin</i>) of Allah’s (TME) resources	A faithful will be trustworthy and truthful in business transactions, will not discriminate in any form, and will not hoard his wealth avariciously
Equilibrium (<i>al ‘adl</i>)	“Give full measure when you measure and weigh with a balance that is straight...” (17:35)	Various elements of life must be equilibrated to produce the best social order, which is a conglomeration of natural and social forces creating social harmony	Equilibrium must be practiced by means of fair competition in an open market; treating others fairly and maintaining fairness in wage distribution and avoid discrimination in all forms
Free will (<i>ikhtiyar</i>)	“O you who believe! Fulfil (all) obligations” (5: 1).	As a trustee (<i>al ‘amin</i>) of Allah’s (TME) resources on earth, mankind has been given the free will to steer his or her own life. Unlike other creatures in Allah’s (TME) universe, humans can choose their behavior to be either ethical or unethical	A faithful is expected to fulfill all obligations, contribute to the well-being of the society, and most important – be benevolent (Godlike) – need to watch over the welfare of weak and destitute members of the society
Responsibility (<i>faradh</i>)	“Every soul is a pledge for its own deeds” (74: 38).	Every individual is accountable and ultimately responsible for his own actions	This accountability ties in with the expectations arising from all the above three ethical axioms and holds one responsible to fulfill them responsibly

The axiom of unity, as presented in the preceding table, is derived from the concept of trusteeship. Everything on earth and the heavens belong to Allah (TME). He has made mankind His vicegerent (*Khalifah*), entrusting them with His resources. Thus, the expectations of a faithful businessperson will be to act in accordance to the commandments of Allah (TME) – be trustworthy and truthful, not hoard wealth avariciously, and not discriminate in any form.

Similarly, the axiom of equilibrium entails creation of social harmony through aggregation of natural and social forces. This is again based on *Qur’anic* injunctions. The expectations, therefore, are to be fair and nondiscriminatory in business practices. A faithful will adhere to these principles sincerely.

The axiom of free will provides freedom to mankind. The freedom to choose, however, is conditional in Islam. Adherence to divine commandment will lead to Allah's (TME) favor and blessings. Violation of *Qur'anic* injunctions will draw Allah's (TME) curse and retribution. The expectation, therefore, is that a believing Muslim will fulfill all obligations, contribute to the well-being of society, and look after the needy.

Finally, the axiom of responsibility holds every individual accountable and ultimately responsible for his or her own deeds. This again is authorized by *Qur'anic* injunctions. The expectation arising out of this axiomatic concept of responsibility ties in with the other three axioms and their expectations/application in business practice. It is the responsibility of every believing Muslim to fulfill all their duties in accordance with Islamic principles to gain Allah's (TME) favor and blessings.

The fundamental ethical axioms that form the basis of the conceptual framework of business ethics in Islam can also be presented diagrammatically as follows (Fig. 46.1):

The inner circle, in the above diagram, depicts the four ethical axioms, *unity*, *equilibrium*, *free will*, and *responsibility*, which are the core values of an Islamic ethical system. These axioms are the foundation of any Islamic socioeconomic system.

The second circle encompasses those elements of the Islamic ethical system that have evolved from the core values. For instance, the concept of trusteeship is derived from the axiom of unity. Similarly, distributive justice is derived from the axiom of equilibrium, freedom of choice from free will, and accountability derived from the axiom of responsibility. These are more descriptive of the core ethical values.

The outer circle represents the elements of business transactions in accordance with Islamic jurisprudence (*fiqh*). The concept of the lawful (*halal*) and forbidden (*haram*) provides a clear guideline for business transactions in Islamic economics. These are based upon the Islamic ethical system, which is derived from the core values (the four ethical axioms).

All elements of the three circles, presented in the preceding diagram, are interconnected to form a coherent framework of business ethics in Islam. For instance, the concept of trusteeship entails trustworthiness and truthfulness in business transactions. Freedom of choice allows one to be ethical or unethical in business transactions. However, to gain Allah's (TME) favor, a faithful will fulfill all obligations, be generous, and look after the needy. Similarly, prohibition of *riba* (interest) or hoarding is based upon the concept of distributive justice that enables socioeconomic equilibrium in society. Accountability to Allah (TME) in the hereafter drives a Muslim to act in accordance with the divine commandments and adhere to ethical business practices, avoiding the forbidden (*haram*) and practicing the lawful (*halal*). These business tenets have been discussed in detail in the previous chapter.

The conceptual framework diagram illustrates the foundation of an Islamic socioeconomic system that is all encompassing and comprehensive.

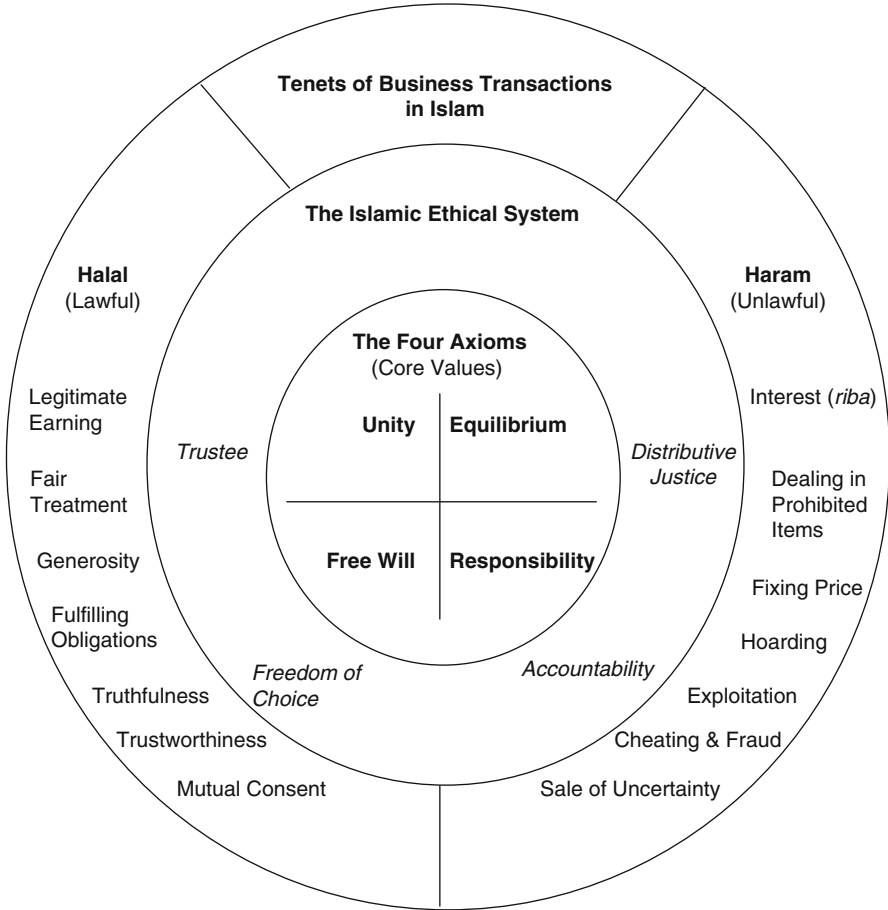


Fig. 46.1 Diagram of the conceptual framework of business ethics in Islam

Implementation of such principles, in adherence to divine commandments, will fulfill the purpose of Shariah (*maqasid al Shariah*) of achieving good life (*hayat tayyibah*) and well-being (*falah*) of society.

Conclusion

Although the four axioms that are the core values and foundation of any Islamic business and society guide day-to-day behavior, they are more descriptive of the ethical philosophy of Islam. The *Qur'an* and *Hadith* of the holy Prophet Mohammed (PBUH) complement these axioms by specifying the degree of lawfulness of key types of behaviors for Muslim businesspersons, as discussed in this as well as the earlier chapter. All of these characteristics of a unique precept in business conduct prescribed by Islam form the foundation of an Islamic business and society and, thus, a concept of ethical system in Islam.

The conceptual framework of business ethics in Islam presented in this chapter provides a systematic representation of what this might look like in an ideal Islamic society.

Cross-References

- ▶ [Christian Metaphysics and Business Ethics: A Systematic Approach](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Imitatio Dei and Jewish Business Ethics](#)

Notes

1. Abbreviations: *PBUH* peace be upon him, *TME* the most exalted.

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Part 14

**Eastern Cultural, Philosophical and Religious
Foundations of Business Ethics**

Po-Keung Ip

Abstract

This chapter takes Daoism as a body of philosophical ideas and investigates some of its major implications for business ethics. The major question is: Could Daoism as articulated by Laozi provide a philosophical basis for developing business ethics for today's corporations? The core ideas of Daoism which include *Dao*, *De* and *wu wei*, and its cardinal values are introduced. The Daoist doctrine of statecraft is discussed by invoking the attributes of a sage who serves as an ideal political ruler. A correlated doctrine of ethical firm-craft is constructed as a way to examine how the Daoist ideas would flesh out in business ethics terms in the corporate domain. Whether and how Daoism could ground business ethics will be addressed by examining the Daoist doctrine of *Dao*, ethical organization and management, *wu wei* management, and ethical leadership. The Daoist doctrine pertaining to business ethics is further scrutinized against the backdrop of the environmental crisis in China as a reality test for the ideas. The implications of the *Dao* principle, *wu wei* management, and ethical leadership for business are envisioned.

Introduction

Daoism (道家) (or Taoism) is so popular and entrenched in Chinese culture since its creation that it is fair to claim that without Daoism, there is no Chinese culture as we know it today. *Daodejing* (《道德經》), or *Laozi* (《老子》), the “Bible” of Daoism, is perhaps one of the few most widely known classics in Chinese communities over the globe. Along with its popularity, its text is open to multiple and sometimes divergent

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interpretations, generating different strands of Daoism in part due to its symbolic, abstract, and at times vague, ambiguous, and opaque language. For common folks, Daoism is widely worshipped as a religion, and the truths revealed in *Daodejing* are perceived as fundamental religious truths. For true believers, Laozi, the founder of Daoism, helped unveil the truths about a fulfilled life, a life of freedom, enlightenment, and happiness. For centuries in China and beyond, Daoism as a religion has had a deep appeal to people of all walks of life. Today Daoism, with its multiple variants, stands as one of three major religions in Chinese communities [1–8].

The term “Daoism” was generally used in the West to refer to both the Daoist philosophy and the Daoist religion (*Dao Jiao*) that emerged around the end of the Eastern Han dynasty (25–220 CE). Daoism as a religion inherited elements of *Daodejing* and evolved over time, mixing with doctrines of immortality, deities, Yin-Yang cosmology, the five phases, *qi*, and alchemy, spawning different Daoist strands. Within Chinese culture, Daoism and its religious strands have exerted deep and enduring influences on both Confucian and Buddhist thinking, the two other cultural building blocks of Chinese civilization. For example, the Neo-Confucian thought in the Song (960–1279) and Ming (1368–1644) periods displayed conspicuous Daoist imprints. The Chinese Chen Buddhist contained discernable Daoist ingredients. In light of this, Chinese culture is fairly described as a benign mixture of Confucianism, Daoism, and indigenized Buddhism. For the more intellectually inclined or scholarly oriented, Daoism is esteemed more as a body of philosophical truths than religious creed. As such, Daoism not only provides wise and sober guidance to how one should lead one’s life but also contains wisdoms on how to run a company and to rule a state. What follows in this section is a brief account of Laozi, the founder of Daoism, *Daodejing*, the Daoist classic, the development of Daoism, and a comparison of Daoism with Confucianism.

Laozi the Person

The historical record of Laozi the person (ca. 722–207 BC) is not without controversies. According to the *Shi Ji* (《史記》) (*Records of the Historian*), written by Sima Qian (司馬遷) (145/135–86 BC), the famed Han (202–220) imperial court historian, Laozi was a native of Zhu (now Honan Province in China), family-named Li, with a personal name of Er. As a custodian of imperial archives, Laozi was said to be visited by Confucius (孔子) (551–479 BC) who sought his advice on rituals. Such a view is in line with the view that Laozi was a contemporary of Confucius. However, other scholars date Laozi’s existence to the fourth or even third century BC. Legend has it that he retired to the West and completed *Daodejing* at the suggestion of a gate keeper [9, 10].

Daodejing the Classic

Despite its small size (5,250 words), *Daodejing*, the Daoist classic, has played a pivotal role in defining Daoism and shaping Chinese culture. This remarkable

masterpiece of ancient wisdoms is reportedly said to be the most widely read and translated text besides the Bible. Numerous commentaries were written on it, expanding its meanings or giving the key concepts different and sometimes competing interpretations. Authors in the humanities, social sciences, natural sciences, management, education, *qigong*, and even photography, painting, investment, and many other fields [11–20] have invariably drawn inspirations from it. Partly due to its broad and embracing scope and abstract, vague, and symbolic language which allows for multiple interpretations, *Daodejing* has created within itself contending doctrines and views including theism and atheism, idealism and materialism, naturalism and humanism, mysticism and naturalism, and activism and passivism, adding more complexity and multiplicity to its already rich contents [2–4, 7, 9, 21–29].

Daoism Developed

Daoism is often popularly referred to as the doctrines of Lao-Zhuang, comprising the thoughts of both Laozi and his follower, Zhuangzi (莊子) (399–295 BC). Rather than just a faithful follower of Laozi's ideas, Zhuangzi succeeded in carrying Daoism to a new intellectual level by creatively expanding Laozi's ideas into epistemology, cosmology, among other things, in *Zhuangzi* 《莊子》, the classic [10, 30–34]. In cosmology, Zhuangzi gave Laozi's cosmos much refinement and offered more nuanced distinctions. Laozi's scope of self-transformation applies only to human beings in the social and moral domains, but Zhuangzi transported self-transformation to a large realm. Furthermore, the process of change played a more central role in Zhuangzi's doctrine compared with Laozi's. The cosmos was conceived in some evolutionary fashion within which things are in perpetual transformations and evolution, as well as converging into unity. In the hands of Zhuangzi, the unity of things becomes more complete, resulting in a blurring if not disappearance of differences and contraries in the perceptual world.

Epistemologically, Zhuangzi saw common distinctions like life and death, beauty and ugliness, and right and wrong as the results of different perspectives. The ideal of life, for Zhuangzi, is one of free roaming and wandering in the cosmos with a mind graciously oblivious of human affairs, which strives to immerse and converge with nature. Life is perceived as a play on a stage which is the cosmos. A life worth living is a life that has “the fasting of the mind,” “sitting down and forgetting everything,” and “the body is abandoned, the intelligence is discarded, one is separated from the body and free from knowledge, and one becomes identical with a great penetration.” ([9], p. 22, note [35]). Such a transcendent vision of life coupled with a mindful disengagement from human affairs set Zhuangzi apart from Laozi, whose principal concern remained much on good governance in human society. For Zhuangzi, the good life is a life filled with transcendent and extraordinary experience accessed only by a contemplative and imaginative mind. Despite these contrasts, both share the full embracement of the *Dao* and its consequences. Daoism entered a new phase of its development by assimilating the works of scholars in the Wei-Jin period of the third and fourth centuries [62–66]. Wang Pi's (王弼) (226–249) commentaries on *Laozi*

expanded the original Daoism to take *wu*, nonbeing, as the ultimate reality of the cosmos. Kuo Hsiang (郭象) (252–312), by way of commenting on the *Zhuangzi*, used *ziran*, nature, to replace *Dao*. Wang's and Kuo's ideas helped create Neo-Daoism which subsequently left a lasting impact on Chinese Buddhist thinking in the third and fourth centuries and more in a more pronounced form in the Chen School of Chinese Buddhism in the seventh and eighth centuries. Meanwhile, the footprints of Neo-Daoism are also discernable in the development of Neo-Confucianism in the eleventh century, in particular in the ideas of The Great Ultimate Diagram Explanation of Zhou Dun-I (1017–1073) [1, 9, 35–39].

Daoism Versus Confucianism

To better appreciate Daoism, it is helpful to contrast it with Confucianism, the dominant cultural constituent of Chinese civilization. Striving for a stable and legitimate political and social order and exhorting an active engagement in social and political life is the spirit of Confucianism [10, 40, 67]. Questing for personal freedom, peace and tranquility, and detachment from the mundane and ordinary signifies the ethos of Daoism. These two contrasting ancient wisdoms indeed represent two competing grand visions of life and society for Chinese culture that still resonate today. Confucius devoted his entire adult life to advocate the return of a preestablished political order exemplified by the Zhou dynasty. Laozi went to great length to counsel a revolt from the established social order and championed a life of freedom and tranquility in nature. However, this popular characterization should be understood together with their crucial commonality – both Laozi and Confucius were deeply concerned about political governance and leadership in the human world.

In light of the divergent interpretations of *Daodejing*, two views are presented – one received and one critical – to make sense of Laozi's doctrine. The received view consists principally of well-received and popular interpretations of its key concepts and views prevalent in the literature. The critical view, while accepting some truths of the received view, attempts alternative renditions and critical assessment of ideas and views whenever they are appropriate. It is the view adopted in this chapter. The received view provides more sympathetic and generous interpretations of the text that may support more positive implications in their applications to the real world. This view has the apparent intention of solving puzzles and easing paradoxes in the text, making Laozi's ideas more coherent and comprehensible. The critical view maintains a critical approach to the meanings of the ideas and claims, especially with regard to the connections of these ideas and claims to business ethics.

This chapter takes Daoism as a body of philosophical ideas and examines some of its major implications for business ethics. Our question is: Could Daoism, as articulated by Laozi, provide a philosophical basis for developing business ethics for today's corporations? Whether and how Daoism could ground business ethics will be addressed by examining the Daoist doctrine of *Dao*, *wu wei* management, and leadership.

The Core Ideas of Daoism

Daodejing contains the core ideas of Daoism: *Dao* (道) or Tao, *de* (德), and *wu wei* (無為). It also contains Laozi's views on knowledge and morality, on statecraft, and on the sage as leader. This section gives a brief account of the meanings of the key Daoist elements.

What Is *Dao*?

What is *Dao*? The Chinese word “dao” literally means the way, road, or path. In *Daodejing*, however, the word “dao” has a larger and metaphysical meaning. It refers to the way of the universe or cosmos, which means the nature, process, regularities, laws, and sources of the cosmos [1, 4, 6, 10, 16, 41–44]. *Daodejing* offers some major characterization of *Dao*:

The *Dao* that can be told is not the eternal *Dao*. The name that can be named is not the eternal name. The Nameless is the origin of Heaven and Earth; the Named is the mother of all things. (1)¹

Reversion is the action of *Dao*. Weakness is the function of *Dao*. (40)

Dao produced the One. The One produced the two. The two produced the three. And the three produced ten thousand things. The ten thousand things carry the yin and embrace the yang, and through the blending of the material force they achieve harmony. (42)

The all-embracing quality of the great virtue follows alone from the *Dao*. The thing that is called *Dao* is eluding and vague. (21)

As envisioned by Laozi, *Dao* is invisible, subtle, formless, pervasive, mystical, and the “mother” of all things (1, 52). As well as having a cosmological sense, *Dao* signifies the path, way, principle, truth, among others. Laozi viewed the cosmos as not created and controlled by deities or supernatural forces but existed and operated all by itself, in contrast to doctrines in the Western tradition.

As the source and way of the cosmos, *Dao* permeates and sustains the natural and the human world, material and nonmaterial beings, as well as individuals, groups, organizations, communities, societies, and nations and their respective activities. Noticeably, as the meaning of *Dao* is broad and at times ambiguous and elusive, it often invites multiple and even conflicting interpretations.

Cosmological concern aside, Laozi contemplated the way of good politics and good life. Particularly, Laozi was concerned about the *Dao* of statecraft, or in today's language, the principles and ways of political governance. This is understandable because Laozi, like many of his contemporaries, tried to advocate doctrines to address the pressing social and political problems of his turbulent times, notwithstanding his naturalistic guises.

What Is *De*?

The Chinese word “*de*” literary means virtue. This virtue-sensed word “*de*” occupies a central position in traditional and modern Chinese thoughts. For Confucians,

de principally means human moral virtues. For Daoist, however, *de* includes not only human moral virtues but processes, modes, and states of nature. In *Daodejing*, the word “*de*” is closely associated with the word “*Dao*,” as seen in “The all-embracing great virtue (*De*) follows only solely from *Dao*” (21), for example. This quote suggests that *De* is the embodiment and manifestation of *Dao* and its functions in myriad things of the cosmos. Indeed, *De* is *Dao* that existed, embodied, resided, functioned, operated, and expressed in numerous concrete things, big and small. Thus seen, *De* in the Daoist sense has a much broader meaning than the popular meaning of *de* as human virtues. Laozi’s idea of *De*, alternatively referred to as “treasures,” include deep love, frugality, and “daring not be ahead of the world” (67). These virtues are associated with the virtues of courage, generosity, and leadership (49, 63).

If *De* is the embodiment and realization of *Dao* in myriad things, what is the mechanism involved? Could *De* in things self-realize itself without any external help or intervention? Could human efforts help such a realization? To the extent that *Dao* has a self-transforming nature, things are transforming themselves path the way to the realization of *Dao*, and *De* will ensue. With regard to whether human effort is involved in the process, *wu wei* seems to be the mechanism that helps realize *De* in things. But the problem is: How could *wu wei*, which literally means doing nothing, accomplish the task? How would *wu wei* make the connections between *De* and *Dao*? To answer these questions, one should understand the meaning of *wu wei*.

What Is Wu Wei?

One expressed function of *Dao* is *wu wei*, as stated “*Dao* invariably takes no action, and yet there is nothing left undone” (37). Though literally rendered as “taking no action,” according to the received view, *wu wei* does not mean doing nothing but means taking no artificial action, noninterference, or letting things take their own course naturally [10, 27, 45, 46].

Elsewhere, we are told that *Dao*’s *wu wei* produces these effects: support and nourish things, allow things to transform spontaneously, produce yet not take possession of things, benefit but not compete with things, among others. Thus *wu wei* is best understood as a kind of “action” that is nonpurposive, nonmanipulative, and nondeliberate. *Wu wei* acts are passive rather than active, indirect rather than direct, responsive rather than initiative, nurturing rather than suppressing, receiving rather than delivering, embracing rather than domineering, and nature-following rather than human-induced. Laozi famous claim “Do nothing, and there is nothing that is not done.” (“*Wu wei er wu bu wei*,” “無為而無不為”) makes sense in light of these attributes.

Laozi used water as a symbol to illustrate the attributes and processes of *wu wei*: “The most marvelous things are like water. Water can benefit the 10,000 creatures without competing, and settle in places most people despise. In these ways it is like *Dao*. There is nothing softer or weaker than water. And yet there is nothing better for attacking hard and strong things. For this reason there is no substitute for it.

All the world knows that the weak overcomes the strong and the soft overcomes the hard. But none can practice it” (78).

The nature of *wu wei* is also illustrated through the practices of the sage. The sage is presumably the one who could practice *wu wei* in its perfect form, as he understands fully the true nature of *wu wei* (22). Laozi said, “Therefore the sage manages affairs without action. And spreads doctrines without words. All things arise, and he does not turn away from them. He produces them but does not take possession of them. . . .He accomplishes his task but does not claim credit for it” (2).

The Daoist Cardinal Values

Laozi endorsed a set of values that are in harmony with *Dao*. They include weakness, softness, receptiveness, quiescence, femininity, simplicity, subtlety, and frugality. Their representing symbols are valley, infant, female, and water, which also serve as metaphors for a life that faithfully follows *Dao*. The following are some representative passages:

When Man is born, he is tender and weak. . . All things, the grass as well as trees, are tender and supple while alive. . . . The tender and the weak are companions of life. (76)

The spirit of the valley never dies. It is called the subtle and profound female. The gate of the subtle and profound female is the root of Heaven and Earth. It is continuous, and seems existed all the time, and never feels tired in its action. (6)

Why is weakness valued? For Laozi, feebleness is valuable for life because it helps people to overcome hurdles and difficulties in the long run, just like water that apparently looks soft and feeble yet is capable of attacking and destroying hard and strong things (78). Also, what appeared as weakness on the surface may actually be real strength underneath (45).

Along with affirming these values, Laozi counseled against extremes: the extravagant and the excessive (29). He advised people to scale down their desires (19, 61), to do away with knowledge and competition (3, 8–10, 37), to avoid sensuality (12), and to stay contented (44, 46). Be humble, submissive, and be behind others (7, 61, 67) are the right attitudes and virtues to possess and develop. Far from embracing escapism, the successful practice of these values and virtues produces a life of simplicity, tranquility, and wisdom. And this is a true life of *Dao*.

How to Run a State Sagely

In *Daodejing*, there are more than 20 chapters on ways of ruling a state. As said before, Laozi has a major concern about statecraft, or political governance in today’s parlance. This section gives an account of the Daoist idea of statecraft through the attributes of a sage as ruler and how it is connected with *Dao* and *wu wei*.

Laozi's celebrated metaphor that rulers should "run a big state like cooking a small fish" (60) is often heralded as one of the major Daoist signature dictums on statecraft. The idea is that rulers should handle state affairs the way a seasoned cook would cook a small fish. The experienced cook in order to keep the fish's body intact while bringing out its delicate favor would use the gentlest care and avoid too much handling. Likewise, a ruler should rule the country with great care and avoid excessive interference in order to foster people's well-being. Thus, the small-fish-cooking metaphor signifies a doctrine of statecraft that is based on minimal or noninterference, which is also grounded on the *wu wei* way of governance. The Daoist doctrine of statecraft has several mutually supportive components. They include views on *Dao* and *De*, *wu wei*, self-moral rectification, knowledge, talented and moral people, morality and desires, among others. Furthermore, as good leaders are essential to good governance, overlaps between the Daoist concepts of governance and leadership are to be expected.

Sageliness, *Dao*, and *Wu Wei*

Running a state requires leadership. Laozi's doctrine of statecraft is articulated through the acts and attributes of a sage, who stands as an ideal ruler or leader. Thus, the attributes of good leadership could be glimpsed through the attributes of the sage, extensively described in *Daodejing*. Though the word "sage" is mentioned about 30 times in *Daodejing*, there are also passages about kingly conducts that do not directly use the term "sage" but intend to convey similar sagely conducts and attributes.² The major sagely attributes and acts are as follows:

The sage has not fixed (personal) ideas, he regards the people's ideas as his own. (49)

Therefore the sage desires to have no desires, and does not value rare treasures. He learns to be unlearned, and returns to what the multitude has missed. Thus he supports all things in their natural state but does not take any action. (64)

Leads the people but does not master them. (10)

Do not value rare treasures, so that the people shall not steal. So not display objects of desires, so that the people's hearts shall not be disturbed. Therefore in the government of the sage, he keeps their hearts vacuous, fills their bellies, weakens their ambitions, and strengthens their bones. He always causes his people to be without knowledge (cunning) or desire. And the crafty to be afraid to act. By acting without action, all things will be in order. (3)

By embracing the One, the sage follows *Dao*, and thus becomes the model for others to emulate. By virtue of following *Dao*, the sage understands and acts on the truths that lie behind apparent paradoxes: "To yield is to be preserved whole. To be bent is to become straight. To be empty is to be full. To be worn out is to be renewed. To have little is to possess. To have plenty is to be perplexed" (22).

Following *Dao* is indeed adopting and practicing *wu wei*. Laozi explained why *wu wei* is the effective way of governing: "The more taboos and prohibitions there are in the world, the poorer the people will be. . . . The more cunning and skill man possesses, the more vicious things will appear. The more laws and orders are made

prominent, the more thieves and robbers there will be” (57). In view of these, the sage is mindful of the benign consequences of practicing *wu wei*: “I take no action and the people of themselves are transformed. I love tranquility and the people of themselves become correct. I engage in no activity and the people of themselves become prosperous. I have no desires and the people of themselves become simple” (57).

This set of attributes and acts apparently would also align well with the practice of humility, restraint, embracement, accommodation, passivity, and disengagement. Thus, good leadership is one that would closely follow *Dao*. The idea of *wu wei* would guide rulers to adopt policies and acts that are in compliance with *Dao*. A good leader would restrain from imposing his own will on his people and society and avoid excessive interference in their lives and public affairs of the state.

Knowledge, the Worthy, and Morality

Running a state is a complex, messy, and challenging undertaking. Rulers would need good and knowledgeable people as well as extensive knowledge and morality of governing. However, Laozi’s negative views on talent (“the worthies”), knowledge, and morality apparently raise questions about the coherence of his doctrine. For example, Laozi famously exhorted: “Do not exalt the worthy, so that people shall not compete. . . , He always causes his people to be without knowledge (cunning) or desire” (3) and “In ancient times those who practiced *Dao* well did not see to enlighten the people, but to make them ignorant. People are difficult to govern because they have too much knowledge. Therefore he who rules the state through knowledge is a robber of the state; He who rules a state not through knowledge is a blessing to the state” (65).

Laozi harbored similar scorn for morality and more puzzling, sageliness. He advised people to abandon them: “Abandon sageliness and discard wisdom, then the people will benefit a 100-fold. Abandon humanity and discard rightness, then the people will return to filial piety and deep love. Abandon skill and profit, then there will be no thieves or robbers. . .” (19).

These negative views on the worthies, knowledge and wisdom, morality, and sageliness seem to create confusion and tensions in the Daoist doctrine of statecraft. Why did Laozi advise rulers against exalting those moral and able people who are in positions of authorities? Why did Laozi counsel rulers to keep their subjects in ignorance? Why did he recommend that morality and sageliness to be abandoned?

Semantics matter here. According to the received view, the worthies that Laozi apparently advised to be disregarded were the staunch adherents and practitioners of the existing ceremonies and music of his time. As Laozi did not hold high regard for the conventional ceremonies and music, it is not difficult to understand why he held such a view against the worthies. Keeping people ill-informed or uninformed about public affairs is to make them easily manipulated and controlled. Such a reading is consistent with the legalist doctrine of statecraft. Again, the received view interprets knowledge to mean a kind of “petty intelligence” that often borders on slyness and which is often tainted with ulterior motives. Only by preventing

people from possessing this vulgar cleverness could have people's minds and deeds returned to the way of *Dao*. A similarly sympathetic rendition could be applied to Laozi's negative view on morality. According to the positive interpretation, morality would mean conventional morality practiced by the Confucians that is contrary to *Dao* and therefore should be abandoned. For Laozi, people should follow only true morality that reflects *Dao*. Similarly, the sageliness to be rejected would be the conventional version of sageliness envisioned and endorsed by the Confucians of whom he had little respect. Only by abandoning it could one begin to approach the true sageliness that is the reflection of *Dao*. Only the true sageliness would entail authentic *ren*, *yi*, and knowledge [9, 10]. In sum, much of what Laozi denounced were the conventional and established values, norms, and wisdoms cherished and practiced by the Confucians.

How to Run a Corporation Ethically

Could the Daoist doctrine of statecraft be applicable to the corporate domain, spawning a correlated doctrine of “firm-craft” (the way to run a firm)? Could Daoism provide a foundation of business ethics informed by the Daoist doctrine? What would a Daoist ethical management and organization be like? How would a Daoist firm ethically deal with its major stakeholders, employees, customers, suppliers, partners, community, government, global society, and the environment? What would a Daoist corporate leadership be like? How would a Daoist leader fashion a corporate social responsibility (CSR) policy? These and other issues have to be answered within a Daoist doctrine of ethical firm-craft. Before these issues are discussed, some definitions of business management and business ethics are in order.

What is business management? Business is a social activity that utilizes various resources to produce goods and services to meet social needs while generating profits and creating jobs. Business management is a coordinated and organized way to deploy financial, material, intellectual, and human resources to achieve these goals. Its process and functions include planning, organizing, monitoring, controlling, marketing, sourcing, competing, learning, innovating, and responding to the market as well as societal and environmental needs. Modern business management is generally comprised of a suite of specific management – production, human resources, strategic, marketing, financial, information, stakeholders, supply-chain, and of late, reputation and corporate social responsibility (CSR). Business ethics refers to the ethical aspects of a business organization or firm which include the morality relating to the values, objectives, norms, policies of the organization; the thinking, decisions, acts, and the relationships of its members, as well as how other stakeholders of the organization and the environment are to be treated [47, 48]. Two senses of business ethics are commonly used in the literature. Empirical business ethics concerns the factual aspect of the morality of a firm. Normative business ethics is about the moral rights or wrongs of activities and decision of a firm and their justifications. The normative sense of business ethics is used in this chapter.

Organization and Ethical Management

Ethical management is one that meets the demands and criteria of reasoned morality. What would a Daoist ethical management be like? To understand a Daoist ethical management, one has to understand the *Dao* of management and organization, as Daoists see *Dao* permeate and sustain both the organization and management [19, 49]. What would the *Dao* of organization be like? The *Dao* of organization would refer to the right way of organizing, and the *Dao* of management likewise would mean the right way of managing, where “right way” means “the natural way (of following *Dao*)” or simply “the truth.” “To follow *Dao*” presumably would be the Daoist cardinal principle of organization and management (the *Dao* principle hereafter). However, without using this principle to derive more substantive midrange principles, it would offer little guidance for the right way or the “truth” of organization and management. Is small or large organization the right way of organization? Is hierarchically and rigidly structured organization, or loose and flat, or networked organization the right way?

Before the products to be manufactured or services to be delivered are specified, it seems impossible to determine what would be the right way of organizing. For the modern automobile industry, e.g., a modernized Fordist or Toyota’s “Just-in-time” style organization would be the right way to organize labor and operation. For financial services, loosely connected teams would be the proper way of organizing the business. For internet service providers, a network of well-coordinated small teams with high autonomy would be the right way to operate. Whether a certain form of organization is appropriate depends largely on the industry, the tasks in question and the specific goods and services to be delivered. Thus, simply invoking the *Dao* principle offers little substantive advice on how to structure and run an ethical organization. This applies to management and its ethics. Whether a form of management is right depends much on the nature of the industry or tasks in question. Whether it is ethical further involves the values, norms, acts, and motives of producers; the nature of the goods and services; the process of sourcing, production, and delivery as well as their impact on stakeholders and society; and the environment, among others. Appealing only to *Dao* without articulating its concrete and specific managerial implication is like dosing out vacuous directives that leave much crucial matters undecided. In such a situation, managers would be ill-equipped to comprehend or unpack the complexity of the intensely dynamic business environment, let alone ably perform their strategic and operational tasks. They would need more well-defined and nuanced midrange principles and actionable directives to augment their vision, fashion policies, and aid actions. It means that one would need to define in clear and specific terms what constitutes the *Dao* of ethical organization and management and to articulate the precise meanings of the alleged *Dao*-following policies and actions with respect to specific domains.

***Wu Wei* Management**

Could the Daoist *wu wei* management, based on the famous dictum: *Wu wei er wu bu wei* (“Do nothing, and there is nothing that is not done”), offer the needed

guidance? What would a *wu wei* management be like? What would it mean to execute *wu wei* management in terms of producing policy and action? Could we really get the result as claimed, namely, nothing is left undone when we practice *wu wei*? The received view's reading of the *wu wei* management is that it is not inaction *per se* but invokes actions that are neither purposive and manipulative nor deliberate and intentional. Such a management would rely on actions or policies that are indirect, reactive, nurturing, receiving, and embracing and would shun actions or policies that are direct, active, suppressive, delivering, and domineering.

From the critical perspective, before one could figure out what these actions and policies would mean in the corporate domain, one prior question should be raised, namely, to what extent a *wu wei* management could be possible in the real world? Management is an inherently purposive and deliberate activity and process. From the selecting of goals and objectives, framing strategies and assigning priorities, formulating short-time and strategic plans to the mundane tasks of monitoring, controlling, and operating – management activities are intentional, purposive and deliberate. There is simply no management without a purpose or intention. To the extent that *wu wei* deprives management of purpose or intention, it destroys management. Indeed, much of what *wu wei* advises to embrace and avoid seem to be the opposites of what management should strive to embrace and avoid. If this were the case, one would reasonably ask: Is *wu wei* any good for management? More basically, is *wu wei* management an oxymoron?

To continue this critical approach, we use human resource management as a specific domain to further examine whether and how *wu wei* management makes sense in the real world of management. As discussed earlier, Laozi held a negative view on the worthies and knowledge. He counseled against using the worthies and advised people to abandon knowledge. If we interpret “the worthies” as a proxy for talented people with integrity, what would be the implications of the Daoist view on talents and knowledge for human resource management? The Daoist's advice on human resources management would probably amount to avoid selecting, retaining, and promoting talented people with integrity. And for assessing staff performance, personal integrity and knowledge would be sidelined or downgraded compared to other criteria. But this implication would be absurd and even suicidal to any company in today's knowledge economy simply because talents with integrity and knowledge are the lifeblood of a company. Depriving it of talents and knowledge, a company would not be able to survive. Probably no sane and reasonable manager would believe in such an idea, not to mention adopting it. Furthermore, human resource management and knowledge management are both purposive and deliberate activities. *Wu wei* simply has no place in them, or in any other forms of management. Indeed, had *wu wei* been adopted, chaos, confusion, and aimlessness would have been resulted. In regard to the claimed effects of *wu wei*, were *wu wei* to be practiced, it would be far from clear that “there was nothing that was not done.”

In addition to the Daoist attitudes toward knowledge and talent, it is interesting also to ask how a Daoist would view profit and self-interest of private enterprises. Would a Daoist accept profits and self-interest as natural to business as leaves and

branches to a tree? Or would a Daoist reject them the way he would reject knowledge and talents? The answers to these questions, like other answers discussed earlier, are by no means clear.

Ethical Leadership

What would a Daoist ethical leadership be like? Would the attributes of the Daoist political leadership help shed light on ethical leadership in business? How would a Daoist ethical leader run a company?

Leadership is a complex concept. It refers to leaders and their attributes, their ways of leading, and their relationships with followers. This is the agency sense of the concept. Leadership, in a system sense, means the nature, process, state, and system of leading. Ethical leadership is leadership that is informed, constrained, and guided by conscious moral concerns and choices. These concepts can be used either empirically or normatively. The empirical concept concerns the factual aspect of leadership. The normative notion focuses on the ideal and justifiable aspect of leadership. This section adopts a normative agency sense of the notion. Ethical leaders are persons in leadership position who consciously and consistently base their decisions and actions, as well as build and sustain relationships on reasonable morals and values to which they are committed [50–52].

As discussed earlier, a sagely leader would have major attributes of weakness, softness, simplicity, tacit strength, nurturing, versatility, and adaptability. Good leaders would be committed to *wu wei* in thought and deeds, embrace and comply with *Dao*, as well as behave in ways that are nondomineering, supportive, and noninterfering, among others. How these attributes and actions would play out in the corporate context, especially in business ethics terms, requires further investigation. Presuming that having attributes like nurturing, being simple, nondomineering, supportive, and noninterfering in general makes sense and is beneficial in business, the challenge is to hammer out the precise meanings of these attributes in organization and corporate terms. For example, what would it mean for an ethical leader to lead by *wu wei*? What would it mean for a leader to embrace and follow *Dao*? What would it mean to say a leader possessing water-like qualities in management terms? How would these water-like attributes be translated into ethical leadership attributes? Of particular relevance to today's corporate world, what roles would these attributes play with regard to enhancing a leader to ethically manage issues like corruption, property right, fair competition, supply chain (sweatshop and labor rights), the environment, and climate change?

Would the possession of the Daoist leadership attributes stand as an asset or a burden to a company with respect to business ethics? As an *asset*, leaders having these attributes would lead as enablers, facilitators, enhancers, beacons of the development, and maintenance of ethics within the company and beyond. As a *burden*, in contrast, leaders with these attributes would become obstacles, diverters, defectors, obfuscators and destroyers of the ethics of the firm and society. Whether the roles would be positive or negative has to be worked out in more concrete terms, and the answers cannot be settled in theory.

Daoist Business Ethics in Action

This section uses China as a context to briefly examine in more concrete terms how a business ethics informed by Daoism would play out. This is done by examining how a Daoist ethical leader would address the environmental crisis that is plaguing the country [53–56]. To examine how Daoism would address this problem may also provide insights for understanding how Daoism would be applicable to other cultures.

The Environmental Crisis

China has achieved extraordinary economic growth with double-digit average annual GDP growth over the last three decades. This impressive economic development, while helping to lift hundreds of millions out of poverty, has been achieved at a hefty environmental and human cost. According to an official report on the cost of pollution [56], coal consumption increased by 75% between 2000 and 2005, which exacerbated the already serious air pollution condition. China is now the top SO₂ emitter in the world, emitting nearly 26 million tons of the gas in 2005, a 27% increase since 2000, according to State Environmental Protection Administration. Water pollution is also serious. Between 2001 and 2005, on average, about 54% of the water in the seven main rivers in China was classified as unsafe for consumption, representing a 12% increase since the early 1990s. The economic cost of pollution-related premature mortality and morbidity associated was conservatively estimated at 157.3 billion yuan in 2003, or 1.16% of GDP [55].

How would a Daoist ethical leader respond to the environmental issue? To address this hugely complex and difficult issue requires extensive knowledge, broad and long-term vision to objectively understand the problem in question, as well as the right strategies and workable policies to solve the problem. In addition to having an adequate set of ethical commitments, an ethical leader should be able to identify the ethical aspects of the problem in such a way as to frame appropriate and balanced ethics-regarding policies and actions and be ready to make tough decisions over difficult trade-offs. Furthermore, an ethical leader should also possess the political will to take action and implement policies in spite of anticipated difficulties, resistances, and oppositions, especially from powerful and corrupt vested interests. The solutions provided should not only be effective and practicable but ethically justifiable as well. These could be seen as some of the major prerequisites of an ethical response. Under such prerequisites, what values and visions would an ethical leader have? What would his strategies, policies or actions be like? The following are some conjectural answers to these questions envisaged from the vintage point of a Daoist ethical leader.

Dao, Wu Wei, Leadership

A Daoist leader's first and foremost task would have to correctly understand the nature of the environmental crisis including its causes and consequences, which

would have required the relevant and extensive objective knowledge. This means, in the Daoist parlance, to understand the *Dao* of the problem. Could appealing to Daoist principles suffice to provide the necessary knowledge of the problem? More basically, what would the *Dao* of the problem be like? Obviously, without actively engaging in sustained knowledge-gathering and scientific processes which include identifying problems, gathering data, framing and testing hypotheses, and integrating and interpreting findings, one would never be able to acquire the knowledge about the nature of this complex problem. And these involve intensive and sustained knowledge activities that are goal driven, rational, and deliberative.

Take the case of combating environmental air pollution and global warming as an example. To combat the major air pollution and reduce green-house gas (GHG) emission posed by the extensive consumption of coal, a Daoist leader would have to invent and adopt effective strategies to reduce the emission of the GHS. This would include enhancing energy efficiency or developing and deploying alternative green energy technologies. He would need to redesign and implement new business processes, for example, by implementing a green transportation system or promoting energy efficiency by replacing all compact fluorescent lamps with LED lamps for lighting and illuminations in offices and shops to help reduce the carbon footprints. The question remains whether and to what extent adhering to *Dao* would help produce similar sets of ethical responses. It seems that, without having substantive knowledge of the problem in question, merely appealing to *Dao* would offer little guidance for developing concrete solutions and policies to the problem. As argued earlier, the *Dao* principle of nature following is simply too vacuous, vague, or abstract to inform and generate workable solutions and actions for real world problems.

Ardent believers of *Dao* would insist that the above strategies, policies, and actions are compatible with the *Dao* principle or even are generable from the principle. But this claim is less than convincing. If appealing to *Dao* offered little help in framing concrete responses to the problem, could *wu wei* management provide concrete guidance? To the extent that *wu wei* counsels the avoidance of deliberate and intentional actions, it is doubtful that the managers who adhered to *wu wei* management would be able to envision, design, and implement similar concrete strategies and policies. Lastly, how would a Daoist leader think and act in response to these problems? Would he think or act along similar lines as suggested? Would possessing the sagely attributes make him an ethical leader? How would the values of feebleness, simplicity, femininity, receptiveness, disengagement, frugality, etc., help him to come up with appropriate ethical responses? These questions await answers. Without providing answers to these and other questions mentioned earlier, it is far from clear that the *Dao* principle is compatible with or able to generate effective strategies and policies similar to those listed above.

In addition to the environmental crisis, other problems like endemic corruption [57–60] labor rights, property right infringement, and rich-poor gap also pose daunting challenges to the nation and its future [55, 61]. These problems have serious implications for business ethics as well. How a Daoist business ethics would address these problems is an open question.

Conclusion

We started this chapter with a question: Could Daoism, as articulated by Laozi, provide a good basis for developing business ethics for today's corporations? In light of the discussion above, some concluding remarks are in order. In the realm of business ethics, Daoism has something valuable to offer. The Daoist naturalistic orientation and insights may help to foster corporate values that respect nature and thus are favorable to having policies beneficial to the environment. The *wu wei* management in its best form may prove helpful for solving problems in some situations. The values of simplicity, softness, receptiveness, frugality, and embracement may serve as a counterbalance to the current obsession with unsustainable growth, hurtful competition, wasteful consumption, and mindless materialism, as well as good restraints over corporate greed, extravagance and excesses, and other forms of corporate malfeasance and corruption. The counsel against contentment with conventional knowledge and morality may inspire people to seek for creative knowledge and wisdom. The virtues of the Daoist ethical leader may also be good attributes for business leaders to emulate. Despite the potentially valuable contribution of these ideas, their diverse and sometimes vague and underdefined meanings create conflicting interpretations and understanding. As stated at the start of the chapter, some Daoist doctrines allow for two broadly distinguishable readings. The received view is based on charitable interpretations along the naturalistic line and idealistic expectations and renditions, which may contain more positive implications for business ethics. Whether these positive implications turn out to be real has yet to be tested. One apparent weakness of such a view is that it often fails to establish the connections between the grand ideas and the real world of business with enough rigor and critical input. Supporters of this view apparently take Daoism as timelessly omnipotent and universally applicable to today's reality [18, 20]. Perhaps the vague and loose language often deployed in these elaborative works creates a delusive sense of universal applicability.

The critical view adopted in this chapter is based on critical interpretations of the ideas and rigorous examination of how these ideas are connected to the real world of business ethics. This view prompts one to raise reasonable questions about the precise meanings of major concepts and views, as well as about the applicability of the Daoist ideas to the corporate domain and business ethics. With regard to the applicability aspect, it must be said in general that without deriving more substantive and concrete meanings, vague and abstract ideas – no matter how well-intended – are of little help to business ethics. Equally, first-order principles couched in highly abstract language without correlated midrange principles constructed to guide policies and actions would prove futile in the real world.

With regard to applying ancient wisdoms to modern business world, it is helpful to be mindful of some critical questions: How can these grand ideas developed in the far away ancient context still be relevant to the twenty-first century? In what way are these practical wisdoms applicable to modern business ethics? Could these wisdoms offer us concrete and actionable guidelines for

making intelligent and ethical decisions in response to the major issues of the day? To respond to these questions, scholars should define in precise terms what these ancient wisdoms and ideas amount to in the business context. They should also explain in rigorous terms how these wisdoms and ideas are applicable and what their implications are. These generic questions may equally be applicable to a broad range of issues in business ethics, including leadership, corporate governance, organization, consumer, labor, stakeholder relationships, supply chain, the environment, sustainability, and corporate social responsibility issues, among others.

To be able to fully exploit ancient wisdoms for today's business ethics requires a prudent and honest scholarship buttressed by a rigorous and critical spirit. Shoddy scholarship that uses loose and vague language and employs rather stretched and forced interpretations of the text is counterproductive. Deliberating mainly in abstraction while making no convincing connections to the business reality is futile. Discussions fixated on the ideal and the lofty while oblivious to the harsh reality of the business world are of little value to practitioners. These are some of the major pitfalls scholars should try to avoid in applying ancient wisdoms.

Cross-References

- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Chinese Guanxi and Business Ethics](#)
- ▶ [Confucian and Legalist Basis of Leadership and Business Ethics](#)
- ▶ [Confucian Virtues and Business Ethics](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

1. The numbers in round brackets represent the respective chapters in *Daodejing* (References and translations are from [9, 10], with my amendments).
2. In some quoted passages, the first person pronoun "I" apparently refers to the sage.

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Eike A. Langenberg

Abstract

Business life around the world is embedded in social relationships, and yet personal relationships (*guanxi*) among Chinese people stand out because of their idiosyncratic features and unrivaled pervasiveness. No ethical legitimation may be derived from the sole fact that personal relationships are a dominating force behind Chinese business practices, however. Building upon a precise conceptualization of *guanxi* as a social system, this chapter therefore presents an ethical assessment of the utilization of *guanxi* in a business context. Acknowledging the existence of cultural differences in moral perceptions, its author examines the compliance of such practices with two predominant schools of Chinese and Western thought: Confucian (virtue) ethics and utilitarian ethics. It is found that *guanxi* complies with classic Confucian values, but cannot be justified in terms of utilitarian ethics, which establish morality based upon the creation of social welfare. Evidently, Western firms operating in China, and Chinese firms operating abroad, are confronted with the challenging task of defining their own moral stance. This chapter provides decision-makers with the theoretical foundations needed to master this challenge.

Introduction

Business life is structured along social relationships. This is true for China, as it is around the world: In Italy, interaction within the local communities is largely based

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on ties within extended kinship networks; similarly, large parts of Eastern European economies are influenced by familiarism; and Russian business practitioners are said to heavily rely on *blat*, i.e., a traditional system of personal relationships [1]. Although, evidently, the phenomenon of “string-pulling” is found throughout the world, Chinese personal relationships, or *guanxi*, as they are locally known, stand out because of their idiosyncratic features and unrivaled pervasiveness. No ethical legitimation may be derived from the sole fact that personal relationships are a dominating force behind Chinese business practices, however. Rather, a critical assessment is needed on whether or not the utilization of *guanxi* in business complies with moral standards. This chapter provides such an assessment by building upon a precise conceptualization of *guanxi* as a social system and its application in an economic context.

Guanxi is a sociological term that describes a subset of Chinese personal connections between people in which one individual is able to prevail upon another to perform a favor or service [2]. It lies in the skillful utilization of moral imperatives aiming at diffuse and calculated instrumental ends [3]. China’s prime sociologist Fei Xiaotong (1910–2005) has argued that interpersonal connections are the fundamental organizational principle of Chinese society, irrespective of social strata [4]. As a lubricant, *guanxi* gives the course of many events a helping hand: employment issues, school enrollment, lawsuits, medical care, driver’s licenses and plates, academic publications, and so forth. As a means by which personal interests may be advanced, problems solved, and resources obtained, a *guanxi* network usually encompasses individuals on all levels, from employees who control goods in short supply to cadres who decide about government permits. Not surprisingly, the prevalence of *guanxi* is not restricted to informal social interaction, but extends to formal business realms as well. Governing business activity throughout China, *guanxi* affiliations, rather than “arm’s length” principles, are the basis of many transactions.

Despite the fact that the word *guanxi* itself is a relatively new term in the Chinese language—it was not included in the authoritative 1915 *Ciyuan* dictionary of classical Chinese—it is not a modern phenomenon. *Guanxi* has developed from village life, and its rural origins manifest themselves in the custom of exchanging gifts, which has been deeply rooted in Chinese culture for thousands of years [5]. Traditionally, once *guanxi* is established, two individuals may ask each other a favor with the expectation that the debt incurred will be repaid sometime in the future [4]. Such exchanges are characterized by three features: Firstly, the interpersonal linkages in question are essentially motivated by means-ends calculation. People draw on connections in order to secure favors in personal relations. Secondly, attention is given to affection. Among ordinary people, *guanxi* often has a pejorative undertone when the affective component is low, i.e., when no feelings are involved. Thirdly, *guanxi* is usually associated with norms. It implies obligations (e.g., a response to requested assistance) and a long-term attitude.

As will become evident in the course of this chapter, all three features are consistently important in a *guanxi* system. It therefore comes as no surprise that influential political scientist and sinologist Lucian W. Pye defines *guanxi* as “friendship with implications of continued exchange of favors” [6]—implicitly

mentioning instrumentality, affection, and norms. This definition describes the nature of the relationship, and it allows for a demarcation from bribery: While *guanxi* and bribery are actually closely related, it would nevertheless be wrong to treat them as synonyms—first and foremost, because a bribery transaction is motivated by purely economic interests (i.e., a profit-and-loss calculation), while *guanxi* also contains an affective and normative component. Second, *guanxi* is a diffuse, long-term phenomenon, as it requires the establishment and cultivation of a relationship, while illicit exchanges are usually characterized by immediate and specific obligations. In an anecdotal report, a Beijing business consultant clarifies the detachment of *guanxi* and bribery: “Look, if you don’t have *guanxi*, you can’t pay a (. . .) big money bribe (. . .). You have to have *guanxi*” [7].

Judging by the normative framework of how obligations are incurred and reciprocated, it becomes clear that the *guanxi* system is a self-contained exchange system coexisting with China’s market economy and (planned) state economy. It is only within this context that *guanxi* can be assessed in terms of business ethics. Given the significant cultural idiosyncrasies of China and Western countries, a differentiated perspective needs to be taken. Applying the (Chinese) framework of Confucianism on the one hand and the (Western) tradition of consequentialism on the other, this chapter concludes with a comprehensive test of how the utilization of *guanxi* in business conforms to ethical principles.

Chinese *Guanxi* and Business Ethics

Literature Review

The scientific discourse of *guanxi* is cross- or interdisciplinary. Involving multiple fields of research, *guanxi* can be explored with the help of concepts used in sociology, economics, politics, anthropology, history, and psychology as well as from a business perspective such as management theory or marketing. Despite enriching the general understanding of the relevance *guanxi* has, not all disciplines make relevant contributions to its explanation. Focusing on the connection between *guanxi* and business, this chapter concentrates on the field of economic sociology, linking and (re-)integrating sociological theory and economics. As Chinese and international research show significant differences in methodology, they will each be discussed separately.

Although *guanxi* is inherently Chinese, few significant studies on the topic have actually been published in China to date. This does not come as a surprise considering that sociology is a recent field of research that was virtually non-existent before the end of World War II. Sociology was first introduced in China in 1947 when luminary Fei Xiaotong wrote his set of essays, *Rural China (xiang tu zhongguo)* [4]. It did not take the Communist government long to end the academic discourse, however: sociology was banned from 1952 to 1980, when the Institute of Sociology of the Chinese Academy of Social Sciences (*zhongguo shehui kexueyuan*) was founded—by Fei himself. Although Fei’s academic works date

back many decades, they still offer highly relevant insights today [8]. This topicality is due to Fei's finding that Chinese society and its exchange practices must be analyzed with its rural origins in mind—a key tenet that is widely acknowledged by Chinese scholars and was reconfirmed by the Chinese Academy of Social Sciences in 2003 [9].

Influential accounts of the *guanxi* system have been provided by Taiwanese psychologist Hwang Kwang-kuo in *Face and Favor* [10], and *Chinese Relationalism* [11], for instance [10–12]. Seeking to explain the “minor tradition” (*xiao chuantong*) of *guanxi* with the “major tradition” (*da chuantong*) of Confucianism, Hwang analyzes *guanxi*, *renqing*, and *mianzi*. In spite of methodological inconsistencies, his “Model of Confucian Psychology” (*rujiade xinzhixing*) made him a star in *guanxi* research. Even more insightful is Chen Junjie's *Guanxi Resource and the De-ruralization of Farmers* (1998) [13]. Virtually unknown in the West, this book is an exception in that it pays great attention to methodological precision.

While, generally speaking, international researchers in the 1970s and 1980s explained to the West what *guanxi* was, the majority of international studies in the 1990s and 2000s were concerned with the question of why organizations needed *guanxi*. Today, online bookstores are packed with guidelines for managers on how to maximize benefits from establishing and cultivating *guanxi*. Alongside the large number of populist publications, however, Western European and North American social scientists have produced a considerable repertoire of works that international researchers can draw upon.

One of the most extensive Western treatments of *guanxi* is offered by Chinese-American anthropologist Yang Meihui in her classic *Gifts, Favors, and Banquets: The Art of Social Relations in Chinese Society* [14]. Yang focuses on power relationships and their social and symbolic expressions, which have crystallized around the circulation of desirables in the *guanxi* system. In a highly politicized discourse on social relationships, Yang perceives *guanxi* as a set of practices that defines itself against the elements of impersonal money and direct buying and selling, which are those of the commodity economy. This book is an excellent starting point for analyses, although, as acknowledged by the author herself in a later publication [15], it has become largely obsolete in terms of business application because it is based on the assumption of a dominating planned economy where organization of production, planning of social activities, and distribution of the means of subsistence have long been the sole responsibility of the state apparatus.

There are also various other seminal descriptions of the *guanxi* system. Exploring the nature of Chinese business practices, Chung and Hamilton [2] argue that the inter-subjective logic of social relationships provides an institutional foundation for Chinese business transactions. The authors convincingly explain that the rules prescribed by the *guanxi* system increase the calculability of economic outcomes, making decisions more economic rather than less so [2]. Similarly, German scholars Schramm and Taube [16] contrast exchanges in *guanxi* networks with economic practices in the Western legal framework [16]. *Guanxi* networks are

identified as an optimum solution to the problem of institutional arrangements. Charging that the conceptualization of *guanxi* is insufficiently questioned and that there is considerable confusion about its implications for business, Fan [17] analyzes *guanxi* from the perspective of social processes [17]. The most recent major anthology on the institutions, culture, and changing nature of *guanxi* has been published by Gold et al. [18]. Since most of its 14 contributing scholars have a serious research history in the field, *Social Connections in China* [18] delivers an interesting range of assessments; for the same reason, however, the anthology does not contain many new insights regarding the conceptualization and implications of *guanxi*. Langenberg [19] accomplishes the socioeconomic integration of the *guanxi* system and market economy [19]. Developing a theoretical model, he then concludes how successful business strategies must consider *guanxi* and how such strategies are to be interpreted legally and ethically. In *Guanxi or Li shang wanglai* (2010), anthropologist Chang presents her fieldwork in a central Chinese village [20]. She develops the concept of “wanglai,” i.e., a system of reciprocity regulated by morality, emotions, rational calculation, and spiritual beliefs.

Sparked by evidence that management networks often improve companies' performance, *guanxi* has increasingly become the focus of Western management literature. This trend can be illustrated by three publications: Luo (2007) provides a comprehensive guideline for business practitioners [21]. Approaching *guanxi* with cases and examples, he discusses a wide range of social, economic, cultural, and business elements revolving around his concept of *guanxi*. Tsang [22] investigates the relevance of *guanxi* with respect to transaction costs [22]. Taking a resource-based perspective, the Singaporean researcher asks if the *guanxi* possessed by a foreign firm can be a source of competitive advantage when doing business in China and if this advantage is sustainable. Grasping transaction-cost advantages, *guanxi*-based exchanges are recognized as a structural alternative to contract law. Building on Tsang [22], Standifird and Marshall [23] also seek to demonstrate the relevance of *guanxi* in terms of transaction-cost advantages [23]. Their essay, which they see as a complement to—rather than an argument against—social embeddedness and resource-based explanations, concludes that *guanxi* can, indeed, provide firms with an imperfectly imitable resource that gives them a competitive edge.

A number of empirical studies have also been conducted on the topic. It should be noted, though, that in general, the possibility of empirical research into *guanxi* is limited: most people are reluctant to talk about their attitude to *guanxi*, and a great deal of self-deception exists. Researchers in less developed areas of China, in particular, are faced with another major problem, namely that their subjects are likely to have a strong propensity to present the “modern” side of China.

Ethical implications are regularly neglected in the research on *guanxi*, with only a few exceptions. Steidlmeier [24], for instance, assesses the cultural logic and social practices of gift-giving in China. Setting off traditional gift-giving from outright corruption, he formulates a guideline for ethical managers, which builds on the action of reciprocity and the moral intentions of the actors [24]. Lovett et al. [25] take a utilitarian perspective: in order to compare the efficiency of a market

economy and the *guanxi* system, they develop a simple static model that incorporates contracting costs into the market economy and a “preference of old friends” into the *guanxi* system. Their model suggests that the economic efficiency of *guanxi*, and thus its ethical legitimation, depends on particular economic contingencies [25]. Dunfee and Warren [26] advocate a particularistic view. They conclude—albeit without delivering a refined framework—that the legitimacy of *guanxi* should hinge upon its distinct types and how they are used in China’s economic and legal environment [26]. Ip [27] examines the extent to which Confucianism should serve as the basis for business ethics in China. Basing his study on the key elements of Confucianism, he develops the highly insightful notion of a “Confucian firm,” deducing that Confucian virtues do not provide an adequate ethical footing for the challenges that modern corporations face in China [27].

This literature review confirms that the necessity of conducting research on *guanxi* has long been recognized. Significant progress has been made with respect to defining, operationalizing, and measuring the *guanxi* system, in particular in the business field. Further impetus can be expected from Chinese research and in the area of ethical implications.

Conceptualization of the *Guanxi* System

It has been said that the present-day *guanxi* system is an indigenous cultural phenomenon, the exchange patterns of which have long been regarded as necessary and, indeed, appropriate. Hence, it is a commonplace to describe the ubiquity of *guanxi* in modern China by drawing analogies to the social environment two or so millennia ago. Notwithstanding the validity of arguments concerning cultural embeddedness, *guanxi* is “not so much a cultural logic as it is a structural system of repeated interactions based on ongoing (...) exchanges” [2], as Chung and Hamilton—and almost identically Guthrie [28] correctly note. Taking an institutional perspective on society, the emergence of *guanxi* as a major system of social exchange and regulatory policy is best explained with its socio-structural factors.

Among those scholars who approach *guanxi* as a structural system, it is popular to attribute its emergence to a “lack of coherent business laws (...) and formal institutional support” [29] or the “weakness of formal institutional arrangements” [16]. Reflecting a preoccupation with legal systems, the terms “lack” and “weakness” clearly indicate that it is only natural for Western economists to assume the existence of enforceable laws. As Smelser and Swedberg [30] point out, economists often assume that social exchange norms and institutions emerge only to complement imperfect markets. As explained in the introduction to this chapter, however, the *guanxi* system developed from rural exchanges and has asserted itself as an institution in Chinese society that exists parallel to other systems (e.g., the market economy) and is not subordinate to them. Therefore, theory must argue that *guanxi* has evolved as a primary, formal socioeconomic coordination mechanism. And this is exactly what the (new) economic sociology does, by applying the frames of

reference, variables, and explanatory models of sociology to the complex of economic activities [30, 31].

The following conceptualization of *guanxi* is organized in accordance with the structural components that form the basis of any exchange system: resources, actors, network structure, norms, and sanctions [32].

Exchange Resources: *Renqing*, *Ganqing*, and *Mianzi*

It follows from the above that *guanxi* should be defined as a long-term relationship between actors who, based on interest in and control over instrumental, affective, and normative resources, engage in continuous exchanges, which are governed by a set of network-specific norms.

The major exchange resource in the *guanxi* system is referred to by the Chinese as *renqing*. *Renqing* actually has a variety of meanings, the most important denotation of which is an instrumental resource that an individual can present to another person in the course of a social exchange. This term also has two other connotations: it expresses (normal) human feelings and compliance with social norms and rules of etiquette. It is worth noting that this second connotation comes closest to the original meaning of *renqing* in Confucian ethics, namely appropriate social conduct and the fulfillment of promises and obligations. In the following discussion of *guanxi* as a socioeconomic exchange system, however, *renqing* is depicted in a purely instrumental manner; as such, we may distinguish *renqing* in terms of favors and gifts [14].

Favors exchanged by members of the *guanxi* system include the sharing of (classified) information and rendering of assistance. The type of information that might be shared could be about new business opportunities or job vacancies, for instance. Information acquired from *guanxi* members is often felt to be more reliable than documentary media [21]. Some typical examples of assistance are access to scarce items (e.g., scarce train tickets), favorable interest rates, price discounts, and tax benefits.

Besides favors, gifts are exchanged in the *guanxi* system. Most Chinese make use of both happy and unhappy occasions to send gifts to their friends and acquaintances. Presented in a red envelope (*hongbao*), cash is the number-one gift; the amount given varies across regions and also depends on the closeness of the relationship and other factors. Besides cash, a wide variety of gifts are exchanged, e.g., fruits baskets, cigarettes, liquors, and shopping vouchers. Since these all have a material value, such gifts can be exchanged with a clear instrumental goal in mind. The exchange modalities are not optional, but exhibit a significant degree of culturally embedded symbolism.

Despite the preponderance of instrumental concerns that characterizes *guanxi*, *renqing* is not sufficient to build it [33]. Along with *renqing*, actors in the *guanxi* system have control over and/or interests in a second resource: *ganqing*, loosely translated as “sentiment” in a relationship. Clearly, individuals also establish *guanxi* based on affection for a person or a “sense of attachment,” with an emphasis

on genuine warmth, safety, and a considerable degree of emotional concern. Reflecting the qualitative element, good *ganqing* means that two people have a good rapport or considerably deep feelings within a social relationship. The word *ganqing* also describes the quality of a relationship. *Ganqing*, in this sense, is based on a “commonality of shared identification,” as Jacobs denotes the same worldview, taste, habits, and so on [34]. Clearly, the joint pursuit of hobbies (such as playing mahjong) can strengthen *ganqing*.

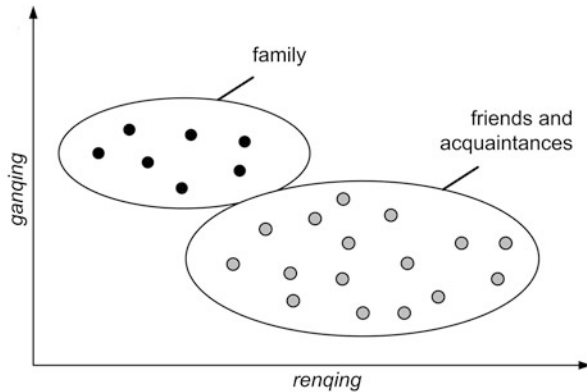
The third resource exchanged in the *guanxi* system is *mianzi*. Literally translated as “face,” *mianzi* actually refers to an individual’s social position and public image [10]. *Mianzi* is different from the other two exchange resources, however, in that it is socially constructed and not directly controlled by the actors. As will be elaborated later, *mianzi* is bestowed by the network upon actors who successfully perform one or more specific social roles that are well-regarded by others within the social network. Therefore, what is actually meant by the expression “to give/lose face” (*gei/diu mianzi*) is that an actor makes the network bestow *mianzi* on another actor or withdraw it from them.

To sum up, in the *guanxi* system “two persons can be close because they are bound by obligations, or because they have strong affection for each other, or because they are instrumentally related to each other,” as Chung and Hamilton assert [2]. The tripartite “resource bundles” of *renqing*, *ganqing*, and *mianzi* cover an instrumental, affective, and normative dimension, and most of the time they are exchanged together as a combination of resources [13].

Actors and Network Structure

The Chinese structure obligations along social positions, and they adopt multiple standards of behavior towards their interaction partners. Fei Xiaotong assumes Chinese society to be organized by what he calls “differential mode of association” (*cha xu geju*), i.e., a system of egocentric networks that place distinctive moral demands on individuals in each tie [4]. In search of a categorical frame of interaction in the *guanxi* system, numerous frameworks, or taxonomies, have been suggested, each with a different focus. Yan [35] highlights a *personal core* of immediate relatives—a *reliable zone* of good friends and more distant relatives who can always be counted on for help—and an *effective zone* of friends in a broader sense [35]. Yang [14] identifies the categories of *family and kinship*, *neighbors and native places*, *non-kin relations of equivalent status*, and *non-kin superior and subordinate status* [14]. Tsang [22] classifies the groups into *blood bases* (i.e., family members, relatives, and clan members) and *social bases* from one’s social life (e.g., acquaintances from school or work) [22]. Irrespective of how systematic such taxonomies may appear, they are arbitrary and represent an ad hoc assumption with no explanatory power. It is imperative for a taxonomy to be based on resources, because exchanges are the result of actors’ interests in and control over resources. This subchapter develops a taxonomy that is derived from the distribution of *renqing* and *ganqing*, which actors control directly.

Fig. 48.1 Clusters of a resource-based actor classification



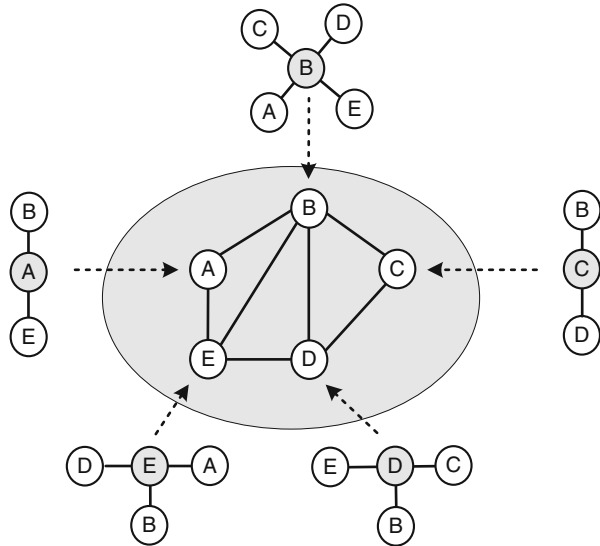
A traditional family performs various functions covering many of the rather modest needs of rural people, including educating its children and caring for the elderly members. The family, a long-established ideal in Chinese culture, integrates all its members into a single financial unit. Thus, from an instrumental perspective, the family controls *renqing* [36]. Instrumental interests cannot all be satisfied by one's family, however. In fact, in an urban environment, in particular, actors will need to rely on interaction with individuals outside their family in order to satisfy their instrumental needs. As friends and acquaintances represent a large pool of competent and specialized persons, they usually control a large amount of *renqing*.

Most *ganqing* in which individuals are interested is controlled by their family. Affection in consanguine relationships (usually) increases in accordance with how closely people are related. Friends and acquaintances may also control a considerable amount of *ganqing*. This increases as a congenial personality is developed, the emphasis lying on the notion of shared qualities (values, tastes, habits) and experiences that close the hiatus between the inside and outside and fuse identities.

The distribution of *renqing* and *ganqing* resources mentioned above suggests that actors in the *guanxi* system fall into two clusters: family members on the one hand and friends and acquaintances on the other. As shown in Fig. 48.1, family members form the cluster with higher *ganqing* and lower *renqing*. Friends and acquaintances, usually characterized by higher *renqing* and lower *ganqing*, include everyone beyond the immediate kin with whom one has a close relationship: peripheral relatives, co-workers, classmates, fellow villagers, and so forth.

Within this categorical framework of interaction, actors advance their interests by exchanging *renqing* and *ganqing* when individual control over them is simultaneously met by reciprocated interests. These exchanges, however, are characterized by time asymmetries, i.e., actors perform at different points in time: First, one actor (A) hands control over his resource bundle to another actor (B). Upon receipt of the resource bundle, actor B then makes an implicit promise to transfer his resource bundle at a later point in time [37]. In practice, such a promise is implicit in

Fig. 48.2 Structure of a *guanxi* network



statements like “Thank you so much—if there’s anything I can help you with in future, just let me know!” If actor B keeps his promise and hands over control of his resource bundle, as expected by actor A, the exchange yields actor A the expected benefits. This exchange structure, however, creates a temporary imbalance of credits: While the actor who performs last (actor B) always improves his situation because he has already appropriated the benefits, the situation for the first performer (actor A) will only improve if the exchange partner acts as expected; actor A’s situation deteriorates if the partner fails to reciprocate. The uncertainty associated with up-front performance cannot be eliminated, but rational actor A can seek to quantify the probability of reciprocation and include it in his calculation. A risk-neutral actor will make an exchange only if the expected benefits are positive.

Promised resource bundles are person-specific debts. In the *guanxi* system—as in many other non-economic exchange systems—such promises cannot be transferred from one relationship to another, or can only be transferred to a minor extent. Due to the non-transferability of resource-bundle promises, *guanxi* exchanges are restricted to a system of dyads. Much in line with Fei Xiaotong’s assertion that Chinese individuals take an egocentric perspective on their entourage, it follows that each actor maintains his own unique personal network of *guanxi* dyads with other actors [4]. The personal network maintained by each actor can be depicted as a *sociometric star*, and when such networks are combined, they constitute a *guanxi* network (*guanxi wang*). Figure 48.2 shows how the personal networks of five actors (A, B, C, D, and E) add up to a well-connected network in which exchanges of resource bundles take place [38].

It may happen that the interest of a member of a given network is directed at a resource bundle that none of the actors he is connected to controls. A mutual

acquaintance—the so-called *intermediary*—may then introduce the two parties [3]. Preferably, the introduced person will be an insider from the same *guanxi* network. In cases where no insider has control of the resource bundle that is needed, an initially disconnected actor, i.e., an outsider, is integrated into the network. As an intermediary usually vouches for the proper exchange conduct of the outsider, the network expands without increasing uncertainty. Both the increased connectedness of the network and its enlargement are advantageous for its members: with each additional relationship, members gain access to more diverse exchange resources. An extremely complicated structure of social relations may emerge from this simple network expansion mechanism.

Norms and Sanctions

In general, the longer the tradition of any culture, the more differentiated the set of interdependent norms will be. The norms of the *guanxi* system, in all their great complexity and pervasiveness, which Chinese tradition has produced, should not be mystified, though. Rather, they should be approached with the understanding that self-determined actors have consciously created them because they yield benefits, namely reducing uncertainty in resource exchanges.

Uncertainty in the *guanxi* system is reduced by normative provisions and sanctions. An actor who accepts a gift automatically incurs the obligation to reciprocate the gesture (*li shang wang lai*). Actors usually keep records of the resource bundles received and given, particularly at ceremonies. So how does this principle apply to the categorical frame of interaction in the *guanxi* system?

As in most traditional societies, close kin in China are ideally perceived as fulfilling one another's needs without anticipating any reciprocity [39], which is why family members are not expected to keep tabs on any personal debts incurred by other members of the family. This logic applies beyond basic care-giving and also holds for transactions in the *guanxi* system: If a father asks a favor of his traditionally raised son, the son will seek to live up to the father's expectations and not ask him for any reciprocation. As mentioned earlier, family obligations depend on the "thickness" of blood, i.e., they traditionally are strongest between parents and children (and between father and son in particular).

The normative structure of reciprocation among friends and acquaintances is different from, and actually more refined than, reciprocation within the family. In what is termed the "norm of *renqing*" (*renqing faze*), a mandatory surcharge is added to each obligation incurred, requiring friends and acquaintances to return more than they have received [4, 40]. At no point in time are debt and credit accounts in a state of equilibrium. In spite of the difficulty of objectively calculating the value of resource bundles, an attempt to merely pay back the approximate amount received is considered a refusal of the relationship. Leaving actors considerable room to maneuver, the norm of *renqing* neither defines the exact time, nor does it specify the value of the reciprocation [2, 16]; only immediate or no reciprocation is prohibited.

As Gouldner supposes, a convention that inhibits complete repayment induces people to remain socially indebted to each other [41]; the resulting permanent imbalance prolongs their relationship indefinitely. When performed anti-cyclically, such an exchange pattern actually becomes beneficial. By deliberately incurring obligations that do not involve much personal effort—preferably when the gift or favor is of great importance to the recipient—actors can pile up a reserve of resources that may be brought into play in times of need. Similar to an insurance policy, the norm of *renqing* stabilizes the exchange system.

Norms, as beneficial as they may be, will emerge only if they meet a number of conditions [32]. Effective norm enforcement is one such condition. It hence comes as no surprise that surveillance and sanctioning mechanisms play a predominant role in the *guanxi* system. In order to encourage compliance with a norm, the *guanxi* network raises the individual cost of cheating members. This act is termed a *sanction*. Since *guanxi* networks are the result of exchanges based on interests in and control over three resources (*renqing*, *ganqing*, and *mianzi*), sanctions must be defined in terms of their loss. In the next section, the sanctions that exist in *guanxi* networks are presented: withdrawal of *mianzi* and/or network ostracism.

A non-reciprocating actor will be reputed to be an ungrateful person (*wang en fu yide xiaoren*), which means that his *mianzi* will be withdrawn by the *guanxi* network [42]. Due to a lower risk of being cheated, actors generally prefer to make exchanges with those who have attained a large amount of *mianzi*, i.e., they exclude any actors who are low in *mianzi*. When *mianzi* is withdrawn, the cheating actor needs to rebuild his *mianzi* from scratch by making exchanges on the basis of *renqing* and *ganqing* with other actors who have little or no *mianzi* themselves, hence incurring much higher uncertainty. In cases where withdrawing *mianzi* is an insufficient punishment, non-compliance will be sanctioned more harshly by the *guanxi* network, namely through ostracism (*paichi*). Delinquents will be scorned (*buli*) by the network members, and they will no longer be able to engage in any exchanges. Not only does the ousted network member lose all his outstanding *renqing* and *ganqing* (i.e., which other network members have not yet returned), but, most importantly, he also squanders the opportunity to engage in future exchanges within the network.

It can be concluded that the threat of sanctions is sufficient to attenuate the probability that a network member will act opportunistically. Capable of enforcing the obligations incurred from accepting resource bundles, sanctioning in the *guanxi* system is performed by what Malinowski terms “definite social machinery” [43]. From the normative framework of how obligations are made and reciprocated and how actors are sanctioned, it becomes clear that the *guanxi* system is a self-contained *institution* [16] rather than an informal mechanism created unintentionally (*feizhengshi zhidu xingde fangshi*) that would be subordinate to a market economy based on commercial law.

In spite of the prominent role that sanctions play in the *guanxi* system, traditional Chinese societies prefer mediation by human compassion to sanctions. People believe that “harmony in interaction must have primacy” (*he wei gui*), because it is the spiritual state one should aim at [12]. Since the invitation of a third party to

help resolve a dispute may sever the relationship between the two main parties, many Chinese people seek to settle disputes in a one-on-one way (*si liao*) and to straighten out (*li shun*) their relationship themselves. As *guanxi* networks are embedded in Chinese society, it seems safe to state that they actually have the “bite” of efficient sanctioning at their disposal, but its members will only apply sanctions if the ideal of harmony cannot be upheld.

Integration of *Guanxi* in Business

In China, social and business life are closely connected. As Chung and Hamilton note, “a number of studies have shown [that] Chinese businessmen prefer to use *guanxi* as a primary medium for business relationships” [2]. Similarly, Su et al. have empirically observed that *guanxi* is the “cultural way of doing business in China” [44]. In order to understand the effects of *guanxi* on business, its systemic elements must be integrated with the elements of a market economy. This chapter constructs the emerging notion of a hybrid socioeconomic exchange system in which individuals and firms interact. Within this hybrid framework, firms cannot arbitrarily choose to renounce elements of either system when conducting business. At the same time, individuals connect the firms with which they are affiliated, for individuals (in the roles of managers and employees) are “linking agents” within the *guanxi* system.

The impact of *guanxi* on business is best analyzed using the framework provided by *managerial economics*, a branch of the *theory of monopolist competition*. Based on the observation that in many industries, companies’ products are distinct in variables other than price (or quantity), the theory of monopolist competition was developed in the 1920s and 1930s—most prominently by Edward Chamberlin (1899–1967)—as a means of overcoming the classic dichotomy of pure monopoly and perfect competition [45]. Managerial economics explores conflicting cause-effect relations in oligopolistic processes, and firms apply it in an attempt to deactivate competition and thereby increase their performance in terms of market shares and profitability. Roughly speaking, market shares and profitability are determined by a firm’s ability to produce economic value relative to its competitors [46].

Economic value-created represents the difference between the value that resides in the product and its costs. The former, i.e., the value that resides in the product, refers to a particular benefit that consumers perceive for a product. In monetary terms, this value denotes the maximum amount the consumer is willing to pay for one unit. The cost of a product refers to the value of inputs that a firm sacrifices in the process of creating this benefit, i.e., for converting raw materials into components and for assembling components to produce the finished good [46].

Firms offering heterogeneous products compete in terms of prices as well as quality (representing all non-price variables). Since the resources exchanged in the *guanxi* system hold an inherent value for their recipients, they must be considered as independent action parameters that are related to the action parameters of the

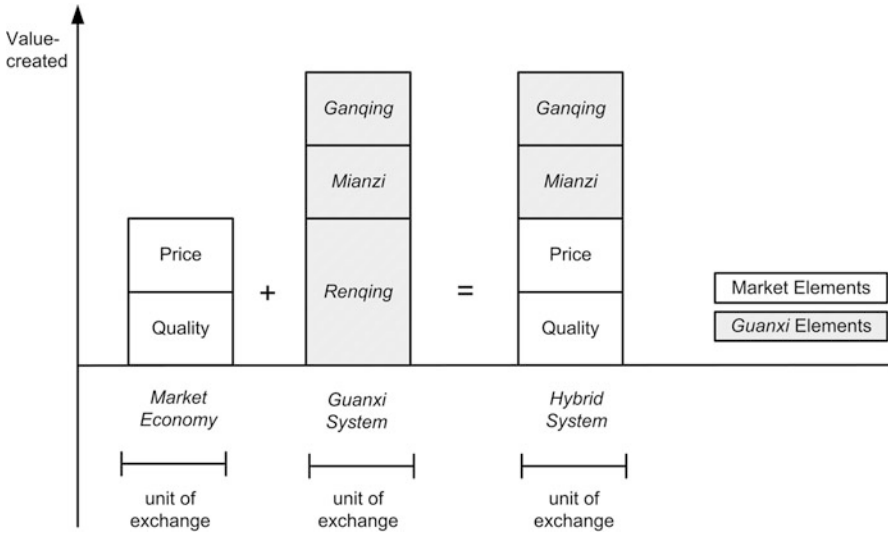


Fig. 48.3 Components of value-created in a hybrid system

market economy. As consumers purchase products in a market economy in order to satisfy their instrumental interests, the market-economy action parameters of *price* and *quality* coincide with (instrumental) *renqing* in the *guanxi* system. The affective and normative value of *ganqing* and *mianzi*, however, is not available through market exchanges; consumers can only appropriate these additional benefits in the course of exchanges in the *guanxi* system. Figure 48.3 elucidates this resulting hybrid exchange system, in which each unit of exchange has four action parameters: price, quality, *ganqing*, and *mianzi*.

For the sake of conceptual clarity and to simplify comprehensiveness, the term *guanxi* will be used in the following discussion to describe the additional resources of *ganqing* and *mianzi* as non-market action parameters. Such contrasting of market and non-market action parameters greatly enhances the precision of the discussion.

Value is created as goods move along the vertical chain, which is therefore referred to as a *value chain*. In his 1985 bestseller, *Competitive Advantage*, Michael E. Porter deconstructs a firm by depicting it as a collection of *value-creating activities*, i.e., physically and technologically distinct elements and tasks executed within the company (e.g., operations, marketing and sales, and human resource management) [47]. The process of value creation is optimal when all the elements and tasks required for a product that meets customer requirements consume a minimum amount of resources. In this case, the gap between consumer benefits and the cost of performing the activities widens, and the profit margin increases.

Considering that the *guanxi* of business managers and employees stretches beyond the boundaries of their firm, the notion of the external must be incorporated into analyses. This step is best achieved by extending Porter’s value-chain model by including three types of external linkages: relationships with suppliers and

customers (*vertical guanxi*), relationships with competitors (*horizontal guanxi*), and relationships with authorities (*lateral guanxi*).

Firms that attempt to develop effective *guanxi* business strategies need to meticulously distinguish these three types of *guanxi* and their impact on primary and supporting value-chain activities (for a detailed analysis, see Langenberg [19]). In order to scrutinize ethical implications, we shall explain the impact of *guanxi* on a firm's business performance, taking one example of *ganqing* in vertical *guanxi* and one example of *mianzi* in lateral *guanxi*.

Consider the following situation of a favorable price paid to a vertical *guanxi* partner: A bootmaker can choose to purchase suede leather from two suppliers who both deliver the same high-quality leather. Supplier A is an international company with a large market share and, due to economies of scale and the resulting advantageous cost structure, is able to supply leather at low prices. Supplier B is an old friend of the family; everyone enjoys spending time together, and *ganqing* is high. His prices, however, are slightly higher than supplier A's. Now, in a market economy, where purchasing decisions are made on the basis of price and quality, the bootmaker would purchase from supplier A. In a hybrid system, the bootmaker will purchase from supplier B, because the benefit of receiving *ganqing* when doing business with a friend overcompensates the slightly higher price.

Consider another very different example now: *mianzi* in lateral *guanxi*. Firms have a vested interest in securing favorable tax treatment on their corporate income tax (CIT). While the standard CIT rate in China is currently at 25%, a preferential tax rate of 15% is levied on the income of high-technology enterprises. Applications are filed with the provincial Technology & Science Committee (*kexue jishu weiyuanhui*), which reviews them in its working groups and approves suitable ones through its committee head. Upon approval, a qualification certificate (*gao xin jishu qiye zige*) valid for 3 years is issued to the applicant, who then files it with the tax authority in charge of the firm's records. In order to qualify as a high-technology enterprise, businesses must have a required minimum of intellectual property rights ownership, research and development (R&D) expenses, and a share of revenues generated from high-tech activities (60%), among other conditions. The rules of what sales revenues are booked as "high-technology revenue" are quite flexible, and the qualification of expenses as "R&D expenses" allows for a degree of interpretation. Hence officials have wide discretionary power regarding the high-technology CIT break (and countless other taxes, for that matter). It is not surprising that lateral *guanxi* therefore plays a major role in tax issues.

Against this backdrop, consider the case of a low-end motor manufacturer located in Qingdao City whose share of revenues generated from high-tech activities is somewhere in the range of 55–60%, depending on the method of calculation. Suppose that the chief engineer of the company is friends with the head of Shandong Province Technology & Science Committee. Both of them went to the same school, and they regularly get together within the same network of friends and acquaintances. As the *guanxi* network clearly expects friends with good *ganqing* to support each other, the Shandong Province Technology & Science Committee applies the share of 60% (rather than 55%) and makes it easier for the motor

manufacturer to obtain the qualification certificate it needs. This exchange showcases the benefits of lateral *guanxi*: the tax break of 10% subsequently granted to the motor manufacturer as a firm; and the increase of the head of the committee's personal *mianzi*, because he abided by the *guanxi* norm of reciprocity.

The above examples corroborate the claim that *guanxi* generates value for the parties involved who have an economic incentive to avail themselves of *guanxi*. Although this finding has already met with wide empirical support, a more differentiated perspective is needed. Firstly, certain firms with particular attributes in terms of their ownership structure, origin, company size, time in business, and technological competitiveness are expected to dampen their performance with *guanxi*-based business strategies (for such exceptions, see Langenberg [19]). Secondly, the costs that managers and employees incur when using their *guanxi* for the purposes of the organization also need to be considered; firms for which *guanxi* makes little economic sense will seek to avoid such strategies.

Implications for Business Ethics

Now that it has been established that using *guanxi* makes economic sense for certain types of companies, just one question remains: Is the application of *guanxi* in business permissible in ethical terms, both from Chinese and Western perspectives?

Generally speaking, business ethics is the application of ethics to business behavior. Although managers and employees are sometimes tempted or even encouraged to apply special or weaker ethical rules to business situations, society does not permit any exceptions. If dishonesty, for instance, is considered unethical in social life, then it is unethical in business as well. It is important to note that ethics are not determined by common practice, but by reflected behaviors rooted in the culture to which actors appeal. This interrelation between culture and ethics inevitably leads to conflicting viewpoints in the ethical understanding of different cultures. In fact, the more ingrained and culturally derived a practice is, the greater is the likelihood of cross-cultural dilemmas occurring [44].

Considering that *guanxi* exchanges are among the most powerful examples of a culturally ingrained practice [26], international firms doing business in China can expect to face ethical quandaries. Chinese business practitioners and scholars who wish to live up to their moral obligations, on the other hand, must be careful not to conveniently accept *guanxi* as being culturally imposed, but rather evaluate critically whether this common practice actually conforms to existing ethical norms in China.

It is useful to distinguish two major views of morality: *deontic theories* and *virtue theories*. The former assess the morality of actions and are divided into two contrasting views: *deontological ethics* and *consequentialist ethics*. Deontological ethics, most prominently advocated by John Locke (1632–1704) and Immanuel Kant (1724–1804), judge acts by the dimensions of rights and duties and hold that certain acts cannot be morally justified, irrespective of how beneficial their outcome might be. An act is therefore considered to be right if it conforms to moral norms

that have to be obeyed by everyone. In stark contrast, consequentialist ethics, the paradigm case of which is utilitarianism, evaluates actions in terms of their outcome. Put forward by John Stuart Mill (1806–1873) and Jeremy Bentham (1748–1832), classical utilitarianism weighs positively against the negative effects on all affected individuals, holding that an action is moral only if it maximizes the good. Unlike deontological and consequentialist ethics, which are obligation- and outcome-based, respectively, *virtue ethics* (or *aretaic ethics*) elaborate on the traits and character that people should try to achieve. Aristotle (about 384–322 BC) and Confucius (about 551–479 BC) were both eminent advocates of virtue.

Confucian Perspective on *Guanxi*

Business ethics has slowly entered the public discourse in China; academic interest in this field of research began in the late 1980s, and the first surveys on Chinese business ethics were conducted as recently as the mid-1990s. Despite this short academic history, many Chinese scholars and business practitioners rarely apply the existing international framework, but believe that only a uniquely Chinese concept (*you zhongguo tese de gainian*) is able to reflect and grasp the fundamental ethos of business ethics. Following the general consensus that the philosophy of Confucius (*Kongzi*) provides for China's most influential moral heritage, the subsequent paragraphs consider *guanxi* exchanges in terms of Confucian ethics. It is worth noting, though, that heterodox cultures, such as Buddhism and Daoism, had an impact on Chinese civilization that is frequently underestimated [48].

A general understanding of the societal context in which Confucius lived is supportive of the appreciation of the role and importance of its moral imperatives. Confucius was born in an “ancient and troubled culture” [49] during the downfall of the Eastern Zhou empire (770–221 BC). This empire had little power and was no longer able to control the semi-autonomous vassal states that had come into being after the removal of the (Western) Zhou dynasty (1050–770 BC). When the hegemony lost their ruling power, there was constant discord between rival kingdoms. In this subperiod of Eastern Zhou, known as the Warring States Era (475–221 BC), state rulers started making use of officials instead of nobles for administrative purposes. The uprooted members of the lower aristocracy, including Confucius, began touring the empire to advise the feudal dukes who had managed to remain in power. Confronted with military warfare, political disorder, and social instability, many of these thinkers began to look for an ideal structure for society.

Eventually, Confucius turned to the teaching of young scholars, thereby fathering the intellectual school that the Chinese refer to as the “School of Ru” (*rujia*). After his death, which marked his near apotheosis, the 77 scholars who are said to have successfully received the Master's teachings completed his philosophy. Although few of his scholars became influential—most of them came from a life in cramped conditions—Confucianism persisted and, indeed, grew dominant during the Han dynasty (206 BC–220 AD), which used knowledge from ancient texts to legitimize its autocracy [50].

Confucius's philosophy did not contain a lot of new ideas. Its integration of rituals, political power, and the worshipping of the ancestors has already been a part of Chinese philosophy since the Shang dynasty, a fact that the Master fully acknowledged: "I transmit but do not innovate; I am truthful in what I say and devoted to antiquity." (*lun yu*) [51].

Still, the search for an incontrovertible framework of Confucian elements has kept sinology scholars busy for over a hundred years. Also, non-sinologists in need of assumptions for grasping Chinese cultural elements for their respective fields of research have made inappropriate suggestions, drawn unwarranted parallels, and jumbled up terms. The next few paragraphs will therefore begin by sketching the structural elements of classic Confucianism based on the seminal accounts [49, 50, 52, 53].

As stated earlier, Confucian ethics belong to the school of virtue ethics. As such, they consider a person's moral character and virtues to prevail over existing rules and duties. This understanding is appropriately illustrated in the following excerpt from the *Analects* (*lun yu*) [53]:

The Master said: The linen cap is what is prescribed by the rules of rituals, but now a silk one is used. It is more economical and I follow the common practice (. . .) The rules prescribe that people bow below the hall, but now the practice is to bow after ascending the hall. That is arrogant. I follow the rule in spite of the common practice.

Harmony is the greatest of all moral virtues (*lun yu*) [51]. Elaborating on its importance, Confucius understood harmony as the ultimate purpose of (social) life. Closely related to harmony is the expression of the senses, i.e., emotions (*qing*). Depending on the extent to which emotions are developed, individuals fall into three categories: while good people have the optimum configuration of emotions and bad people the opposite, most people belong to the middle category, in which some emotions are overdeveloped and others are underdeveloped.

Rites and ritual propriety provide the means to achieve harmony. Confucius assumed the existence of a proper way for humans to behave, and hence for society to be organized. This proper way, *li*, is typically translated as "rites" or "ritual propriety." Confucius changed the original meaning of *li*, i.e., an ancestral offering, to what he believed glued ancient society together: a certain etiquette that humans were supposed to follow. Based on the assumption that individuals are never isolated entities, the Confucian sociocultural structure assigns individuals hierarchical positions that require the performance of ascribed duties (*bu xue li, wu yi li; lun yu*) [51]. Even though specific rituals had long since lost their function, it may have been continued compliance with *li* that instilled Confucianism with its extraordinary persistence.

In a hierarchy of fixed moral positions, which are not questioned in terms of legitimacy, maintaining harmony requires mutual responsiveness. The division between moral positions is complemented by specific concepts that operationalize *li*. The most important of these concepts is *ren*. Because the interpretation of the Master's "love for one's fellow men" (*ai ren; lun yu*) [51] obviously is not very clearly defined, there have been debates concerning what *ren* actually means ever since the time of Confucius. The original meaning of *ren* in the Zhou dynasty—i.e.,

philanthropy—was changed by Confucius to something that can be translated as “benevolence.” In order to attain benevolence, Confucius expected individuals to restrain themselves and thus observe the rites (*ke ji fu li; lun yu*) [51].

As the fundamental basis that gives rise to and instills all virtues, benevolence comprises several principles of behavior in interaction; what is common to these principles is that they are vertically directed and based on positions. In the family sphere, the most imperative demonstration of benevolence is filial piety towards one’s parents, as expressed by the Confucian concept of *xiao*. The character *xiao* already occurs in bronze inscriptions from 1000 BC, indicating the son’s worship of his late father. As it mostly appears in the first two chapters of the Analects, which are more recent, *xiao* might not have been used by Confucius himself, however. Whatever the case, *xiao* came to mean serving the living parents only after the death of Confucius. While the concept of *xiao* addresses economic concerns in a primarily rural society—the authority of the eldest male was vital for the extended family to operate as a unit of production and consumption—it also includes emotional support. Furthermore, its obligations persist even after the death of one’s parents, after which the eldest son was prohibited from holding any official post for a mourning period of 3 years, requiring him to interrupt or even completely abandon his career.

Benevolence and ritual propriety were further elaborated by Mencius (*Mengzi*, 379–289 BC), a philosopher who studied in the academic lineage of Confucius’ grandson. Mencius described them as the cardinal virtues (*de*) of Confucian ethics together with the concepts of appropriateness (*yi*), straightness (*zhi*), and, later, trust (*xin*). These virtues find their application in *wu lun*, i.e., the five relationships to which every individual is assumed to be subjected [54]. *Wu lun* classifies four sets of superior–subordinate relationships, namely father–son (*fu zi*), ruler–subject (*jun chen*), husband–wife (*fu fu*), and elder–younger brother (*zhang you*), as well as an equal relationship between friends (*peng you*). Each relationship is governed by a particular norm: closeness (*qin*) between father and son, justice (*yi*) between ruler and subject, the separation of (gender-specific) spheres between husband and wife (*bie*), proper order between elder and younger brother (*xu*), and trust between friends (*xin*). The attempt to arrange these five potentially competing forces, with a focus on the first and the second relationship, became one of the central doctrines of Confucianism.

Although the word *guanxi* is not found in the Chinese classics, the structure of virtues and obligations in Confucian (or more precisely, Mencian) *wu lun* is highly compatible with the norms of reciprocity in the *guanxi* system, because appropriate conduct is determined by social positions: exchanges among friends are compatible with the Confucian virtue of trust due to the fact that debts and credits—in accordance with the norm of *renqing*—are never balanced. The traditional gift exchange in the “Papaw Story” (*mu gua*) of the Book of Songs (*shi jing*), in which each gift (a quince, a peach, and a plum) is reciprocated with gifts of superior value (three different gems), perfectly illustrates the similarity of the emphasis on reciprocity in Confucian ethics with the norm of *renqing* described in the respective subchapter [55]. It should be noted that the preference for harmony in dispute resolution in *guanxi* networks also largely agrees with Confucian thinking.

Most importantly, Confucian ethics—unlike occidental ethics—accommodate the preference of members of the *guanxi* network (family, friends and acquaintances) to outsiders. Such preference conforms to the Confucian demand that benefits be allocated based on the virtue of benevolence, which depends on the nature of the social relationship [27]. People will feel more compassion for and show more benevolence to close family members than to distant individuals; the notion of equal concern for all people has never been part of Confucian teachings. This is in line with the observation that the Chinese pay great attention to the obligation and responsibilities that go with personal relationships [56]. Evidently, the actors in the above examples of vertical and lateral *guanxi* are acting ethically from a Confucian standpoint.

These findings are particularly insightful in light of the popular claim that Chinese ethics is “situation-specific” [13], i.e., acts are judged by society on a case by case basis rather than universal principles—obviously, this claim may be true in only a loose and trivial sense. Granted, the rules are more complicated than in Protestant ethics, for instance, in which all individuals consider themselves subject to the same set of social norms. However, as demonstrated above, it would be wrong to conclude from these multiple, non-equality standards that Chinese ethics are not based on universal principles: Confucians would hardly have thought that the son’s obedience towards his father should apply in certain situations only. Similarly, the Chinese sense of fairness (*gongping gan*) generally holds that “outsiders are not important” (*wuguan jinyao*), which perfectly explains the common phenomenon that network members ruthlessly take advantage of outsiders. As wrong as it would be to deny Chinese ethics a high degree of casuistry, which makes obligations contingent upon power relations and personal circumstances, it would also be incorrect to argue that no abstract, universal criteria exist. If *guanxi* stands in contrast to the principle-based theory of ethics, this contrast is not as sharp as is often thought.

Western Perspective on *Guanxi*

In spite of the fact that deontological Judeo-Christian morality dominates Western societies, economic systems and actions in the West are mainly evaluated using the consequentialist concept of utility. *Utility*, according to Bentham, is “that property in an object whereby it tends to produce benefit, advantage, pleasure, good or happiness (...) or (...) to prevent the happening of mischief, pain evil, or unhappiness to the party whose interest is considered: if that party be the community in general, then the happiness of the community: if a particular individual, then the happiness of that individual” [57]. The system or action that generates the largest amount of utility (or *social welfare*) for all the actors involved is to be preferred. Certain drawbacks of this approach are acknowledged and accepted, such as the difficulty to accurately measure utility, or the fact that the rights of minorities can be overridden by the majority. The upcoming discussion will follow the utilitarian approach.

The ethical assessment of *guanxi* exchanges from a utilitarian perspective must consider the distribution of control and ownership of exchange resources as well as the economic and institutional environment in which exchanges take place. It will become evident that *guanxi* exchanges are considered ethical (only) if control and ownership of exchange resources coincide and if the environment is characterized by economic and institutional uncertainty. While these institutional conditions may have been prevalent at the time that Confucius lived in, they have significantly changed since then, and so has the ethical assessment of *guanxi*.

If control and ownership of exchange resources coincide, actors will allocate resources in an optimal manner, i.e., each actor will only conduct exchanges that increase his total utility. This is the case in the earlier example of vertical *guanxi* where the bootmaker trades a small gap in *renqing* (profit) for *ganqing*, which increases social welfare in terms of market and non-market resources (price, quality, *ganqing*, and *mianzi*). The opposite result ensues if control and ownership of exchange resources do not coincide: Where the recipient of the benefits (e.g., of higher *ganqing* or *mianzi*) does not coincide with the bearer of the cost (e.g., unfavorable price and lower quality), the so-called *principal-agent problem* arises in which actors only consider the costs that they will need to bear themselves [58]. Such situations commonly occur if a principal (e.g., an organization) charges an agent (e.g., an employee) with the task of executing specific (economic) transactions on its behalf. When dealing with vertical, horizontal, or lateral partners, agents will be tempted to act in their own interests, which often differ from those of the principal. The objectives of the principal and agent are perfectly aligned, and the principal-agent problem is therefore precluded in the case of a self-employed worker or an entrepreneur who is both the owner and manager of his firm.

Since ownership and control of resources never coincide in the case of horizontal and lateral *guanxi*, such *guanxi* exchanges will always produce principle-agent problems, yielding a less than optimal allocation of resources and a loss of social welfare. Against this backdrop, consider the earlier example of the high-technology CIT break: the low-end motor manufacturer as a firm and the head of Shandong Province Technology & Science Committee both benefit from the transaction, while the tax authority (or rather the taxpayers) bear(s) the cost. In horizontal *guanxi*, exchanges also create value only for the parties who are directly involved; the costs of such exchanges are borne by another party, namely the consumers.

Another highly relevant element in the utilitarian assessment of *guanxi* is the level of uncertainty of the economic environment. This is because the *guanxi* system, as a structural alternative to market exchanges under commercial law, yields lower transaction costs than market economies in an uncertain environment, and vice versa [25].

Going back to Coase's seminal work "The Nature of the Firm" [59], and further elaborated by Williamson [60], *transaction costs* describe the cost incurred by actors in making an economic exchange, most importantly search and information costs (to identify a suitable exchange partner), bargaining costs (to negotiate a contract), and policing and enforcement costs (to formulate the contract and enforce the execution of its terms). In an uncertain environment, the consideration

of all relevant contingencies in the negotiation, formulation, and enforcement of a formal contract is very difficult; hence the transaction costs of market exchanges are high. The enforcement of contracts is particularly problematic when the environment lacks coherent commercial laws and effective institutions. *Guanxi* exchanges, on the other hand, do not require any complex formal contracts, because the threat of sanctions by the *guanxi* network is sufficient to attenuate the risk of opportunistic behavior (see the section on “Norms and Sanctions” above). The affective component of the *guanxi* system (*ganqing*) further reduces the incentive to cheat. In addition, *guanxi* members are often able to mediate conflicts in good faith, rather than inviting a third party to help resolve their dispute, which would sever the relationship and incur additional costs for both parties.

The transaction-cost advantages that go with the *guanxi* system are traded off, however, by the significantly higher costs associated with the socializing that is required to cultivate *mianzi* and *ganqing*, and by the opportunity costs from the network’s bias towards old business partners, which produces a delay in allowing new members with specific or superior skills to join the network. Hence, *guanxi* exchanges outperform market transactions in terms of efficiency only in an uncertain environment lacking the formal institutions that enforce contracts based on commercial law. Some scholars have actually explained the remarkable ability of *guanxi* networks to deter and manage non-compliance with the weakness of such institutional arrangements in China [16].

It is important to note that *guanxi* networks and the market in the above analysis are assumed to be mutually exclusive institutions, although they actually exist in parallel. Ethically speaking, when market and *guanxi* exchange systems coexist, gift-giving in return for preferential treatment obviously becomes a relative issue [16]. Notwithstanding this, it seems logical to conclude that, in terms of macroeconomic efficiency, such coexistence is actually worse than the isolated existence of either of them. If actors can arbitrarily select the more favorable institution, for instance in dispute resolution, the efforts made by both institutions to reduce transactional uncertainty are undermined. In theory, it would probably be best to make use of the specific advantages of both institutions in a particular setting, i.e., in solving minor problems using *guanxi* and settling major disputes using the legal system.

As we have shown, *guanxi* exchanges can be considered ethical only if control and ownership of resources coincide and if exchanges take place in an uncertain environment. Interestingly, this scenario resembles the socioeconomic situation during the Warring States Era when Confucius developed his philosophy: In this environment of socio-political instability, China was organized as an “agricultural village society” (*cun luo shehui*), with almost all Chinese people either being farmers or making a living from activities related to the primary sector. Social relationships were primarily based on the “culture of blood relationships” (*qinyuan wenhua*). Rural exchanges mainly took place between a few families (*xiao nong*), the members of which formed the *guanxi* network. The personalistic loyalties and interpersonal obligations at the time had a similar structure to those in the *guanxi* system, and it seems likely that they were not just ethical to Confucians, but would probably have seemed so by utilitarian standards as well.

Today, the environment looks much different: the share of the labor force occupied in agriculture-related areas is much lower and is dropping fast. What's more, the size and complexity of modern organizations requires their owners (e.g., shareholders) to entrust specialized agents (e.g., managers) with control over their resources. Uncertainty in the market exchange environment has also been significantly reduced. China has now spent half a century in peace and relatively high social and political stability. Great progress has been made in terms of law enforcement; arbitration commissions (such as the China International Economic and Trade Arbitration Commission) allow for efficient settlements of trade disputes, and national as well as international quality standards protect customers from hidden defects in products. These developments have certainly rendered *guanxi* exchanges less efficient than market exchanges, and therefore they are not ethically acceptable from a utilitarian perspective today.

Conclusion

This chapter has established that the *guanxi* system is unique in terms of its structural features and ubiquity. Essentially motivated by a means-ends calculation, *guanxi* exchanges are distinct from purely economic transactions in that affection and observance with social norms are required. From the normative framework of how obligations are made and reciprocated, and how non-complying actors are sanctioned, it is apparent that the *guanxi* system is a self-contained institution that coexists with a market economy. By considering the special nature of *guanxi*, the analysis at hand provides local and multinational firms operating in China's socioeconomic system with the theoretical foundations needed to define their moral stance towards the utilization of *guanxi* for business purposes.

Two predominant schools of thought—Confucian virtue ethics and Western utilitarian ethics—yield different conclusions. While *guanxi* meets the ethical terms of Confucianism, it does not comply with Western utilitarian principles. The conflict between both sets of morals can be elucidated with the case of preferential treatment: In Western utilitarian ethics, only those acts are considered moral that maximize the good of all individuals. Preferring a friend in business is unethical, as it undermines functional efficiency; hence such behavior and is associated with pejorative terms like “nepotism.” In Confucian ethics, on the contrary, it is imperative to treat friends and family members better than strangers, and to share information with the *guanxi* network at the expense of out-groups. Exposing a close *guanxi* partner to open competition is considered disloyal, because equal opportunity worsens the situation of friends who perceive a relatively higher chance of success as appropriate.

The above incompatibilities have been empirically surveyed [61, 62]. Based on utilitarian principles, Chinese managers were found to be relatively unethical, while in terms of “human heartedness”—operationalized through the managerial attitude towards group harmony and sympathy for group members—they were more ethical than their American counterparts. This reasoning explains the observation that Chinese businessmen tend to complain that “foreigners have

no human feelings” (*waiguoren meiyou renqing weier*), a complaint that, after all, is analogous to the Western grumble that “[Chinese people] can’t be trusted, because they always help their friends” [25].

The majority of modern businesses, which are run by employed managers and operate in a fairly certain environment, must decide which of the two incompatible schools of thought they should follow. It seems safe to assume that companies operating on their home turf will go with the moral framework that dominates in their own culture. That said, the decision is more complex for Western firms operating in China and Chinese firms operating abroad, respectively. The controversy about how the ethical principles of one cultural region apply to another cultural region is reflected in the popular debate on *ethical relativism* vs. *universal ethics*. Proponents of the former view argue that (conflicting) ethical principles may be right at different locations at the same time. This stance is regularly referred to as the “when in Rome [do as the Romans do]” approach to ethics [63]. Universal ethics claim that morals can be defined in absolute terms. Based on reflection about what is right and wrong, globally, the best concept should be chosen as a general rule. While a general consensus on a universal set of ethics would solve the controversy, it actually seems unlikely that the process of globalization will bring about such an agreement in the near future: many multinational companies and various international institutions (like the OECD and ILO) have long been attempting to agree upon a single code of ethical business conduct that curtails unethical business practices. Not surprisingly, *guanxi* practices have not been included in any of these proposals.

Cross-References

- ▶ [Aristotle and Business: An Inescapable Tension](#)
- ▶ [Aristotle and the Corporation](#)
- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Confucian and Legalist Basis of Leadership and Business Ethics](#)
- ▶ [Confucian Virtues and Business Ethics](#)
- ▶ [Daoism and Business Ethics](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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Abstract

This chapter presents the fundamental features of Confucian ethics. Next, it applies Confucian ethics to the business challenges of culture, strategy, customer/supplier relationships, operations, and innovation. It closes with a discussion of how Confucian ethics might have mitigated the collapse of the US financial services industry.

Introduction

There were four things which the Master taught, – letters, ethics, devotion of the soul, and truthfulness. [1]

Over the last few years, few societies have escaped scandalous business behavior. The collapse of the global economy began in the USA with the subprime mortgage crisis. Chinese companies were found incorporating harmful ingredients into human and pet food. Toyota, the benchmark of Japanese quality manufacturing, was forced to recall thousand of automobiles over safety issues long after the company knew of the defects. These are merely some of the examples of poor managerial decision-making and unethical behavior. They also highlight the need for good management and ethical business behavior. This chapter will argue that Confucianism, an ethical system over two millennia old, can contribute to the management of successful and ethical business organizations.

Before we begin the discussion of the applicability of Confucianism to management, it is helpful to briefly suggest why business organizations are important in the

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twenty-first century and why ethical business behavior is crucial. The twentieth century witnessed the development of the large business enterprise which played a central role in organizing economies and industries [2]. While there is no question that entrepreneurs play important roles in economic development and innovation [3], the fundamental business dynamic is innovation and growth. If an enterprise does not seek growth, it has a “going out of business strategy.” Therefore, the small business should think big and the large business must defend and advance its economic position. There is no reason to think this process will cease in the twenty-first century, and this dynamic combined with technology-driven globalization will make the business enterprise even more important to economies and societies.

Why Confucianism as a Business Ethic?

Perhaps with the exception of Marxism, which subordinates human behavior to inexorable historical laws, ethical systems demand individual choice. We are offered, for example, systems ranging from Nietzsche’s egoism at the one extreme to theological altruism at the other. In between, we can choose from a variety of ethical systems from virtue ethics to such offerings as Kantianism, Utilitarianism, and the ethics of Rawls and Nozick, to name just a few. They all are attractive in some way. Egoism and Nozick’s libertarianism support the pursuit of unfettered self-interest found in free market capitalism. The application of unfettered egoism, however, has contributed to many of the economic crises throughout the history of capitalism, including the most recent global financial crisis, and a single-minded pursuit of self-interest by individual organizational members can be disastrous to organizational success. Kantianism demands categorical ethical behavior, while business exists in a world of conditions. Rawls identifies general principles of governance leaving local institutions, including business organizations, great freedom in self-organization. Utility requires the consideration of every possible outcome before selecting the one that will provide the best result, creating an impossible standard, since even in the best of circumstances, well-intentioned and well-trained people can find it difficult to anticipate the unexpected.

Businesses are special-purpose organizations characterized by hierarchy, mission, and division of labor requiring cooperative behavior among members. In publically held companies, ownership is held by a diffuse group of shareholders and a professional management group is responsible for day-to-day activities and the overall success of the enterprise. This leadership group determines the mission of the organization, its future direction, strategy, and objectives and identifies and allocates the resources required to achieve them. Lower managerial levels and employees are responsible to carry out the mission and achieve the objectives assigned by senior management. Division of labor is used to rationally divide the organizational tasks into jobs, integrate related jobs into groups or teams, and these into larger organizations designed to accomplish the necessary functions that will ensure firm success. In general, the larger the organization the more complex it is.

A significant managerial challenge is the coordination of a complex entity composed of many different structures and groups composed of numerous employees.

A business must pay attention to both its internal and external environments. A successful business crafts its organization in response to its environment. Well-managed enterprises are inwardly/outwardly focused where the business environment is composed of many entities, including, but not limited to, the various customer segments in its chosen market, competitors, suppliers, other businesses in its industry that are neither competitors nor suppliers, and governmental and social groups interested in its behavior. Management must focus on the resources and activities that will ensure success and minimize risk to the business.

This chapter argues that Confucian ethics is a practical and appropriate ethic for business because its precepts and principles are suited to business organizations and processes and possess the flexibility for application to businesses regardless of size or complexity. The chapter will begin with a discussion of the fundamental aspects of Confucianism and then apply Confucian ethics to the business challenges of strategy, innovation, supplier and customer relationships, and organizational structure and complexity. It will conclude with a brief discussion of how Confucian ethics might have mitigated the recent financial crisis.

Confucian Fundamentals

Confucianism is a social ethic which encourages a lifetime pursuit of moral excellence. Everyone possesses the inherent capability to develop into an autonomous and self-governing person. As Mencius observed:

The heart of compassion is the germ of benevolence; the heart of shame, of dutifulness; the heart of courtesy and modesty, of observance of the rites; the heart of right and wrong, of wisdom. Man has these four germs just as he has four limbs. For a man possessing these four germs to deny his own potentiality is for him to cripple himself; for him to deny the potentialities of his prince is to cripple his prince. If a man is able to develop all these four germs that he possesses, it will be like a fire starting up or a spring coming through. When these are fully developed he can take under his protection the whole realm within the Four Seas, but if he fails to develop them, he will not be able to even serve his parents. [4]

Mencius said, All the ten thousand things are there in me. There is no greater joy for me than to find, on self examination, that I am true to myself. Try your best to treat others as you would wish to be treated yourself, and you will find that this is the shortest way to benevolence. [4]

It requires the individual to develop into a person of character and the person of character, or superior person in Confucian nomenclature, is one who, through study and practice, embodies virtue and applies his/her virtue to the various situations encountered in daily life. The superior person constantly seeks self-improvement because only through self-assessment and improvement can the person of character continue to develop morally. Confucianism recognizes a fundamental truth about morality: only people of character can be good consistently. The petty and mean man according to Confucius may from time-to-time manifest good behavior, but he

is not a person of character because he will demonstrate bad behavior the rest of the time. Since the superior person is morally dependable, this individual is essential to moral and successful relationships, organizations, and societies. Confucianism is not a sanguine morality. It is highly disciplined, understands human foibles and shortcomings, and realizes moral understanding is difficult to achieve. Constant moral behavior is challenging. While it appreciates law and regulations, it understands, more importantly, that law and regulations are ineffective without good people. Being good is both difficult and a conscious choice.

As a social ethic, Confucianism focuses on the individual in the situation within which a person must act. If the person understands moral behavior correctly in the situation, the person should properly understand and execute the appropriate behavior. According to Confucius, there were nine attributes of a superior person:

Confucius said, “the superior man has nine things which are subjects with him of thoughtful consideration. In regard to the use of his eyes, he is anxious to see clearly. In regard to his ears, he is anxious to hear distinctly. In regard to his countenance, he is anxious that it should be benign. In regard to his demeanour (sic), he is anxious that it should be respectful. In regard to his speech, he is anxious that it should be sincere. In regard to his doing business, he is anxious that it should be reverently careful. In regard to what he doubts about, he is anxious to question others. When he is angry, he thinks of the difficulties (*his anger may involve him in*) sic. When he sees gain to be got, he thinks of righteousness.” [1]

The superior person is seeking both internal and external understanding.

We must develop the qualities of the superior person further. The superior person is a thinking and learning individual. Hall and Ames argue that a particular type of thinking is important to individual moral development. Thinking is “a set of interrelated processes associated with “learning,” “reflecting,” “realizing” and . . . living up to one’s word” [5]. Learning is not abstract but practically focused on an effort to understand social values and transmitting them to others. Reflecting requires an individual to understand differences in situations and approach situations knowledgeably and skillfully rather than mechanically. Realizing “refers to the propensity for forecasting or predicting the outcome of a coherent set of circumstances of which the forecaster himself is a constituent and participatory factor” [5]. Living up to one’s word is “the claim that one has the acquired ability, acumen and resources to make real what one says” [5]. Learning, reflecting, realizing, and living up to one’s word are the underpinning of the superior person and the source of the knowledge, self-cultivation, and self-improvement necessary to the proper engagement with the world.

According to the *Great Learning*:

1. What the Great Learning teaches is—to illustrate the illustrious virtue; to renovate the people; and to rest in the highest excellence. . . .
3. Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *the Great Learning*.
4. The ancients who wished to illustrate the illustrious virtue throughout the kingdom first ordered well their own states. Wishing to order well their states, they first regulated their families. Wishing to regulate their families, they first cultivated their persons. Wishing to cultivate their persons, they first rectified their hearts. Wishing to rectify their hearts, they first sought to be sincere in their thoughts. Wishing to be sincere in their thoughts, they

first extended to the utmost their knowledge. Such extension of knowledge lay in the investigation of things. . . .

5. From the Son of Heaven down to the mass of the people, all must consider the cultivation of the person the root of *everything besides* [1].

The Confucian superior person is also a person of virtue. In Confucianism, the cardinal virtue is *ren*, usually translated as benevolence, humaneness, or sincerity.

1. Fan Ch'ih asked about benevolence. The Master said, "It is to love *all* men." He asked about knowledge. The Master said, "It is to know *all* men."
2. Fan Ch'ih did not immediately understand.
3. The Master said, "Employ the upright and put aside all the crooked;—in this way the crooked can be made to be upright."
4. Fan Ch'ih retired, and, seeing Tsze-hsiâ, he said to him, "A little while ago, I had an interview with our Master, and asked him about knowledge. He said, 'Employ the upright and put aside all the crooked; —in this way the crooked can be made to be upright.'"
5. Tsze-hsiâ said, "Truly rich is his saying!"
6. Shun being in possession of the kingdom, selected among all the people, and employed Kâ-yao, on which all who were devoid of virtue disappeared. T'ang, being in possession of the kingdom, selected from all the people, and employed î Yin, and all who were devoid of virtue disappeared [1].

Benevolence represents a very important attitude toward others and helps shape behavior toward proper social interaction. Benevolence has five important attributes: wanting what is best for yourself and others, self-improvement for everyone, knowledge, moral behavior, and concern for others (what benefits others benefits the individual). The benevolent individual is unselfish, is kind and charitable toward others, and seeks mutually beneficial relationships. Benevolence is empathy, where an individual demonstrates a sincere concern for the welfare of others and exhibits a desire to see that what is best for oneself is afforded others [6]. Integrity and trust are connected and mean that one "lives up to one's word." The benevolent person is also trustworthy and sincere in his/her treatment of himself/herself and others. He/she is a person of stature and respect. Benevolence is manifest not only in individual behavior but also in how the superior person is viewed by others.

Rightness is another important Confucian virtue. Whereas "(b)enevolence is the characteristic element of *humanity*. . . . Righteousness is *the accordance of actions with what is right*. . ." [1]. According to Mencius, "(a) man who mutilates benevolence is a mutilator, while one who cripples rightness is acrippler. He who is both a mutilator and acrippler is an outcast. I have indeed heard of the punishment of the outcast Tchou, but I have not heard of regicide" [4].

Benevolence is an attitude and disposition toward others; righteousness is acting morally. The correct person, therefore, always seeks proper behavior in any given situation. Benevolence helps frame the situation while rightness determines the action. In more contemporary terms, righteousness is concerned with "doing the right thing" by focusing on proper conduct.

For the superior person, the benevolent person, the challenge is proper behavior, the expression of one's benevolence, knowledge, and trustworthiness. Benevolence must be guided by the golden rule. Tsze-kung asked, saying "Is there one word which might serve as a rule of practice for all one's life?" The Master

said, “Is not RECIPROCITY (sic) such a word? What you do not want done to yourself, do not do to others” [1]. Reciprocity is multifaceted. A moral individual must try to place himself/herself in another’s position and understand how he/she would want to be treated if roles were reversed. However, before the situation may be appraised correctly, a moral person must have completed a great deal of learning to comprehend fully the requirements of the situation. Reciprocity implies not only a general knowledge of right behavior but also understanding how right behavior applies in the situation, and how the behavior will contribute to the mutual benefit of each individual directly affected in the relationship.

For Confucians, society is composed of hierarchal relationships governed by the individuals in the highest positions, where each person is expected to fulfill his/her role according to social rules. For Confucius, hierarchy was the correct social order where everyone should exist in mutually beneficial relationships. In the traditional society of Confucius’ time, there were five basic relationships: minister/subject, father/son, husband/wife, older brother/younger brother, and friend/friend. Each of these relationships is denoted by names, where each name is itself a relationship between the requirements of the name and the individual’s preparation, willingness, and skill to fulfill the name. The individual must bring moral knowledge as well as the practical knowledge necessary to fulfill the name properly. For example, a minister must have moral knowledge as well as the knowledge of government and the ability to apply both correctly. One without the other would result in the minister acting improperly.

Fan Ch’ih requested to be taught husbandry. The Master said, “I am not so good for that as an old husbandman.” He requested too be taught gardening, and was answered, I am not so good for that as an old gardener. [1]

Confucius understood that society was composed of specialized roles and relationships and that well-managed organizations – states, families – required everyone to understand how roles must be performed and how roles relate to other roles. Roles are always defined relationally, not individually. The minister/subject role is defined by the two names in a hierarchical relationship, and for the relationship to be correctly implemented, both the minister and the subject must behave correctly toward each other. When these names are performed properly, the relationship should benefit all members and the organization should be successful. The following passages illustrate the importance of names:

...the prince be not a prince, the minister not a minister, the father not a father, and the son not a son. Although I have my revenue, can I enjoy it? [1]

1. Tsz-Lu said, “the ruler of Wei has been waiting for you, in order with you to administer the government. What will you consider the first thing to be done?”
2. The Master replied, “What is necessary is to rectify names...”
5. If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success.
6. When affairs cannot be carried to success, proprieties and music will not flourish. When proprieties and music do not flourish, punishments will not be properly awarded. When punishments are not properly awarded, the people do not know how to move hand or foot [1].

Although becoming moral is a personal journey, it is one that takes place in a social context. As Tu Wei-ming suggests “(f)rom the Confucian point of view, therefore, although one can never be truly human if one fails to be sincere to oneself, one can never delve deeply into one’s genuine self-hood if one refuses to manifest sincerity in the context of human-relatedness” [7]. Rather than withdraw into oneself to become moral, one must manifest one’s morality by engaging the world. Consequently, the Confucian superior person is inwardly/outwardly focused. The moral person continues to develop the germs of virtue, in Mencian terms, while remaining very much a part of society. Only through engaging the world can a superior person manifest his/her virtue, be respected, and show moral leadership. The Confucian superior person is a leader by demonstrating good example and the value of proper behavior.

Social intercourse is governed by the rules of *li*, translated as ritual, rites, propriety, or etiquette. *Li* defines the moral person in relationships with others and “it necessarily involves a relationship or a process by which a relationship comes into being” [8]. We might add that it manifests itself not only in developing but also in maintaining relationships. Several passages from the Analects demonstrate the importance of proper behavior:

The Master said, “Without recognizing the ordinances of *heaven*, it is impossible to be a superior man.” [1]

The Master said, “the superior man, extensively studying all learning, and keeping himself under restraint of the rules of propriety, may likewise not overstep what is right.” [1]

The Master said, “. . . Benevolence is the *characteristic element* of humanity, and the great exercise of it in loving relatives. Righteousness is the *accordance of actions with what is right*, and the great exercise of it is honoring the worthy. The decreasing measures of the love due relatives, and the steps in the honor due to the worthy, are produced by *the principles of propriety*.” ([1], italics in the original)

According to Fingarette,

(Human virtue) *Te* is realized in concrete acts of human intercourse, the acts being of a pattern. These patterns have certain general features, features common to all such patterns of *li*: they are all expressive of ‘man-to-man-ness,’ of reciprocal loyalty and respect. . . (M)en are by no means conceived as being mere standardized units mechanically carrying out prescribed routines in the service of some cosmic or social law. Nor are they self-sufficient, individual souls who happen to consent to a social contract. Men become truly human as their raw impulse is shaped by *li*. And *li* is the fulfillment of the human impulse. . . the specifically humanizing form of the dynamic relationship of man-to-man. ([9], italics in the original)

Ivanhoe makes a similar point that *li* is meant to restrain excessive behavior and keep virtue within its proper bounds [8]. In that sense, *li* is a moderating force. It is “(t)he notion that one must recognize that one’s own desires are not preeminent, that an agreed upon and common set of rules takes precedence, is a prerequisite to participation in *any* kind of cooperative enterprise. . .” ([9], italics in the original).

The attitude and capabilities an individual brings to his/her relationships will determine how correctly he/she fulfills his/her role in the relationship, their name in

Confucian nomenclature. Li, therefore, requires an individual to perform in what we might today call a practice: a practice being a prescribed way knowledge, including specialized knowledge, is applied in a given situation. In addition, li also indicates a process by which something of mutual benefit is accomplished when all members of the relationship perform their roles properly. The key terms are mutual benefit through proper individual behavior.

This leads to a discussion of gain. Confucians understand that humans naturally wish to succeed and prosper and there is nothing inherently wrong with this fundamental part of human nature. Indeed, for most situations faced by individuals, this is not only good but welcome. People should go through life seeking fulfillment, satisfying relationships, and so forth. In Confucian terms, this can be called gain. If a person develops good character, applies virtue in everyday life, fulfills their name properly, they, as well as those with whom they have relationships, should benefit as well. In many respects, this demonstrates an elegant simplicity in Confucian ethics. Good people trying to do good will most often succeed. Gain, therefore, may be defined as that which improves an individual's circumstances, where gain is not limited to money because it covers anything that may improve a person's circumstances. The dilemma for the superior person is to recognize those situations where gain will be at the expense of other members in the relationship. In those situations, the individual must behave properly even if the outcome would affect him/her negatively.

“Your Majesty,” answered Mencius. “What is the point of mentioning the word ‘profit’? All that matters is that there should be benevolence and rightness. If your Majesty says ‘How can I profit my state?’ and the Counsellors (sic) say, ‘How can I profit my family?’ and the Gentlemen and Commoners say, ‘How can I profit my person?’ then those above and below will be trying to profit at the expense of one another and the state will be imperiled...” all that matters is that there should be benevolence and rightness... What is the point of mentioning then word ‘profit’? [4]

Similarly, Mencius argued:

Now if you should practice benevolence in the government of your state, then all those in the Empire who seek office would wish to find a place at your court, all tillers of the land to till the land in outlying parts of your realm, all merchants to enjoy the refuge of your market-place, all travelers to go by way of your roads, and those who hate their rulers to lay their complaints before you. This being so, who can stop you from becoming a true king. [4]

This quotation illustrates names, relations, as well as wealth production. Surely, the merchants expect to make a profit in the marketplace. It also illustrates the critical role leaders play in hierarchical relationships. For Mencius, as well as Confucius, in hierarchies, moral leadership at the top is imperative. As Confucius remarked, “The mind of the superior man is conversant with righteousness; the mind of the mean man is conversant with gain” [1].

Proper action is rightness. When faced with a situation where the individual will benefit at the expense of others, the superior person will avoid this outcome and chose to act in a way that will not harm others, even if it is at his own expense.

This brings us to a discussion of Confucian harmony. In the metaphysical sense, harmony is the alignment of heaven, earth, and man into the “mandate of heaven.”

While there are no stirrings of pleasure, anger, sorrow or joy, the mind may be said to be in a state of EQUILIBRIUM (sic). When those feelings have been stirred, and they act in their due degree, there ensues what may be called the state of HARMONY. This EQUILIBRIUM (sic) is the great root *from which grow all the human actions* in the world, and this HARMONY (sic) is the universal path *which they all should pursue*.

Let the states of Equilibrium and harmony exist in perfection, and a happy order will prevail throughout heaven and earth, and all things will be nourished and flourish. ([1], italics in the original)

In this condition, all relationships are being fulfilled correctly and everything is in its proper balance. It is the condition human beings should strive to achieve. This illustrates the essence of harmony. It is about organizing and bringing different parts into cooperative relationships. Harmony is not only about similarity; it welcomes difference and diversity, so long as the different and diverse seek cooperation for mutual benefit [10].

In the early Confucian Classics, harmony is illustrated by music. Many different instruments playing together are needed to make music. Each instrument makes a different sound and must be played by a skilled musician. In music, difference can be combined to make harmony so long as the musicians understand musical principles and are willing to apply them in a cooperative effort for the mutual benefit of musicians and audience. If we continue this analogy, one musician and instrument can make harmony by playing different musical notes correctly and several musicians and instruments can achieve a similar objective by acting similarly. In life as in music, individuals should strive to behave correctly and seek harmonious relationships for mutual benefit.

However, life is not so simple that in all situations individuals understand and accept an objective and are willing to work together for its achievement. Conflict is a part of human life. Confucians understand this also. Conflict exists and must be managed successfully. Often, Confucianism is presented as favoring harmony above all else. This is a stereotypical interpretation. Although harmony is an important Confucian value, Confucian ethics recognizes disagreement and debate and provides methods of conflict management [11]. Reasonable people often disagree about many things. What is important is an individual’s approach to conflict and disagreement. If disagreement and debate is approached in the spirit of trust, cooperation, and mutual benefit, character traits fundamental to Confucianism, then self-improvement, relationship development, and mutual benefit can emerge in a “dialectal” process of interaction. Harmony, while a significant objective in human relations, must not be achieved by sacrificing benevolence and righteousness, two important Confucian virtues. Nothing, not even harmony, supersedes them. The cardinal virtues of benevolence and rightness are of supreme importance and cannot be superseded by harmony, ever.

Finally, Confucianism is a leadership ethic. A superior person is always a leader. By demonstrating proper conduct, the superior person is a role model and worthy of

emulation, regardless of his/her social status. However, since social relationships are hierarchical, it is critical for those in positions of power and authority to be moral. Confucianism is both an ethical and political philosophy founded upon power and governance. As the Great Learning and the Doctrine of the Mean make clear, harmony is based upon the control of power through the proper governance of the self, the governance of institutions, and the governance of the state. Tue Wei-ming labels this the fiduciary society [12]. A fiduciary society is one governed by proper moral relationships based upon rituals and names which is beneficial for all members. Proper moral preparation and leadership are essential to the success of society and require institutional and political leaders to demonstrate moral behavior through benevolence and rightness. Indeed, it is only within proper moral relationships that a person becomes truly human.

Confucian Ethics and Business

Business ethics based upon Confucianism is a very different view of the way business should perform its economic and social roles than free market capitalism so prevalent in the United States and elsewhere. Fundamentally, free market capitalism requires minimal law and regulation to protect private property and market integrity [13]. It emphasizes market discipline and profit maximization, and its stress on individual liberty increases individual responsibility. While most ethical systems require individual choice, where individuals must solve moral questions according to its precepts, free market capitalism demands that individuals choose their moral system prior to addressing moral dilemmas [14]. So long as everyone accepts the agreement to respect individual liberty, private property, contracts, and the free market, they are free to select any ethical system because the freedom to choose one's desires and ethics is fundamental to liberty. At first blush, this may seem innocuous, yet it may open up numerous opportunities for abuse. If an individual selects personal gain as his/her overriding desire or a firm views customers as merely a source of revenue and profit, excessive behavior may result. If individuals comply with the letter and not the spirit of the law, then it opens a wide area of problematic behavior. It can justify "gaming the system" for personal benefit, and for some, it could allow questionable behavior to become rightness.

A business ethic based upon Confucianism would be radically different from one based upon free market capitalism. Before we discuss the basic characteristics of business, a discussion of organizational culture is important. Louis V. Gerstner, retired chairman of IBM, considers the development of organizational culture as one of the most important managerial tasks [15]. Culture is an all encompassing term denoting the basic beliefs, values, and symbols of an organization. While culture may vary by organization and industry, it represents a fundamental characteristic of an organization and provides guidance for member behavior. In this sense, management is correct to focus on culture. A culture supportive of the firm's mission and activities contributes significantly to success as both a managerial

leadership and controlling tool. Therefore, a business organized according to Confucian principles would develop a culture of ethical behavior based upon self-improvement, the virtues, trust, and the golden rule and encourage mutually beneficial relationships. Moreover, this firm would value employees as more than economic inputs and customers as a source of revenue. Both would be viewed as individuals worthy of moral consideration, respect, and trust. Culturally, it would view these relationships as deserving cultivation and mutual success and would focus on long-term success based upon these key associations.

It is difficult to underestimate senior management's role in the corporate governance. Management is the leadership group that determines the principles at the foundation of the organization. It charts the future direction of the organization, identifies and allocates resources, and shapes the behaviors of employees and others dependent upon the organization for success. Managerial decisions made and behavior displayed send powerful messages about values, expectations, and the role of the organization in industry and society. It is important that management, especially senior management, acts correctly. They should exemplify proper behavior by exhibiting the Confucian virtues and wanting the best for employees, suppliers, and customers.

Business organizations have distinct characteristics. They are hierarchical, mission-focused special-purpose entities. Management applies the principles of division of labor to effectively organize resources to accomplish the business mission. Division of labor requires organizational activities to be separated into specialized tasks, which are then organized into roles, relationships, and functions. Organizations can be understood, therefore, in terms of their mission, skills, and functions (finance, marketing, manufacturing, etc.). Although these are important, organizations are populated by people in relationships, and through relationships, people perform the work that contributes to firm success. Confucianism's focus on mutually successful relationships based upon the virtues of benevolence, reciprocity, trust, and respect is an appropriate foundation for business relationships.

Managerially, relationships can be approached strategically and operationally. Strategy is concerned with the long-term future success of an organization. According to Porter, strategy is about uniqueness and difference, the ability to do different things or the same thing differently in a way that confers competitive advantage [16]. It is based upon the knowledge and understanding of a firm's internal and external environments and how they relate to each other in a way that positions the company for long-term success.

Externally, a firm needs relationships with customers, and this may be the most important relationship since customers justify the firm [17]. Without customers, there is no need for the business. The business/customer relationship should be founded fundamentally on trust and respect. It is also based upon knowledge. Knowledge is important in the contemporary world, and it places the firm in the more influential position in the relationship. Knowledge in one sense is about fulfilling customer needs satisfactorily. It means honesty and a fair offering in quality and price. It means seeking the proper balance so that the interests of the organization do not take precedence over the customers. Perhaps, more

importantly, knowledge places a greater burden on the firm. In most firm/customer relationships, the firm has greater knowledge than the customer. How many passengers know the plane they are about to take is properly maintained? How many customers in supermarkets or restaurants know that their food is handled properly? In many, if not most, consumer relationships knowledge is asymmetrical in favor of the business. Therefore, if the relationship is to be mutually beneficial, the business must be trustworthy and act benevolently and correctly.

In addition to customer knowledge, a firm needs to understand its environment in detail to ascertain information about current trends in areas such as technology, demographics, and competition so it can understand what capabilities it needs for its future success. Strategy is thinking about the future to identify what needs to be accomplished and taking the proper actions to secure it. Success is based upon the ability of the firm through its marketing, product design and development, production, and distribution capabilities to offer competitive products and services. This ability is based upon competencies.

The diversified corporation is a large tree. The trunk and major limbs are core products, the smaller branches are business units, the leaves, flowers and fruit are the end products. The root system that provides nourishment, sustenance, and stability is the core competence. . . . Core competencies are the collective learning in the organization, especially how to coordinate diverse production skills and integrate multiple streams of technology. . . . If core competence is about harmonizing streams of technology, it is also about the organization of work and the delivery of value.

. . .The skills that together constitute core competencies must coalesce around individuals whose efforts are not so narrowly focused that they cannot recognize the opportunities for blending their functional expertise with those of others in new and interesting ways. [18]

Competencies are more than the capabilities of employees to accomplish their assigned tasks in ways that contribute to current and future success. It requires both management and employees to develop into thinking and learning individuals and mentors worthy of emulation in the Confucian sense. Furthermore, management must understand that management is a distinct competency that must be maintained and developed because management by their example sets the character of the organization.

While employee skills are important, competencies transcend individuals who are properly organized into relationships among several people and functions. A successful product, for example, is the result of marketing, product design and development, production, and distribution competencies working in harmony. Each competency is composed of individuals, names, willing to act cooperatively in a series of activities in a prescribed manner. Following Ivanhoe and Tu, li is the process by which these activities come together into mutually beneficial relationships. In business, li should be understood as a practice. A business organization is based upon division of labor where individuals performing related activities work together to achieve something of value to the organization and its customers. Each member is expected to successfully complete his/her tasks correctly so the next person in the sequence of activities can complete his/her work properly. The various tasks must be arranged in such a way so that the overall objective is

achieved efficiently and correctly. To do so, each member must willingly cooperate to perform his/her tasks to the best of his/her ability according to a prescribed method. It is management's responsibility to ensure that the competencies are properly organized. Both management and employees are responsible for maintaining and improving skills so that competencies remain relevant to organizational needs.

Confucian ethics requires individuals to behave cooperatively to secure mutual benefit. In this sense, Confucianism can give ethical meaning and value to the activities of all individuals within the organization and contribute to overall organizational success. Moreover, it can contribute to the understanding of the contemporary idea of empowerment. A Confucian, however, would use the term responsibility instead of empowerment. Fundamental to Confucianism is the idea of responsibility. Individuals are responsible to do their name properly. Responsibility requires preparation, learning, understanding, and keeping one's word. It demands that an individual participates in collective activities in ways that contribute to success for all members in the relationship. In short, individuals are required to fulfill their responsibilities (names) responsibly. In this sense, employees have always been empowered to do their jobs correctly.

Some may see the role of individualism as an issue in Confucianism because Confucianism may be interpreted in a way that reduces individualism. Since Confucianism is based upon roles and relationships, individuals are required to subordinate themselves to organizational objectives to the point where their individualism is completely circumscribed. That is quite possible, especially in those organizations where harmony and obedience to superiors are valued above all else. It need not be and should not be so. Confucianism requires the proper balance in life. All organizations require some subordination of individuals to the needs of the organization in order to achieve collective objectives. This is true regardless of the ethics underpinning any organization, if collective objectives have any chance to be achieved.

Fundamentally, management should want the best from and for their subordinates. This is, perhaps, the essence of benevolence. If management has selected and trained employees properly, they should provide the conditions where the employee can develop and contribute to the success of the organization. This should mean at a minimum that employees should be able to apply their skills and knowledge to the tasks at hand in the context of their personality and individuality. Employees who are comfortable in what they do and satisfied when doing it are more productive and easier to manage. There are times of conflict, however. Conflict and disagreement are commonplace and productive sometimes. Disruptive conflict, such as personality clashes, must be recognized and addressed swiftly so that the smooth functioning of the organization is not damaged. These can be handled through additional training, coaching, or transfer. Disagreements over how business objectives should be achieved are helpful and contribute to organizational success. Discussion and debate over how best to design, produce, or distribute products or what markets to enter should be encouraged. Effective management should elicit ideas from subordinates to improve the business. The absence of disagreement is a false harmony

and a threat to the business. Everyone involved should keep in mind Mencius' admonition to act benevolently and correctly in all they do, including disciplinary actions and business discussions.

Furthermore, a Confucian would consider a discussion of workplace democracy as meaningless. Hierarchical organizations are by their very nature undemocratic. Important business decisions should not be put to a vote. Choosing a mission, strategy, markets, etc., is the responsibility of senior managers. Should management craft an organization which allow employees to develop contribute and participate effectively, surely. To allow employees to run the business would be an abdication of responsibility by management.

External relationships are equally important to business success. The totally integrated firm of the early twentieth century has been replaced by the smaller organization focusing on core competencies. Today, businesses depend upon a supply chain composed of other companies providing critical inputs, whether it is IT services, components, or other critical skills and competencies. The contemporary supply chain, therefore, can be conceived as a dependency chain where each company in the relationship depends upon other companies for success. If mutual benefit and success are to be realized, each member in the relationship must be willing to make the necessary contribution regardless of the organization to which they formally belong. Successful supplier relationships must rest on benevolence, reciprocity, knowledge, trust, and living up to one's word.

Firms have other associations in addition to supplier relationships. They deal with outside civic and issues-oriented groups, governmental organizations, and competitors. While the foundation for successful supplier relationships may seem clear, it is less so for the others. In some situations, the relationship may seem adversarial. Sometimes, issues-oriented groups may disagree with a firm's practices or products, regulators disagree over compliance, and competitors wish to compete successfully. The behavior of all of these will impact the firm. However, similar to internal and supplier relationships, these should be viewed as learning opportunities for everyone in the relationships. In all cases, firms must interact with benevolence and rightness. Business organizations and business people are always leaders, and leaders should show good example. With civic and issues-oriented groups, the situation may require an educational approach or simply to agree to disagree. Confucianism does not require uniformity; it does demand respect. Diversity, including diversity of opinion, is welcome. With regard to regulation, Confucianism expects compliance with both the letter and spirit of the law. If a firm disagrees with a law or regulation, it should present a reasoned disagreement and not one based purely on self-interest. Firms should be expected to make a contribution to the larger society and not pursue self-interest exclusively.

Relationships with competitors are critical, and few business ethicists offer much in the way of ethical analysis of competitor relationships. Competition is a threat, but it is also an opportunity. Competition is necessary to market economies. It is also useful to self-improvement. It is through the competitive process that firms adapt to their environments, new products and innovation are tested, and competitive advantage develops. A Confucian approach can contribute to

competitive success and advantage. Confucianism is a demanding ethic. It requires constant learning and self-improvement. It requires engagement with the outside world and demands benevolence and righteousness in all relationships. If competition and competitors are approached correctly, a firm may be viewed as worthy of emulation by others. More importantly, it will be on the road to long-term competitive advantage. As Michael Porter suggests, effective strategy and long-term competitive advantage are not found in copying others. That is the road to marginal success. Long-term competitive advantage is the result of doing things that are difficult to copy [16]. It is about innovation and being unique. Long-term success is about thinking and learning and executing for success in the marketplace. It is based upon understanding the environment and preparing the firm. It looks externally but prepares internally. If it is done well, the firm will be well along the path to success.

The entrepreneur, whether working alone or within an organization, recognizes opportunity. From the steam engine to the internet, humanity has benefited from the entrepreneur and innovator. According to Schumpeter and other members of the “Austrian School,” entrepreneurial discovery is the mechanism of economic change and new wealth creation [3]. The entrepreneur, through innovation, creates new products, services, or different ways of producing value (e.g., Toyota’s just-in-time manufacturing system). The entrepreneur need not be the rugged individual laboring in the garage to bring a new invention to market. In the contemporary world, while there is still room for some of these individuals, invention and innovation take place within organizations, both large and small. Successful innovation is the result of the disciplined application of knowledge and investigation [19]. For an invention to be an innovation, it must be commercialized and achieve marketplace acceptance, that is, customers see value in the innovation. Innovation can be positive for the innovator, the firm, and the customer. In this sense, all three plus the market and society can be beneficiaries through the process of economic change and wealth creation. Schumpeter labeled this “creative destruction”: the process through which, in a competitive market, new products and processes replace others and create new wealth. The innovator can become wealthy, the organization successful, and the customer better off. In this sense, innovation is positive and presents no moral dilemma.

The introduction of something new may pose moral dilemmas. Some product innovations, while profitable to some, may be harmful to customers and society. Process innovations may cause the elimination of the work of individuals or whole departments. The first one is the less difficult to address from a Confucian perspective. As Mencius admonished the king, one must choose rightness in this case and not harm others for personal gain.

The second dilemma is more difficult. Innovation may be incremental or transformational. Incremental developments are gradual and allow management to adapt and implement change gradually. Transformational change is, perhaps, the most extreme manifestation of creative destruction. These changes often revolutionize processes, industries, and societies [20]. Transformational change is fundamentally different and, as Christensen argues, presents the greatest managerial challenge because it requires management to make fundamental choices about the future

direction of the firm [20]. It may require a fundamental restructuring of the firm and a reevaluation of its position in an industry.

Management, especially senior management, is responsible for the care and feeding and success or failure of the business. Transformational products represent a fundamental threat to the business, whether they have been created in-house or by a competitor. In many respects, this is the innovator's dilemma, when to recognize the challenge, embrace something new, and turn the challenge into an opportunity. If not addressed properly, the situation may result in the inability of the firm to satisfy its customers and be profitable in their chosen market. If that is the case, what it is currently doing is incorrect. The solution, from a Confucian perspective, is for management to rectify the situation and reestablish proper relationships and correct the situation effectively and morally.

There are many ways to address transformation, and a thorough discussion is beyond the scope of this presentation. Fundamentally however, management must understand the situation and apply knowledge properly. To wait too long may be fatal and no self-respecting manager should wish to preside over the failure of the business. The Great Learning provides a good starting point. "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *the Great Learning*." To execute his/her name well, the successful manager, when facing management challenges, will be prepared, understand the situation, and be capable of wisely leading the organization. If the need for change is recognized early enough, organizational change will be less traumatic. The longer the situation goes unrecognized or remedial actions postponed, the more painful the process. Indeed, the more upheaval to the organization and its members needed to rectify the situation may indicate managerial failure.

The organizational adjustment necessary to address fundamental change requires hard work, the development of new relationships and commitment to the long-term health of the business. Fundamental change often has negative consequences for some. Sometimes, it requires reassignment into different roles and positions. It may mean having people leave the business. However, the organizational challenges of a growing business are fundamentally different than the ones facing an organization under stress. It is far easier to be benevolent in periods of success than decline. In any event, moral requirements should not change when circumstances do. The correct person is benevolent at all times. This is required of all members of the organization, not just management. Management should separate employees as a last resort. Other options such as transfer and retraining may be available. Layoff is an extreme measure and may be necessary. It should not be used merely to boost profit. Similarly, those who can leave the business without much hardship should be benevolent. These may include employees interested in career change, retirement, or other personal circumstances and desires.

The reader might object that what is presented here is an ideal version of Confucian business ethics. Things can go wrong in a well-managed firm populated by employees with good intentions or as a Confucian might say, the mandate of

heaven is difficult to achieve but lost easily. Markets can be misunderstood and good products can fail. The example of the New Coke comes to mind quickly. Coca Cola, a well-managed firm with good market knowledge, failed to understand customer commitment to Coke Classic when they withdrew the original product with the launch of New Coke. Based on customer reaction, Coca Cola quickly reintroduced the original formula product.

Another objection might be that Confucianism depends too much on individual virtue to the neglect of law and regulation. Indeed, most ethical systems require individual responsibility and morality. Ethical behavior without ethical people is a contradiction. Granted, Confucianism places significant demands on individuals. Even Confucius understood this as the following passages suggest:

The Master said, “The superior man thinks of virtue, the small man thinks of comfort. The superior man thinks of the sanctions of law, the small man thinks of favours (sic) *which he may receive.*” [1]

The Master said, “If the people be led by laws and uniformity sought to be given them by punishments, they will try to avoid the punishments, but have no sense of shame. If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have a sense of shame, and moreover will become good.” [1]

Ip raises the important issue of whether virtue alone is sufficient to create ethical firms because of the tendency of leadership to govern in their own interests [21]. This is a significant challenge. Confucians understand the need for law and other mechanisms to regulate human behavior. However, virtue, as Ip recognizes, is a necessary foundation. As the regulatory environment changes through globalization, it may be the best we can get if and until there is a global economic regulatory regime.

One might say that Confucianism places too much responsibility on individuals. Well-managed ethical organizations require well-intentioned employees. This is especially true in contemporary firms dependent on knowledge workers who possess specialized knowledge and skill. To a very large extent, management depends upon these employees to execute their responsibilities correctly.

Employees, can make errors. Error-prone employees, however, must be retrained, reassigned, or removed. Furthermore, Confucius understood that people are not equally capable and have different capacities for acquiring knowledge and assessing situations. As Confucius remarked, “In archery it is not *going through* the leather which is the principal thing;— because people’s strength is not equal” [1]. To address this challenge, management must assess employee capabilities so their strengths are utilized and weaknesses minimized. In addition, there should be a system of redundancies designed to identify errors before products, reports, and other outputs are released as well as procedures to address errors afterward. Toyota, for example, took too long to implement corrective action after the unintended acceleration issue became known. The recall was more expensive, highly publicized, and fines were paid. Prior to this situation, Toyota had a spotless reputation. It is unclear what the future market effect of this management failure will be on the firm.

Furthermore, Confucius was aware of the need for laws, rules, and regulations. There are, for example, many references in the Analects to the rules of propriety. Laws regulate behavior and help make life predictable. Rules and regulations are necessary to the smooth operation of organizations as well as the proper application of specialized knowledge. Professions such as law, medicine, engineering, and accounting have specialized rules and qualifying examinations as well as professional organizations responsible for maintaining the effectiveness and applicability of the rules of professional conduct. Confucius would agree that these are necessary with a very important caveat: for laws to regulate behavior and professional knowledge to be applied correctly, sincere individuals are necessary to good societies and organizations. Good laws require the respect of good people and good people require promulgation of good laws. As (t)he Master said, "In hearing litigations, I am like any other body. What is necessary, *however* is to cause *the people* to have no litigations" [1]. The same may be said of rules and regulation. The effective reduction of these is contingent on the presence of good people.

Two additional objections must be addressed: strategy and innovation. The fundamental responsibility of management is the long-term success of the firm. This demands the development and execution of a successful strategy. Understanding markets and consistently offering successful products are high bars, and history is filled with once successful companies that failed to adapt and perished. This fact does not invalidate the need for good strategy and management. Neither does it absolve management from a sincere effort to offer quality product and services at a fair price. Instead, it makes the point. For argument's sake, understanding that we are actually describing human relationships, we can conceive of the firm as a series of relationships among customers, competitors, suppliers, and employees. The fundamental objective of every firm is long-term market success. Short-term success is possible with shoddy products and limited market knowledge by the firm and customers. Some companies are bottom feeders.

Long-term success requires hard work. At the center is the firm, composed of employee relationships. Connected at one end are the various supplier relationships and at the other are customer relationships. All of these relationships are essential to firm success and must be managed effectively and properly. These are essentially reciprocal relations. The Confucian virtues and the golden rule can provide a solid foundation and effective guidance. These relationships should be approached with sincerity, benevolence, and reciprocity. For example, a firm should approach its supplier relationships with the attitude of improvement – that is, quality, efficiency, and effectiveness – and paying a fair price for supplies. Increasing quality is usually good, and a fair price helps insure a viable supplier. Some firms foolishly demand price reductions that marginalize their suppliers and jeopardize their own well-being. Similarly, customer relations should be sacrosanct for the simple reason that without customers, there is no justification for the firm. Consequently, the firm must understand both current and future customer needs. This requires solid market research to understand the marketplace and the development of products and services designed to address the requirements of the various customer segments.

If this is done correctly, success will follow, if not, failure will ripple through the organization and its supply chain.

A firm should approach the market and its customers with the virtues of benevolence, sincerity, and reciprocity. If market research and segmentation are executed well and good market knowledge acquired, the firm should develop products and services that meet the wants and needs of its current and potential customers. As Peter Drucker observed almost 60 years ago:

Marketing is so basic that it is not just enough to have a strong sales department and to entrust marketing to it. Marketing is not only much broader than selling, it is not a specialized activity at all. It encompasses the entire business. It is the whole business seen from the point of view of its final result, that is, from the customer's point of view. [17]

If the products and services meet customer needs, they will buy. If a firm's market offerings are based on long-term competitive advantage, the opportunity for success increases and competitive pressures are mitigated.

There is no question that innovation has contributed to firm success and individual well-being. The argument here is that a moral dimension should be added to the economic analysis. To say that an innovation is good simply because it increases wealth seems insufficient. Confucianism may be helpful here. Schumpeter argued that the innovator is entitled to the wealth created by the innovation. By the same token, should the consumer of the innovation expect some benefit also? Furthermore, should the innovator take into consideration the impact of the innovation on others and not focus only on the benefit to himself/herself? If that is the case, the Confucian virtues of sincerity and benevolence as well as the golden rule can provide moral guidance.

Finally, if the fundamental objection is that it is difficult to be a superior person, the Master might respond: Difficult? Difficult, indeed!

The Master said, "In the way of the superior man there are four things, to not one of which I have yet attained—To serve my father as I would require my son to serve me: to this I have not yet attained; to serve my prince, as I would require my minister to serve me: to this I have not yet attained; to serve my elder brother, as I would require my younger brother to serve me; to this I have not yet attained; to set the example in behaving towards a friend, as I would require him to behave to me, to this I have not yet attained." [1]

The Case of the Financial Services Industry Meltdown

The financial services industry crisis demonstrates many of the shortcomings of free market capitalism. A centerpiece of free market capitalism is market discipline where the market will not only discipline those firms which fail whether it is financially, strategically, or ethically, but also serve as a warning to other firms. However, punishment for failure is usually after the fact. The threat of future market discipline may be insufficient to limit behavior that risks the firm. The collapse of the US financial service industry demonstrates the inability of market discipline to curb destructive behavior. Indeed, an argument can be made that

market discipline encouraged risky behavior and when firms were faced with collapse, the government intervened because these businesses were “to big to fail.”

One number alone demonstrates the severity of the collapse of the US financial services industry. According to the Financial Crisis Inquiry Commission:

(n)early \$11 trillion in household wealth has vanished, with retirement accounts and life savings swept away. . . . The crisis was the result of human action and inaction, not Mother Nature or computer models gone haywire. The captains of finance and the public stewards of our financial system ignored warnings and failed to question, understand, and manage evolving risks within a system essential to the well-being of the American public. [22]

The report goes on to argue that a significant portion of the crisis was caused by failures throughout the financial services industry supply chain [22]. As argued earlier, supply chains are dependency chains made up of various relationships among firms who rely upon each other for success. These relationships depend upon individuals to perform their tasks in ways that contribute to the mutual benefit of all members in the relationship.

Many of the innovations from the financial services industry, from no verification statement only mortgage applications through collateralized debt obligations and structured investment vehicles, hid the increasing risks in the derivatives and mortgage-backed securities business. Furthermore, securities rating firms moved from an arm’s length relationship with securities issuers to one where they wanted to please their investment bank customers with the investment ratings they desired – Triple A in many cases. These highly rated investments were purchased by pension funds and others investors, who by law were required to purchase “safe” investments. The investment engineers who created the investment vehicles sought zero correlation, a situation where if one security might fail, other related securities would not. “One obvious flaw of this approach is that nowhere in the process was anyone required to conduct real-world due diligence about the underlying mortgages” [23].

The investment banks approach to business changed during the run-up to the financial crisis. Their business model evolved from placing the customer first to one where they would invest for the house, make investments for customers, and make investments against customers for other customers or the house. The traders made money in any case regardless of the impact on customers.

For the most part, it all began with mortgages. No doubt there were honest applicants and brokers who matched customers to good products. However, the money was made in the numbers of mortgages sold, which would then be placed in structured investments and sold to investors. Since the game was volume, brokers with few scruples placed applicants, especially refinance customers, into unaffordable subprime mortgages. According to BusinessWeek, the process was so corrupt that documents were fabricated and sex and bribes were offered by brokers and wholesalers to secure mortgages [24]. These were then packaged and sold to customers who thought they were obtaining highly rated, low-risk investments.

In the final analysis, the financial crisis is the story of a culture of uncontrolled greed and managerial and employee ethical failure at all levels. Had Confucian

ethics been in place, much was possibly mitigated. While Confucianism cannot prevent the unfolding of the business cycle, the vagaries of the market, and unknown risk, following the precepts of Confucian ethics can assist the management of the firm. Furthermore, applying Confucian ethical prescriptions can reduce the number and mitigate the severity of self-inflicted wounds.

Confucius said, “Listen to this my little ones. When clear the water washes the chin-strap, when muddy it washes the feet. The water brings this difference in treatment upon itself.” Only when a man invites insult will others insult him. Only when a family invites destruction will others destroy it. Only when a state invites invasion will others invade it.

The T'ai chia says,

When Heaven sends down calamities
There is hope of weathering them;
When man brings them upon himself
There is no escape. [4]

In 2002, 8 years before the collapse of the financial services industry, none other than Warren Buffett understood the risks of the new financial innovations. “In our view, however, derivatives are financial weapons of mass destruction, carrying dangers that, while now latent, are potentially lethal” [25]. The financial service crisis was indeed a man-made calamity.

Cultures built on benevolence, trust, and mutually beneficial, reciprocal relationships among all members can help individuals adopt the proper attitudes and behaviors. A focus on customer benefit rather than personal gain would have helped the appropriate execution of responsibilities. Realizing that names denote how tasks and relationship must be fulfilled properly and understanding that individuals and firms must place wealth creation and customer benefit first can point everyone involved to the proper solution. This knowledge might not have prevented everything. It could mitigate the large amount of wealth destruction which resulted from the financial crisis.

Conclusion

Confucian ethics is appropriate for business organizations. Confucian ethics is based upon knowledge, hierarchy, individual responsibility, reciprocity, and virtues of benevolence, trust, and rightness. Confucian ethics fits the fundamental characteristics of business as specialized, wealth-producing, single-purpose entities based upon hierarchical relationships. Confucian ethics when applied correctly can contribute to ethical business behavior and firm success.

Cross-References

- ▶ [Aristotle and Business: An Inescapable Tension](#)
- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Chinese Guanxi and Business Ethics](#)

- ▶ [Confucian and Legalist Basis of Leadership and Business Ethics](#)
- ▶ [Entrepreneurship and Ethics](#)
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- ▶ [The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?](#)
- ▶ [Utilitarianism](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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Confucian and Legalist Basis of Leadership and Business Ethics 50

Kwang-Kuo Hwang

Abstract

In view of the fact that a company may develop its corporate culture by utilizing the resource of cultural heritage where it is situated, this chapter traced the historical origins of Confucianism and Legalism, discussed their theories of leadership and organization, proposed a conceptual scheme for comparing the five major aspects of Confucianism and Legalism, and used it to interpret the cultural dynamics for some historical episodes. A critical review over findings of pervious research indicated that most issues related to the establishment of business ethics in contemporary Confucian societies can be interpreted in the context of current conceptual scheme.

Introduction

This chapter is aimed to discuss the philosophical foundations of leadership and business ethics in Chinese societies. In their empirical research designed to explore the philosophic foundations of business management, Cheung & Chan [9] interviewed five eminent corporate executive officers (CEOs) in Hong Kong. Their dialogues revealed that the CEOs practice a style of Chinese leadership synthesizing Confucian, Daoist, Mohist, and Legalist doctrines. The Confucian doctrines advocate benevolence, harmony, learning, loyalty, righteousness, and humility. They are the most prevalent tenets that support paternalism and collectivism. The Daoist doctrines emphasize flexibility and reversion (e.g., the principle that the weak can defeat the strong). They bolster the leader's forbearance. The Mohist doctrines underpin thrift and working with the masses, whereas the Legalist doctrines inculcate self-control and innovativeness.

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The contents of those philosophical tenets can certainly not be exhausted by the aforementioned values. When an individual encounters problem in his lifeworld, he may try to seek for adequate wisdom for action from his personal stock of knowledge to solve the problem. Each traditional school of philosophy contains an ideal concept of person, as well as its accompanying wisdoms for action which can be utilized to solve various problems in their lifeworlds. In addition to these traditional philosophies, a Chinese CEO may also use Western knowledge of management to practice the task of business administration.

Viewing from the perspective of social science, the most important cultural tradition that may contribute to the leadership and business ethics in contemporary Chinese society is Confucianism and Legalism. Hence this handbook is designed to elaborate the philosophical foundations of business ethics in various societies over the world, this chapter will begin by a brief biography for Confucius and Hanfei, the founder of these two schools respectively. The foundation of their thoughts will be discussed within the context of their era, special attention will be paid to the interplay of these two philosophical schools in Chinese history. A conceptual scheme will be proposed to expound its influence on leadership and business ethics in contemporary Chinese societies.

Confucius' Era and His School

As a major school of philosophy, Confucianism was emerged and founded in a tumultuous and chaotic age in Ancient China. In the earlier Zhou dynasty, the rights and duties of the ruler and his vassals were clearly defined by a feudal system. During the Western Zhou period (1027–771 B.C.), the sovereign not only commended universal and tribute among his vassals, but also exercised considerable control over their social affairs. He might even punish an offending vassal with armed force. After Zhou capital was invaded by barbarians in 771 B.C., the ruler fled and established his court at Loyang in the East. The power of the Eastern Zhou dynasty waned rapidly, and the rulers of the feudal states were left with increasing freedom to ignore their customary duties to the sovereign and to expend their territories and domains of power.

Confucius' Era

Confucius (551–479 B.C.) was born in the State of Lu (now Shandong province) during the tumultuous period of Spring and Autumn (772–484 B.C.). His father, a mid-rank official, died when he was 3 years old. Confucius worked as a shepherd and as an accountant for a noble family. He was very interested in the rites and institutions that prevailed in earlier period of Zhou dynasty, and devoted himself to study the traditional culture of Zhou. During Confucius' life time, feudal princes were frequently trying to usurp the throne. So he hoped to restore social order by advocating a return to a morality of loyalty and the ethical system of filial piety.

Confucius began his career as a public teacher since his age of 22. His fame gradually increased, and it was said that he attracted 72 disciples and more than 3,000 students, which earned him a good reputation and made him famous [1].

Confucius identified himself as an educator whose mandate was to rectify the world by teaching virtues. In attempting to restore the feudal social order of the early Zhou dynasty, he spent a lot of time researching and recording rites and music for ceremonies and other occasions expressing one's dedication to family, country, and state. He also edited poems and classics collected from various states, including Lu, Zhou, Sung, and Chi. He wrote a history of Lu entitled *Spring and Autumn* and annotated ten supplements to the *I-ching*. All of these were used as materials for teaching his students [60].

Confucian Ethics

In order to restore the feudal social order of the early Zhou dynasty, Confucius advocated an ethical system centered on the concept of benevolence (*ren*). His doctrine was enriched by Mencius (372–289 B.C.) and Shiun-tze (315–226 B.C.), who added the concepts of righteousness (*yi*) and propriety (*li*), respectively. Benevolence (*ren*) in the Confucian tradition is not kindness or goodness directed to all of humanity including strangers, but is defined as favoring people with whom one has a close relationship. Righteousness or appropriateness (*yi*) refers to respect for those whom respect is required by the relationship, and propriety (*li*) is defined as acting according to previously established rites or social norms.

Confucians advocated five cardinal ethics for the five major dyadic relationships in Chinese society. The obligations that accompany the roles of each of these five relationships are fulfilled by practicing different core values:

What are the things that humans consider righteous (*yi*)? Kindness on the part of the father, and filial duty of the son; gentleness on the part of the elder brother, and obedience of the younger; righteousness on the part of the husband, and submission by the wife; kindness on the part of the elders, and deference by juniors; benevolence on the part of the ruler, and loyalty of ministers. These are the ten things that humans consider being righteous. (Li Chi, Chapter 9: Li Yun)

This passage, which does not include a reference to relationships between friends, promotes the idea that social interaction should follow the principle of respecting the superior, particularly in interactions between parents and children and between a king and his loyal subordinates.

When Confucians were contemplating the ontology of the universe, they did not conceive a transcendent creator as did the Christians. Instead, they recognized a simple fact that each individual's life is a continuation of his or her parents' physical lives and the lives of one's descendants are the derivatives of one's own. Therefore, Confucians proposed the core value of filial piety and advocated for the ideal of "kind father and filial son," which was a prototype for arranging the relationship between "benevolent king and loyal minister." A father should run

a family like a feudal ruler reins a state. Parents are obligated to show their kindness by taking good care of their children, while children are expected to fulfill their filial duties by working hard to pursue goals that are highly valued by the whole society.

Confucian Theory of Leadership

Confucius believed that in order to govern others, one must first govern oneself. So he advocated self-cultivation for everybody, proposed the ideal of sage King, and argued that if the King's personal virtue has developed sufficiently, it may spread beneficent influence throughout the kingdom. He claimed that a ruler's own straightness will have an attractive effect to bring obstinate subjects into line and produce obedience to the governing authority. Therefore, he counseled for the ruler to "just desire the good yourself and the common people will be good." (Analects XII, 19)

To govern a nation by virtue, can be compared to the North Polar Star:
it remains in its place, while the other stars wait upon it (Analects II, 1).

Mencius believed human nature to be inherently good. All human beings possess four incipient virtues: commiseration, shame and dislike, respect and reverence, as well as right and wrong. It was these qualities that gave humans the character of being humans. Therefore, a ruler must govern humanely. With the inherently good mind, a sage King should establish government "that could not bear to see the suffering of the people". The practice of humane government will automatically attract support from the common people, who will submit willingly, rather than needing force to enforce obedience. Furthermore, the magnetism of humane government is so strong that it may extend to the people in neighboring states (Mencius, Kung-sun Ch'au, Part II, 5 & 6).

A ruler "who oppresses his people to the extreme will himself be slain and his kingdom will perish." Mencius advocated that a loyal minister is obliged to rectify the king to rule with humanity. In case when a ruler fails to do so Mencius declared that "he who injures humanity is a bandit him." The populace beneath him have a right to rise in resistance of his despotism and overthrow. Since his kingly status is lost, the act of deposing him is not to be named "regicide," but is simply tyrannicide (Mencius, King Hui of Liang, Part II, 8).

Hanfei's Era and His Thoughts

During the end period of Spring and Autumn, the power of the Eastern Zhou dynasty was too weak to control rulers of the feudal states, they not only ignored their customary duties to the sovereign, but also took any opportunity to expand their territories and powers by conquering and merging other weak states.

Gradually, five powerful feudal leaders emerged. They were eager to influence or even to control the Zhou king and to impose their will on the other feudal lords.

Many intellectuals began suggesting ideas to the rulers on how to attain their goals of state. This historical context fostered the formation of the Legalist school.

As a major school of philosophy, Fa Jia (the Legalist school) emerged during the tumultuous and chaotic age of Warring States Period (403–222 B.C.). Its main thoughts were refined against the cultural background of Confucianism, its contents are in direct opposition to Confucianism in many respects.

Hanfei's Era

Hanfei (280–233 B.C.) was a prince from a royal family in the small state of Han during the Warring States Period. The ruling family of Han had formerly been high ministers in the state of Jin, but they gradually usurped power and divided the territory of Jin with two other noble families to create three new states, Han, Jao, and Wei. The domain of Han was small and its territory located in a mountainous area, so they were constantly threatened by their strong neighbors, especially the powerful state of Chin.

Worrying about the dangerous condition of his own native state, Hanfei devoted himself to studying the course of the rise and fall of a state. Because of his stutter, Hanfei was unable to articulate his ideas with eloquence. He repeatedly submitted suggestions to his ruler, but the ruler ignored his advice. So he decided to take another course and wrote them into a book [40].

Legalist Theory of Leadership

Unlike the Confucians, the Legalists had no interest in preserving or restoring the customs or moral values of the past. Their only goal was to teach the ruler how to survive and prosper in a highly competitive world through various measures of administrative reform, such as strengthening the central government, increasing food production, enforcing military training, and replacing the old aristocracy with a team of bureaucrats.

Based on the presumption that all human behaviors are motivated by a ruthless pursuit of self-interest, Hanfei's theory of leadership was constructed around three core concepts, namely, *shih* (power), *fa* (law), and *shu* (management technique). According to Hanfei's theory, a ruler has to occupy the position of leader with substantial power (*shih*) before he is able to use law (*fa*) and management techniques (*shu*) to manipulate his subordinates [27].

To Hanfei, real power means ability of the position-occupier to utilize tactics of influence by meting out reward and punishment, which was termed as “two handles.” Hanfei advocated that a ruler with power should “hold handles while situated in his position” and manipulate his subordinates by *fa* and *shu* (*The two handles*). *Fa* means law or rules of regulation, while *shu* means skills of manipulation that can be used by the ruler to control subordinates to attain organizational goals.

Though Hanfei argued that *fa* (law) should be initiated by the ruler, he did not think that a ruler should establish law at his own will. Just like other Chinese philosophers of his time, Hanfei believed that the *Dao* (the Way) is the origin and fundamental principle of operation for everything in the universe. An enlightened ruler should realize it and use it as a basis for constructing rules to judge right and wrong.

Hanfei believed that natural law can be established with the consensus of all group members. He suggested the ruler to follow “the order of heaven,” “the fundamental principle of nature,” or “the natural way,” and advised that a smart leader should study carefully the principles of nature operating in the state, and use them as the foundation for constituting rules (*The way of the sovereign*). Because “law is used for regulating ordinary operation” of a state, it must be characterized by such important features as: publicity, objectivity, feasibility, enforceability, universality. Furthermore, all rules should be constituted on the basis of equity rule, or *gongdao*. Therefore, people are willing to follow them without complaint (*The principle features of Legalism*).

Based on this concept of *fa*, Hanfei proposed three main techniques (*shu*) for a ruler to manipulate subordinates, namely, assigning competent talent to the right position, following up the project and checking the results, and evaluating contributions and granting rewards accordingly. He said

Shu means assigning the competent talents to right positions of the government, checking results of performance with what had been stated in their proposals, controlling the power of sparing and killing to evaluate competencies of ministers. Those should be held by a ruler. (Deciding between two legalistic doctrines)

Confucianism and Legalism in Chinese Society

During the Han dynasty, Tung Jong-shu (179–104 B.C.) proposed integrating the two systems with the idea of “making judicial sentence by the Confucian classic of Spring and Autumn” and “utilizing Legalism as an instrument to consolidate the Confucian social system” [11]. Rulers of China began to use Legalist methods to defend their power and position and to control people, but retained Confucian doctrine to educate and discipline people. Chinese society became characterized by the feature of “Confucianism in public and Legalism in private.”

Familism and Nepotism

Confucian ethics for ordinary people proposes a principle of favoring intimates as the formula for distributive justice. This principle demands the decision-maker to distribute resources on the basis of *rendao*, i.e., one should adopt the need rule for interacting with family members, and the *renqing* (affective) rule for interacting with acquaintances in one’s network of *guanxi* (relationships) outside the family. The practice of such ethics may result in familism and nepotism in Chinese society.

The Confucian view assumes that an individual's life is inherited from one's parents as well as one's ancestors, and that the lives of one's offspring are continuous with one's own life, so the family is viewed as an inseparable entity. This is the cardinal component of the ideology of East Asian familism, which is dramatically different from the individualism of Western culture originating from Christianity.

In addition to familism, Confucianism also includes a social philosophy encouraging individuals to maintain harmonious relationships with people outside their own families. Viewed from the conceptual framework of *Face and Favor*, when individuals interact with relatives, friends, or acquaintances within the network of *guanxi*, they must be polite and hospitable. According to the rule of *renqing*, when an acquaintance encounters difficulties, one must behave as considerately as possible and do favors for them as far as possible. By the same token, when individuals receive favors from acquaintances, they must remember to try to reciprocate.

The operation of a *guanxi* network might be either beneficial or harmful to the operation of a firm or a state, depending on the nature of resources involved in the *renqing* event. A leader may utilize *guanxi* to solve many problems; in contrast, the *guanxi* network may become a breeding-ground for nepotism, factionalism, and cliquism in an institution.

Struggle Between Confucianism and Legalism

In contrast to Confucianism, Legalism is essentially an organizational theory formulated in the authoritarian culture of Ancient China. It has been used by many rulers in Chinese history to consolidate their power, while China was in a period of order and prosperity, and the emperor's power was strong and stable. But when Chinese society fell into turmoil and disturbance, struggle between Confucianism and Legalism frequently appeared.

Legalist ways of organization are akin to Western ideas of bureaucracy that became widespread after the rise of capitalism. The cultural traditions of Confucianism emphasizing the values of benevolence and affection (*qing*) are constantly in tension with those of Legalism, which might result in dialectical dispute over political, social, or cultural issues between centripetal and centrifugal elites in the societal center. This constitutes the so-called struggle between Confucianism and Legalism in Chinese history, decision makers in power are frequently urged to make a choice between the *renqing* rule and the equity rule. Even in contemporary Chinese society, the struggle between these two value systems is repeated, and may have direct or indirect influence on the operation of a firm or a state.

A Conceptual Scheme

In order to elucidate the essential nature of the struggle between Confucianism and Legalism, Hwang [26] proposed a conceptual scheme to compare five crucial aspects of these two schools of thought: value orientations, norms for regulating

Table 50.1 A comparison between five major aspects of Confucianism and legalism

	Confucianism		
	Ethics for ordinary people	Ethics for scholars	Legalism
1. Value orientation	Familism	Collectivism	Individualism and collectivism
2. Social norm	Particular <i>li</i> (courtesy)	Universal <i>ren</i> (Benevolence)	Universal law (<i>fa</i>)
3. Distributive rule	Need rule	Equality rule	Equity rule
4. Criteria for distribution	Blood relationship	Membership	Contribution
5. Decision-maker	Paterfamilias	Elite (scholar-official)	Ruler

Source: Adapted from Hwang ([26], p. 26).

social behavior, rules for distributing resources, input factors determining the distribution of resources, and the authority who makes decisions (Table 50.1).

Confucianism advocates a kind of status ethics. It has differing expectations of scholars and ordinary people. For ordinary people, it is enough to practice the *ren-yi-li* ethical system within the domain of one's family and acquaintances. The guiding principle for their social organization is familism, the social norm for regulating social behavior is *li* (politeness), and the decision-maker who holds the power of distributing resources within the family is the paterfamilias. When allocating resources to others, the first thing to consider is the blood relation with the recipient. Resources are frequently allocated according to the need rule.

Confucianism sets a completely different expectation for scholars. It expects scholars to contribute to the world with Dao, and requires them to extend the domain for practicing *rendao* from the individual and family level to greater society; the bigger one's domain, the greater one's moral achievement. While the ideal goal of Confucianism is to attain a peaceful, harmonious world, what a scholar can really do is to actualize *rendao* in a community or social organization larger than the family. Therefore the value orientation of scholarly social behavior can be termed collectivism. According to the Confucian ethics for scholars, the norm for social acts in such a collectivity should be *ren*, all important resources of the group should be allocated according to the equality rule by morally educated scholars, and every member of the group is entitled to an equal share.

As stated in the previous section, when a Legalist leader is assessing how to allocate rewards and punishments to subordinates, contributions to the accomplishment of organizational goals, rather than blood relationships or group memberships, should be considered. Therefore, the guiding rule for their social acts comprises both individualism and collectivism. By recognizing the legitimacy of individual interests and by advocating the universality of legal applications, Legalists are individualists. However, Legalists are collectivistic in the sense that they give priority to organizational and national goals rather than to familism and factionism. A delicate combination of parts of both the Confucian and Legalist traditions was created and maintained in the feudalistic society of Imperial China for hundreds of years.

The Manifestation of Cultural Tradition in Contemporary China

The Cultural Revolution

After the Communists took over China in 1949, they began to strive to replace Confucianism with the ideology of Marxism. During the Great Leap Forward beginning in 1958, most families were reorganized into self-sufficient communes on the principle of egalitarianism in the hope that people would transfer their loyalty from the family to the state [44, 51]. During the Cultural Revolution from 1966 to 1976, the Communists proposed the slogan: “denounce Confucianism and raise Legalism.” People were required to follow the precepts of Marxism, and every act had to be in accordance with the teachings of Chairman Mao Zedong. The Communists claimed that the nature of these movements was the struggle between Confucianism and Legalism or the struggle between communism and capitalism [10, 13, 42]. But, if these movements are examined with reference to the conceptual scheme in Table 50.1, it can be seen that in fact they are struggles between Confucian ethics for ordinary people and those for scholars. The Communists attempted to replace the Chinese family system with the new organization of communes, where communist cadres played the role of traditional scholar-officials in promoting production by advocating the orthodox ideology of Marxism and allocating all important resources to members of the commune in an equal way [5]. Viewed from the perspective of Chinese culture, all these efforts can be said to be attempts to replace the Confucian ethics for ordinary people with those for scholars, or to transform loyalty to family and personal *guanxi* into loyalty to the state and the Party. The Great Leap Forward and the Cultural Revolution proved to be monumental failures: Economic productivity declined to an abysmal level, and countless people suffered starvation during these years [44, 51].

In 1978, Deng Xiaoping took over the reins of power, stabilized the political turmoil after cultural revolution, and adopted the policy of Reforms and Openness (*Gaige Kaifang*) to attain the goals of Four Modernizations, those of agriculture, industry, science and technology, and military [12, 21]. Deng’s program of economic reform shifted China’s development strategy to an emphasis on light industry and export-led growth. For the sake of attaining certain foreign funds, market, advanced technologies, and management experiences, China followed the experiences of the East Asian Tigers, and established a series of Special Economic Zones where foreign investment and market liberalization were encouraged [43, 53].

Tension Between Confucianism and Legalism

It is generally agreed that modernization for most Asian countries is essentially a process of exogenous change originating from outside and transmitted to the inside, from the top down, which is different from the endogenous modernization of Christian countries [2, 16]. During the process of transformation, it will encounter genuine struggle between Confucianism and Legalism at both the state and firm

levels, which may influence the operation of the firm as well as the state as a whole. In an industrial/commercial society of organic solidarity, any conflict or struggle occurring at the societal center may interactively influence the operation of a firm at the periphery [16].

Before China decided to adopt the policy of Reforms and Openness, almost all important resources for economic production were under the control of either the government or the state-owned firms.

When China decided to adopt the capitalistic route of national development, the societal center must make every effort to construct economic and legal systems with a high degree of formal rationality to encourage entrepreneurs to utilize state-owned resources to pursue benefit by investing and creating organizations to make products to meet the demands of the market. Ideally speaking, both systems should be designed to create a sociocultural milieu with the characteristics of the Legalistic tradition as described in Table 50.1. The political leaders in power decide to create favorable conditions at the state level, while entrepreneurs make effort to combine all the subsidiary factors for raising production at the organizational level [49, 50].

However, because the legal system has been formulated from top to down, it is usually constructed with some *gray* areas where an administrative office can interpret it flexibly. During the process of transforming a particular public resource to the private sector, a decision-maker in either government or state-owned firms may have the power of allocating at his will the public resource without its ownership.

He may allocate the resource to several petitioners of instrumental ties in accordance with equity rule or *gongdao* without any psychological conflict. Nevertheless, if a petitioner of his acquaintances asks him to allocate the resource in such a way to favor the petitioner, he may experience the tension between Confucian *renqing* and Legalist *gongdao*. In case when two or more groups are involved in striving for a scarce resource, the situation of struggle between Confucianism and Legalism may happen in which the involved parties may utilize various forms of Confucian or Legalist rules as listed in Table 50.1 to defend their own positions or to compete with their opponents.

Two Types of Enterprises

Operating in such a social and political environment, enterprises in China can be differentiated into two broad categories. One category is generally state-owned businesses. They are mainly specialized in doing business with governmental sectors and are subject to major influence by government policies. They maintain close relationships with high-ranking officials in the government and can be termed *relation-oriented enterprises*.

The other category of enterprises is composed mostly of foreign-investment or private businesses that concentrate on selling their products in the domestic or international markets, which are their major sources of interest. They pay more

attention to improving the quality of their products and to developing new markets. They can be termed *market-oriented enterprises*.

This does not mean that a market-oriented enterprise can totally disregard *guanxi* (social relationships). Since the early stage when Chinese society began to transform from planned economy to market economy, maintaining necessary *guanxi* ties with government officials has long been an important strategy for all enterprises to the constantly changing environment. For instance, an empirical research conducted by Peng & Luo [47] indicated that *Guanxi* ties with government officials were paradoxically more important for non-state-owned firms than for state-owned firms.

Rational Calculation

Furthermore, in order to compete with other products in the market, entrepreneurs must maintain not only public relationships with customers, but also specific networks of marketing channels for selling products. Therefore, it was found that *Guanxi* ties are more crucial for firm performance for service than for manufacturing industries and for firms in low than in high growth industries [47], it had greater positive effect on firm performance for new ventures in an environment of higher level dysfunctional competition [39].

Nevertheless, these relationships are established on the basis of rational calculations and equitable exchange, unlike the merchant–politician relationships aimed at apportioning public resources.

Because *guanxi* cultivation needs financial resources, Park and Luo [46] found that *guanxi* utilization achieved sales growth but not profit growth while Shenkar, Luo, and Nyaw [52] found that *guanxi* strategy improved sales revenue but not cost reduction. Most researchers argued that as market-oriented reform deepened and institutional environment became more mature over time, the effect of *guanxi* ties or *guanxi* practices on performance diminished [22, 41, 57].

Two Types of Guanxi

In order to explain the prevalence of *guanxi* usage and *guanxi* strategy in Chinese society, some researchers have proposed several conceptual frameworks for analyzing this phenomenon.

Tan & Snell [56] conducted a study of semi-structured interview with 46 ethnic Chinese managers and 30 non-Chinese expatriate managers in Singapore. They provided evidence of the use of traditional *guanxi-linked morality* as a moral resource by some of the former group in judging workplace ethical dilemmas. The moral reasoning reflects wider cultural heritage, and is not merely a function of corporate culture and individual moral development. While such morality played only a minor role in moral reasoning, it was largely overshadowed by *modernist morality*.

Quanli Guanxi

Nevertheless, what is the *guanxi*-linked morality? Some researchers have tried to define it clearly. For example, Zhang & Zhang [64] classified *guanxi* into obligatory, reciprocal, and utilitarian types at the individual level. Viewing from the theoretical model of *Face and Favor* [25], reciprocity is a universal rule for social interaction. The mixed tie of friendship is composed of both expressive and instrumental components. According to Hwang's [28] analysis of Confucian ethics, when an individual receives a favor from another, he is obligated to repay the favor. Therefore, any *guanxi*-linked event contains utility, reciprocity, and obligation. It is impractical to classify *guanxi* into three clear-cut types of utilitarian, reciprocal, and obligatory.

In an attempt to tease out *guanxi* practices ingrained in the cultural tradition and those adapting to the immature institutional environment, Su and Littlefield [54] proposed two types of *guanxi* practices, namely "*qinyou guanxi*" (personal favor exchanges among family and friends) and "*quanli guanxi*" (exchange between power and interests) and attributed the former to influence of the traditional Chinese culture and the latter to that of the contemporary institutions, mainly that of socialist market economy. They held the former as legitimate means of favor-seeking for common people in navigating through work and life, but the latter as corruptive and rent-seeking by the elite of the power and the wealthy.

Rent-Seeking Guanxi

The so-called favor-seeking *guanxi* means that an individual interact with other party of mixed tie in terms of *renqing* rule. Viewing from the theoretical framework as presented in Table 50.1, there are systems of regulation in any organizational institution. Caused by a variety of reasons, the system of regulations may have some flaws which are called *institutional holes* by Chinese people. In this case, a petitioner may seek for *guanxi* with the resource allocator who has the power of decision-making within the institution, interact with him in accordance with *renqing* rule, and transform their relationship into the so-called rent-seeking *guanxi*. As an alternative definition of economic rent, here rent refers to the returns over and above the costs of employing a monopolistic resource by manipulating government policy [4, 54]. Meanwhile, rent-seeking is synonymous with corruption in imperfect market conditions in which a decision-maker has the power to allocate a resource at a price below the market equilibrium level [58].

Double-Edged Sword of Guanxi

Because social exchange in Chinese society can be distinguished into these two types, *guanxi* can be conceived as a double-edged sword [59], that may have distinct impacts on economic efficiency and the well-being of ordinary Chinese

citizens [15]. On the positive side, favor-seeking *guanxi* has widely been utilized by Chinese businessmen to establish the interpersonal trust in order to maintain the stability and quality of sales and supplies in the market [61]. On the negative side, the process of putting their moral percepts into practice may result in problematic ethical behaviors.

Paradoxical Consequences of Guanxi Practices

Warren et al. [59] conducted two studies to explore the paradoxical (helpful and harmful) consequences of *guanxi* practices to the *guanxi* actor, the organization, and the larger Chinese community. They asked participants to rate the degree of helpfulness and harmfulness of six real life scenarios of *guanxi* practices in Study 1 and to provide actual examples of helpful and harmful *guanxi* practices in Study 2. The majority of the respondents in Study 1 rated *guanxi* practices as always helpful to the focal actor, but sometimes helpful and sometimes harmful to the organization, and most times harmful to the community.

Only one scenario about building loyal customer relationship with no implied violation of organizational or community interests and procedures is viewed as helpful to the self, the organization, and the community. Obviously, when there was conflict of interest, *guanxi* practices were perceived as benefiting self-interests of the *guanxi* user at the expense of either the organization or the community. In the actual examples of *guanxi* practices provided by the respondents, *guanxi* practices were seen as a double-edged sword. On one hand, *guanxi* practices not only enhanced individual actors' social capital, career advancement, and social and financial well-being but also promoted trust, cooperation, harmony, and efficacy in the organization and the community. On the other hand, reinforcing the first finding in the scenario study, the participants provided vivid examples of how *guanxi* practices that benefited individual users also undermined merit- and product-based competitiveness of the organization and damaged the economic, legal, and ethical institutions of the larger Chinese society.

Generally speaking, *guanxi* practices with favor exchanges as the core activities are ethically acceptable or even laudable if contained in the private domains of life where personal and private resources are exchanged. However, to the extent private and public resources are mixed up in *guanxi* exchanges, they become ethically problematic to the extent public resources are used to benefit private interests of the *guanxi* parties in violation of ethical rules or norms of the relevant communities.

Ethically Lax

Zhuang & Tsang [65] defined some ethically problematic marketing activities and techniques used in personal selling in China as gray-marketing. Based on this, they developed a conceptual model of gray-marketing for a particular type of selling in which both the sellers and the buyers exhibit problematic ethics in an exchange.

They found that the respondents have different ethical evaluations of different marketing practices used in personal selling such as giving and accepting gifts, buying and accepting meals, and offering and accepting kickbacks. Some of these practices may not be considered unethical. Considering in terms of ethical assessment, gray-marketing practiced by buying agents is more unacceptable than when practiced by sales agents. Furthermore, a person's ethical evaluation of gray-marketing behavior, empathy for gray-marketing, and belief that gray-marketing has serious consequences, all significantly affect his inclination to use gray-marketing.

Chan, Cheng, & Szeto [6] conducted a comprehensive survey to examine how Chinese executives perceive the role of *guanxi* and ethics played in their business operations. They factor-analyzed 850 valid replies, and identified three distinct ethics-related attitudes and two distinct *guanxi*-related attitudes for Chinese executives. The cluster analysis of the composite scores of these five attitudinal factors further indicates the existence of three distinct groups of Chinese executives that vary in their ethics and *guanxi* orientations, namely, the unethical profit seeker (UPS), anti-governance, *guanxi*-cultivator (AGGC), and apathetic executive (AE). The three groups are also found to be significantly different in such demographic characteristics as age and the ownership structure of the serving organization. Specifically, the intergroup comparison suggests that younger Chinese executives and those working for privately owned firms and joint ventures are more inclined to engage in unethical activities for profits.

Wu [62] studied business ethics practiced by Taiwanese enterprises in Mainland China, Vietnam, and Indonesia. Some 375 valid responses were obtained from Taiwanese owners or senior administrators. Taiwanese enterprises in East Asia were found to be ethically inclined in respect of their local environments and generic human rights, though one-third of participants identified themselves as "ethically lax."

A cross-cultural comparison of US and Taiwanese business practitioners conducted by Cherry, Lee, & Chien [8] indicated that Taiwanese practitioners exhibit lower perceptions of an ethical issue in a scenario based on bribery, as well as milder deontological evaluations and ethical judgments relative to their US counterparts. In addition, Taiwan respondents showed higher likelihood of making the payment.

Adaptation of Foreign-Investment Enterprises

Conceptualizing along the dimension of modernization, Taiwanese society has been exposed to the impact of Western culture to a greater extent than did the Mainland China. Nevertheless, both Taiwan and Mainland China share similar Confucian cultural tradition, the business ethos of Taiwan are also characterized with Confucian familism and crony capitalism [33]; it would not be difficult for Taiwanese-investment enterprises to adjust to the new social environment to other Asian countries including China.

Nevertheless, managers with different cultural backgrounds who know little about the complicated dynamism between Confucian heritage and Legalism may have different views on what is acceptable ethical behavior [7]. Brand & Slater [3] invited 31 Australian managers who had spent on average 8.7 years working in business connected to China to participate in in-depth interviews regarding their business ethics experiences in China. Those managers identified issues relating to a broad spectrum which could be labeled “bribery and facilitation.” Other repeated themes included requests for visa assistance, employee theft, nepotism, and non-adherence to contractual obligations. They identified four key coping strategies from the data: Managers spoke of not compromising their own morals, of attempting to understand the motivation of Chinese colleagues, of talking to others, and of adhering to company policy.

Based on interviews in the China-based operations of 49 UK companies, Millington, Eberhardt, & Wilkinson [45] carried out their research both with senior (often expatriate) staff and with local line managers who were responsible for everyday purchasing decisions and for managing relationships with suppliers. The results suggest that gift giving is perceived to be a significant problem in UK-owned companies in China. Gift giving appears to be associated with illicit payments, corruption, and the pursuit of self-interest. Firms seek to reduce the incidence of illicit transactions by changing staff roles, instituting joint responsibilities, which include the separation of different aspects of sourcing/purchasing, increasing the involvement of senior staff in the process, and through the education of employee and suppliers.

Hierarchical Stakeholder Model

For business of foreign investment, *guanxi* (literally interpersonal connections) is in essence a network of resource coalition-based stakeholders sharing resources for survival, and it plays a key role in achieving business success in China. However, the salience of *guanxi* stakeholders varies: Not all *guanxi* relationships are necessary, and among the necessary *guanxi* participants, not all are equally important. Therefore, establishing necessary *guanxi*, without paying unnecessary costs, becomes a crucial lesson for business of investment to achieve success in China [20].

Su, Mitchell, & Sirgy [55] developed a hierarchical stakeholder model of *guanxi* which dimensionalizes the notion of stakeholder salience, and distinguishes between and among internal and external *guanxi*, core, major, and peripheral *guanxi*, and primary and secondary *guanxi* stakeholders. Guanxi management principles are developed based on a hierarchy of *guanxi* priorities and management specializations. They applied this instrumental stakeholder theory to construct a means for Western business firms in China, to reliably identify *guanxi* partners by employing the principles of effective *guanxi*.

Because business of foreign investment tends to help their managers to improve the way they approach potential ethical situation in China, the ethical performance

of foreign-investment enterprises as measured by various indicators has fared well in comparison to that of the indigenous state-owned enterprises, collectives, and private enterprises [37].

Dynamism for Organizational Change

Balanced Concept of the Firm

Owing to the notable differences between the practice of ethics control mechanisms in foreign-investment and local enterprises, establishing global supply chains of multinational companies in developing countries may institutionalize emergent international ethical standards and practices into this component of the Chinese economy [35]. Some researches indicated that the value profile of Far Eastern students who had lived and studied in USA for a considerable period of time tend to get modified, so as to include the values preferred and desired in the new social environment [36]. They may become agents to initiate social change after they returned to work in their home country.

When corporate social responsibility has become increasingly popular in advanced economics in the West, it is receiving more and more attention by corporations in Taiwan [33] and China [34]. Moreover, because rent-seeking *guanxi* may bring benefits to individuals as well as the organizations they represent, but these benefits are obtained at the expenses of other individuals or firms and thus detrimental to the society [18], a counterforce may emerge to control it from the internal society of China.

Ip [33] examined the challenge of developing a business ethos in China in response to today's increasing demands of corporate social responsibility within the context of recent business scandals, food scare, labor issues, and environmental degradations the country is now experiencing. It seems to me that the efforts of developing business ethics by implementing new rules of regulation against the background of Chinese cultural and ideological heritage can be conceptualized as struggle between Confucianism and Legalism in consideration of Chinese historical context, but it is more adequate to view them as complements between two opposing forces as conceived in Table 50.1. It is an effort to improve the favor-seeking *guanxi* among stakeholders by Confucian wisdom for action, but to suppress the rent-seeking *guanxi* by the Legalist technique of management, so as to assume the corporate's social responsibility. This approach might be called the "*balanced concept of the firm*" [17] which is different from other approaches to corporate ethics in chiefly Western literature such as discussion on "*corporate social responsibility*," *the stakeholder approach*, and *social contract theories*.

Ethical Leadership

In order to explore the effective performance of business ethics and to provide a learned reference, Wu [63] reviewed relevant literature, developed a notion of

“business ethics operation,” and argued that different types of “*ethical leadership*” and “*catalytic mechanism*” precipitated four operations and a swathe of different approaches to business ethics within enterprises across the Taiwan Strait. Huang & Snell [23] studied moral climates through case studies of three state-owned enterprises in a South China City, and built a model of the relationship between moral leadership, institutional superstructure, internal governance and control systems, enterprise moral atmosphere, and performance.

Provis [48] discussed two different types of obligations: personal and social obligations as owed to *guanxi* parties, in contrast to general and abstract moral obligations as owed to impersonal communities or the rational structure of law and administration. The personal obligation lies in personal identification with the particularistic social relationships between *guanxi* parties, whereas the general obligation is independent of any concrete individuals or their specific relationships. Private ethics of *guanxi* exchange such as reciprocity and trust between *guanxi* parties may nevertheless conflict with and violate public ethics of the community and the rule of law, impartiality, and fairness.

Conceiving in terms of the conceptual scheme presented in Table 50.1, Confucian ethics for ordinary people emphasize the importance of personal obligation, while Confucian ethics for scholars advocate the value of practicing one’s general obligation to the organization or the community. Generally speaking, the effective business ethics are initiated by determined moral leaders with Confucian ethics for scholars who decide to create such a corporate culture by the so-called catalytic mechanism for designing the internal governance and control systems. For example, Firth, Mo, & Wong [19] analyzed enforcement actions issued by the China Securities Regulatory Commission against auditors in respect of fraudulent financial reporting committed by listed companies in China. They found that auditors are more likely to be sanctioned by the regulators for failing to detect and report material misstatement frauds rather than disclosure frauds. Further analysis of the material misstatements indicates that auditors are more likely to be sanctioned for failing to detect and report *revenue-related frauds* rather than *assets-related frauds*. Their results suggested that regulators believe auditors have the responsibility to detect and report frauds that are egregious, transaction-based, and related to accounting earnings.

System-Design Variables

Douglas & Wier [14] hypothesized that budgeting system variables and reactions to them are influenced by culture-specific work-related and ethical values. Most organizational and behavioral views of budgeting fail to acknowledge the ethical components of the problem, and have largely ignored the role of culture in shaping organizational and individual values. The data of their research demonstrated the national cultural differences in system-design variables (such as participation, standards tightness, budget emphasis, etc.) which they characterized as the opportunity and incentives to create budgetary slack, and the expected relationship

between incentives (but not opportunity) to create slack and slack creation behavior.

For example, “*Small treasuries*” (*xiaojinku*) are off-book accounts found in many large enterprises in China for the purpose of rewarding managers and their subordinates, building up *guanxi* (personal networks), and even financing the business operations of their *danwei* (work units).

While small treasures can, in some cases, help organizations deal with immediate financial problems, they have negative impacts on organizational performance in relation to the moral hazard of managers, as well as the allocation of organizational resources, in respect of sustainability of strategic advantages and growth, and mismanagement of organizations. Because of the involuntary behavior of managers in Chinese enterprises, Hung [24] proposed that it will require not only organizational controls, but also a fundamental change in these managers’ ideology for solving the problems of small treasuries.

Conclusion

Fan [18] argued that *guanxi* is an inevitable evil under the current political and socioeconomic systems in China. Its role and importance in business life will be diminished as the country moves toward an open market system. In fact, Fan [18] was talking about rent-seeking *guanxi*, but not favor-seeking *guanxi* in his argumentation. Viewing from the theoretical framework of Table 50.1, when the importance of rent-seeking *guanxi* is diminished as a consequence of struggle between Confucianism and Legalism, favor-seeking *guanxi* is still an important cultural tradition in the complementary leadership between Confucianism and Legalism for maintaining the operation of Chinese enterprise.

Indigenous Control Mechanism

Here I would like to emphasize the implications of “struggle” and “complement” between Confucianism and Legalism. In Chinese history, so-called struggle between Confucianism and Legalism means the contradiction of two opposing forces who are insisting on their attitudes about the establishment of control mechanism to regulate the problematic ethical behaviors within the organization (or the state). After the establishment of ethical control mechanism as a consequence of struggle between Confucianism and Legalism, its practice must rely on the ethical leadership from top to down, which is called practicing Confucianism with a supplement of Legalism by Chinese.

Most ethical issues related to China can be understood in terms of this perspective. For example, intellectual property right is one of the major issues of misunderstanding between the West and the various Chinese political entities after decades of heated negotiation. Lehman [38] examined the sources of this problem from the standpoint of traditional Chinese social and political philosophy, specifically neo-Confucianism. He pointed out that the basic assumptions about the nature of intellectual property, which arose during the seventeenth and eighteenth centuries in Europe, are fundamentally at odds with the traditional Chinese view of the role of intellectuals in society. It suggests

that politics which do not take these differences into account, but which attempt to transfer Western legal concepts without the underlying social constructs, are responsible for much of the lack of success in the area of intellectual property rights.

Virtuous Corporations Against Stigma

Viewing from my advocacy for indigenous psychology [28, 29], so long as the underlying social and cultural construct can be identified for constructing indigenous theories of social sciences, it is not difficult to solve such problems as intellectual property or business ethics. There is a widely spread stereotype that Chinese state-owned enterprises are “economic black holes” which swallow everything in their paths. They have been stigmatized with such images as inefficiency, backwardness, resistance to change, conservatism, and bloated bureaucracy. Nevertheless, as a consequence of China’s economic success, more and more state-owned or collective owned enterprises have distinguished themselves by their unique corporate culture as well as their financial performance. Some examples on the name list of “virtuous corporation” are the Weizhi Group, which produces apparel in Xian, Shaaxin province [30], the Haier Group that produces home electrical appliances, the Qingdao Brewery Cooperation, which brews the world-famous Qingdao beer, the Double Star Group, which manufactures in Shangdon province [31], and the Vantone Group, which specializes in reality and financial services in Beijing [32]. Case studies on those “virtuous Corporation” showed that the most prominent features are the strong corporate culture and the leaders which contribute to the business ethics as well as the social capitals of the company. A series of intensive of analysis on those successful cases enabled [32] to conclude that a company can rarely develop its culture without utilizing the culture of the society where it is situated. Corporate cultures of those companies by and large are reflections of their home cultures which, I believe, can only be understood by theoretical framework of indigenous social science.

Cross-References

- ▶ [Chinese Guanxi and Business Ethics](#)
- ▶ [Confucian Virtues and Business Ethics](#)
- ▶ [Daoism and Business Ethics](#)
- ▶ [On Yijing as Basis of Chinese Business Ethics and Management](#)

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Chung-Ying Cheng

Abstract

Unlike those who see no unique Chinese business ethics in present Chinese society or see only some simple Confucian and Legalist rules at work in business, this chapter holds that there is an Integrated Confucian Business Ethics in Chinese society today and that it has a rather complex structure as based on the Yijing mode of thinking. Without the Yijing onto-generative cosmic philosophy as a guide there could not be such an interesting integration of philosophical schools in Chinese business ethics, which in essence becomes a practical philosophy for action in business and economics. The process of derivation of such integration is both practical and rational as envisioned by the Yijing way of thinking. In this chapter I analytically describes the process of this integration from Confucian virtue ethics to enhanced Confucian ethics and its business application as enhanced Confucian business ethics. From this, we come to a modernist transformation by way of incorporating duty ethics, utilitarianism and even rights ethics. This is then called the *Integrated Confucian Business Ethics*, which is the powerful tool used by Chinese business and economy leaders today to achieve both economic development and national development at the same time.

Introduction

It is important to know that there is a Chinese Business Ethics at work in China today and also to know how this unique Chinese Business Ethics as a complex structure is derived from both tradition and modernity based on the powerful

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transformational power of the Yijing onto-generative philosophy of change and transformation. The importance of this knowledge and understanding consists in that it illuminates how Chinese business people and their leaders do their businesses in many contexts of negotiation and transactions, which include both domestic and international scenes. It also explains how successes are achieved and how risks have to be confronted and overcome. Hence, we should study the guiding principles underneath this highly complex structure titled Chinese Business Ethics in reference to the Yijing, which in a sense is the Classic of Change and Exchange.

Defining Task of Inquiry with New Concepts of Ethics

The task I set up to do in this inquiry is a highly complex one. It involves defining and understanding how ethics in Chinese philosophy as we know has been formulated under the influence of the Yijing as a cosmological philosophy. This must lead to an inquiry as to how Confucian theory of virtues and virtue ethics are to be defined under such an influence. This means that we cannot just take for granted what has been said about Confucian ethics without such a reference. Once we formulate the Yijing integrative ethics in Confucianism we would then see Confucian ethics as a system of ethics of virtues with special reference to an onto-generative cosmology.¹ This result would then be made available to include insights from the Daoist philosophy, which also stems from the Yijing cosmology as well as to incorporate the Chan Buddhist philosophy of enlightenment which stems from the Daoist philosophy. This complicated structure is then what I would offer as the enhanced and even ideal form of Confucian ethics, which despite its ideality is actually working effectively in combination with other factors as standards in historical Chinese society.²

Given the present new form, it may be regarded as the ideal form or the core wisdom of the Confucian tradition in one way or another operative in the minds of the practitioners of contemporary New Confucianism.

I have no desire to prove this thesis from a social science point of view. I let it stand just as a working hypothesis and titled it *Confucian Ethics in the Enhanced Form* or simply virtue ethics of life and the *dao*. I shall hold that this ethics is the basic model for management in traditional culture whether in the private sector or in the public sector. My next step is to confront Chinese society today as a modern society and even as *a society with mixture of modern and postmodern cultures which respectively advocate universalism of values and particularism of human freedom*. In this hybrid context I introduce and consider a model of ethics which would incorporate the Western ethics of deontology, contract theory, and utilitarianism as irreplaceable modernizing ingredients.

With this understanding I shall inquire how Western ethics can be described justifiably as the union of deontology, contract theory, and utilitarianism. Then I shall incorporate this union into the Enhanced Confucian Ethics to arrive at the modern or *Contemporary Confucian Utilitarianism* or Confucian Business Ethics. But we must also be reminded that in contemporary China, Marxism plays an

essential leadership role in effecting this development which is reflected in the value goals and strategic policies of the central government and state-owned enterprises. In taking this into consideration I come to the final contemporary form of Integrated Confucian Ethics/Business Ethics, which seems to guide all economic reforms, commercial transactions, and business management in China. To recapitulate simply, this ultimate modern form of this ethics is a result of transformation from the Enhanced Confucian Ethics to the *Integrated Confucian Ethics* via incorporation of duty ethics and utility ethics in the traditional enhanced virtue ethics of Confucianism.

In a final move of definition and explanation, I shall simply identify the business ethics and management system as application of the Integrated Confucian Ethics to different functions of economic decisions and management in contemporary corporations as described by my C Theory, which treat corporations as legal persons in some difference from but in association with simply natural persons. The philosophical crux of the conclusion is to indicate that such a model of business ethics and management is intended to be descriptive as hypothesis and prescriptive as a guiding principle in the actual practice of business behavior which is organizational or market oriented or both. Since the basic methodology of totalistic and dynamic onto-generative way of thinking is essentially derived from Yijing philosophy, without which either Confucian ethics, whether enhanced or integrated, or their transformation is not possible. Hence, we have to see both Confucian ethics or Confucian Business Ethics as Yijing spirit imbued and Yijing grounded as well.

Yijing as Creative Source of Cosmological and Ethical Insights

Yijing 易经 as a classic in Chinese philosophy has been often regarded as book of divination. But as early as the time of Confucius in the sixth century BCE, Yijing has emerged also as a book of cosmic insights and ethical wisdom. This great transformation is made possible by inquiring on how Yijing developed as a response to the need for knowing the future and a concern with future changes of nature and with how human beings would confront the changes. This fundamental motive has made Yijing both epistemologically and ethically interesting, because as one can see, without knowing the world from a comprehensive perspective, how could I identify and locate myself in the world?³ Similarly, without our ability to respond to a world situation in terms of proper and fitting actions, how can I warrant my well-being in the future? As future action belongs to future, we have a choice as to which future action we would prefer. Hence, the divinatory interest has to lead to interest in action. It is in confronting the world as we come to know empirically and by observation that we come to know ourselves as capable of choice and capable of effective action, again as testified by our wide experience.

In both knowledge and action we can see how Yijing must transform itself into a book concerning knowledge of cosmic reality and a book concerning human choice and action. This means that one has to see that Yijing is not just a book of divination, but a work presupposing implicit representation of a fundamental view of the cosmos and its changes in the system of symbolic indexes of lines. It is a book

which leads also to the discovery of the cosmic creativity for change, and evolution of different things in nature always suggests a creative force at work. By creative force I mean that power which brings out new things and make many to become one and one to become many possible. In a natural cosmology, laws of nature come into existence when things come into existence and there will be new laws of nature when radical changes among things take place. In the case of man, in so far as we can make a choice and act on our choice, we can be said to have creativity as well. It is also interesting to see how this human creativity is actually deeply rooted in the cosmic creativity as I have indicated, for it is by reflection we come to know we are created from the creative force of cosmos. We are created from the cosmic process in the sense of our being what we are generated and evolved in a process of change and transformation.⁴ Besides, we come to know that we are created in such a way that we can be said to embody the root creativity of the cosmos so that we can explain how we could make choice and action in a creative way as testified by development of civilization and ethical institutions in history.

From this analysis it is quite clear that in so far as the Yijing is concerned with the divinatory issue of knowing future and acting according to our knowledge of the future, it is founded on the basis of a rich presupposition and background which provides the potentiality of transforming it into the most philosophical book. As a matter of fact, this transformation actually is accomplished in two stages: the first stage is where the judgments from past divination became sorted out in a system of *guas* 卦 of symbolic forms of *yin* 阴 and *yang* 阳 lines. The *guas* also became silently named with reference to things we observe in the world. The second stage is where Confucius and his disciples make a full and holistic interpretation of the book and bring out to the open and explicit the hidden cosmology of creativity and change as transformation as we see in the Ten Wings of the Yizhuan 易传. It is not just the hidden cosmology of nature that was brought out, it is also the hidden ethics of powers of choice and action that was also brought out so that we have a basis for developing ethics and cosmology together. It is not just a matter of Confucius giving an ethical interpretation of the Yijing, it is also a matter of the Confucian disclosure of the ethical presuppositions of the Yijing? As we can see, the cosmology is the source of ethical insights and ethics is the cosmology being completed with human reflection on normative action. Yijing in this sense has offered to us a naturalistic axiology, uniting cosmology and ethics into an open creativity of creative development and freedom and achievement.⁵

For the purpose of exhibiting the cosmic spirit of creativity, we may quote the following statement of the Tuanzhuan 彖传⁶ for the hexagram Qian which explain how originative creativity of the cosmos has the virtues of creation (*yuan* 元), prospering (*heng* 亨), facilitating (*li* 利), and persevering (*zhen* 贞). These four virtues are to be inherited by all things created by the originative power:

Great is the originative creativity (*qian* 乾)! It is by it that all things begin their existence and thus the Heaven has the power of production. The clouds flow and the rain falls so that all natural kinds demonstrate their forms. [As the sage comes to understand], the *qian* hexagram shows timely formation of six positions each of which realizes a different function of the heavenly creativity. This means, the way of originative creativity

(*qiandao* 乾道) makes kits creative transformation so that all things acquire their congenital nature of creativity which enable and empower their self-fulfillment. This no doubt is pertinent for persevering and preserving. The sage (as a person who embodies this understanding) stands over all things and would thus induce all-comprehensive peace for all the ten thousand states. (Qian Tuanzhuang 乾象传)⁷

How does the humanity show its creativity? The above quotation has already pointed out that the *human person has to understand the cosmic process of origination and sustainable evolution in his ability to symbolize this understanding in a system of symbols of yin and yang*. This is natural way of showing the cognitive creativity of humanity. But humanity has also to demonstrate how it keeps on the creative function and activity in forming civilization, enhancing community, and settling issues and moves forward for ceaseless creative action of realizing talents and visions of humanity which conforms at the same time to intrinsic virtues and leads to joyful presentation of goodness. Even though the cognitive creativity of humans does not necessarily produce moral good, and is capable of serious destruction and causing great harm, one also could notice that human beings make more positive choices than negative and that the positive choices turn out to be more successful actions. That is why positive and good actions are more often chosen than not and more often successful than not. Therefore positive aspects tend to be recognized and negative ones ignored. That is why ethics in the positive sense is naturally formulated, when it is formulated, it is formulated in the form of self-cultivation for development of harmony within oneself and harmony among people and things in the world. This is the human way of realizing the cosmic creativity just as the humanity is a cosmic way of realizing human creativity. Both creativities are rooted in the same source and form a chain of reciprocating circle of enhancement and uplifting.

The following statements for the Xiang Zhuan 象传⁸ are extremely suggestive and significant:

“The heaven proceeds vigorously. The authentic person shows the same by self-strengthening without cessation”

“The earth poses its creative compliance. The authentic person shows the same by reinforcing his virtue (ability) for holding things”

From these two short remarks, we could come to see how humanity could be developed under the influence of our appreciation and understanding of the cosmic way. Three points could be made: First, it takes deep insight and reflection to see the creativity of the Heaven and Earth and to see it in a way which is congenial and intimate with our own self-understanding; second, we do come to see that the cosmic creativity is the model for awaking our self-understanding and self-knowing toward modeling after the cosmic creativity and what results from this modeling is the human ethics of self-cultivation and care and receptiveness to others, people, and things all included, like what Heaven and Earth have shown.

Third, humanity has also acquired an intrinsic end which defines its worth and dignity, namely, a human being is endowed with a nature which is cosmic and ontogenerative and so to speak, rooted in the profound creativity of the cosmic reality. As this cosmic reality is rooted in an inexhaustible creativity which is unlimited and unconditioned, humanity also has a source which is immanently transcendent and

thus has all the power of achieving himself, enhancing others and refreshing and regenerating this cosmos. From these, we can come to see how Confucianism and Daoism arise and how in both ethics there is a continuation and development of a creative cosmology and thus a representation of the onto-generative metaphysic of life and harmony.⁹

Confucian Virtue Ethics as Embodiment of the Onto-Generative System of the Yijing

In terms of time, it can be said that Yijing has come to embody a cosmological philosophy much earlier than Confucianism as founded by Confucius. But one might also say that it is Confucius who has contributed to the articulation of this cosmological philosophy as indicated above. The methodology throughout this embodiment and articulation is consistent and that is what I have described as comprehensive observation and reflective feeling. The onto-generative cosmology of Yijing is no doubt more a matter of comprehensive observation, whereas the Confucian ethics and philosophy of humanity and ethics is more a matter of reflective feeling on the other hand. But the continuity and resonance between the two require explication which gives coherence and depth to the Confucian position on humanity. First of all, we may have to raise the question on how Confucius initiates his philosophy of humanity in his observation of rites and rituals in his time and how he transforms his concern with *li* into a concern with humanity in the sense of care, benevolence, and feeling for life and creativity.

The order of *li* 禮 or propriety has prevailed in the ancient time as an order of social harmony and political stability. The invention and development of *li* of course is not arbitrary and ad hoc as it is the way in which the human relationships become regulated and the social order become established. For Western philosophers, it is not quite understandable concerning how *li* could be introduced in such a way that it makes trust, respect, and functional interdependence possible among people both known and unknown. From the Western point of view, it should be the law which prescribes the way how people should act or not act. But for *li*, the relationships among humanity is not just a matter of observing external rules of law, the violation of which invokes punishment.

Besides, the law has to be commanded by an authority which reigns over those to which the law applies. A good example is Roman Emperors who dictated laws for obedience by subjects with punishment for disobedience. On the other hand, for the efficacious action of *li*, the authority is invested not in one reigning lord but in the whole community. In this regard, *li* has the consent among people from their own feelings. It might be introduced from a sage but it is founded on initial common feelings among human subjects who throughout their own experience come to appreciate the *li* and even become attached to the *li*. Until we understand this foundation of the *li* we could be misled into thinking of the so-called “magical power” of the *li* as Herbert Fingarette has suggested.¹⁰

Thus understood, it is said in the Analects that “the function of *li* is such that it takes the harmony as the most valuable pursuit.” ([2] 论语, 1.12). By the same token, Confucius even wishes to make the *li* the foundation of the political rule, and he contrasts the rule of *li* with the rule of *fa* or *xing* (punishment) as follows:

Guided by dictate of political authority, and regulated by punishment, people can get by without violating the law but having no sense of shame; Guided by virtue, and regulated by *li*, people will have sense of shame and a standard for personal development. ([2], 2.3)

It is on the basis of understanding of the *li* that Confucius comes to the awakening of the humanity underlying all people. What is notable about this discovery and understanding is that he sees this underlying humanity as also a matter which defines one’s voluntary action and freedom or free will. For he says, “If I wish to have the *ren* 仁, lo, *ren* is right within me.” In other words, the underlying humanity defines not only a general feature of all people, but a general feature which is also a particular recognition of the self-consciousness and self-autonomy in which human will and self-knowledge are equally present. This point is extremely important, for it is through understanding this point that we can see how *ren* comes to transform oneself and the human community into a moral and ethical community.

As we see, the Chinese word *ren* as composed of the two-human-togetherness (仁) has contained a rich repertoire of meaning and implication. It is not only a substantive word referring to the feeling I have concerning the general humanity but also a metaphorical word which requires both imagination and action for realizing the togetherness of the two-human relationship which of course is not limited to the two-human relationship. What I wish to explain here is that the basic ethical principles or codes of Confucianism can be said to be contained and rooted in this root metaphor. I shall explain this in terms of three basic meanings and experiences of *ren* as intended by Confucius;

1. *Ren* is restraining of myself so that I can freely practice the *li* as rules of relationship which reflect human desire for harmony. It is here that in awakening to the *ren* I also recognize the obstruction from my selfish desires and bigotry-based self-interest. These desires could satisfy me only temporarily as a small person, but in order to fulfill myself I have to overcome these desires and embrace the feeling or sentiment of *ren*. We have to come to this understanding by already knowing the reason for *li* observance and therefore come to the formation of new self which is open to *li* and which will preserve the spirit of *li* and lead to natural performance of the *li* as a fitting way of treating others in respect of relationships and situations.
2. *Ren* is the ability of putting myself in the role and position of other people in situations of relationships which we experience and encounter in life. In being able to put myself in the role and position of others I can empathize with other people in their doings and sympathize with them when they have difficulties so that I might come to help and thus exhibit a concern and care for others. This capacity of empathy and sympathy and consequential feeling for care and help must be seen as a high mark of humanity in *ren* and its actualization no doubt

requires that we have developed an insight into the minds and hearts of other people. How this is possible points to the fact that we see others as myself and myself as others and thus we could have the same hearts and minds in terms of their basic capacities.

From the operation of the *ren* in this sense we come to the famous two principles of Confucian ethics:

- (a) Do not do to others what you do not want others do to you
- (b) In wishing to establish myself, establish others as they wish; In wishing to reach for your end, try to enable others to reach for their ends.

These two principles have embodied the most profound wisdom of the Confucian virtue ethics. What I mean by this is that it takes a person of profound self-knowledge and humanity to see that there is deep similarity among oneself and others and that this similarity is also a matter of mutual bonding so that what I regard as harming must be experienced as harmful by others and what I experience as joyful must be experienced as joyful. Hence, I should not impose harms on others as I do not wish harms to be imposed on me; similarly, I should share joys with others as I do wish others to share with me but I have to take initiative to do so. This is also to make one person to be a worthy representative for humanity. It is through the realization of humanity that we come to appreciate others as others and myself as myself.

It is on the basis of this realization of humanity that we can establish both identity and difference between myself and others, for while I can avoid harming people and in addition to try to make people happy, I have still to see other people as different entities with their own peculiarities external and internal to their own selves, I have therefore to respect their identity in terms of their difference and this takes also insight to accomplish. I may use myself as a measure of pain and pleasure, but my experience could be too limited, so that I may not know how to help others to avoid pain and to gain happiness in general. For Confucius, this is the reason why I have to keep an open mind and an open heart so that we may come to learn and make progress of my understanding. Hence, the requirement of self-cultivation and learning from others (三人行必有我师) are important projects for realizing myself in humanity and realizing humanity in myself. For Confucius, the issue of alterity of other minds and hearts raised by Levinas does not exist, because there is the cosmology of knowing by observation and reflection which may be denied by Levinas¹¹. The Confucian ethics is thus seen to be founded on the epistemology and cosmology of the experience of observation and reflection which have an expanding and real use in establishing knowledge of the world and humanity.

In the Analects, Confucius speaks of the way of Zhong Yong 中庸 which is understood as the middle way, but what is a middle way exactly?. Confucius has answered with the statement that “The excessive is just like the deficient in being both unacceptable.” There are many statements which suggest what constitutes excessiveness and deficiency. From these statements, we see that the best and good form of life must consist of a mean which just fits in with the way of the mean which can be applied to situations to generate a desirable state. I take this way of the mean to be that of harmony which is normally achieved by following the *li*. But there are

many circumstances which require us to discover and determine what is the harmonizing factor which actually brings out a harmony among people.¹²

Confucius sees this as a challenge and hardly any people can achieve and hold this principle for long because people may lose sight of the change of circumstances and thus may not regain the way how a universal principle applies to a particular situation. This means that we have to renew our principle of the mean with a new desirable mean to be generated in a holistic situation. What this means again is that we need to continuously learn from experience and renew ourself by cultivation of self-reflection. This means also to continue to keep out vision of the *dao* and follow the *dao* in one's life. This is of course a matter of *ren* or cultivation of *ren* which is regarded is a life-long mission for oneself. It is on this basis that Zisi in Zhong Yong comes to define humanity as a matter of endowment from the Heaven and that we must constantly seek inner feelings of identity in self and illumination of one's nature which embodies the *dao*.

Given the above three points of the *ren*, we may bring out an important point about the nature of the human self: human self is to be defined by one's consciousness of one's identity and one's identity has to be defined from integration of one's experiences of identity of things and people with their differences which I come to see and appreciate. This means that a human being has to be consciously and conscientiously involved in identifying himself as an entity which has achieved a coherence of experiences in his life and which he may be expected to hold in the future. Besides, he would be able to address his responsible actions to others and be trusted by others as parts of his experiences of himself. It is in this sense we may see the person as authentic and respectable because he finds no truth in himself but the truth of his coherence and his ability to preserve and carry out his coherence as informed by his conscious identity and warranted by his ability and willingness to assume his responsibilities and perform his duties in regard to others.

Now the question is how this Confucian ethical understanding of humanity is related to modern business ethics. To answer this questions, three observations could be made:

1. In modern business, we have an organized structure which requires common observance of basic rules of constitution to do with division of labor and consolidation of work. This means that there are *li* rules which must be observed and observed in an external-to-internal way as these rules must be founded on a sense of common purpose and common vision.
2. The ability to feel for others so that one restrains oneself in order to interact with others in a productive manner is a matter of *ren* or considerations for others. Without this understanding it is difficult to work with others whether on superior or inferior ranks. One may not be able to deal with consumers or clients effectively without a sense of *ren* which requires one to look into feelings and responses of others.
3. In business ethics, there is requirement that the managerial authority represents the whole corporation and this implies that the CEO of the business must be well- cultivated in basic virtues of humanity so that he could effectively

communicate with others including his own workers and find ways of solution for any difficult tasks.

With our explanation of *ren* at hand, we may proceed to a fundamental concept of Confucian Business Ethics, namely, the concept of *cheng*. It is on this basis of the authenticity of the human self that we can explain the important virtue of “*cheng* 诚” (literally translated as sincerity, meaning “authenticity”) as singled out in Zhong Yong. *Cheng* is the inner feeling of one’s identity as authenticated by one’s readiness to bring all the mental faculties to bear on one’s action and conduct. In this deeper sense of self-identity, one sees that if there is no moral responsibility, there is no authenticity of the self. We must first recognize that *cheng* is the way to identify oneself on a deep level which will lead oneself to the creative root of oneself. By *cheng* one comes to see oneself as rooted in the creativity of a cosmic source which should give rise to all other self-identities. It is from this deep source that one sees one’s *cheng* as capable of inducing empathy and trust from others.

From this point of view, *cheng* is the action by which one acts out from one’s creative source so that one can be creative as well. The creativity resulting from *cheng* is a sense of affiliation and resonance of oneself with others and even with all things in the world. For one can tell from this authentic understanding of oneself and others that one can initiate, create, and realize oneself in reality just as one can feel how others can initiate, create, and realize others in reality. In fact, one must see that for a society to be maintained in good order this experience of sincerity with its outward demonstration is an indispensable condition for mutual understanding and at the same time the necessary foundation of human empathy and sympathy. In contemporary times, the Confucian idea of a businessman must require this element of deeper identity in one’s ability of self-authentication in the rooting in a creative source.

In sum, the above discussion is to show that *cheng* is an integral part of *ren* which enables us to see that *ren* is both a unique experience of oneself and a universal sentiment of humanity which has the power of moving others as well as realizing one’s own identity.¹³

With *cheng* to be so understood as the source of *ren*, we may now come to see how *ren* leads to other virtues in the Confucian ethical system. I shall specially address the virtues of *yi* 义 and *zhi* 智. First, I shall begin with *yi*. In being truly concerned with other people, a man of *ren* no doubt would recognize what is fitting and appropriate to be done or not to be done in a situation or with regard to a relationship. Whereas *ren* is internal feeling rooted in the inner consciousness of the human person, *yi* can be regarded as the proper way in which people should be treated in a situation where substantial benefits and harms could be involved. In a sense *yi* is the correct presentation of a situation *qua* situation in which harmony and balance must be achieved. In more plain terms, *yi* is the proper share one should receive over a distribution of rights and benefits, duties and responsibilities.

Besides, we have to see that among all the proper ways of treating people there is the most proper way of treating people which we may call the right principle

expressed by the Chinese term *zhengyi* (正义), to be translated in English as justice or justness. The point here is that *zhengyi* is both objective and subjective, both external and internal. We see that *yi* could represent an objective relationship to be recognized by the human mind. It is up to the human heart to require a proper or objective standard for distribution of award and punishment to be applied. This human heart is precisely the *ren* heart of a person. This means that the virtue of *yi* is also a correct attitude which is supported by *ren* and nourished by *ren*. As *ren* is against selfishness, narrow mindedness, arrogance, and bigotry, *yi* must find its place in *ren*. Mencius comes to see the importance of the virtue of *yi* as he recognizes that in the actual world there are many cases of lack of *yi* although those in power may feel complacent about their believing that they have brought good and benefits to people. But whether a ruler loves people or not does not depend merely on his personal feeling of being kind, but rather in his action in bringing benefits to people in the spirit of *ren*. If a ruler is able to care for people in this manner, we must say that he has translated his *ren* heart into the deed of *yi*.

This brings us to the Confucian virtue of *zhi* 智. *Zhi* is to use one's intelligence to understand a situation or event so that one's action will bring out the correct presentation of the situations and event in terms of what is to be done for the *yi* in the situation, namely, what should be done for the equity of the situation. In this sense *zhi* is not mere knowledge of things but knowledge which can generate proper moral action and lead to beneficial results. Confucius does take *zhi* very seriously. He even says that "Even if a person has reached an end by *ren*, if he does not have *zhi*, what he has attained will become lost again" ([2], 15.33). In a sense, we may simply regard *zhi* as practical wisdom or prudence. It is to be derived from reflective understanding and much self-restraint so that one can come to have knowledge of reality and yet see what is valuable and desirable in what prudence has shown. That is, one has to know values and ends in order to be said to have the *zhi*. *Zhi* is knowledge of ends and means toward the ends, and not just knowledge alone. *Zhi* is in this sense close to Kant's practical reason, but not to Kant's theoretical reason. As *zhi* has to develop from one's experience and transaction with people and world, *zhi* is well founded in learning and reflection. With *zhi*, one learns how to live a harmonious life and free oneself from doubts and ignorance. One can thus reach an understanding of the world which can be counted for generating common good or good to oneself without hurting others.

One may wonder why we call *yi* and *zhi* virtues (*de* 德) like the *ren* where *ren* embodies an attitude, an ability, and a feeling. The same can be said regarding *yi* and *zhi*, even though both have to rely on or require objective understanding of people and things and their relevant relationships in various situations of life. They are nonetheless more a matter of cognitive valuation of objective situations rather than projection of the self like *ren*. Besides, they do require *ren* as a root and background so that their coming into being is not groundless. They are actually aspects of the *ren* or humanity whose development requires us to pay attention to them as they would help *ren* to realize itself. The more developed these two virtues, the more they become integrated with *ren* and make *ren* both rationally and

Fig. 51.1 Derivation of main virtues from Cheng

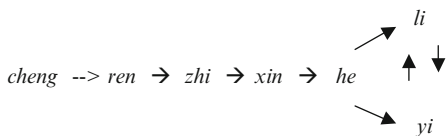
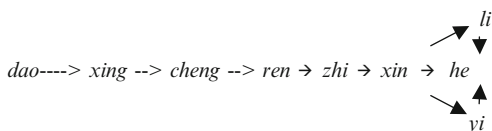


Fig. 51.2 Derivation from Dao to Harmony



emotionally substantiated. In this sense, we see the organic relationships among these basic virtues.

There are other more concrete virtues which we need not bring here. It suffices for us to see how *ren* generates all virtues and specifically the virtues of *yi* and *zhi* as ways in which *ren* can be realized. Similarly, we must say that while *li* leads to *ren*, *ren* is to be realized in *li* which inevitably leads to *yi* and *zhi*. For, in order to have a proper and fitting *li*, one has to appeal to *yi* and *zhi* in order to bring *li* to actuality and its application to a situation. In this sense, we see duality of *li* and *ren*, duality of *ren* and *zhi*, and duality of *ren* and *yi*. Finally, we have to indicate how *xin* 信 is to be developed as a virtue in a Confucian theory of virtues.

What is *xin* 信? *Xin* has two facets which are composed of the subjective feeling of trust and confidence and the objective reference to a state of trustworthiness and desirability for trust. It is clear that, in order to maintain a harmonious world with communication, we have to believe and trust others so that we may be trusted and believed by others. The reciprocity principle of the last topic applies well here. But one may ask how one could have *xin* in these two senses. Again, the answer is that one has to observe the world and see that trust must be based on understanding. One’s self-trust and trust in others will eventually bring trust from others in oneself as one becomes trustworthy. With trust established, one can act on one’s virtues and knowledge with confidence as one will be respected and common good will be pursued in a community by all involved. Hence, Confucius says that “There is no way to establish oneself (as a ruler) without trust from people”. ([2], 12.7) For Confucius there is no better way of life than developing one’s virtues rooted in *ren* in order to be trusted and also to deserve trust and thus become trustworthy.

We may represent the Confucian Ethics of Virtues and hence the Confucian Business Ethics of Virtues in the following diagram (Fig. 51.1): the sign \rightarrow indicates an intrinsic link in terms of experience and concept.

But we should not forget the cosmic factor for the ethics, hence we come to see how *cheng* is rooted in *xing* and *dao* so that we have a richer diagram of the following (Fig. 51.2).

After Han Chinese society to a large measure became Confucianized in the sense that the Confucian virtues become basis for normalization of social conduct and moral behavior

Relevance of Western Ethics and Its Incorporation in the Confucian Ethics

We come to the question on how Western ethics is relevant for the development of Confucian ethics in the modern world. It must be admitted first that the ideal form of Confucian ethics stated in modern terms was neither known nor formulated before the modern and contemporary time. In between the traditional era and modern time there was the May 4, 1919 Cultural Movement, which made the traditional Confucianism the target for devastating attack and rejection. Fortunately, there are early Neo-Confucian efforts made by Liang Shumin and Xiong Shili in aspiring to reignite a renaissance of Confucian philosophy in light of Western philosophical ideas in the latter phase of the May 4 Movement, which would lead to a new interpretation and reconstruction of Confucianism on the philosophical and intellectual levels in post-1949 era Taiwan and Overseas. But again these efforts have not made strong impact on the development of Confucianism as an ethics and management philosophy. The fact is, we cannot ignore the great campaign for Maoism and Marxism from 1921 of last century to 1949 in Chinese Mainland which led to the Great Cultural Revolution in the period 1965–1976. We can see that what has remained as residue of Confucianism was almost wiped out by the destructive force of the Great Cultural Revolution.

But again, as the events turned out, the arrival of the Period of Reform and Open (*gaige* and *kaiifang* 改革与开放) made it possible the slow and yet gradual rehabilitation and retrieval of Confucianism in the contemporary cultural China since 1980. What I have termed the enhanced Confucian ethics is a reflective reconstruction of the implicit Confucian ethical tradition as practiced in traditional China, which became the basis for further development in light of the future era of economic development in China since 1993.¹⁴ But here we have to confront a great difficulty, namely, the difficulty of making sense of opening of the free economy in a socialist country. This difficulty perhaps should be understood and resolved in Deng Xiaoping's call for developing Chinese Socialism with a Chinese Characteristic. What is this Chinese Characteristic? The answer is: It is the socialist idealism which is based on Confucianism.¹⁵ This political reform has made it possible to take a new look on the role of Confucianism and how a modernization of the Confucian ethics could be effected.

The most important thing to register is that economic activities must be recognized and incorporated into the Confucian ethics system in order for it to apply to the sociopolitical situation after 1980. The central idea is to evaluate the worth of economic profit and efforts to be made to get rich and profit. This also means that the socialist economy has to be liberated to embrace many kinds of reform in economic and financial matters. What is most essential for affirmation and promotion is the principle of utility or utilitarianism which takes the consequences of

making profit and developing capitalism (in some important sense) seriously. As a matter of fact, it is not for the first time that China comes to face the demand of economic liberation. The idea has been introduced by Yan Fu (1852–1921) through his translation of Adam Smith and J.S. Mill.¹⁶ With this background, it is not difficult to see how contemporary China could be so easily induced to get into the mode of free market economy even though not all relevant rules of economic games have been established, not to say respected.

Here, the major issue is how Confucianism could be reconstructed to accommodate the utilitarian principle as a principle of guidance of economic and commercial behavior. In my recent article on reconciling equity with self-interest¹⁷ I have articulated and argued for the Confucian position on economic activity and getting wealth with its traditional concern with general equity and social harmony. In this light, we can see how from a Confucian ethical point of view a social utilitarian principle which aims to better the society and state needs to be promoted in so far social benefits for the people are concerned. In this sense, what is to be focused on is a kind of social and political economy which would address issues of increasing social wealth and enhancing well-being of people by using the principle of utility. The real problem is whether the development of market economy could accommodate the Confucian principles of harmony and virtue and whether the latter have to be introduced in the social practice of harmonization in order to warrant not only sustainability of the market economy but also to ease the tension and danger of an overweening capitalistic dominance.

It is in light of these complicated issues which prevail in China today that prompt me to inquire how to moderate and transform the model of Enhanced Confucian Ethics into a new form of ethics and management to be titled Integrated Contemporary Confucian Ethics.¹⁸ Again, my concern is not whether it is explicitly recognized and accepted in the minds of Chinese entrepreneurs or government policy makers, but whether it could provide a normative description as well as a normative guide for the ethics and management development in China. In trying to develop this model, my interest is not only to show that China at the present time needs this model of ethics and management based on the spirit and methodology of Yijing as onto-generative cosmology but to indicate that this model has an aspect which is universalistic at the same time when it is particularistic. For, it provides a way as to how to combine the Confucian tradition with modernity, and how to relate to a global context where ethics and management must embody a human significance which is the original intent of the Yijing onto-generative cosmology and ethics.

Given the development of Western ethics, we see a historical process of ethics developing from virtue ethics of the Greek in antiquity to deontology of Kant in modernity, and then from Kant to rights ethics and utilitarianism in contemporary times.

With the moral intention of the Integrated Contemporary Confucian Ethics for Chinese economic development established, the question is how to achieve the goal and how to determine the goal, these constituting two aspects of moral evaluation. One could then see that one has to claim one's legitimate rights and fulfill one's obligations in the society so that one can freely pursue what is the best interest which would satisfy one's personal needs on the one hand and social needs on the

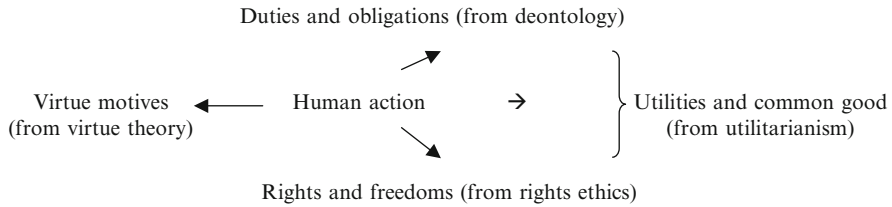


Fig. 51.3 Integration of duty ethics, rights ethics, and utility ethics on the basis of virtue ethics

other hand. In this manner, I may bring in utilitarianism as the standard for a consequential consideration of my action. In this manner, as I have suggested in my article on integrated ethics,¹⁹ we may not only resolve any possible conflicts among these various theories but using these theories in a necessary and logical way to achieve the best result in terms of an agreed-on conventional good. As we see, this methodology of moral reasoning has already embodied a meta-ethical point of view which is the theory of theories implicit in the Yijing and Confucianism. We can represent this methodology in the following flow chart (Fig. 51.3).

This methodological process is both possible and desirable because we can see that it is also an onto-generative one: namely, this process can be assumed to be rooted in a cosmologically inspired ethics of virtues such as Confucian one and as such it can be seen to change and differentiate into different branches, in answering to different social needs, which eventually yield fruits of action as we have intended.

This should bring us back to a comparison of Confucian ethics with Western ethics which also suggests how we need to integrate the two into a workable contemporary ethical theory fit for explaining and normalizing development of Chinese economy in a global context. It is in this direction that we can construct an ideal form of ethics and management for Chinese economy as well as for the globalized world.

Five Functions of Managerial Powers Under Modernized Confucian Ethics

In my C Theory book, first published in 1993, I have distinguished five levels of managerial considerations which involves control, regulating, implementation of ideas and ideals, and creation of enterprises and creative transformation. The five levels are composed of the level of autonomic and well-coordinated machine use, the level of skill involving human hands, the level of use of systems of knowledge, the level of implementing principles and values, and finally the level of applying wisdom of the dao (the ultimate principle of formation and transformation). These five levels should not be confused with the five levels of the Yijing-based Integrated Confucian ethics, which is proposed here in this paper as basically a normative project that is based on understanding of the philosophy of onto-generative cosmology in Yijing. It is true that as principles of ethics they can still be applied in management as guiding principles as I have argued that *lunli* 伦理 (ethics) and

guanli 管理 (management) are interrelated in terms of substance and function. But the five levels of management described here are intended for general reference to structure of levels of management which inverts the levels of ethics as we can see. In light of this structure of levels of management, I shall first explore how a normative functional theory of management is developed in my C theory.

The ideal modern Confucian model of management and leadership is supposed to result from a critique of Chinese history and Chinese philosophy which gives rise to an ideal of synthetic creativity (*zonghe chuangxin* 综合创新) and which I would myself describe as transcendental integration (*chaorong* 超融), because what is needed is not a synthesis but a synthesis from a macroscopic point of view in the interest of openness, efficiency, and comprehensiveness.²⁰ To see the need and actual formation of such a model one has to see how experience and expediency of history have produced moral lessons for the development and maintenance of political leadership. Without going into details of historical facts, we may simply see development of economic management and political leadership as a matter of meeting changes in society and the world and as a matter of understanding and awareness of the needs and wants of people.

First of all, let us ask what do people really need and want from a modern political leader and CEO in charge of a political economic development? As we come to understand that a modern leadership is for meeting change, refining structures, and instituting reforms so that an adequate form of leadership is to be identified or expected, we can then list the most important factors which learning from history, knowledge of the present, and aspiration toward the future have imposed on the political leadership. In such an imposed burden, one shall find that preservation of one's own important experience and memory, learning from competitors and neighbors, and development of modernization and globalization are equally relevant and demanding. I describe seven such considerations as follows:

- C1 Calculation and Commitment, Chair of the Board
- C2 Constitution and Command, General Manager, CEO
- C3 Competition and Cooperation, Marketing Director, CMO
- C4 Creation by Innovation and Creation by Renovation, Operations of Production
- C5 Communication and Coordination, Human Resources
- C6 Comprehension and Circulation, Stockholders Meeting
- C7 Cessation and Ceaselessness, Reelected Stockholders Meeting

Considering their intergenerative and mutual balancing relationships, we can now represent the basic C model of Management and Leadership in the following diagram (Fig. 51.4).

I take the sign “→” as indicating a normative tendency from a function to give rise to another function, namely, $C_i \rightarrow C_j$ means that C_i would normatively give rise to C_j . Hence, C1 which stands for commitment should give rise to C2 which stands for command. Why so? In an organization, it is required that commitment to a goal leads to actual engagement which is command. Similarly, we can require and argue that command should go to market for competition C3 and competition in marketplace requires or simulate productions C4 which should meet the demand of the consumers which is part of C3. With C4 developed and meeting the challenge of

Fig. 51.4 Integration and circulation of creative management functions based on the C theory

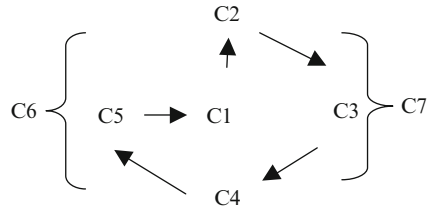
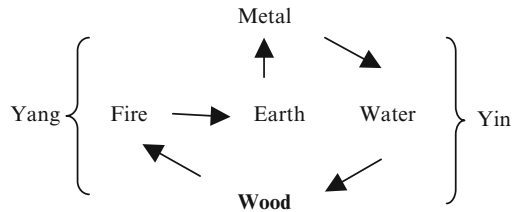


Fig. 51.5 Circulation of five powers based on successive generativity



the market, it feeds back to C5 as a state of human resources taken to be cultivated and developed. Then C5 should have the need to go back to the source and request a reinvigoration and new emergence. These giving rise to and yielding indicates a relation of successive and mutual generation (*xiangsheng* 相生) in the traditional five power theory of Earth/Metal/Water/Wood/Fire, in Yijing-inspired cosmogony whereby we have precisely a corresponding figure (Fig. 51.5) similar to the above one.

Based on the onto-generative cosmology I have indicated an analogical argument in which C1 is compared to Earth, C2 is compared to Metal, C3 is compared to Water, C4 is compared to Wood, and C5 is compared to C5. If this comparison in terms of qualitative suggestiveness generate functions for managerial activities, the traditional five power theory in Fig. 51.2 would lend a heuristic force to the five C Theory in Fig. 51.1. Of course we can illustrate the balance and counterbalance relations of C in light of the same of the five powers theory. We may indeed reconfigure the functions of management as comprising the following concerns and activities (Fig. 51.6).

In light of the embodied integration of the ethical abilities in the functions of the leadership as explained in the seven points of the new model, we may also present the following diagram indicating how these abilities can be represented as a system of integrative ethics for moral leadership which harks back the basic Confucian model of ethical virtues as a based on the Yijing cosmology. But in order to do this, we must see how each generative relationship should become genuinely mutual and hence reciprocal and interactive. This is a very important modification and revision of the original five-power theory so that the whole theory will become more productive and more integrated. In order to do, this for the original theory, we need to recognize the hybrid nature and mediation function of each power.

Thus, we can see how Metal actually may condition and give rise to Earth via a route of Water/Wood/Fire. Similarly, we may see how Water may give rise to

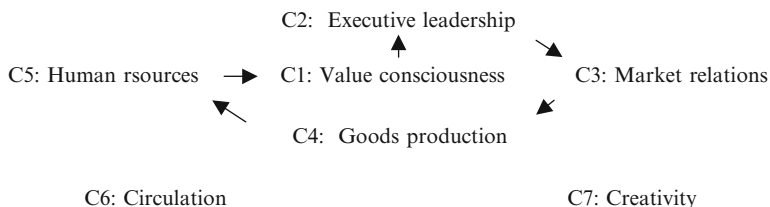


Fig. 51.6 Integration of creative functions of management in business

Metal via route of Wood/Fire/Earth, how Wood could give rise to Water via route of Fire/Earth/Metal, how Fire may give rise to Wood via route of Earth/Metal/Water, and finally, how Earth may give rise to Fire by way of Metal/Water/Water. This mutual generation which allows direct and indirect routes simply takes the whole system of circulation as thoroughly organic and organismic. This is not only physically possible and desirable but necessary and required for an organically integrated management and leadership.

Conclusion

From Original Insights to Philosophical Articulation

In the above I have presented a Yijing-oriented philosophy of ethics which I have described as Integrated Contemporary Confucian Ethics. This system of ethics can be also be described as Integrative Confucian Virtue Ethics of Life and the *Dao*, which has integrated the principles of duty, principle of utility, and principle of rights from the Western tradition. This amounts to a postmodernist reconstruction of the Classical Confucian virtue ethics which is based on Yijing onto-generative cosmology, but which also integrates the values of Daoism and Chan Buddhism both of which are Yijing-inspired²¹. That the incorporation of different types of ethics is possible for the Confucian system is due to the fact that there is the source of Yijing onto-generative cosmology which functions as a creative power of synthesis and comprehensive integration on the ground of experience of humanity which is accumulative and reflective as time advances. For after all, a system of ethics is to be developed for the sole purpose of meeting the challenge of leading a meaningful and desirable life which should be self-fulfilling and creatively productive not just for oneself but for the whole human-kind. With the Confucian virtue ethics of life and the *dao* established, we have then a solid foundation for developing a business ethics in relation to the creation of legal persons in the form of corporations and organizations.

It is taken for granted as a historical fact that economic corporations are created for the purpose of production so that they may compete in an open market place where freedom of transactions and exchange are allowed and fairness of such transaction and exchange is warranted. Hence, there are basic constitutive rules of organization and regulative rules of market transaction to be introduced and to be complied with. I have defined business ethics to be a matter of compliance with constitutive-regulative rules of organization and marketing

competition in such way that it should not violate the first-order ethics of life in community. Whether it may take advantage of the ground rules of ethics of life for improving an organization or for facilitating a market transaction is a matter of the choice for practitioners of business ethics.

With business ethics thus conceived, the management of any corporation or organization and what not is a matter of using powers invested in the functions of management for the purpose of maintaining, sustaining, and promoting and advancing the ends of corporations and transactions. I have distinguished five such powers of management in accordance with my theory developed in *The C Theory* book and have expanded their application and usefulness in close connection with the modernized theory of Confucian virtue ethics of life and the *dao*. In this fashion, the management theory must be considered as derived from or based on virtue ethics of life and its business application. As the Confucian virtue ethics is grounded on the Yijing cosmology of creativity and centralization, by the same token, the corresponding business ethics and management theory are consequently so grounded.

Cross-References

- ▶ [Confucian and Legalist Basis of Leadership and Business Ethics](#)
- ▶ [Confucian Virtues and Business Ethics](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [Utilitarianism](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

1. By “onto-generative” I mean whatever exists presupposes a process of origination from some source or root of being and this process will lead to the formation of an object to be conceived as some thing. Hence, the term indicates the natural formation of something from a source, corresponding to the concept of *benti* or root body. This idea of generative being is to contrast with the idea of “being” which is either transcendent or has a status of being without necessarily generatively related with other beings. This is the contrast between Western ontology with Chinese *bentilun* which is generative ontology.
2. After Han Chinese society to a large measure became Confucianized in the sense that the Confucian virtues become basis for normalization of social conduct and moral behavior.
3. People may identify and differentiate themselves in a network of human relationships but that is not the identification and positioning of a person in a large and even comprehensive framework of Heaven, Earth and 10,000 of things as Confucians and Daoists may wish to maintain. Do people need a comprehensive perspective/map to know their place in the world? And the map need not be comprehensive. There must be a world map in which I could find my whereabouts and situation.
4. The immanent generation of human beings from nature is different from the transcendent creation of humans by God. It requires a philosophical mentality to understand such a language. But we need not spend time to argue this point.
5. It is completely wrong to see Yijing as deterministic system as some people using divination believe. On the contrary it is in the nature of divination that Yijing is realized as a book of participation and creative achievement.

6. The Tuanzhuàn is one of the Ten Commentaries on the original texts of the Yijing, which is written under the insightful inspiration of Confucius. The author could be the first generation disciples of Confucius such as Zizi and Zengzi but the actual writing could be considerably later in the fourth century BCE.
7. We may also quote the Tuanzhuàn of the Kun to indicate how the power of receiving and preserving plays a central role in the creativity of *qian* and in fact functions as the other half of the *qian*. It is the power of receptive creativity that nourishes and potentiates so that the power of *qian* could continue and become regenerative.
8. The Xiangzhuàn is one the Ten Commentaries on the original texts of the Yijing which is written under the insightful inspiration of Confucius. The author could be the first generation disciples of Confucius such as Zizi and Zengzi but the actual writing could be considerably later in the fourth century BCE.
9. There lies the crucial distinction between an externally transcendent metaphysics of God and an internally transcendent metaphysics of the Dao. The God takes the image of man and becomes a symbol of absolute perfection whereas the Dao takes no such image of man and remains an absolute source of symbolization without itself being symbolized. The second distinction is that where God is regarded as an external and transcendent power ruling over man like a sovereign, the Dao is regard as an internal awareness not to be separated from the self-cultivating person and there is a self-ruling power for the human person. We may see these two as representing two forms of human development and civilizational development. The Western has followed in general the way and belief of God whereas the Chinese has followed in general the way and understanding of the Dao. The way of God tends to become what we conceive to be a religion as embodied in the Abrahamic religions of the West whereas the way of the Dao becomes what we may conceive to be ethics as embodied in the Confucian and Daoist ethics of China.
10. Because of lack of knowledge of Chinese language and lack of insight into the moral feelings in Confucius, Herbert Fingarette has been misled to speak of the magic of *li* as a network of charm, completely ignoring and unaware of the rich content of feelings and moral reflections in Confucian conception of the human self. (See his *Confucius: Secular as Sacred*, 1972) The consequences are (1) Confucian virtues are merely seen as behaviors; (2) Chinese self is conceived as having no moral mind or no moral self; (3) a psychological reduction of moral behavior to magic takes place; (4) Confucian virtues could not be seen as independently motivated but seen as constituting mere social relations with social roles attached. This doctrine of Confucian ethics unfortunately is seriously misleading. This has led to many sinologists' denial of morality, human self, or human subjectivity in Chinese philosophy. Specifically, it has led to an interpretation of human self as having no interiority of feeling and values but merely a set of ritual relations.
11. Confer *Totality and Infinity: An Essay on Exteriority*. Trans. Alphonso Lingis, Pittsburgh, PA: Duquesne University Press, 1969.
12. Zhong Yong 中庸 is traditionally considered as written by Zisi, the grandson of Confucius. The idea of the mean may not exhaust the meaning of *zhong yong* as an ultimate Confucian virtue for zhong yong has also the meaning of acting from the central-mindedness of a person without bias and equilibrium in natural response to things in the world. It also means to reach for a timely harmony with the dao and at the same time preserving unity with humanity.
13. This virtue of Cheng is implicit in the Analects and it becomes conspicuous in the Zhong Yong.
14. It is very significant to take note of the historical development of China in the year of 1993 when Deng Xiaoping announced and pushed the free market economy development in China which has made tremendous impact on Chinese modernization project for a modernized nation-state in the global world. The year 1993 is also the year in which the International Association for Confucian Studies (国际儒学联合会) was established by the support of the central Government. The ICA founding signified the catch of time of Confucianism in Contemporary China (and vice versa) through my initiation proposal and efforts made in 1989, the eventful year which was the turning point for development of Contemporary China.

15. One cannot argue that the Chinese Characteristic is Chinese Marxism, for Chinese Marxism is basically what Chinese socialism is or should be. Its development in contemporary era is a matter of introducing free market in contemporary China in order to allow people to get rich and have quality of life improved. This latter part is no doubt something to do with the wisdom of the Confucian ethics based on Yijing, which allow the conscious change and transformation (*quanbian* 权变) toward comprehensive promotion of life by human efforts which we find in both Confucius and Mencius.
16. Between 1895 and 1908, Yan Fu translated eight major pieces, among which were T. H. Huxley's *Evolution and Ethics* (1896), John Stuart Mill's *On Liberty* (1899), Adam Smith's *Wealth of Nations* (1900), Spencer's *Study of Sociology* (1903), and Montesquieu's *The Spirit of the Laws* (1905). The net result of these translations is that the Chinese intellectuals and, through them, the Chinese people are made open to the idea of utilitarianism which is required by modernization and evolutionary competition in the modern world.
17. See my forthcoming paper titled "Reconciling Equity and Self-Interest: Toward Implementing the Confucian Principle of Humanity" at the Tenth International East-West Philosophers Conference in Honolulu, May 17–24, 2011 in which I argued that Confucianism is not against economic activities aiming at getting rich but the overall concern with equity and harmonization should be maintained as a check on the liberal development of economic development. See Proceedings of Assembly Papers of the above mentioned conference.
18. In light of the fact that this new form of ethical system has taken into consideration of many enlightened economic reform and open policies we could also title it the Confucian-Marxist-Utilitarian Ethics in certain areas of its application under the name of Chinese Marxism or the name of Socialism with Chinese Characteristics. But since Chinese Marxism has become growingly sinicized or for that matter Confucianized in the recent 15 years, the present title appears to be more apt.
19. I have argued that source of virtue ethics and rights ethics is one. See my paper "Transforming Confucian Virtues into Human Rights: A Study of Human Agency and Potency in Confucian Ethics," in [1].
20. This is precisely what a good scientific theory requires as we know from philosophy of science and any professional scientist working in fundamental areas of modern science. Confer W.V. Quine [3].
21. For saving of space I have not included my explanation of Daoism and Chinese Buddhism including Chan Buddhism, as parts of the expanded Confucian Business Ethics.

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Part 15

**Human Rights, Globalization and
Business Ethics**

Corporations and Fundamental Rights: What is the Nature of Their Obligations, if any?

52

David Bilchitz

Abstract

This chapter seeks to consider the philosophical question whether corporations have obligations for the realization of fundamental rights, and if so, what the nature of those obligations is. It begins with a brief history, aimed at identifying some of the key ideas underlying fundamental rights discourse. These rights, it is argued, flow from certain fundamental features of individuals. As such, they emerge from what is termed the perspective of recipience, namely, of the individual who is being protected. This perspective is often criticized for failing to specify the agents who are to realize these rights. Nevertheless, it is pointed out that what is most important from this perspective is that the rights of the recipient are realized. This entails that no agent may legitimately harm or threaten individuals who possess such rights. Such an entailment applies equally to corporations as well as other business entities. While negative obligations to avoid harming fundamental rights appear to flow logically from the nature of fundamental rights, what remains more controversial is the extent to which corporations bear responsibility for actively taking steps to help realize the fundamental rights of individuals. Some contend that it is the state that must primarily bear such positive obligations.

To answer this question, a brief understanding of the nature and purpose of the corporation is necessary. Some view the corporation as reducible to the individuals lying behind it and its purpose as involving solely the achievement of maximum profit. Contrary to this view, this chapter argues that the corporation must be viewed both from the perspective of individuals investing in it (“the individual perspective”) and the perspective of lawmakers who create

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this entity (“the societal perspective”). The societal perspective requires that the corporate entity have a benefit for society. As such, the first key duty is that corporations avoid harming rights. That very obligation, however, when analyzed in more depth, does not simply require noninterference but also significant positive obligations. An argument is presented that requires corporations to assume significant positive obligations on the basis of the harms caused by the private property system within which they are intrinsically enmeshed.

The societal perspective from which the corporation emerges also in a more direct way involves recognizing that corporations are formed not simply for attaining individual profit but for achieving social benefits. Lawmakers are under a stringent obligation to ensure most particularly the realization of fundamental rights. Corporations, it is argued, are thus formed partially for the purpose of contributing to the important social purpose of realizing fundamental rights. Given its distinctive nature, however, and the duality intrinsic to it, there is a need also to draw limits to those very obligations. The chapter thus provides a case for recognizing that corporations are social entities and bound to contribute to the advancement of fundamental rights. The individual perspective on the corporation helps us recognize that they will often fulfill these obligations in a distinctive manner. It also helps us to recognize certain principled limits upon these obligations.

Introduction

The concept of fundamental rights (or often referred to as “human rights”) [1–3]¹ is of central importance in both the moral and legal landscape today. The call for “human rights” has animated struggles for the equal treatment of women, black, and LGBT people as well as uprisings against tyranny such as has recently occurred in the Middle East. It is also increasingly being used as a concept of importance in combating poverty, environmental degradation, and extending decent treatment to animals. There are many difficult philosophical questions that arise in connection with fundamental rights. Some of these problems can be captured by the question: “*Who must do what for whom?*” ([4]; Kuper quotes the views of O’Neill [5]). This composite question raises several problems: Who are the bearers of the obligations for realizing rights? What is the nature of their obligations? Who is entitled to claim the protection of rights or to benefit from the performance of these obligations? In order to begin answering these questions, it is necessary to have some conception of what fundamental rights are and the justification for their existence.

The problem that will be the subject of this chapter relates to the fact that fundamental rights grant entitlements without specifying who bears the obligations for realizing these very entitlements. The more specific focus of this chapter will be on whether corporations have obligations for the realization of fundamental rights and, if so, what the nature of these obligations is. Fundamental rights have been a central feature of ethical discourse and political philosophy for at least 200 years. The focus of the discourse surrounding such rights has, however, been upon the

obligations they place on states and governments. Determining the implications of fundamental rights for the conduct of business and corporations is a relatively recent endeavour. It has nevertheless become a pressing matter, given the growth of corporations and their power to impact upon the fundamental rights of individuals.

The first part of this chapter will consider briefly the history and origins of the concept of fundamental rights. This brief overview will seek to demonstrate that the concept is not fundamentally tied to the relationship between individuals and the state; rather, it is rooted in the idea that these entitlements flow from certain fundamental interests that individuals have. Fundamental rights thus emerge from a particular perspective – what I term the “perspective of reciprocity.” This involves a focus upon the entitlements of the individual being protected. This perspective is often criticized for failing to specify the agents who are to realize these rights. Nevertheless, it is pointed out that what is of key importance from this perspective is to ensure that these rights are realized. Each right, it is argued, involves multiple forms of obligation.

In order to determine whether corporations have obligations in relation to fundamental rights, it is necessary to have an understanding of the nature and purpose of this entity which is the subject of the second part of this chapter. Some view the corporation as reducible to the individuals lying behind it and its purpose as involving solely the achievement of maximum profit. Contrary to this view, I contend that the corporation must be viewed both from the perspective of individuals investing in it (“the individual perspective”) and the perspective of lawmakers who create this entity (“the societal perspective”). The societal perspective requires that the corporate entity has a benefit for society and does not harm individuals in such a society.

The third section of this chapter begins by providing two arguments for why corporations at least have negative obligations to avoid harming fundamental rights. It is argued that these two arguments flow from the societal perspective as well as the very nature of fundamental rights. While negative obligations to avoid harming fundamental rights seem to flow logically from these considerations, what remains more controversial is the extent to which corporations have positive obligations – whether they bear responsibility for actively taking steps to help realize the fundamental rights of individuals. Some contend that it is the state that must primarily bear such positive obligations.

I engage with this controversy in the fourth section and provide two arguments for thinking that corporations do bear positive obligations as well for realizing rights. The first argument is rooted in the duty to avoid harming fundamental rights. That very obligation does not simply require noninterference but also significant positive obligations upon corporations when we take into account the harms caused by the private property system within which they are intrinsically enmeshed. The second argument develops the idea of the societal perspective which involves recognizing that this entity is created for the purpose of achieving social benefits. A plausible conception of social benefit would include at the minimum a contribution towards the realization of fundamental rights. Given the distinctive nature of the corporation, however, and the duality intrinsic to it, there is a need also to draw limits to those very obligations. This chapter thus provides a case for

recognizing that corporations are social entities and bound to contribute to the advancement of fundamental rights. The individual perspective on the corporation helps us recognize certain principled limits to these obligations and that corporations often fulfill them in a distinct manner.

Fundamental Rights

Brief History and Origins

Ideas that have some relationship to the notion of fundamental rights can be found in many cultures and date back to antiquity. In the Western tradition, these related notions can be traced back to ancient Greece and Rome as well as Judaism and Christianity (See some of the material in [6]). Several authors also argue that related ideas have been present in African moral theory (See, for instance, [7]) and Asian philosophy [8]. The social contract tradition, in the notable writings of Thomas Hobbes and John Locke, provides some of the first overt references to certain fundamental interests and rights that individuals possess. For Hobbes, humans fundamentally have an interest in self-preservation and security which ultimately leads to the need to form a sovereign power. The interest in self-preservation remains even after the state is formed and can form the basis of civil disobedience [9]. For Locke, human beings have certain “fundamental natural rights” to life, liberty, and property. The deficiencies of the state of nature lead to these rights being insecure and thus provide a foundation for the state whose end involves significantly the realization of these fundamental rights ([10], p. 271 and pp. 350–353). Already with these theorists, it is important to note that fundamental interests or natural rights are not fundamentally linked to the state itself and are present in the state of nature. The most important legal development that arose from the influence of the social contract tradition was the French Declaration of the Rights of Man and Citizens, enacted in 1789, with the advent of the French Revolution. This began the process of the legal entrenchment of fundamental rights in the constitutions of particular states. Another notable example from that time is the United States Constitution. The French Declaration roots natural rights in the idea that “Men are born and remain free and equal in rights” [11]. The Declaration was clearly aimed at controlling the legislative and executive power of the state. With the reign of terror following the revolution and the rise of Napoleon, there was much disenchantment with the French Revolution. In the decades following its passing, the Declaration elicited heated debates concerning the existence and nature of fundamental rights (For some of these critiques, see [12]).

The utilitarian tradition in the 19th century began as rather hostile to the notion of fundamental rights with Jeremy Bentham describing them as “nonsense upon stilts” [13]. John Stuart Mill, however, famously sought to reconcile utilitarianism with the notion of rights. Mill importantly connects the idea of justice with the concept of moral rights: he states, “[j]ustice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more

absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this more binding obligation” [14]. These ideas identified by Mill remain central to the notion of fundamental rights, namely, that they impose binding obligations upon individuals and that these obligations relate to the most important elements of the well-being of individuals.

One of the most significant legal developments to occur was the movement of fundamental rights from the realm of moral philosophy and the constitutions of specific states to becoming one of the central normative bases for the international legal order after the Second World War [15]. The horrors of the Holocaust saw the complete devaluation of the lives of particular groups such as the Jews and Roma. In reaction to this, in 1949, the United Nations General Assembly recognized the Universal Declaration of Human Rights. This important document begins in article 1 by recognizing that “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” [16]. In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also recognized that fundamental rights emerge from the “inherent dignity of the human person” [17, 18].

The focus on dignity and reference to reason has suggested to some a Kantian philosophical foundation for the rights in the Declaration and Covenants. Famously, Kant distinguishes between that which has a price and a dignity. That which has a price is replaceable and is, in general, important for a particular purpose; that which has a dignity cannot be replaced and has an inner worth ([19], p. 84). The idea of dignity is also often linked with Kant’s second formulation of his categorical imperative which enjoins individuals to “[s]o act that you use humanity, whether in your own person or in the person of any other always at the same time as an end, never merely as a means” ([19], p. 80).

The Kantian and contractarian trends within the philosophical underpinning of fundamental rights are developed importantly in the second half of the 20th century in the work of John Rawls. Rawls argues that the principles of justice emerge from a suitably constructed procedure he terms the “original position.” The original position essentially is a construct whereby we imagine what free and equal people would decide were they to have to agree on principles of justice with one another. To avoid power differentials from entrenching the privileges of those already well-off, and to ameliorate the unfair effects of talents being unevenly distributed naturally, Rawls asks us to imagine individuals behind a “veil of ignorance.” This effectively means that we do not know which position we occupy in society nor any facts about our gender, race, sexuality, talents, and much else. To enable people to make a choice in these circumstances, they require some information that can be the basis of such a choice. Rawls employs the idea of primary goods for this purpose, which are “the necessary conditions for realizing the powers of moral personality and are all-purpose means for a sufficiently wide range of final ends” [20]. The primary goods include natural primary goods such as food, water, and housing as well as social primary goods that include basic rights and liberties, freedom of movement,

income, wealth, and the social bases of self-respect. Rawls argues that people in the original position would choose his two principles of justice. For the purposes of this chapter, it is the first principle that is most important which Rawls formulates as follows in *Political Liberalism*: “[e]ach person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all” [21]. Thus, the outcome of a procedure for determining the principles of justice, according to Rawls, will lead to the protection of certain basic rights and liberties. These flow from an understanding of certain vital interests of individuals that are the necessary conditions they require in order to realize a conception of the good.

More modern theories of fundamental rights build on these ideas in differing ways. In the early 21st century, Martha Nussbaum outlined a capability view of fundamental rights that is rooted in Rawlsian, Kantian, Marxist, and Aristotelian insights. Her theory builds on her work with Amartya Sen on the capability theory which understands value in individual life in terms of functionings and capabilities: “we ask not only about the person’s satisfaction with what she does, but about what she does and what she is in a position to do (what her opportunities and liberties are)” ([22], p. 70). The central question of the capability approach is whether a person is capable of being or doing X. Nussbaum outlines two distinct thresholds which delineate the value of functionings and capabilities to human beings. The first threshold concerns functionings that are particularly central in human life: their presence or absence is typically understood to be a mark of the presence or absence of human life. The second threshold delineates functionings that characterize a flourishing human life, one that is “worthy of a human being” ([22], p. 11). Nussbaum uses these notions to develop a list of central human functionings and capabilities that determine what is of fundamental importance to human beings and how well-off they are. Using the Kantian idea of treating everyone as an end in themselves, Nussbaum argues that individuals are entitled to have their capabilities developed and to be placed in a position whereby they can live a truly human life. In later work, she also argues that this may apply beyond the human species to all creatures that have a capacity to flourish [23].

My own work seeks to build on the work of Nussbaum and Rawls to provide a more satisfactory foundation for fundamental rights. It outlines a different conception of value in the life of individuals which resides in their ability to have conscious experiences of the world as well as the ability to achieve their purposes. The theory then distinguishes between two thresholds: the general necessary preconditions for being free from threats to survival and the general necessary preconditions for the fulfillment of purposes. The thresholds are distinguished on the basis of the “urgency” of the former in comparison with the latter, which it is contended is of importance in determining what must be done for individuals. Instead of focusing on either capabilities or primary goods, the theory also uses the insights of both to help develop an attractive conception of individual interests. The theory then defends the idea that society must in its background rules treat the lives of all beings as having equal importance. In specifying what this means, it is argued that a society is not required to realize the particular goods of beings; rather,

treating individuals with equal importance involves recognizing that every member of society must be provided with the enabling conditions to live lives of value to them. “To do so requires guaranteeing to each individual the necessary prerequisites for realizing a life of value” [1]. This ultimately requires recognizing each individual’s basic entitlements both to “freedom rights” (civil and political rights) and “resource rights” (socioeconomic rights) [24].²

Rights, Obligations, and Agents

I have thus far gone through a brief history of fundamental rights, some key legal developments, and engaged with some of the recent justifications for these rights. The purpose of this overview has not simply been to introduce the notion of fundamental rights but also to identify certain important features of the discourse of rights and their foundations which have implications for the obligations of corporations in this regard.

The history and philosophical foundations of fundamental rights demonstrates that these entitlements are usually held to flow from certain fundamental interests that individuals have. For Locke, this is life, liberty, and property; for Mill, it is certain essentials of well-being. Later theories include the interest in being able to pursue and revise a conception of the good and the necessary prerequisites for doing so. Different theories may thus give differing accounts of what is of value in individual life and the interests individuals have; theories of rights, however, share a notion that these entitlements flow from significant features of individuals which require protection.

Flowing from these roots, it follows that fundamental rights offer particularly strong entitlements and protections for these very basic, foundational interests of individuals. However, these protections are not absolute: most moral and legal systems recognize circumstances in which they can be limited. Nevertheless, their strength is reflected, for instance, in the way in which such rights cannot easily be overridden: as Dworkin puts it, if a fundamental right exists, the government may not act “on no more than a judgment that its act is likely to produce, overall, a benefit to the community. That admission would make his claim of a right pointless, and would show him to be using some sense of ‘right’ other than the strong sense necessary to give his claim the political importance it is normally taken to have” [25].

These features of fundamental rights allow us to understand that they flow from what may be termed the “perspective of recipience.” This effectively means that fundamental rights are focused on the individuals who have the entitlements and to whom obligations are owed. This perspective can be contrasted with the “perspective of agency”: here, the focus is on the agents that are responsible for performing particular actions. Some have argued that the focus on those to whom entitlements are owed is a weakness of rights discourse: the failure to focus on the agents who must realize these rights provides a recipe for empty promises. The obligations that rights impose are underspecified, and there is no allocation of responsibility to specific agents for the fulfillment of these rights [26].

However, it can be responded plausibly that the perspective of agency – while clearly of importance – does not perform the same role as a theory of rights. A theory of rights draws our attention to the most urgent interests of beings and recognizes the importance of strong protections for these interests. Such a theory does not lack action-guiding consequences; indeed, the importance of fundamental rights is that they involve a claim that the urgent interests of individuals must be protected, no matter the agents that may threaten them. These urgent interests provide the very reasons for many of our duties to others. Talk of duties alone fails to indicate that it is our connection to others who have fundamental interests that is of critical importance and which imposes obligations upon us.³

The importance of this discussion of the perspective of recipience is the fact that the theories of rights that we have come across, in various ways, articulate the need to protect the fundamental interests of individuals *without* specifying a particular agent that has the obligations to ensure they are protected. Instead of being a weakness, it can be argued that this is a strength of rights discourse which provides it with an inherent flexibility. Indeed, the context of much historical discussion of fundamental rights is very much on the harms that states cause to individuals through repressive actions. If the focus historically had simply been on agents and their obligations, it is likely that those obligations would have been focused on the actions of the state. In our current world, that may still be relevant as states still hold significant power; nevertheless, other agents also possess the ability to cause significant harms to individuals. The logic of fundamental rights, as we have seen, pushes us towards imposing obligations on all agents who pose a threat to fundamental rights. This allows us to allocate such obligations according to their power and ability to affect the realization of such rights. This means that, despite the historical focus, if nonstate actors are increasingly able to impact significantly upon fundamental rights, then we need to grapple with how to ensure that they play a positive (and not harmful) role in ensuring their realization. Thus, the very openness of fundamental rights discourse concerning the agents responsible for their realization allows for an inherent flexibility in allocating these obligations on a basis that will ensure the effective realization of these rights.

The feature of fundamental rights that is being described – namely, that it includes an implicit requirement that there be effective implementation thereof – has a number of other implications. First, it requires us to recognize the limits of individual action alone and the need for cooperation and engagement between persons to work together towards the realization of rights. Secondly, it can require a limit to be placed on the burdens imposed upon any specific individual. Placing overly onerous obligations on individuals may be counterproductive as they may become overwhelmed, apathetic, despondent, and resentful.⁴

Thirdly, it requires us to move beyond a purely abstract understanding of the correlative obligations of rights and to develop a more concrete specification thereof. Some have argued, for instance, that certain types of rights – often termed civil and political rights – simply impose obligations not to interfere with the rights of others (“negative obligations”), while other types of rights – often termed socioeconomic rights – impose obligations to take active steps to provide people

with goods (“positive obligations”). Henry Shue has sought to highlight the mistaken nature of this view by demonstrating that “the complete fulfillment of each kind of right involves the performance of multiple kinds of duties” [27]. He demonstrates that rights which have traditionally been classified as “negative” in nature – such as a right to security – also impose positive obligations on certain others, while rights that primarily are supposed to impose positive obligations – such as a right to subsistence – in fact also impose negative obligations on others. Every right, he claims, involves three correlative duties: duties to avoid depriving, duties to protect from deprivation, and duties to aid the deprived. Thus, the right to adequate food, for instance, contains three duties: a duty not to eliminate an individual’s only available means of acquiring food (the duty to avoid depriving), a duty to protect individuals against deprivation of their only available means of subsistence by third parties (the duty to protect from deprivation), and a duty to provide the food for those unable to do so themselves (the duty to aid the deprived). Shue’s analysis thus demonstrates that each kind of right involves both negative obligations (to refrain from interfering with a person’s enjoyment of a right) as well as positive obligations (to take active measures to realize a right).

The next section of this chapter seeks to consider the implications of these ideas for the obligations of corporations in relation to fundamental rights. The focus is upon the corporation given that it is the dominant structure through which business is conducted today. In order to gain an understanding of whether corporations should have obligations flowing from fundamental rights and, if so, what the nature of these obligations is, it is important first to understand the nature and function of the corporate entity itself. The next section addresses this question.

The Nature and Function of Corporations

The Nature of the Corporation

We can start by recognizing that there are no naturally existing corporations. Corporations are structures created by law: it is thus necessary to consider in a little more detail the key legal properties of a corporation. One of the key purposes of all forms of commercial activity involves individuals trading in goods or services and seeking to make a profit thereby. Commercial activity is conducted through a range of legal forms. Some vehicles for conducting business are simply reducible to the individuals underlying them: the sole proprietor and partnership are examples of such forms. The corporation has become the dominant structure in the modern world at least in part because, in law, it is regarded as not being completely reducible to the individuals underlying it. The major distinctive feature of the corporation has been its “separate legal personality” which allows the company to be a bearer of rights and liabilities in its own right ([28]; and also [29]).⁵ Conceiving of a corporation as a separate legal person has a number of legal advantages, foremost of which is the notion of limited liability [30]. The corporate form separates out shareholders from bearing full responsibility for the fate of the

company, and thus “the risk carried by the contributors of capital extends no further than the loss of the amount which they have contributed to the venture as capital” [31].

The very defining characteristic of the corporation in law thus clearly gives expression to an irreducibility thesis: the properties of the composite entity – the corporation – can differ from those of the individuals that either invest in it or manage it. In brief, several considerations support this thesis. First, the identity of the corporation is not affected by changes in the individuals who lie behind it. Indeed, one of its key advantages is the fact that it continues to exist beyond the lifetime of particular individuals who invest in it or manage it: this is known as the benefit of perpetual succession. Secondly, individuals who lie behind the corporation may bear responsibility only for those particular decisions that they take or are involved with. If a director could not reasonably be expected to have known about a decision taken by another director, he/she will often not bear personal liability for it. The corporation, however, bears liability for all decisions by individuals empowered to act on its behalf. In most legal systems, corporations may thus bear independent civil and/or criminal liability for acts that are attributed to it.

A third and related point involves the difficulty of attributing particular actions to individuals. In the case of corporations with a simple structure, it may be easier to identify the individuals responsible for a particular decision. Even here, however, individuals may claim that the very purpose of the entity and the expectations it creates involves recognizing that acts they performed for the sake of the corporation should not be attributed to them in their personal capacities. In corporations with more complex decision-making structures, the collective nature of the enterprise may render it extremely difficult to attribute particular actions to specific individuals or to decide upon whom individual responsibility is to be pinned. Fourthly, the corporation may, as a separate entity, wield more power than the individuals who make it up do collectively. For instance, a large multinational corporation when it lobbies a government to adopt a particular position may have more bargaining power than the individuals who form it do even when they act together. Finally, the separate legal personality of a corporation may facilitate and concentrate the accumulation of wealth.

It is important, however, not to take this argument too far. Clearly, the notion of separate legal personality in some sense appears to be a construct: the corporation cannot in reality act other than through the individuals who are the intelligent entities behind it. Every decision taken will be a decision of an individual or a complex collection of individuals who are tasked with representing the corporation. The property holdings of a corporation will, when it is founded, be invested by the individuals who form the company. While corporate activity may build upon such resources in various ways and the ownership be diffused (through listing on a stock exchange), ultimately, it will be individuals with a shareholding in the corporation who are entitled to the profits from its activities. These considerations taken together point to the fact that the very legal nature of the corporation requires us to see that it has a complex relationship to the individuals underlying it: it cannot be reduced to those very individuals while in some sense it is fundamentally

dependent upon them. The relation of “supervenience,” often employed to describe the relationship between the mind and the body in philosophy of mind, may well assist in giving us a sense of the relationship between a corporation and the individuals underlying it.

The Purpose of the Corporation

This understanding of the complex nature of the corporation has an impact on how we understand its purpose. It is important to distinguish between two perspectives in this regard: the point of view of the collective social structures (and particularly the lawmakers) who create and regulate the structure of the corporation in law (I shall refer to this as the societal point of view) and the point of view of the individuals underlying the corporation [32, 33].⁶

Individuals have a calculated economic motivation in forming a corporation: usually, they would have determined that the best way to conduct business for them is through the vehicle of a corporate structure. Their reasons for doing so must involve attaining certain commercial advantages. For example, individuals may wish to insulate themselves from the risk of personal insolvency should the corporation fail and to ensure the benefits of perpetual succession are obtained. Some therefore tie the purpose of the corporation very closely to the individual perspective [34].

The corporate form is, however, a legal structure, and the perspective from which such a vehicle is created in law is not equivalent to the perspective of any particular individual who invests in it. Decent lawmakers who pass laws on behalf of a society are required to adopt a more impersonal perspective that seeks to advance the interests of all individuals in society and to ensure that every individual is treated with equal importance [35]. Thus, in deciding whether to pass a law that brings corporations into legal existence, lawmakers must not simply consider the benefits for individuals with an interest in creating such a structure. They must rather seek to determine whether that very structure will be of benefit to *all* members of society and determine in what respect it can either hinder or advance the purpose of treating each individual with equal importance.

This societal perspective gives us a clear reason to reject the notion that the purpose of the corporation solely involves the maximization of profit for individuals. For any lawmaker would need to ask the further question why an entity focused on the maximization of profit would be beneficial to society and advance the goal of equal importance. The maximization of profit cannot therefore be an end in itself from the societal perspective; rather, the justification for the corporate structure must be rooted in the social advantages it would bring about.

Traditionally, there is indeed a capitalist justification for the corporate structure that makes reference to social benefit. The corporation can be said, for instance, to encourage people to take more risk, stimulate innovation, and provide a catalyst for greater competition. These benefits in turn often lead to the stimulation of growth in the economy and thus greater wealth in the society. More jobs can be created which in turn, ultimately, improves the quality of life for individuals. Importantly, many

of these advantages are only achievable if corporate structures are designed by lawmakers with a recognition of the particular perspective of individuals who lie behind the corporation – namely, that it is a structure that can allow them to attain commercial advantages and achieve profit. There are thus good reasons for lawmakers from their societal perspective to adopt an understanding of the purpose of a corporation that also takes into consideration the perspective of individuals who will utilize the corporate structure.

This section has thus sought to establish that a corporation, given its nature as a structure that is both irreducible to the individuals underlying it as well as fundamentally dependent upon them, must be considered from the two perspectives of the individuals who invest in it (and manage it) as well as from the perspective of society (acting through its lawmakers) that enables such a structure to exist. The former perspective places the focus on maximizing profit; the latter perspective is concerned with the social benefits of the corporate structure (This discussion is largely taken from [36]).

Corporate Obligations to Avoid Harming Fundamental Rights

Negative Obligations

An understanding of the nature and function of the corporation and the two perspectives from which it may be viewed is of crucial importance in understanding whether they have obligations for the realization of rights and, if so, the very nature of these obligations. As we have seen, fundamental rights each entail multiple forms of obligation. I will first start by asking whether corporations bear traditional “negative obligations” to avoid harming the fundamental rights of individuals (Shue’s duty to avoid depriving). I shall present two arguments as to why they do have such obligations.

The first argument begins from the perspective of lawmakers, which it has been argued must proceed from the premise that the corporate form is created for the purpose of attaining social benefits for all in a political community. The same perspective would clearly require that a diligent lawmaker should refuse to create such an entity if its formation would lead to grave social harms. However, it may be that the picture is less clear-cut: the corporate structure may itself offer the possibility of strong social advantages yet be accompanied by the possibility of grave social harms. In such circumstances, the diligent lawmaker would need to devise a regulatory framework that strengthens the likelihood of realizing the advantages while guarding against the realization of those harms. From its inception, it has been clear that the core advantage of the corporation from the perspective of individuals – its separate legal personality – can lead to social harms through insulating shareholders and directors from bearing full responsibility for their actions. The mix of self-interest and impunity that can result from the corporate form has led some to view it as “a structure which is pathological in the pursuit of profit” [37]. Corporate law has evolved largely to ensure that the benefits of the

corporate structure are obtained while the economic risks, attendant upon this entity, do not materialize [38]. The focus of corporate law has, however, been on economic risks; the wider social impacts of the corporation have largely not been the focus of legislative engagement. Given that fundamental rights protect the most basic interests of individuals, the violation of these rights by corporations would be amongst the most serious social impacts for lawmakers to be concerned about. The fact that the corporate structure itself can create grave risks of harm to fundamental rights would thus provide a clear normative basis for lawmakers to impose strong negative obligations upon the corporation to avoid harming individual rights.

The second argument proceeds from the very logic of fundamental rights. As was discussed in the first section of this chapter, such rights are rooted in the protection of important interests of individuals who must be treated as having “dignity” or “equal importance.” Individuals are deserving of such protections no matter who threatens them. Rights require obligations to be imposed upon all agents who can threaten their realization. Given that corporations are very powerful today and have the capacity to harm the fundamental rights of individuals, it is necessary to recognize that they have obligations to avoid doing so. Thus, the very logic of what it is to have a fundamental right would require that all agents – whether the state, a corporation, or individuals – may not harm the rights of other individuals.

I have thus made two arguments why corporations should have “negative” obligations to avoid depriving individuals of fundamental rights. Such an obligation is not only recognized at the normative level but has also recently been recognized in the Ruggie framework. This framework was developed by a special representative to the Secretary General of the United Nations, Prof. John Ruggie, who was given the task of developing an understanding of the responsibilities of businesses in relation to fundamental rights. In 2008, he released his framework which recognizes corporations bear a “responsibility to respect” fundamental rights, which essentially means that they must avoid harming the fundamental rights of individuals [39]. He has developed guiding principles for the implementation of this framework which have recently been accepted by the United Nations Human Rights Council [40]. Though there is no binding treaty declaring the position in international law, it can be said that, at the international level, there is now broad recognition that corporations have a responsibility not to harm fundamental rights. There have also been several voluntary initiatives whereby international bodies and corporations themselves have acknowledged that they bear an obligation to avoid harming fundamental rights ([41]; also see [42]).

Positive Obligations that Flow from Negative Obligations

Much more controversial is the question as to whether corporations have a duty to take positive steps to realize rights. This would involve going beyond ensuring that their ordinary activities do not harm rights but require them actively to take particular steps to help realize rights. Different types of positive measures can be distinguished, some of which are more controversial than others.

John Ruggie, in the framework that he outlines, states that “doing no harm” can require that positive steps be adopted to ensure that negative consequences do not result from corporate action ([39]; [43], p. 517).⁷ The example Ruggie uses is important in helping to understand this point: a workplace antidiscrimination policy, he claims, might require that a company adopt specific recruitment and training programs ([39], para 55). If we try to draw out what he could mean by this statement, presumably, the training component of such programs would be designed to shift discriminatory attitudes within a firm. Recruitment programs would, it seems, at least have to be based upon equal opportunity principles and could perhaps also involve some form of affirmative action to redress past discriminatory practices. This example, however, highlights the fact that positive steps may be necessary to ensure that a corporation avoids harming the rights of others: in the example Ruggie gives, the violation would involve avoiding the infringement of equality rights through discriminatory practices. The positive duties of a company in this context simply flow from its general “negative” obligation to avoid violating rights and essentially are designed to guard against any such violations.

Corporate obligations for Ruggie are also not simply confined to taking positive steps to avoid violating rights through its own actions. In the due diligence enquiry that he proposes, Ruggie supports the position that a corporation must also consider how it could contribute to human rights violations through the abuses of third parties. He is clear that the corporate responsibility to respect rights would involve avoiding “complicity” which “refers to the indirect involvement by companies in human rights abuses – where the actual harm is committed by another party, including governments and non-State actors” ([39], para 73). His views here seem to imply that corporations also have a responsibility to *protect* individuals against abuses by third parties with whom they have some form of contact (This section and analysis is taken from [44]).

The positive obligations recognized thus far are all connected to the purpose of avoiding harming fundamental rights. Ruggie, however, does not go further and recognize an obligation upon corporations to help “fulfill” rights (actively to contribute towards the realization of fundamental rights). This could involve, for instance, an obligation upon pharmaceutical companies to provide drugs (or lower the price of drugs) for those suffering from life-threatening illness or an obligation upon legal corporations to provide pro-bono legal services for the poor.

Ruggie argues against extending corporate obligations further by claiming that while corporations may be “organs of society,” they are “specialized economic organs,” not “democratic public institutions” ([39], para 53). The differing nature of corporations and states thus means that corporate “responsibilities cannot and should not simply mirror the duties of States” [39]. Consequently, Ruggie asserts, “by their very nature, therefore, corporations do not have a general role in relation to human rights like states but a specialised one” [45]. Ruggie thus attempts in his framework to identify the “distinctive responsibilities of companies in relation to human rights” [39]. The claim that corporations have only a responsibility to respect reflects his attempt to capture the particular role they should play in relation to fundamental rights. Ratner, too, contends that corporations only have negative

duties in relation to fundamental rights or, at most, responsibilities to take positive measures clearly necessary to effect these negative duties. To go further than this, he claims, “would effectively ignore the functional differences between states and businesses; it would thereby ask too much of the corporation, especially at this stage of the international legal process, when the broad notion of business duties in the human rights area is just emerging” ([43], p. 517).

Underlying this view is an understanding of the function of the corporation that sees it essentially as part of the “private” realm. Individuals investing in corporations are seen to have a fundamental economic aim to maximize profit while limiting their own risk. This leads to a view of the function of the corporation that was most famously articulated by Milton Friedman: “there is one and only one 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” [34]. The rules of the game for Ruggie and Ratner would go further than those envisaged by Friedman and involve respecting human rights. Nevertheless, the social role Ruggie articulates for the corporation is similar: it is ultimately an economic entity focused on profit maximization which is required to avoid causing significant social harms.

Two types of responses may be made to this argument. The first response accepts the vision of the corporation offered by these theorists but contends that, nevertheless, it has positive obligations for the realization of rights; the second response challenges the conception of the corporation underlying this argument, suggesting a better view would recognize positive obligations to realize fundamental rights. I shall outline both types of responses and arguments in turn (I have dealt with these arguments in [3]).

Positive Obligations for Realizing Rights

A Libertarian Argument for Positive Obligations

The first argument seeks to build on the duty to avoid harming fundamental rights. This may initially appear only to involve a corporation having to conduct its ordinary activities without infringing on people’s rights. Yet, this very duty, it can be argued, can also entail rather extensive positive actions being required on the part of corporations actively to help realize rights. To understand why this is so, it is necessary to go back to an understanding of the purpose of the corporation and the harms that it can cause in relation to individual rights. At its core, the corporation is deeply connected with the process of accumulating wealth and thus operates in the realm of acquiring and transferring property. Empirically, it is important to take note of the fact that corporations are the owners of some of the largest concentrations of wealth in the world.

As it is currently instantiated in the world, the private property system, while clearly having a number of advantages, also creates a number of severe harms for individuals. In practice, this idea can be understood through considering the fact

that a mining corporation's ownership of minerals prevents others from exploiting those minerals. A pharmaceutical company's patent over medicines prevents others from producing them or individuals from being able to access them if they lack sufficient funds to buy them. Ownership of land prevents other individuals from having access to that land without the owner's permission. Indeed, in a world where all property is owned (as is largely true of our world) and such ownership confers rights to exclude others from such property, individuals can be left in a position where all the resources necessary to meet their basic needs are owned and they have insufficient income to acquire such resources. Private ownership can lead to a world where individuals may be excluded from having access to such basic goods as a place to stay, life-saving health care, food, and water.

Locke famously defended private property rights, claiming that one acquired such rights by mixing one's labor with a particular object. Yet, he placed a crucial qualification on the acquisition of these rights: it would only be fair to appropriate a resource for Locke and, consequently, for an acquisition to be legitimate where "there is enough and as good left in common for others" ([10], at p. 289). This would effectively have ensured that individuals were not left in a destitute position without any possibility of acquiring the crucial resources they needed to live and exercise their autonomy. Robert Nozick famously sought to develop Locke's account of how property rights are acquired, and his theory outlines a strong conception of property rights. Nevertheless, he also recognized a proviso on the acquisition of property rights which, while weaker than that of Locke, still required any just acquisition to leave "as much and as good" for other people to use. For Nozick, what is key is "whether the appropriation of an unowned object worsens the situation of others" ([46], p. 175). Nozick provides an example of an appropriation that would worsen the position of others: an individual, he claims, could not appropriate the only water hole in a desert from which individuals can drink and exclude all others from being able to drink such water (or even charge prices which they cannot afford) ([46], at pp. 179–180).

The important point about the Nozickian proviso and the example he provides is that it embodies a recognition of the harm that property rights can cause. Property rights in the hands of some can deprive others of the opportunity to benefit from a resource; indeed, they create the real possibility that individuals may be prevented from having their most basic needs met. The proviso also importantly places a strong condition on the very legitimacy of property holdings themselves. If one cannot own or purchase the only water hole in a desert and thus exclude other needy individuals, then surely this implies that individuals cannot be left in a position where all resources necessary to meet their basic needs are owned and they have insufficient income to acquire such resources. Thus, in a world where everything is largely owned and many are in dire poverty (as is the case in many developing countries), even a libertarian such as Nozick must recognize limitations on the property rights of owners.

These limitations at least require that the property rights in question must not exclude individuals from having the most basic resources to survive and exercise their autonomy. Since the private property system as it currently exists prevents poor individuals from taking resources from others, the duty would have to be on

the beneficiaries of the private property system – owners – to ensure that their holdings do not deprive others of access to such goods. Indeed, in a Lockean (or Nozickian) account of property rights, the very legitimacy of their holdings depends upon their meeting the terms of this proviso. Thus, we reach the conclusion that the private property system itself can cause severe harms to individuals which must be precluded if property holdings are to be legitimate; in order to avert such harms, owners – who play a part in creating these harms through holding resources exclusively for their use – need actively to provide individuals with at least the resources they require to realize their most basic interests in survival and the exercise of their autonomy.

A related argument recognizes that those who are the beneficiaries as well as causal agents of the harms of the property system must play a part in ensuring that those harms do not eventuate. In a property system based on excluding nonowners from using resources, this argument would require owners actively to assist nonowners to gain access to such resources. Such an obligation would be founded essentially in a duty to compensate individuals for the harms caused by private property system within which owners are deeply embedded [47].⁸

How does all this relate to corporations and their positive obligations for the realization of fundamental rights? The argument provided above is clearly a general one that is applicable both to the corporation and individual owners. Nevertheless, it has particular application in relation to corporations: for these entities are specifically created by law for the purpose of attaining social benefits and must be designed so as to minimize social harms. The very economic focus of corporate entities embeds them in the process of acquiring resources and property rights. Indeed, since their inception, as has been mentioned, these entities have been the sites of accumulation of large amounts of wealth. Property rights have certain harms attendant upon them which in turn forms the basis of duties to avert those harms on the part of those who wish to claim such rights. The qualifications on property rights also give expression to certain conditions that must be met in order for them legitimately to be held. An entity that has, amongst its key purposes, the possession and accumulation of wealth must thus have duties to ameliorate the harms caused by the very system of property rights that enables it to achieve this purpose. In societies where many individuals are deprived of even very limited property holdings, it is necessary to protect their fundamental rights that are threatened by private property rights. The very economic purpose of corporations and their success in accumulating wealth thus highlights their crucial role in the property system. This provides the basis for recognizing an obligation upon them to make a contribution to alleviating at least the worst effects of such a system: the exclusion of individuals from having the resources necessary to realize their fundamental interests.

A Social Vision of the Corporation

The second argument I shall provide for recognizing positive obligations upon corporations is not rooted in the duty to avert harm. It is based in the dual purposes

I have outlined of the corporation: from the individual perspective, it is a vehicle for attaining profit and limiting risk; from the social perspective, it is designed by lawmakers around the creation of social benefits. Of great importance here is a deeper elaboration upon this societal perspective and the notion of social benefit. Where lawmakers are tasked with creating laws for an entire society in a democratic system, they are not expected to make such laws with the view of privileging particular individuals. The rules governing a society are by their very nature designed to regulate the distribution of benefits and burdens to a group of individuals ([1], p. 60). As such, a key element of the societal perspective is the idea of impartiality: no one individual must be privileged over others. Indeed, the notion that each individual is of equal importance is central to most political and moral theories [48].⁹ Lawmakers thus must go about their task through adopting an impersonal perspective that requires every individual to be treated with equal importance.

The next important claim to establish is that the principle of equal importance should plausibly be construed to give rise to a requirement that individuals have fundamental rights that must be protected and realized by a society. I have already shown in section one how several accounts of fundamental rights are rooted in such a principle of equal importance. Though, a detailed defense cannot be offered here, it suffices to say that there is a plausible case that a society committed substantively to treating individuals with respect for their worth must guarantee each individual the necessary prerequisites for realizing a life of value. This entails protection for an array of civil and political rights as well as socioeconomic rights ([1], at p. 64–65).

How does this all relate to the obligations of corporations? As has been argued, the corporation is an artificial institution created by lawmakers who must adopt a societal perspective towards what they do. That societal perspective requires them to advance the equal importance of individuals in the institutions and legal rules they create. In turn, the principle of equal importance is best interpreted as giving rise to the requirement that the fundamental rights of individuals be protected and realized. Thus, a key criterion from the societal perspective against which to assess the social advantages brought by a particular structure such as the corporation is the impact that it can have upon fundamental rights.

Lawmakers will adopt different strategies to achieve their goals in this regard. One possible approach would be to create certain structures of the state to advance the realization of fundamental rights in a direct way. Other strategies can include creating structures such as the corporation which are designed to contribute towards the realization of rights in a more indirect manner. The traditional arguments in favor of the corporation stress its role in encouraging entrepreneurial risk taking and stimulating innovation which in turn can lead to an increase in economic growth. These benefits may themselves have important implications for rights in society. If the corporate structure would, for instance, encourage greater employment, this would help realize the socioeconomic rights of employees by enabling them to meet their own needs. Some innovations produced by corporations may also have implications for rights: for instance, a new medical treatment could help advance the right to health care of individuals. Part of the very underlying justification for

a structure such as the corporation is thus the argument that it can help to harness the creativity and productivity of individuals in such a way as to have significant benefits for the realization of rights. Lawmakers would, from their perspective, need to consider these benefits as an important justification for the creation of the corporate structure.

Lawmakers would, however, also have cause to recognize that the indirect manner in which these positive consequences for the realization of rights are obtained means that they will not necessarily result from corporate structure. Careful regulation will be necessary to ensure that the corporation in fact achieves the wider social advantages it is designed to realize. This point can be illustrated by considering the patenting of medication by a corporation, for instance, which could lead to a monopoly over its production. This could lead to high prices being charged for the medication, with access being confined to those who are able to afford it. The supposed benefit of the corporate structure – innovation – would here fail to advance the interests of all individuals in society with some being unable to enjoy those very benefits. If we understand, however, that the corporate structure was in fact designed partially to help advance the realization of the fundamental rights of individuals equally, there is a strong case for recognizing that those benefits attendant upon the structure (particularly in areas that impact upon fundamental rights) must be made accessible to all. Legal regulation would thus need to ensure that the medical innovations that result from corporations contribute to the realization of the right to health care of all individuals. If only one corporation had the capacity at a particular time to produce such drugs, a positive obligation could be imposed upon it to ensure that the benefits of its innovation are made accessible to those who cannot afford them. Understanding the implications of the societal perspective that lawmakers must adopt in designing the corporation – which is focused around a particular understanding of social advantage – thus leads to the recognition that such a structure should have positive obligations to contribute to the realization of rights.¹⁰

Limits on Obligations of Corporations for Realizing Fundamental Rights

I have thus far sought to establish that there are strong arguments for recognizing that corporations have both positive and negative obligations for realizing fundamental rights. However, the question may arise as to whether there are any limits on the obligations that they have? Clearly, fundamental rights against the state are not absolute, and there are legitimate circumstances in which they may be limited. The principles and processes of reasoning concerning the limitation of rights in the case of the state are now delineated in the constitutional law of many states. In relation to corporations, however, given the rather recent discussion of their responsibilities in this regard, they remain rather underdeveloped.

The key notions of proportionality and balancing of interests will probably have an important role to play. This would require the violation of a fundamental right to

be balanced against the reasons for the violation by a corporation. The process of proportionality traditionally requires that a right may only be limited if there is a legitimate purpose that is to be achieved thereby; the limitation is suitable for realizing the purpose; and the limitation is necessary (not overly intrusive of the right in comparison to readily available alternatives) [49, 50].¹¹ These tests could be adapted to determine whether the limitation of a right by a corporation is justifiable. Thus, the right to free speech would not bar a company from penalizing employees for speech that “insults a company, lures away employees or gives away trade secrets, since these actions impinge on core interests of the company. In general, however, it would bar a company from taking disciplinary measures against an employee for his speech critical of the government” ([43], p. 514).

Importantly, an understanding of the dual purpose of the corporation is important in developing an adequate account of the limits of corporate obligations. The two perspectives I have outlined involve recognizing that the corporation is itself an intermediate structure between individuals and the state. One needs to take account both of the individual desire for an optimal vehicle through which to conduct commercial activities and achieve profits, and the importance of achieving social benefits from the structure.

These two perspectives can be drawn together through recognizing that the corporation will largely achieve social benefits in a distinctive indirect manner, through harnessing the benefits of its commercial activities (and the individual perspective) for social ends. Importantly, this could require explicit regulation to ensure that the corporation’s commercial activities do not only advance the economic interests of the individuals who invest in the corporation. Nevertheless, the distinctive nature of the corporation must be recognized through taking adequate cognizance of the individual perspective. This means that the corporation cannot be treated simply as an extension of the state – with all its resources being available to assist in the realization of rights – without any recognition being given to its commercial purpose.

Importantly here, a distinction must be drawn between the maximization of profit and the achievement of profit. From the individual perspective, it would be rational to achieve the greatest amount of profit possible. The corporation nevertheless remains valuable to individuals even if it facilitates the achievement of profit short of the maximum capable of being attained. From the perspective of society, however, this distinction is important: to reduce a corporation to a loss-making entity would be to fail to respect its commercial purpose from the point of view of individuals. On the other hand, in seeking to advance the realization of rights, it may be necessary to require that corporate profits be reduced. Thus, for instance, pharmaceutical companies may be required to reduce the price of drugs to ensure they are affordable to the poor and legal firms may need to accept reduced working hours from their staff who are required to devote some of their time to providing legal representation to those who lack it pro bono.

These examples demonstrate that positive obligations upon corporations could be realized through a corporation’s commercial activities though this could legitimately reduce the profits that are achievable by such corporations. Nevertheless,

it is possible to retain the attractiveness of a corporation from the individual perspective by ensuring that these social obligations do not impose such a burden that they prevent individuals from attaining profit from their activities. Thus, one clear-principled limit on the positive obligations upon corporations must involve not reducing corporations to loss-making entities. This is clearly not the only principle to determine the extent of corporate obligations but represents one constraint upon what may be done. Further normative principles are clearly required in order to provide guidance concerning the exact ambit and extent of the positive obligations of corporations, and this is an interesting matter that requires future research and discussion.

Conclusion

This chapter has sought to consider the question whether corporations have obligations for the realization of fundamental rights, and if so, what the nature of those obligations is. From a brief history of the ideas underlying fundamental rights, it was shown that these rights flow from certain fundamental features of individuals. The perspective of reciprocity places emphasis on the rights holder and ensuring that their rights are realized effectively. This in turn requires the allocation of obligations in a manner that will ensure the effective implementation of fundamental rights. To determine such an allocation, it was necessary to have an understanding of the nature and purpose of the corporation. Of importance here was recognizing both the importance of corporations as vehicles for individuals to conduct business as well as for attaining social benefits.

Given the power of the modern corporation and its capacity to harm rights, it was argued that this leads in a logical manner to a clear obligation upon corporations to avoid harming the fundamental rights of individuals. What remains more controversial, however, is whether corporations have positive obligations actively to help realize rights. Some contend that the particularities of the corporate entity mitigate against recognizing such positive obligations. I provided two arguments against this view. The first involved analyzing in more detail the obligation to avoid harming rights. When the harms caused by the private property system – within which corporations are deeply embedded – are properly understood, such an obligation could entail significant positive action being required by corporations actively to assist in the realization of rights. The second argument develops the very idea of the social advantages of the corporate structure to recognize such positive obligations.

The two perspectives identified in this chapter provide a conception of the corporation as an integral part of society that is required to make a social contribution. This significantly involves contributing towards the foundational social justice project of realizing the fundamental rights of all. The dual nature of the corporation requires us to realize that it will make such a contribution often in a distinctive manner and within the limits that enable it still to function as an entity with a commercial purpose that must seek to give expression to the interests of the individuals underlying it. There remains a need for the development of a more detailed understanding of the exact ambit of corporate responsibilities in this

regard. Nevertheless, corporations today cannot be viewed simply as entities focused on the maximization of profit; they must be rather be seen as structures with the dual goals of being appropriate vehicles through which individuals can realize their commercial interests and assist in the realization of the most pressing challenges in society, namely, the realization of the fundamental rights of all.

Cross-References

- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Corporate Human Rights Violations: A Case for Extraterritorial Regulation](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values](#)
- ▶ [What are the Obligations of those who Invest in Corporations?](#)

Notes

1. I use the term fundamental rights to leave open the question whether such rights extend beyond the realm of the human species which I believe to be the case. This chapter draws on and utilizes aspects of the following previous work of mine: Bilchitz [1–3].
2. For the full theory, see [1] [Chaps. 1–3](#). A recent theory that is also of interest is by Griffin [24].
3. Bilchitz D (note [1–3] above) p. 73.
4. Bilchitz D (note [1–3] above) pp. 89–90.
5. The most important contribution of corporate law has been said to be the creation of a legal person, “a contracting party distinct from the various individuals who own or manage the firm, or are suppliers or customers of the firm”: see Hansmann and Kraakman [28] and also Stephens [29].
6. This distinction is inspired in some measure by the distinction Nagel makes between the personal and the impersonal perspective in his book [32]. It also can be seen to connect with the distinction made by Sigwick [33] between the point of view of the universe and the point of view of individuals (the point of view of the universe here being replaced by the point of view of society or law-makers). See [Chap. 2](#) of Bilchitz (note [1] above 57–62) for more on this distinction in the context of a theory of fundamental rights.
7. Ruggie Framework (note [39] above) at para 24. See also Ratner [43] who is also prepared to allow that positive measures may be required to give effect to negative duties.
8. This argument is similar to one made by Thomas Pogge in relation to world poverty see Pogge [47] and for an adaptation of this argument to the particular context Bilchitz, D [3] p. 15.
9. See, for instance, Dworkin [35], p. 1 and Sen [48].
10. Both of the arguments for positive obligations are taken from Bilchitz, D [3] 11–16 and 19–23.
11. Alexy [49] provides a rigorous analysis of the various elements of a proportionality enquiry. See also my critical engagement with this framework in Bilchitz [50].

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Corporate Human Rights Violations: A Case for Extraterritorial Regulation

53

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Abstract

This chapter highlights why the current territorial model of regulating corporate human rights abuses is inadequate to deal effectively with modern violations of human rights by companies that operate at a transnational level. It is contended that a case can be made for extraterritorial regulation without doing too much violence to the well-established principles of international law. Therefore, states, especially the home states of multinationals, should show the required political will in introducing suitable extraterritorial measures to enhance corporate compliance with their human rights responsibilities. By doing so, they would be fulfilling a collective goal agreed upon by the international community.

Introduction

It is generally accepted that companies can violate a range of human rights in diverse circumstances: acting alone, through their business partners or in complicity with state organs. However, the human rights framework is still predominantly state centric and vertical (see [1], p. 1385), though some inroads have been made in it in recent times. This paradoxical situation raises a number of questions in relation to the sources of human rights obligations of non-state actors such as companies and the means of enforcing such obligations against them. Various kinds of laws at the municipal level deal with human rights obligations of companies (see, e.g., [2], pp. 39–52). Since this model suffers from serious limitations, there has been a push for (as well as the corporate resistance to) the identification of corporate human rights obligations at the international level.

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As far as the enforcement of human rights obligations is concerned, several attempts have been made to regulate corporate actors so as to provide victims an access to effective remedy. However, so far, no robust mechanism is in sight to hold accountable multinational corporations (MNCs), which are considered difficult regulatory targets ([3], p. 401; [4], p. 193). The trick may lie in employing multiple regulatory techniques at various levels in an integrated manner [5]. This chapter aims to explore one regulatory option, that is, extraterritorial regulation of corporate conduct by states. It is argued that although this is not an ideal regulatory tool, states can still take resort to extraterritorial measures under principles of international law. I begin in Part II by providing a definition of extraterritorial regulation and unpacking the potential sources as well as nature of such regulation. Part III then highlights the mismatch that exists between modern forms of corporate human rights violations and old regulatory tools. Part IV suggests the legal basis and justifications for states to regulate the human rights violations of companies through extraterritorial measures. Some notable concerns that arise from exerting extraterritorial jurisdiction over companies are dealt with in Part V of this chapter.

Extraterritorial Regulation: What Does This Mean and Entail?

At the outset, let me encapsulate what extraterritorial regulation means in the context of controlling corporate human rights abuses. Extraterritorial regulation refers to laws enacted, or other regulatory measures taken, by states beyond their territorial boundaries ([6], p. 201). This implies that the basis of jurisdiction would be a non-territorial variable ([7], p. 7). Two aspects of the extraterritoriality should be considered: *source of regulation* and *nature of responsibility*. In terms of the source of regulation, there are two broad possibilities: “home state extraterritoriality” and “host state extraterritoriality”. Although a number of factors (such as shareholding, location of registered main office, the principal place of business, and nationality of directors) can be used to determine the “home” of a company, for the purpose of this chapter, incorporation is taken as determinative of the home of a company. So, home state extraterritoriality would mean that a state extends its laws to overseas subsidiaries of (parent) companies incorporated therein ([8], p. 169). On the other hand, host state extraterritoriality would imply a reverse scenario: the host state of a subsidiary applying its laws to the overseas parent company ([8], p. 169).

Out of home state extraterritoriality and host state extraterritoriality, it is the former that is more common ([7], p. 34), perhaps because extraterritorial regulation by a host state is not only more complex but also more susceptible to failure than regulation by a home state ([8], p. 177). But this should not be a reason for too much worry. As I have argued previously, it is the home state extraterritoriality that offers more potential to make companies accountable for human rights violations (especially those that take place in weak governance or conflict zones) ([9], pp. 50–51). Even if only a few home states enact extraterritorial laws, this should have a ripple effect on the current situation of corporate impunity for human rights abuses.

As far as the nature of responsibility flowing from extraterritorial regulation is concerned, there are several possibilities (see [10], pp. 140–42). States can of course enact an extraterritorial law specifying human rights standards applicable to overseas subsidiaries or overseas operations of local companies and prescribing civil, criminal or administrative sanctions for non-compliance. Furthermore, there exists the possibility of a given state extending a civil remedy (akin to the US Alien Tort Claims Act of 1789) ([11], pp. 21–54; see also [12]) to overseas victims, but without imposing any direct duty on local or overseas companies. States may also impose disclosure requirements on local parent companies in relation to their overseas subsidiaries.

One may ask whose interest a state seeks to protect when it acts extraterritorially: the interests of its own people or the interests of non-nationals? States are of course duty bound to respect, protect, and fulfill the human rights of people living in their territories ([13], p. 184). However, in view of extensive cross-border migration of people, this duty of states cannot be confined to their respective territorial boundaries. Furthermore, the realization of human rights is a collective goal shared by all states, and the responsibility assigned to each state to accomplish this goal within their territories is only one way to achieve the said goal. States should thus have extraterritorial obligations too [14]. Therefore, it can be said that when states act extraterritorially, they seek to safeguard human rights not only of their own people but also of people living in other states. It is though likely that a given extraterritorial measure might benefit one category of people more than the other category.

Mismatch Between Modern Human Rights Violations and Old Regulatory Tools

Before moving on to examine the legal basis and justifications for extraterritorial regulation, one should answer the question related to the need for such regulation. Companies operated beyond municipal borders in old times as well. The operations of the British East India Company, for example, extended to several countries of South Asia and South East Asia [15, 16]. What then is the difference between the British East India Company and MNCs of the modern time? One key distinction is that the former operated at the transnational level without any subsidiaries, because companies at that point of time were not allowed to establish subsidiaries without the express and specific grant of charter by the sovereign. On the other hand, MNCs today can establish subsidiaries at their will by just complying with the requirements stipulated by relevant corporate laws. One crucial implication of this distinction is that whereas the British government could exercise effective jurisdiction over the British East India Company wherever it operated, states now generally struggle to exert jurisdiction over foreign subsidiaries of companies incorporated within their territory.

This struggle is a direct result of regulatory tools and legal principles lagging behind the modern forms of business. In the area of corporate human rights violations, the current regulatory framework is predominantly territorial.

This territorial model of regulation, in which all states are expected to regulate the conduct of companies within their respective territories, apparently suffers from serious limitations when dealing with modern human rights violations (see, for instance, the case studies discussed in [14]). This section highlights some of the shortcomings in the current model of territorial regulation of corporate behavior.

The first limitation of territorial regulation stems from the extraterritorial operations of modern companies. Companies now operate at a transnational level through a complex web of subsidiaries, joint ventures, and supply chains. Such a *modus operandi* of business necessarily means that some direct or indirect human rights violations by companies would take place outside the territorial boundary of a state in which a given company is incorporated. Out of numerous past case studies, alleged human rights violations related to Shell's operations in Nigeria, Unocal's joint venture in Myanmar, and the manufacturing factories of Apple and Nike in Asia exemplify this point well. In such cases, even if the state in question would like to fix responsibility for human rights violations, it is likely to experience technical or procedural obstacles related to the exercise of effective jurisdiction over the legal entity that actually/physically committed those violations.

Another limitation arises from the fact that some states are unwilling or incapable to act robustly against corporate actors that disregard their human rights responsibilities. The unwillingness, especially of developing countries, is primarily rooted in the apprehension that acting tough against MNCs might impair their competitiveness to attract foreign investment much needed for development (see [17]). Then, there are some states with authoritarian or oppressive regimes, which pay scant respect to the collective goal of promoting human rights. Besides, developed countries might be unwilling to hold companies incorporated therein accountable for overseas violations because doing so might put their companies at a competitive disadvantage *vis-à-vis* other companies [18]. Incapacity of states, on the other hand, is often the result of a number of factors such as an undeveloped legal regime, weak enforcement of laws, economic hardships, corruption and non-independent courts. One can also not ignore the problem posed by inferior environmental or labor standards prevailing in developing countries (see [19], pp. 136–141). These factors may undermine the capacity of a given state to establish a robust regulatory mechanism at the municipal level even if it has the political will to do so.

Moreover, unlike human rights abuses involving states, no international regulatory mechanism is in sight to make MNCs accountable for human rights violations. Such attempts have failed in the past because of the lack of political will on the part of states and strong resistance of companies and their representative organizations to such regulatory proposals. The most recent example of such a failure was the tragic and premature burial of the UN Human Rights Norms, first by the Commission on Human Rights [20] and then by the UN Secretary-General's Special Representative on human rights and transnational corporations (see [21], paras 56–59). This situation again suggests that extraterritorial regulation may be a viable option, at least until we have an international mechanism in place to deal effectively with transborder violations; otherwise, the current regulatory black hole would continue to exist.

These factors indicate an asymmetry between modern forms of doing business and the old legal principles governing regulation and exercise of jurisdiction. This asymmetry should be rectified. One option may be extraterritorial regulation of corporate behavior by states ([10], p. 136). This option has in fact been attempted in the last decade on several occasions. For instance, specific attempts were made in the USA, the UK, and Australia to enact an extraterritorial law to regulate the conduct of overseas subsidiaries of companies incorporated therein (the Dutch government had also considered a similar law, see [22], p. 469). In June 2000, Cynthia McKinney presented the Corporate Code of Conduct Act in the US House of Representatives [23]. This was soon followed by the introduction of a similar Corporate Code of Conduct Bill 2000 in the Australian Senate on September 6, 2000 [24]. Then in 2003, the Corporate Social Responsibility was introduced in the UK Parliament [25]. All these three bills attempted to adopt the home state model of extraterritorial regulation. Although none of these attempts unfortunately proved successful (see [9, 26]), they at least buttressed the perceived need for extraterritorial regulation to redress corporate impunity for human rights violations.

One can also interpret the cases filed in the US courts under the Alien Tort Claims Act – from environmental pollution¹ to beating, arbitrary arrest and detention, torture, and execution²; drug experimentation without informed consent³; forcible displacement and aiding/abetting genocide⁴; Holocaust war crimes⁵; participation in, or abetting, the regime of apartheid⁶; forced dislocation, torture, forced labor, murder, and rape⁷; and extrajudicial killings and war crimes⁸ – as a sign of victims looking to the legal systems of developed countries where a great majority of MNCs are incorporated. It should be noted that unlike the three bills mentioned above, the Alien Tort Claims Act is a fusion of both home state extraterritoriality and host state extraterritoriality: for example, one could sue in the US courts the French subsidiary of a US-based MNC as well as the US subsidiary of a French-based MNC.

At the international level, the Guiding Principles on Business and Human Rights [27], which were endorsed by the Human Rights Council in June 2011, acknowledge the possibility of extraterritorial regulation of corporate conduct by states. Principle 2 provides that states “should set out the expectations that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.” The commentary on Principle 2 states the following (see also [28], paras 42–49):

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

Principle 2 and commentary appended to it undoubtedly brought extraterritorial regulation to the business and human rights debate. It is, however, arguable that Principle 2 does not go far enough in that it does not expressly require (or even recommend) states to enact extraterritorial laws to regulate overseas human rights

abuses by companies incorporated in their jurisdiction. It gives states very wide amplitude in setting out clear “expectations” in this regard – something that can be achieved by simply issuing a policy statement and without enacting any obligatory laws or regulations. Moreover, the term “throughout their operations” is quite vague and prone to different interpretations; companies may, for example, adopt the position that operations of their overseas subsidiaries are not part of their operations. Critics have also pointed out that the commentary on Principle 2 does not truly reflect the actual legal position under international human rights law, as states are expected to take extraterritorial measures in order to fully discharge their human rights obligations under some treaties like the International Covenant on Economic, Social and Cultural Rights (ICESCR) (see, e.g., [29]; see also [30] and [31]). Scholars have also argued that such an extraterritorial obligation of states is more general in nature rather being limited to the ICESCR:

A state can be found to be in violation of this obligations under international human rights treaties for actions taken by it extraterritorially, in relation to anyone within the power, effective control or authority of that state, as well as within an area over which that state exercises effective overall control. ([18], p. 605)

Basis and Justifications for Extraterritorial Regulation

Basis for Exercising Jurisdiction

Scholars have already made a case for states to exercise extraterritorial regulation under certain circumstances [13, 32, 33]. Jurisdiction is not identical to territory, so if a state has some substantial and bonafide non-territorial connection with, or interest in, an issue, an extraterritorial regulation may be justified (see [34], p. 309). There are a number of well-established principles to ascertain such connection or interest outside one’s territorial boundary (see [12], pp. 170–71; [19], pp. 146–47; [35], pp. 4–5; [36], pp. 123–41). States can rely on the nationality principle to regulate the conduct of its nationals irrespective of the territory where the wrong conduct took place. The same principle allows states to protect their nationals from the conduct of external actors. In addition, the protective principle enables states to safeguard key national interests against threats emanating from outside their territorial boundaries, irrespective of the nationality of the wrongdoer. On the other hand, under the universality principle, states can deal with wrongs or crimes of universal concern.

These principles can also be used in support of the extraterritorial regulation of human rights violations of corporations. Considering that corporations are not physically visible in the same way as natural beings, this requires some jurisdictional connection for states to regulate their activities on the basis of the nationality principle. Apart from nationality of corporate owners and the place from which control is exercised (see [10], pp. 147–49), “incorporation” has been employed as one of the devices to determine the nationality of a corporation. However,

incorporation as a principle to enable jurisdiction over companies was premised on the assumption that companies would be operating within the territorial boundaries of a given state. This assumption does not hold true at this point of time when MNCs operate, and can move, across borders. Moreover, in view of the transnational character of companies, they can have – similar to people having multiple citizenships – more than one nationality based on the nationality of shareholders or other factors (see [34], pp. 408–09; [37], pp. 524–25). In short, incorporation is not an adequate basis to invoke the nationality principle against MNCs that have in effect become “stateless” (see [10], p. 146) or “denationalized” (see [38], p. 8).

The control theory may provide a legitimate justification to exercise jurisdiction over foreign subsidiaries in certain circumstances (see [7], p. 92). Dine makes a persuasive argument that for human rights purposes, the place where the actual control over a corporation is exercised should be the locus of control for that corporation. She argues that it “would not be extraordinary to accept that the locus of control for the purpose of regulating its impact on human rights is the place where the control was actually exercised” ([39], p. 87, and generally pp. 84–89). Therefore, if an overseas subsidiary is controlled by a company incorporated in the home state, the home state can regulate such subsidiary through its local parent company to ensure that the former respects human rights.

An aspect related to control is causation. In a particular case, human rights violations may be directly attributable to an overseas subsidiary operating in X state at a *superficial physical level*. However, at a *deeper intangible level*, it is very much conceivable that some policies or decisions that led to such violations were taken by the parent company incorporated in Y state. In such a scenario, it is arguable that Y state has an obligation to ensure that the parent company does not export or outsource human rights violations to overseas territories. The failure to recognize such an extraterritorial duty on states would mean that states can allow their companies to do to overseas people what they cannot do to the people living within their territories. This would amount to giving different value to lives of people based on their geographical locations.

As far as the protective principle is concerned, it is plausible to contend that states can pursue an overseas company that is impinging on basic human rights of its people through a local subsidiary or otherwise. Overseas companies may, for example, threaten the right to health by exporting and selling hazardous products or by conducting human trials of unsafe drug. For analogical purposes, one can draw on criminal law under which states can exercise jurisdiction over a crime even if only one of the constituent elements of a given crime was committed within their territory (see [7], p. 86). This largely uncontroversial principle of criminal law shows that one does not require “all” the connecting elements to exercise jurisdiction over a particular conduct or entity (see [19] p. 146). So, even if the foreign company is not a national of a given state, it can exert jurisdiction over such a company on account of other connecting variables, for example, the effect of company’s operations within the territory.

States have relied on the universality principle in relation to certain *jus cogens* wrongs such as slavery, genocide, piracy and torture (see [40], pp. 43–80; see also [41]).

Several precedents exist to support the application of this principle in relation to human rights violations by natural persons, and there is no apparent reason why the same principle should not extend to violations done by legal entities. In addition, there is an expanding list of common concerns – for example, drugs, bribery ([42], pp. 3–8), terrorism [6], slavery ([43], pp. 306–307), and child sex trafficking [35] – in which states have resorted to extraterritorial regulation. Therefore, there is nothing to prohibit states from meeting the challenge of human rights abuses by MNCs through extraterritorial regulation, especially in cases involving violations of core human rights that are uncontroversial.

Justifications for Extraterritorial Regulation

Extraterritorial regulation of MNCs is not only legally defensible under principles and practices of international law but is also justifiable on policy grounds ([9], pp. 46–50). During the colonial period, extraterritoriality had a different and negative connotation, reflecting imperialistic and non-participatory extension of laws to colonies. However, these concerns are not valid now in an interconnected and interdependent world, especially if extraterritorial laws are made in furtherance of collective goals agreed upon by states. After reviewing international human rights jurisprudence, Salmon concludes that “international cooperation for ensuring human rights constitutes an essential component of the obligations of states” ([13], p. 109). In fact, one can notice such cooperation – which is indispensable to governance in today’s globalized world – in action in non-human rights areas as well, for example, facilitating free trade, establishing peace, or overcoming economic/fiscal crisis.

Despite some differences among states and implementation-related problems, human rights – more than anything else – represent a common understanding toward certain values at international level (see [44], p. 70). Under the Universal Declaration of Human Rights 1948, states have made a pledge to promote “universal respect for and observance of human rights.” Therefore, even when states take steps at municipal level to respect and protect human rights, they are also striving to fulfill this collective objective. It is arguable that when a given state fails to perform this duty persistently for political or economic reasons or the situation involves egregious human rights violations, then the duty of other states to fulfill the common objective (including by acting extraterritorially) may be triggered. In relation to the right to food, the former Special Rapporteur on the Right to Food noted: “. . . the principal obligation to guarantee the right to food is incumbent on the national Government, *but if other States, have available resources, they have a complementary obligation to help the national State when it does not have the resources to realize its population’s right to food*” ([45], para 33 (emphasis added)). In sum, extraterritorial measures are legitimate and justified in that they seek to promote internationally recognized human rights (see [10], pp. 151–60; [46], p. 77).

If human rights are universal, then corresponding duties should be universal too, otherwise it would mean that people living in some states enjoy a superior claim to have their human rights realized as compared to people of some disempowered or impoverished states. For historical and pragmatic reasons, international law conferred on states the authority to fulfill these human rights duties within their respective territories. This should not, however, be taken to mean that states can act the way they like within their territorial boundaries or that states cannot exercise jurisdiction outside their territories under no circumstances. If considered necessary by the collective will of international community, international law is capable to devise additional means to enforce universal human rights obligations. In this context, it is possible to conceive, as Reinisch does, extraterritorial laws “as a form of decentralised enforcement of international law” ([47], pp. 58–61).

Alternatively, one can see extraterritorial regulation as complementary to municipal regulation. This is non-controversial that states have a duty to protect human rights, which includes an obligation to ensure that all entities within their territory or control comply with human rights standards [48]. But does this due diligence obligation extend extraterritorially? McCorquodale and Simons have answered this question in affirmative ([18], p. 618). In other words, a law with some degree of extraterritorial operation would be necessary to fulfill this obligation of states ([49], p. 664), because, otherwise, companies could easily bypass the mandate of municipal law by transferring or relocating their business operations offshore where human rights obligations are less stringent. In fact, if every state is obliged to ensure that corporations incorporated within its territories do not violate human rights of people outside its territory (see [18], p. 600), this would result in a better protection of human rights overall. For example, if X state tries to ensure that its companies do not indulge in human rights violate while operating in Y state and Y state does the same vis-à-vis X state, such extraterritorial measures would assist both X and Y states in fulfilling their threefold duties within their respective territorial boundaries. In other words, extraterritorial regulation should be seen as complementary (rather than antagonistic) to territorial regulation. Salomon notes: “[W]hile it is the state acting domestically that has the primary responsibility for the realization of human rights when it comes to the people within its territory, this does not weaken what is essentially a complementary duty of the international community to remedy the violation of minimum essential levels of economic, social and cultural rights” ([13], p. 184).

Jean Ziegler, the former Special Rapporteur on the Right to Food made the following observation, which is relevant beyond the right to food: “The obligation to respect is a minimum obligation which requires States to ensure that their policies and practices do not lead to violations of the right to food in other countries. The obligation to protect requires States to ensure that their own citizens and companies, as well as other third parties subject to their jurisdiction, including transnational corporations, do not violate the right to food in other countries” ([45], para 34; see also [30], pp. 766–71).

Implications of Exercising Extraterritorial Jurisdiction

The exercise of extraterritorial jurisdiction over foreign subsidiaries of companies incorporated in a given state is likely to raise multiple concerns from other states competing to exert jurisdiction on such subsidiaries – from breach of sovereignty to Western imperialism and interference in municipal policy matters ([7], pp. 132–33). One could point out resultant conflict between laws or applicable standards too. Then there would be issues concerning collection of evidence and enforcement of judgments in overseas jurisdictions. Some other conceptual or procedural issues would also have to be overcome. For example, companies (both parent and their subsidiaries) might rely on the principle of separate legal personality to contest the exercise of extraterritorial jurisdiction. Similarly, the doctrine of *forum non conveniens* (which in essence means that a case must be heard in the most appropriate judicial forum) can be employed to seek dismissal of legal proceedings from the courts of a jurisdiction where the cause of action arose only partially.

These are legitimate but undesirable implications arising out of extraterritorial regulation. However, it is not impossible to overcome these concerns. Let us consider how that is possible. Non-intervention in domestic matters and territorial sovereignty are important principles of international law. Nevertheless, these principles are neither absolute nor rigid. Many instances exist where states have acted individually and/or collectively to intervene in apparently domestic matters if the circumstances justified such an intervention. Similarly, in relation to potential conflicts arising from extraterritorial regulation, it can be said that the differences between laws do not necessarily result in conflict ([50], pp. 143–44). Conflicts ordinarily arise when the host state proscribes what the home state prescribes or vice versa. For example, hardly any host state would mandate (though it may acquiesce to) a corporation employing child or forced labor, or manufacturing potentially harmful substances, or paying less than living wages, or polluting the environment – something which the home state's extraterritorial law may prohibit ([9], p. 61). So long as it is possible for a company to comply with laws of both home and host countries, extraterritoriality should not result in a direct conflict.

As far as the separate legal personality is concerned, states may rely on the enterprise principle – which considers all companies of a group as one enterprise – to regulate activities of overseas subsidiaries extraterritorially ([8], pp. 168–97). Picciotto argues that “the law need not be blind to business reality. Obligations that extend to the worldwide activities of the firm can be placed on the parent company and its directors, to the extent that these activities are under the parent company's de facto control” ([51], p. 148). States thus have authority under international law to regulate the conduct of overseas subsidiaries of local companies ([18], pp. 616–17).

In common law countries, the doctrine of *forum non conveniens* can undermine the efficacy of extraterritorial regulation, in that the courts can dismiss legal proceedings against a company on the ground of the availability of a more appropriate forum. The litigation that has unfolded in the US courts under the Alien Tort Claims Act provides a glimpse of this possibility ([52], pp. 91–96). How could this hurdle be overcome? There have been some positive developments in some jurisdictions to

limit the corporate misuse of this doctrine. For instance, the approach adopted by Australian courts – rather than asking if the alternative forum is more appropriate, one should ask if the courts in Australia are “clearly inappropriate” forum to try a given case – is considered more favorable to victims than to companies [53]. There have also been judicial decisions in the UK that allowed victims to pursue cases in the UK even if the alternative forum was more appropriate, because the victims might not be able to secure justice there⁹. The decision of the European Court of Justice in *Owusu v Jackson* (2005) 2 WLR 942 is also significant in that the Court held that the dismissal of a suit by a European Union member state on the ground of *forum non conveniens* will be incompatible with Article 2 of the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1968 (Brussels Convention).

In short, although extraterritorial regulation of corporate conduct is likely to raise several complex issues, it is not impossible to overcome those issues, if the required political will is there. If states can show such political will in relation to dealing with economic matters (e.g., securities, taxation, and antitrust) and serious crimes (e.g., terrorism, sex trade, and torture), there is no sound reason why that cannot happen in the area of *universal* human rights.

Conclusion

In this chapter, I have tried to demonstrate that extraterritorial regulation – either by home or host states – of human rights violations of corporations is a viable (albeit not an ideal) option to deal with the current situation of corporate impunity for human rights abuses. This regulatory strategy alone would not suffice, but it should still be useful as part of a wider regulatory framework to confront difficult regulatory targets such as MNCs. It is high time that new legal principles are developed and invoked to respond to the modern forms of human rights abuses by companies that operate in disregard to geographical boundaries. In the area of extraterritoriality, such new principles should provide clearer and stronger basis for states to adopt extraterritorial measures in appropriate cases to promote a better realization of human rights.

Cross-References

- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if Any?](#)
- ▶ [What Are the Obligations of Those Who Invest in Corporations?](#)

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Bonita Meyersfeld

Abstract

Institutional investors have a significant role to play in enforcing international human rights standards. Simply by choosing whether or not to invest in corporations and by imposing investment conditions, institutional investors have the ability to influence multinational corporations to comply with international human rights and environmental standards. Institutional investors are thus a potential regulator themselves in the absence of effective state control. Many institutional investors already take factors relating to a corporation's social responsibility into account when making investment decisions. But what happens when they do not? Where institutional investors overlook these factors and invest in corporations that commit human rights violations, the following questions must be asked: Are such investors complicit in the harmful actions of the multinational corporations that they fund? Do institutional investors have a legal obligation under international human rights law to take steps to help prevent the violation of human rights by the corporations in which they invest? Is it lawful for institutional investors to make a profit from the operations of multinational corporations that are complicit in, or commit, human rights violations? Given the significant power of institutional investors globally, especially in developing world investment, it is interesting to note that relatively little attention has been paid to this actor in the international law debates regarding human rights and business.

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Introduction

Many corporations – and the institutions that finance them – now exercise as much power as governments [1, 2]. Similarly to governments, corporations have been found to be complicit in, or directly responsible for, grave human rights breaches [3]. Generally, the behavior of a corporation is regulated by the laws of the country in which it is established. In theory, every state controls its own corporations and regulates their activities. Increasingly, however, corporations are operating outside the jurisdiction of the countries in which they are incorporated or have their primary place of business (“home states”). As a result of the globalized marketplace, corporations have become multinational, operating on a transnational, cross-border basis [3]. Such corporations often operate in foreign jurisdictions in the developing world (“host states”). In many cases, such jurisdictions are characterized by impoverished communities and unstable or emerging democracies and offer a combination of cheaper labor and weak governance structures. These ingredients translate into low overheads for corporations and are an attractive cocktail for many corporations which have moved their operations “offshore” of their home state. At both the level of the home state and the host state, there is a dearth of regulation of such multinational corporations [4, 5].

The global nature of this problem has attracted the interest of the international community which is considering, among other things, how international law can be used to regulate multinational corporations in the absence of effective state regulation. In 2005, the Secretary-General of the United Nations (“UN”) appointed a special representative to investigate how multinational corporations impact on human rights (through notions of “complicity” and “sphere of influence”) and how this should be addressed in international law [6].

To date, the UN’s work on business and human rights engages three entities: the home state, the host state, and the multinational corporation. Generally, the legal question asked is which of these three entities has an obligation under international law for the violations of human rights by multinational corporations. There is, however, an important subject which is underdiscussed in the emerging theory of international law, business, and human rights, and which I explore in this article. This is the role of the institutional investors, who invest in and help fund the operations of multinational corporations.

Proposal

This chapter considers the role of institutional investors in the activities of multinational corporations and the extent to which their investment activities can influence corporations to comply with international human rights standards. I analyze the role of major institutional investors in the activities of multinational corporations and the economies of developing countries [7].

There are several voluntary initiatives (global, regional, and national) to integrate human rights considerations into the investment policies of institutional

investors. There is a question as to whether these initiatives are sufficient and effective. I also consider national measures that have been adopted to integrate human rights into the investment decisions of institutional investors.

I propose that institutional investors have a significant role to play in enforcing international human rights standards. Simply by choosing whether or not to invest in corporations and by imposing investment conditions, institutional investors have the ability to influence multinational corporations to comply with international human rights and environmental standards. Institutional investors are thus a potential regulator themselves in the absence of effective home state and host state control [8–10].

Many institutional investors already take factors relating to a corporation's social responsibility into account when making investment decisions. But what happens when they do not? Where institutional investors overlook these factors and invest in corporations that commit human rights violations, the following questions must be asked: Are such investors complicit in the harmful actions of the multinational corporations that they fund? Do institutional investors have a legal obligation under international human rights law to take steps to help prevent the violation of human rights by the corporations in which they invest? Is it lawful for institutional investors to make a profit from the operations of multinational corporations that are complicit in, or commit, human rights violations? Given the significant power of institutional investors globally, especially in developing world investment, it is interesting to note that relatively little attention has been paid to this actor in the international law debates regarding human rights and business.

Institutional Investors as Human Rights Regulators

In this part of the chapter, I examine the power of institutional investors to compel multinational corporations to respect and protect human rights. I briefly describe the history of institutional investment and human rights protection, concentrating on the influence of institutional investors during apartheid. I then look at the different methods by which institutional investors compel multinational corporations to comply with international human rights standards. Finally, I engage the business case argument, namely, that monitoring human rights standards is not only altruistic but also good for business.

The Meaning of Institutional Investment

Institutional investment refers to group investment on a large scale. Institutional investors are highly specialized institutions, such as banks, insurance companies, retirement or pension funds, hedge funds, and mutual funds who invest large sums of pooled money in companies or financial instruments. Institutional investors include corporations, universities, hospitals, foundations, insurance companies, nonprofit organizations, churches, synagogues, mosques, and other religious institutions [11].

The most well-known form of institutional investment is the investment of pension fund contributions by trustees or fund managers in large, lucrative – and often multinational – corporations. For reasons which I discuss further below, I focus on pension funds in this article as the long-term objectives of pension funds make responsible investment reform much more feasible.

This is so for several reasons. In theory, at least pension funds are (1) based less on quarterly performance than on long-term stability; (2) less susceptible to “hot money” issues (the quick flow of money out of underperforming funds and into strongly performing funds), allowing somewhat more flexibility if a responsible investment underperforms for a few cycles; (3) by their very nature (and execution), pension funds are less actively managed than mutual funds, so they tend to favor investments that they can “buy right and sit tight” (to quote Vanguard’s founder Jack Bogle) [12]. The fact that pension funds are supervised by a highly specialized corporate trustee has given rise to fewer hidden agency costs with pension funds. This means that there are fewer purchases and sales, resulting in more of an emphasis on long(er)-term commitments; and (4) pension funds have a large aversion to tracking errors and thus pursue their given benchmark vehemently.

Managing mass accumulation of wealth makes institutional investors dominant players in global financial services. In general, institutional investors require their portfolio companies (i.e., corporations in which they invest) to comply with the main objective of profit maximization (and, depending on the investment scheme, good governance). This power, however, also places institutional investors in a position to require their portfolio companies to ensure that their activities do not cause human rights violations, either directly or indirectly. In the past, therefore, institutional investors have been called upon to engage with, or disinvest from, portfolio corporations, which have been accused of complicity with human rights violations. Investors usually experience this pressure when a portfolio company either commits human rights violations directly or supplies goods or services to government regimes with poor human rights records.

The Meaning of Responsible Investment

This approach is commonly referred to as “socially responsible investment” or “SRI.” This label originated in the environmental call for sustainable development ([8], p. 2 and [11]). Today, it generally reflects the notion that investors’ operations are “friendly” or sensitive to the environmental, human rights and good governance practices of their portfolio companies. These considerations are often encapsulated in the catchphrase “environmental, social, and good governance” considerations or “ESG” [13]. There are many interpretations and definitions of SRI, but in general, it can be said to entail two broad concepts. The first is the notion of using investment power to generate change in a particular human rights or environmental context. This is also known as impact investment. The most common forms of impact investment are microfinance, social housing, and clean technology. The second concept is to ensure that any and all investment activities avoid funding corporate

activities, which are harmful to the environment, human rights, or other social considerations. The core objective of this type of investment is to reconstruct investment priorities: whereas traditionally investors look only at the profit an investment might yield, responsible investment turns the investor's mind – in addition to profit – to the activities of corporations which might violate human rights and environmental standards.

SRI should be distinguished from ethical investment. The latter generally occurs when investors invest according to religious beliefs or moral considerations. In one form or another, SRI refers to “a broad constellation of interests campaigning for socially, ethically, and environmentally responsible financing” ([8], p. 1).

Increasingly, activists and investors are using the simple, all encompassing phrase, “responsible investment.” I use this term to capture the notion of investment practices that are responsible as regards profitability but also responsible as regards the protection of human rights. The important conceptual dominator is how the mass accumulation of money controlled by institutional investors can be used in a way that mitigates corporate harm, boosts corporate compliance with environmental human rights and good governance standards globally, and continues to make a profit for shareholders. It should be noted that the “S” in ESG has received relatively little attention and expansion. The imposition of good governance mechanisms and the measuring of environmental standards have received increasing attention. In contrast, the social component, and specifically the attention to human rights, has not been developed in nearly the same manner and “is lagging behind as a component of SRI. While human rights, for example, are considered to be an important component of an investment proposition, in practice, it is hard to secure reliable data on production methods at plant or factory level. More subtle aspects of social impact may not feature or be provided to inform an SRI fund manager's investment decisions.” This component, therefore, requires attention and development.

The History of Institutional Investment and Human Rights

The idea that investors should consider the impact of their investment on the well-being of others is not new. Responsible investment is rooted in the notion of “ethical investment,” which was often practiced by religious groups, which were committed to particular ideological principles. Organizations such as the Quakers, Methodists, and the Church of England refused to invest their finances in companies which made profits out of alcohol, gambling, or tobacco [11]. Over time, however, some jurisdictions began to impose restrictions on so-called ethical investment. There was concern that a religious-based approach to investment reflected nonlegal, nonfinancial considerations that are overly subjective and inconsistent with the two tenets of investment, namely, profit maximization and the protection of shareholders' interests [14].

With the advent of international human rights law after the Second World War, the religious characteristic of “ethical” investment began to change. Human rights

lobbyists began to pressurise institutional investors to disinvest from companies that were connected with environmental damage or human rights violations. In the last few decades, investors have been called upon to use their economic influence in portfolio companies to oppose political tyranny (the divestment campaign during apartheid) and genocide (the ethnic killing in Darfur) by extracting their funds from businesses operating in such countries.

Perhaps, one of the most well-known examples of engaging investor power to advance human rights is the divestment campaign during South Africa's apartheid regime. During apartheid, anti-apartheid activists urged institutional investors to disinvest from their portfolio companies operating in South Africa. This pressure led investors to engage with their portfolio companies operating in South Africa to ensure that they opposed the discriminatory practices of the apartheid regime. The UK, for example, (and other EC member states) adopted regulatory schemes requiring UK companies with more than 50% shareholding in a South African subsidiary to report annually to the UK government on steps taken to implement a code of conduct and to report on discriminatory employment practices [15]. The most dramatic and well-known response to institutional investment in apartheid South Africa emanated from the United States (USA).

In the USA, Reverend Leon Sullivan created the Sullivan Principles of corporate investor responsibility, which included the obligation to disinvest money from corporations that engaged with or supported the apartheid regime. The Sullivan Principles articulated the notion that trading with an oppressive government “constitutes a tacit endorsement of that regime and its racist policies” [16]. The Sullivan Principles did not only call for divestment. They also called for engagement. Corporations operating in apartheid South Africa were called on to ensure that the black South African workers they employed were treated equally and according to the same standards of equal protection in operation in the USA. The campaign behind the Sullivan Principles led to the Comprehensive Anti-Apartheid Act of 1986 [17]. This movement “laid the foundation for the global principles and evolving law that corporations have human rights responsibilities overseas to vulnerable peoples within their influence” [16].

More recently, NGOs and transnational organizations have employed similar mechanisms to raise awareness of and trigger divestment from oppressive regimes. Organizations have been calling for the divestment from Darfur and Burma/Myanmar for example [18]. As already mentioned, the power of institutional investors has also been harnessed with some success by the environmental sector. This sector has recognized the role of institutional investors in impacting on the environment through the allocation of capital to businesses operating in environmentally sensitive industries, such as mining and agriculture.

Today, institutional investors have the potential to play a powerful role in the protection and development of human rights on the part of multinational corporations. By requiring a level of human rights compliance in the activities of their portfolio companies, institutional investors are perhaps some of the most powerful regulators in the arena of international law, human rights, and business.

As is clear from the Sullivan Principles, there are a number of ways in which institutional investors can influence the behavior of their portfolio companies. I now turn to consider the methods available to institutional investors to compel multinational corporations to protect and respect human rights.

Methods of Influence by Institutional Investors

There are a number of ways in which investors can influence their portfolio corporations to commit to the protection of human rights and economic development of the people living in the countries in which they operate. This can be done without compromising healthy profits for the ultimate beneficiaries of the investments.

The first mechanism is that of divestment. Usually investors divest if the corporation fails to perform financially. Investors may also be pressured to divest where a corporation is complicit in the violation of human rights, such as war crimes, crimes against humanity, genocide, severe environmental degradation, or severe impact on global health. The Sudan divestment campaigns, for example, led investors to threaten to divest from the oil company Talisman unless it ceased operations in Sudan's oil fields [19]. The second method of investment control is the use of screening. Investors may require corporations to demonstrate environmental, social, and good governance standards *before* investing, as a precondition in return for their business. The third mechanism is engagement. Also known as "active ownership," institutional investors can engage with their portfolio companies to monitor their compliance with human rights standards. Recommendations from powerful shareholders turn a corporation's "mind" toward human rights considerations, thereby limiting the negative fallout from poor governance, lax safety standards, or climate change. Finally, some investors are now turning to litigation. For example, Lothian pension fund is suing BP for the damage to its investment after an oil spill, which it said was caused by BP's negligence [20].

Divestment is an extreme form of investment reaction to the commission of human rights violations by a portfolio company. Divestment based on human rights violations comes with significant responsibility as the withdrawal of an investor from a major corporation can affect that corporation's global share price. The Norwegian Sovereign Wealth Fund's Council on Ethics, for example, was accused of improperly casting a "stain" on Wal-mart when it publically divested from that corporation.

The least severe, and arguably quite effective, method of influence is engagement. For this reason, many activists and policymakers emphasize engagement with portfolio companies to ensure that they comply with international human rights standards, including the avoidance of poor governance, lax safety standards, and collusion in conflict zones and doing business with unstable and unreliable regimes.

Having identified these mechanisms of shareholder control, the natural question is "why"? Why would an institutional investor *want* to control the human rights standards of its portfolio companies? Some argue that business entities are

members of society, created to further the broad good of society and, as such, have an obligation to comply with social (including human rights) standards [21]. Another answer that is often proffered is because responsible investment makes good business sense.

The Business Case for Responsible Investment

In many quarters, the call for responsible investment is met with resistance, if not in fact disdain, on the part of many institutional investors. At the core of the investment, communities' resistance to regulation is the concern that responsible investment practices are incompatible with a low-cost scheme and the freedom to make quick, effective investment decisions which will yield the maximum profit. Responsible investment, however, is not necessarily inconsistent with profit maximization. Some argue that responsible investment practice is not only consistent with, but is actually a precursor to, a long-term, stable, and valuable fund [22, 23]. I discuss some of the arguments of profitability below, but it is important to note that there is some inconsistency between the theoretical profitability of responsible investment and empirical evidence. This is due to several factors, including the lack of a clear definition of responsible investment and a proper analysis of shareholder activism. For the moment, the jury, so to speak, is still out. The reality, however, is that responsible investment has the potential to be a *better* investment option and at least not an investment option that penalizes profits and returns. This is so for a number of reasons.

The first proposed benefit of responsible investment is its tool as a helpful indicator of the stability and long-term value of a corporation. The examination of ESG principles may unearth important information regarding investment returns and risk management, and for this reason, it has been argued that SRI represents a financial benefit, rather than a financial cost [24]. The European Commission confirms this:

Socially and environmentally responsible policies provide investors with a good indication of sound internal and external management. They contribute to minimizing risks by anticipating and preventing crises that can affect reputation and cause dramatic drops in share prices. [25]

It has been argued that the 2008 drop in the value of UK and US pension funds was due in part to a lack of transparency about corporate practice and an irresponsible reliance on market trends with little or no independent analysis [26]. This is compounded by the emphasis on quarterly returns as a barometer for successful investment. Many institutional investors, especially pension funds, rely heavily on index trackers, which, put simplistically, follow a predetermined pattern of investment. Some investors rely on a computer model with little or no human input in the decision as to which financial instruments are purchased or sold. The lack of active management usually gives the advantage of lower fees and lower taxes in taxable accounts. But apart from the fact that this has its own financial risks

(known as “tracking errors” or informally “jitters”), tracking usually covers very short periods (usually 3 months) and obviously does not consider the human rights impact of the portfolio company.

The performance of a company over a 3-month period is very different from the performance of a company over a 20-year period. It is possible that an activity that is profitable in the short term – for example, due to cheap labor – may have negative impacts on the wider portfolio in the longer term – for example, due to reputational costs or poor quality service (both hallmarks of cheap labor). Therefore, pension fund managers need to be more concerned with the performance of a company over a much longer period and should be encouraged to rely less on short-term tracking of corporate performance.

The interests of pension funds and their members are best served by longer-term valuation of companies, given that most people’s pensions will be invested for decades before they are paid out. In general, pension fund managers need to be encouraged to look beyond quarterly results as short-term thinking can lead to lower total returns over a longer period. This is especially relevant to long-term investments such as pension funds, which are designed to make and sustain profits over a long-period of time. This requires careful and transparent practices on the part of portfolio corporations which reduce the risk of investment loss. Short-term profit analysis therefore is not only antithetical to the profit maximization of a long-term pension fund; it also compels an analysis of market trends that is superficial, compromising an in-depth analysis into a corporation’s profitability.

Responsible investment practices are also useful tools in prying open information sources of corporations and ensuring that all aspects of corporate activity are in accordance with best, and safest, practices. An example of this is the Co-operative Society’s ethical fund, which had one of the best performances of any all-shares funds in recent times [27]. Mainstream investment can, by contrast, make catastrophic mistakes. These mistakes might well have been avoided had there been greater scrutiny of the corporate governance of those companies.

The practices of responsible investment also act as a mechanism to measure the health of a corporation’s reputational component. There has been a dramatic increase in the financial value of corporations’ reputations, which inevitably in the longer term will affect their profitability. For example, the reputational capital of Coca-Cola is said to be \$52 billion and of Gillette \$12 billion [28]. Naturally, investors may look to the reputational value of their portfolio corporations when making investment decisions about their profitability. Reputational value is particularly relevant for many consumers and members of the public. Today, consumers increasingly are concerned about the environmental, social, and good governance practices of corporations, and poor ESG practices by companies are one of the causes of serious reputational and therefore financial harm. For example, the oil spill in the Gulf of Mexico – and the threat of litigation – has had an unprecedented impact on the share price of BP [20]. Tesco, a leading British supermarket chain, came under significant pressure when the NGO, ActionAid, released information about the low wages being paid by Tesco to small-scale farmers and women workers in poor countries [29].

An example of this is the historic Ford Pinto Memo, which revealed that the Ford Motor Company knew that the Pinto vehicle had design flaws that could result in a fuel tank explosion when the vehicle was subject to a rear-end collision. Ford decided, based on a cost-benefit analysis, that it would be cheaper to settle the legal claims of those who suffered death and disability as a result of the design flaw rather than to recall all Pinto models. When this information became public, it took Ford decades to recoup its reputational – and financial – losses [30].

A counterexample is Johnson & Johnsons' Tylenol crisis in 1982 when seven people in the Chicago area in the USA died after ingesting Extra Strength Tylenol medicine capsules which had been laced with potassium cyanide poison. Johnsons & Johnsons recalled every package of Tylenol worldwide. This show of honesty – and Johnson and Johnsons' invention of the first inherently tamper-proof, enrobed capsule – restored the company's reputation and enabled Johnson and Johnson to recoup the 92% of capsule segment sales lost to product tampering [31].

Institutional investors clearly have considerable power to compel multinational corporations to respect and protect human rights. And in many ways, responsible investment is itself a mechanism to ensure profitability. This type of investment practice, however, is still ad hoc and intermittent [32]. The question is whether these regulators themselves should be regulated. Is there a need to regulate institutional investors' activities to ensure the protection of human rights? To a certain extent, the industry has started a soft form of global self-regulation through the adoption of an array of international voluntary mechanisms. At national levels, certain states are taking steps to engage ESG principles. This is a very specific type of regulation that effectively operates extraterritorially. In the next section, I consider these voluntary mechanisms and national regulations.

Regulating the Regulators: Voluntary and Legal Standards

Voluntary Standards for Institutional Investment and Human Rights

Recognizing the importance of responsible investment, institutional investors have formed voluntary coalitions around ESG principles. The largest coalition consists of the signatories to the United Nations Principles on Responsible Investment (the UN principles). The UN principles are a set of voluntary and aspirational principles that are based on the industry's recognition of the need to mainstream ESG considerations into their investment decisions (cf. [33]).

The development of these principles began in 2005 when the UN Secretary-General coordinated a group of 20 institutional investors and members of the governmental and nongovernmental sectors. The objective of this group was to create a set of core principles that would guide institutional investors and investment managers in responsible investment, particularly for institutional investors who run long-term, diversified portfolios. The process, which was coordinated by the United Nations Environment Programme Finance Initiative and the UN Global Compact (another voluntary initiative around multinational

corporations and human rights), resulted in a “menu” of possible actions or ways institutional investors can integrate ESG considerations into their investment decisions. At the date of writing, there are 928 signatories comprising 237 asset owners (such as pension funds and insurance or reinsurance companies), 527 investment managers, and 164 professional service partners (organizations that offer products or services to asset owners and/or investment managers). It is estimated that the UN principles apply to \$15 trillion of assets under management [34].

The UN principles are evidence of the influence that institutional investors can have on the human rights and environmental impact of the multinational corporations in which they invest. The UN principles are also evidence of the recognition in the industry that global standards are needed to regulate institutional investors.

Other voluntary mechanisms include the principles developed by the Organization for Economic Co-operation and Development (“the OECD”), namely, the OECD 1976 Declaration and Decisions on International Investment and Multinational Enterprises. The instrument on International Investment Incentives and Disincentives provides for efforts among member countries to improve cooperation on measures affecting international direct investment. These guidelines are nonbinding principles and recommendations articulated by member governments to multinational corporations operating in or from adhering countries. The principles include recommendations relating to human rights, environmental, and anticorruption standards. As regards human rights standards, the OECD Guidelines aim to enhance respect by multinational corporations for the human rights of those affected by their activities consistent with the host government’s international obligations and commitment. The OECD structure includes National Contact Points, which are quasi-judicial entities that “promote the Guidelines and act as a forum for discussion of all matters relating to the Guidelines” (article 10).

The revised OECD Guidelines contain more robust and explicit provisions regarding human rights [35]. Part IV of the revisions to the OECD Guidelines contains injunctions to have a policy commitment to respect human rights; carry out human rights due diligence as appropriate to their size, the nature and context of operations, and the severity of the risks of adverse human rights impacts; and provide for or cooperate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts. These provisions are based on the principle that every business enterprise, including institutional investors, regardless of their size, sector, operational context, ownership, and structure, should respect human rights wherever they operate. Respect for human rights is the global standard of expected conduct for enterprises independently of States’ abilities and/or willingness to fulfill their human rights obligations and does not diminish those obligations. The revised guidelines contain a clear call to investors, noting that where an enterprise contributes or may contribute to a human rights impact, “it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts” [35]. As regards

human rights policies, the revised guidelines note that business enterprises should express their commitment to human rights “through a statement of policy that (1) is approved at the most senior level of the enterprise; (2) is informed by relevant internal and/or external expertise; (3) stipulates the enterprise’s human rights expectations of personnel, business partners, and other parties directly linked to its operations, products, or services; (4) is publicly available and communicated internally and externally to all personnel, business partners, and other relevant parties; (5) is reflected in operational policies and procedures necessary to embed it throughout the enterprise” [35].

Other “soft law” or voluntary principles include instruments or policies developed by the International Finance Corporation (a World Bank institution) which provides, *inter alia*, investment advice to emerging markets [36]; the Equator Principles, which relate to social and environmental risks in project financing, are a credit risk management framework for determining, assessing, and managing environmental and social risk in project finance transactions [37]; and the Global Compact, which is a UN initiative for “businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption” [38]. The IFC is one of the leading investor agencies in respect of developing robust principles for responsible investment. The IFC’s Performance Standards on Social and Environmental Sustainability engage the following: social and environmental assessment and management; labor and working conditions; pollution prevention and abatement; community health, safety, and security; land acquisition and involuntary resettlement; biodiversity conservation and sustainable natural resource management; indigenous peoples; and cultural heritage [39]. These themes encompass performance standards that investee corporations (or clients) are obliged to meet throughout the life of an IFC investment. They are, in other words, conditions of a loan. The regulatory potential is clear.

These voluntary guidelines are useful. They set industry standards and aspire toward a form of business practice that is in harmony with human rights, environmental sustainability, and development. They are, however, voluntary and depend almost entirely on the integrated factors of goodwill and reputational concern (for discussions of the advantages and disadvantages of voluntarism in business, see [40]). According to a recent UN report, consultants and asset managers tend to treat the UN principles as items to be ticked off “rather than an issue of substance which needs to be measured and appraised” ([23], p. 10).

Relying on voluntary codes of conduct or so-called commitment to nonbinding principles often amounts to a contradiction in terms. The notion of voluntarism is problematic for many reasons, not least of all because of the lack of enforcement. Voluntarism in the corporate sector generally is linked to reputation – corporations comply with voluntary principles in order to enhance their reputation in the eyes of their target market. Often voluntarism relies ultimately on consumers in the developed world dictating which rights and under which circumstances such rights must be respected by multinational corporations. We have to question whether the

regulation of multinational corporations should be determined by the purchasing decision of a person in a supermarket in the United Kingdom, for example, or whether we should be more robust in the legal standards for corporations and their investors.

There are jurisdictions that have started to integrate responsible investment into their legal and financial frameworks. In the next section, I discuss the developments in Norway, South Africa, and the UK to demonstrate some of the methodology in advancing responsible investment in national legislative frameworks. I select Norway and South Africa as representing robust and leading development in this field and, in the case of the UK, as a country which still requires development in its regulation of financiers and investors.

Regulation of SRI in National Legal Systems

Most national jurisdictions do very little to regulate the investment decisions of major institutional investors. In this section, I consider three jurisdictions as examples of legislative reform in this regard, namely, Norway, South Africa, and the UK. The purpose of this analysis is twofold. It brings out some of the practical ways that the recommendations I make in this paper may be implemented. It also demonstrates, at least in the case of Norway, the potential success of careful regulation.

Norway

Norway and the Scandinavian countries are often cited as examples of successful regulatory jurisdictions when it comes to the enforcement of SRI standards. The Norwegian Government Pension Fund (“the Norwegian Fund”) is a sovereign wealth fund that invests surplus wealth produced by Norway’s petroleum sector. It is the second largest sovereign wealth fund with an average holding of 1% in equities worldwide. Initially created in 1990 as the Petroleum Fund, it invests Norway’s excess oil revenues in international stocks and bonds on behalf of the country’s future pensioners ([9], p. 577).

The Norwegian fund managers exercise what is commonly known as “active ownership” ([11], p. 312, [53]). This is the notion that trustees actively engage with the corporations in which they invest with a view to securing both profitability and compliance with international standards regarding environmental and human rights protection. The fund managers of the Norwegian Government Pension Fund practice active ownership through voting, filing shareholder proposals and investor expectations documents, and engaging directly with management. Norway’s finance ministry engages in screening and screens out or rejects companies that “produce weapons or pose a risk of human rights violations, such as child labour, violation of individuals’ rights in war or conflicts, severe environmental damages, gross corruption, other serious violations of fundamental ethical norms, and tobacco companies” [41]. The ministry has excluded nearly 50 companies from the fund’s investment portfolio, including Wal-Mart.

In 2004, the Council on Ethics was created to advise the Norwegian Fund managers on how to avoid Norwegian complicity with harmful corporate conduct ([9], p. 589). The Council on Ethics submits recommendations to the Norwegian Ministry of Finance which will then make a final decision on whether to exclude a company from the Norwegian Fund's portfolio ([9], p. 589). From 2004, the Council on Ethics has been making decisions on the human rights, environmental, and good governance standards of portfolio companies.

There are two important "take-home" points regarding the Norwegian Fund. The first is that the Norwegian Fund's decisions evince discernable principles by which to make investment decisions based on ESG considerations. These factors are not vague and indeterminable. The second point is that responsible investment is neither overly expensive nor incompatible with profit maximization, as is evident from the strength of the Norwegian Fund's returns. Norway is a stellar example of a regulatory response to responsible investment practices. South Africa is an example of a developing world jurisdiction that is taking the regulation of investment practices to a new level of enforcement and compliance.

South Africa

From July 1, 2011, South African institutional investors are required to take into account the long-term sustainability of investments, in particular considering the impact of ESG aspects [42]. This requirement was enacted in Regulation 28 of the Pension Funds Act 1956 [43]. Regulation 28 is designed to "align retirement fund regulation with our government policy objectives like socially responsible investments and transformation" [43]. The Preamble highlights the fiduciary responsibility of investors "to invest members' savings in a way that promotes the long-term sustainability of the asset values when taking into account environmental, social and governance (ESG) issues" ([43], p. 7). This principle applies across all asset classes and categories.

The regulations are not voluntary. They require funds explicitly to consider their approach to ESG issues when making investments. Investors are required to have an investment policy statement, which, *inter alia*, describes a fund's general investment philosophy and objectives. Subregulation 2(c) requires funds "at all times" to apply a range of principles, such as the education of the board with respect to pension fund investment, governance, and other related matters and due diligence to determine the risks of the investment. One of the most important principles, setting South Africa apart (and ahead) in terms of SRI, is subregulation 2(c) (ix) which provides as follows:

Before making an investment in and while invested in an asset consider any factor which may materially affect the sustainable long term performance of the asset, including, but not limited to, those of an environmental, social and governance character.

There are a number of important factors in this provision. The first is that it applies across all asset classes and categories. Generally, institutional investors tend to designate one "ethical" or "socially responsible" fund without

mainstreaming these considerations into all investment decisions. Regulation 28 is clear: these principles apply “at all times” and “across all assets and categories of assets” [42]. The second relevant factor is that the application of ESG principles applies both *prior* to investment (“before making an investment”), which means that investors must take ESG principles into account when screening potential investments, and during the currency of the investment (“while invested in an asset”), which means investors must engage with target investments on ESG matters. Finally, the regulations are a clear commitment to long-termism in investing. The short-term assessment will no longer be acceptable in the determination of investing. The regulations are based on the principle that “Prudent investing should give appropriate consideration to any factor which may materially affect the *sustainable long-term* performance of a fund’s assets. . .” [42].

This regulatory framework is new and, as yet, untested. It is unclear to what extent trustees and fund managers will note this obligation and, if they fail to do so, to what extent it will be enforced. This uncertainty notwithstanding Regulation 28 has put South Africa at the head of responsible investment regulation. This is underscored by developments in the voluntary sector.

On July 19, 2011, the Minister of Finance of South Africa launched the Code for Responsible Investing (CRISA) [44]. This is a voluntary code which requires institutional investors to disclose the policies underpinning their investment decisions and actions. CRISA contains five key principles for responsible investing. The first principle requires institutional investors to “incorporate sustainability considerations, including environmental, social, and governance, into its investment analysis and investment activities as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries” [45]. Institutional investors are encouraged to develop a policy to achieve the goal of incorporating “sustainability considerations, including ESG,” into their investment analysis and activities [45]. Interestingly, principle one of this Code speaks to not only the substantive considerations but also the methodology of the investor’s method of monitoring and ensuring compliance with their sustainability policy [45]. The second principle highlights the “ownership responsibilities” of institutional investors, including mechanisms of intervention in their portfolio corporations when concerns relating, *inter alia*, to their social practices are raised. These include “means of escalation of activities as a shareholder if these concerns cannot be resolved” [45]. The third and fifth principles relate to the implementation of CRISA. The fourth principle requires institutional investors to recognize the circumstances and relationships that hold a potential for conflicts of interest and to prevent and manage these conflicts [45].

A more tentative approach is evident from the recent legislative developments in the UK.

UK

In the UK, there is very little effective regulation of institutional investment and human rights ([13], p. 37; [46]). British-based institutional investors are bound by

common law principles of fiduciary duties to (1) act in the best interests of their beneficiaries and (2) be prudent in their financial evaluation of investments, looking for the highest rate of return at the lowest risk [28]. Part of these duties is the requirement in respect of pension schemes to retain a diverse portfolio for the purposes of spreading risk as widely as possible [28].

Although a large part of the UK pension industry has subscribed to responsible investment in name, human rights are rarely considered when making an investment decision ([11], p. 320). Until recently, there was uncertainty in the UK law regarding the extent to which investors' fiduciary duties actually allowed them to take into account additional factors, such as human rights, when making investment decisions. As a result of long-standing and narrowly interpreted case law, it was generally accepted in the UK that all other considerations – including human rights – were extraneous to investors' legal powers. In many instances, institutional investors were concerned that they would be in breach of their fiduciary duties if they took human rights into account in their investment decisions.

The legal position was clarified by Lord McKenzie during the passage of the UK's Pensions Act 2008, confirming that:

There is no reason in law why, in making investment decisions, trustees cannot consider social, ethical and environmental considerations, including sustainability, in addition to their usual criteria of financial returns, security and diversification. [47]

The UK government has indicated principled support for SRI with an improvement in the position regarding SRI. Investors can now feel more confident in considering corporations' human rights impact. These considerations, however, are still entirely optional, and mostly vague.

This is so notwithstanding the existence of some statutory provisions which attempt to incorporate responsible investment into UK law. Section 244 of the Pensions Fund Act 2004 requires trustees of a scheme to prepare a written statement of principles governing their investment decisions. Subordinate regulation (the Pension Protection Fund (Statement of Investment Principles) Regulations 2005) requires pension funds' statement of investment principles to cover "the extent, *if at all*, to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments" [48] (emphasis added).

The Pension Protection Fund (Statement of Investment Principles) Regulations 2005 is really the only statutory instrument that refers to "social" and "ethical" considerations. There is no statutory duty that *requires* UK institutional investors to prevent or even consider the human rights impact of their investment decisions. In practice, most UK institutional investors tend to include reference to social (or human rights) considerations in their statement of investment principles. Very few, however, actually engage their portfolio companies on human rights issues.

Conclusion

The status quo can be summarized as follows. Institutional investors play a pivotal role in the global activities of multinational corporations. Their decisions to invest and disinvest place institutional investors in a powerful position to compel compliance with environmental, human rights, and good governance practices. This power is reflected in the voluntary mechanisms of pension funds and other types of institutional investors. In addition, several municipal governments are turning their attention to the regulation of these actors. For the most part, however, institutional investors are developing their own standards for and compliance with responsible investment principles. Often, this compliance is reticent, loose, and ad hoc. It is on this basis that I turn to consider *how* institutional investors could adopt an approach to responsible investment.

The mechanism of responsible investment is in large part about exercising effective due diligence. The UN Guiding Principles on Business and Human Rights [49] envisages a due diligence process of multinational corporations that involves three stages. The same approach, I propose, could apply to institutional investors.

The due diligence approach envisages a three-step process. The first step requires the multinational corporation to analyze the country context in which it intends to operate to highlight specific human rights challenges. So for example, if an investor is considering investing in a corporation with operations in Saudi Arabia, the institutional investor should consider the context of Saudi Arabia and its compliance, or noncompliance, with international standards regarding human rights. In this investigation, it is likely that an institutional investor would find that the laws of Saudi Arabia are not consistent with international human rights law regarding the rights of women to political and economic participation (see, for example, [50]). The second step the investor would have to take is to determine the impact, if any, its own activities may have on the peoples' human rights in that country. At this stage in our example, the investor would have to determine whether its proposed activities in Saudi Arabia might have an impact on the violation of human rights, and presumably, in what way such activities might exacerbate the already precarious situation of women's protection in the country. Finally, the investor should assess whether it might contribute to the obvious human rights violations through the relationships connected to their activities. Once again, in our example, the investor would have to determine whether its portfolio company's relationship with local supply chains might exacerbate the violation of women's rights. If all three stages of the due diligence process throw up red flags, it is likely that that investment might have a negative effect on the human rights of women in Saudi Arabia. The investor ideally then should engage with the portfolio corporation to determine what steps, if any, it is taking to ensure that it does not contribute to the violation of women's rights in Saudi Arabia.

The formulation of the due diligence process of course is far simpler than its implementation. The detail of this approach presents enormous difficulties. But they are not insurmountable difficulties. The key principle is that it is not acceptable for an institutional investor to enjoy the profits of corporate activity that is mired in exploitation and harm. The due diligence process requires simply that the investor takes steps that an ordinarily reasonable and prudent person would take to become aware of, and adequately manage, existing or potential risks to people's fundamental rights [51, 52].

Cross-References

- ▶ [A Conceptual Framework of Business Ethics in Islam](#)
- ▶ [Business Precepts of Islam: the Lawful and Unlawful Business Transactions According to Shariah](#)
- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Christian Social and Business Ethics: Biblical Foundations](#)
- ▶ [Corporate Human Rights Violations: A Case for Extraterritorial Regulation](#)
- ▶ [Duties of Justice in Business](#)
- ▶ [Entrepreneurship and Ethics](#)
- ▶ [Framing Global Gender Issues: Cross-Cultural Theory and Analysis](#)
- ▶ [Imitatio Dei and Jewish Business Ethics](#)
- ▶ [The Traditional Christian Social Ethics](#)

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Part 16

Gender Issues and Business Ethics

Lindsay J. Thompson

Abstract

The establishment of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as a normative, cross-cultural framework for understanding global gender issues represents decades of ongoing, and in some respects, unresolved, dialogue and debate about theory, policy and practice in economic development, human rights, and feminism [19]. The CEDAW framework, both as a United Nations Convention ratified in 1979 and as an ongoing committee inaugurated in 1982, unequivocally asserts gender equality as a human right. The opening chapter of this section on global gender issues traces this discursive evolution of gender equality by discussing:

- Feminist first principles as a moral foundation for gender equality
- The role of multilateral actors in shaping global discourse on gender
- Contested gender narratives as they have evolved in global economic development discourse
- Relative merits of CEDAW as a framework for examining gender issues

These discussions conclude to acknowledge CEDAW as a workable framework for understanding global gender issues in business and economics, not simply as a codification of universal norms for gender equality but, more importantly, as a widely legitimated and accessible global public discursive space where a multiplicity of values and views about gender equality are expressed, clarified, and negotiated. While gender equality may be of limited use for understanding gender relations in specific cultures or groups that do not aspire to share in the mainstream of global political, cultural, or economic life,

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CEDAW provides a robust theoretical and practical framework for addressing gender issues. As economic relationships grow more complex and involve more hybridized business models across cultures, markets, and sectors, business leaders should be prepared for dialogue, discernment, and decision-making practices to address contested gender values in developing cross-cultural business partnerships. The inclusion of women as full partners in business and economic development is vital for building a global society of peace, justice, and prosperity for all.

Introduction

Grounded in the liberal enlightenment tradition of universal human rights, gender equality has been an established principle of the global multilateral regime since the founding of the United Nations in 1945. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is now endorsed by over 186 of the 193 UN member nations, making it second only to the Rights of the Child as the most ratified human rights treaty of the United Nations [12].

The CEDAW framework of gender equality informs ambitious global projects such as the United Nations Millennium Development Goals and the World Economic Forum Gender Gap Report that focus sustained attention on the status of women [10, 20]. Yet, despite its normative claims, gender equality as an ethical concept remains problematic for various reasons. It can be perceived as almost invariably diminishing women with assumptions about what they lack rather than about how they are fully actualized; successful and powerful women – as highly visible presidents and Nobel laureates or as quietly engaged citizens and householders – are less frequently the subject of gender equality inquiry and analysis than the (literally) billions of women who, whether they know it or not, are understood to be excluded or marginalized from the mainstream of business and economic life. CEDAW also asserts normative political and economic views of that presume individualism, autonomy, and rationalism as privileged modes human actualization that can be perceived as embedded western bias; there are divergent interpretations and expectations of gender relations that presume communal structures of identity and political will. Moreover, nations that have endorsed CEDAW in fact appear to ignore or violate those principles in practice, illustrating a pervasive ambivalence toward fulfilling the promise of gender equality.

The establishment of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as a normative, cross-cultural framework for understanding global gender issues represents decades of ongoing, and in some respects, unresolved, dialogue and debate about theory, policy and practice in economic development, human rights, and feminism. The CEDAW framework for global gender issues establishes normative assumptions about women and gender as well as about the economic role and human rights of women in global society. The opening chapter of this section on global gender issues traces this discursive evolution of gender equality by discussing:

- Feminist first principles as a moral foundation for gender equality
- The role of multilateral actors in shaping global discourse on gender
- Contested gender narratives as they have evolved in global economic development discourse
- Relative merits of CEDAW as a framework for examining gender issues in business ethics

This chapter concludes that CEDAW serves as a working framework for understanding global gender equality in business and economics, but it may be of limited use for understanding gender relations in specific cultures or groups that do not aspire to share in the mainstream of global political, cultural, or economic life. As business relationships grow more complex and involve more types of hybrid enterprise across cultures, markets, and sectors, business leaders should be well prepared for dialogue and discernment practices that sensitively address contested gender values in developing cross-cultural business partnerships.

Feminist First Principles

Feminism is part of a global intellectual and political human rights movement seeking to understand and promote the full flourishing of humanity that now includes distinct regionally and culturally individuated feminist voices throughout the world [9]. Feminist discourse is notably diverse, representing a range of distinct standpoints, goals, and strategies. Despite this diversity, however, the moral claims of feminist first principles, echoed to some degree in most feminist discourse, constitute a core ethic of gender equality based on the human dignity and rights of women [18]. These first principles are:

- Women are fully human.
- Social structures and practices that devalue, marginalize, and subordinate women are unjust because they impede women in realizing their full humanity.
- Social structures and practices of gender injustice should be corrected.

The first principle, that women are fully human, is uncontested among feminists and largely acknowledged by many who are not feminists, but that does not mean it is unproblematic [16]. The assertion of women's full humanity is subject to varied feminist interpretations, from gender theorists who regard the social construction of gender roles as distinct from biological sex to essentialist theorists who believe that biology informs distinctly gendered ways of being. In the modern human rights tradition, full equality for men and women has come to mean rights of inclusion, participation, and access that necessarily reconfigure gender relations at all levels of society. Some critics of this tradition argue that the gendered ontology of modern "full humanity" exacts conformity to predefined male-referenced norms as the price of equality. Others argue that women and men achieve their full humanity in distinctly differentiated but equally valuable ways. Ultimately, the liberal human rights ethic of full humanity is lived out subjectively by individual women whose intentional choices, falsely conscious or not, are to be respected even when they limit personal horizons.

The second principle, asserting the gender injustice of social structures and practices that devalue, marginalize, and subordinate women has actually become more problematic and contested as women have become more fully integrated into business, economic, and social life. While devaluation, marginalization, and subordination of women is not regarded as morally defensible among feminists, there is argument about (1) whether and (2) the extent to which social structures and practices pose barriers for women in realizing their full humanity. Proponents for structural analysis of gender inequity assert that a theoretical understanding of the breadth and depth of inequity combined with knowledge of consequences that result in devaluing, marginalizing, and subordinating specific women in concrete ways is the only way to make visible the barriers women face in fulfilling their human potential. On the other hand, some feminists resist the notion of social structures as impediments, pointing out that these very structures provide support and protection for women to pursue their goals in a way that preserves their unique relational roles in their families and communities. Others believe that the focus on social structure as the root cause of gender injustice diminishes the autonomy and agency of individuals who not only are morally responsible for their own destinies, but are the most resourceful and imaginative in devising effective ways to navigate those structures in their own interests.

The third principle, that social structures and practices of gender injustice should be corrected, is the most controversial and contested, both among feminists and more broadly. Arguing that the gender impact of social structures should be scrutinized, monitored, evaluated, and changed in order to achieve full equality for women and men, advocates for structural change insist that women, men, and society as a whole will benefit from more authentic relational structures based on the real capabilities and choices of individuals rather than the inauthentic structure of collective gender-based attribution of presumed capabilities and preferences. Radical feminists argue that the entire structure of society is patriarchal and must be radically restructured, beginning with gender relations within the family, to create a more just society. Other advocates of more moderate structural change believe that mechanisms such as the Millennium Development Goals, the *Gender Gap Report*, or the Human Development Index in OECD reporting are sufficient and appropriate measures to provide information and benchmarking metrics for both institutional and individual actors to make more conscientious choices that will lead to greater gender equality. These assertions are countered by ecofeminists, cultural traditionalists, and others who see such measures as inadequate, impractical, or wrong because they fail to empower women in envisioning and actualizing their full humanity from their own experience either as women or as agents of social, political, and economic communities distinct from but not necessarily outside the mainstream of modern free market democracies.

All three of the feminist first principles form a philosophical and ethical foundation for the gender equality platform of CEDAW, the global economy, and international business. While CEDAW does not claim the full force of international law, it does function effectively in many ways as a mechanism of global governance, particularly as a mechanism for mediating contested gender values

and norms [4, 7, 11]. There is evidence to support its influence in a worldwide movement toward greater gender equality, although it could be argued that a worldwide trend toward gender awareness of inequality is responsible for the emergence of CEDAW and changing gender demographics. Gender issues and the normative claims of gender equality and women's empowerment have become mainstream concerns. Economic and business literature, business media, and international corporations regularly address gender issues and trends in ways that reflect the ethics of feminist first principles, although these principles remain controversial and contested in many areas of the world.

The Role of Multilateralism in Shaping Gender Discourse

The United Nations' role in developing and promoting an agenda for gender equality reflects the emergence of a global network of voluntary self-governance among sovereign states working in partnership with civil sector actors, multinational corporations, and advocacy groups. The character and effectiveness of multilateralism is widely discussed and evaluated in the arena of international relations and politics. Some view the influence of multilateral actors as crucial in promoting a global regime of peace and prosperity; the resources and flexibility of multilateral actors complement the role of sovereign states in mediating the ideas and values of global conscience, priorities, and political will. While this global multilateral network is not the primary subject of this chapter, it has been instrumental in the development and diffusion of global discourse on gender and, in turn, shaping a global agenda of gender equality motivated by urgent economic and human rights goals that often are laden with intractable value conflicts [5, 12].

As a leading multilateral actor, the United Nations has been active in promoting women's rights as human rights since its foundation in 1945. In 1946, the UN Economic and Social Council (ECOSOC) established the Commission on the Status of Women (CSW). In the wake of Second Wave feminism, the CSW 25th anniversary was marked by declaring 1972 as International Women's Year in the hope of extending the resurgence of focus on women's status and rights in Europe and North America to the rest of the world. For the next 20 years, the CSW led a UN initiative to develop a global agenda for women under the aegis of the 1976–1985 UN Decade for Women, convening global conferences of women in Mexico City (1975), Copenhagen (1980), and Nairobi (1985). These conferences created an unprecedented and unique global forum for women's voices and values, linked through the United Nations to the interests of sovereign states, but also supported by the UN's gender equality principles in articulating views critical of gender bias in the law, policy, and practice of those states.

The creation of a worldwide forum and agenda for women was sustained in the permanent policy and organizational structure of the UN. In 1979, shortly before the Copenhagen conference, the United Nations ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which is

now endorsed by over 186 of the 193 countries represented in the United Nations. The UN gender equality “mega-strategies” of gender-balanced decision-making and gender mainstreaming now highlighted on the UN Women website (“The UN Entity for Gender Equality and the Empowerment of Women” at <http://www.un.org/womenwatch/daw/beijing/fwcwn.html>) were produced in 1995 by a fourth conference for women in Beijing in a Platform for Action outlining 12 strategic objectives. The Beijing conference, with a view toward the millennium milestone, was positioned to establish a women’s agenda for the next century in “action for equality, development, and peace.”

Fueled by a rapidly globalizing political economy that linked the equality of women to economic competitiveness, many states and multinational institutions have been quick to affirm the Beijing Platform for Action in hopes of mobilizing the economic power of women. This enthusiasm was evident in the Millennium Summit of 2000, when the largest gathering of world leaders in history committed their nations to a global partnership for human development known as the Millennium Development Goals (MDGs) to be achieved by 2015. The MDGs set forth concrete, numerical benchmarks for tackling human deprivation in its many dimensions, establishing a framework for the entire international community to collaborate in cutting world poverty by half, saving tens of millions of lives, and bringing billions more people into the global economy as productive participants. To benchmark progress and evaluation, the eight MDGs are buttressed by 21 quantifiable targets measured by 60 indicators. (UN Millennium Development Goals: <http://www.un.org/millenniumgoals/>)

- Goal 1: Eradicate extreme poverty and hunger
- Goal 2: Achieve universal primary education
- Goal 3: *Promote gender equality and empower women*
- Goal 4: Reduce child mortality
- Goal 5: *Improve maternal health*
- Goal 6: Combat HIV/AIDS, malaria, and other diseases
- Goal 7: Ensure environmental sustainability
- Goal 8: Develop a global partnership for development

The formulation of the MDGs was highly influenced by the CEDAW agenda, with two of the eight goals directly involving women (gender equality and improved maternal health) and the remainder involving them indirectly by addressing issues that disproportionately affect women, both as persons and as family caregivers. Since the 2000 launch of the MDG initiative, the UN has taken an active leadership role in monitoring and motivating progress toward achieving the goals. The impact of war, violence, and the 2008 global recession on women and the poor has served in some ways to galvanize multilateral efforts to strengthen the position of women as economic and social anchors of families, communities, and nations.

The heightened visibility of gender issues in the global arena has spurred the growth of hundreds of new multinational actors, many with regional or local roots, seeking to foster prosperity, peace, and human flourishing by empowering women through economic development, social innovation, and leadership initiatives. These

efforts are examined in later chapters of this section on gender issues. Many of these organizations and initiatives are identified via the UN Women website at <http://www.unwomen.org/> and a list of international women's websites is included at the end of this chapter. Powerful multilateral actors such as the World Bank Group and the World Economic Forum have adopted gender equality and women's empowerment as strategic priorities.

Moving beyond traditionally small-scale women's initiatives, the World Bank has begun to invest in making vital economic infrastructure sectors of energy, transportation, water and sanitation, agriculture, private sector development, and finance work effectively for women. The World Bank launched a Gender Action Plan in 2007 under the banner of "Gender Equality as Smart Economics," with an interactive web monitoring and reporting feature accessible to online inquirers. In implementing the Gender Action Plan, Bank President Robert B. Zoellick committed to boosting women's share of the Bank's rural and agricultural projects to at least half by 2010, expected to total US\$800 million, and channeling at least US\$100 million through IFC toward women entrepreneurs by 2012. These initiatives were enhanced by increased International Development Association (IDA) investments for gender equality and innovative engagements with foundations and the private sector to strengthen women's economic power.

The World Economic Forum (WEF) published the first annual *Global Gender Gap* report in 2006, drawing attention to gender equality throughout the world [10]. The *Global Gender Gap Report* index assesses 134 countries on how fairly they divide resources and opportunities between male and female populations to measure gender inequality in four areas:

- *Economic participation and opportunity* – Outcomes on salaries, participation levels, and access to high-skilled employment
- *Educational attainment* – Outcomes on access to basic and higher level education
- *Health and survival* – Outcomes on life expectancy and sex ratio
- *Political empowerment* – Outcomes on representation in decision-making structures

In 2010, the WEF expanded gender gap reporting in the *Corporate Gender Gap Report*, illuminating women's economic participation and opportunity gap among the world's largest companies. Benchmarking 600 companies in 20 countries against well-established gender equality and empowerment policies and best practices, the report found that leading companies fail to capitalize on the talents of women.

The World Bank and World Economic Forum initiatives mark a shift in the global discourse on gender issues occurring during the first decade of the twenty-first century; the voices urging gender equality and women's empowerment were no longer primarily those of women, women's advocates, or obscure journals, but powerful institutional voices with far-reaching influence. Acknowledging that gender equality was still an unrealized goal, the CEDAW goal of mainstreaming gender equality and women's empowerment as a global issue was substantially achieved.

Contested Gender Narratives: WID, WAD, GAD

The mainstreaming of gender issues in global economic and development discourse does not signify universal agreement on the issues of gender equality or the way they are framed and understood. Contested gender narratives have been a constant feature within feminism and in global economic development. A synopsis of these contested narratives in this chapter will be contained to those narratives that shaped the development discourse that emerged as the dual agenda of *gender equality* and *empowerment of women* that now drives global development policy and programs designed to address the concerns of women on a global scale. Those who wish to explore the scope of gender narratives in greater detail should seek other sources [15, 17].

Early multilateral initiatives to address the concerns of women date back to the early twentieth century following the achievement of political and legal rights achieved through first wave feminist movements in the United Kingdom and North America. The Women's International League for Peace and Freedom (WILPF), for example, was founded during the throes of World War I in 1915 at the Congress of Women held at The Hague in the belief that women were instrumental in the foundation of a peaceful global society. WILPF founders, Aletta Jacobs, Jane Addams, Alice Hamilton, and others, were European and American activists already working to address women's welfare and rights issues as well as promoting the role of women in broader arenas of social change and public affairs. Protesting against "the madness and the horror of war, involving as it does a reckless sacrifice of human life and the destruction of so much that humanity has labored through centuries to build up," they envisioned women as empowered architects of peace and harmony within and among nations [6]. The interdependent themes of social welfare, justice, and empowerment as constant feminist themes in multilateral women's initiatives have been an enduring source of confusion and contention as ensuing generations struggled for consensus on a global women's agenda.

The history of this struggle can be described broadly in phases as WID (Women in Development), WAD (Women and Development), and GAD (Gender and Development) that reflect the influence of various streams of feminist thought in an evolving narrative that now informs CEDAW as an identifiable voice of and for women in the global development agenda. The WID approach to development generally is understood as the integration of women into the global process of economic, political, and social modernization and growth without a critical questioning of the value or desirability of these ends. The WAD approach applies a Marxist critique to view women as a class who need to be emancipated from dependency on an economic system of power relations (which would include the WID approach) that exploits their work within and beyond the household. The GAD approach applies a critical, deconstructionist lens to gendered power relations, linking the devaluation of women's roles in production and reproduction as the structural root of women's subordination and the key to reconstructing a more equitable distribution of power between women and men.

Women in Development. The WID approach to development evolved from the widely held economic development assumption of the mid-twentieth century that modernization was the key to development. As decolonized and traditional societies succeeded in transforming themselves into analogues of industrialized western states and acquired modern institutional, intellectual, and social infrastructure, world leaders and international development planners assumed that women would share the resulting benefits of economic growth. The growing influence of the United States, particularly after World War II with the creation of Bretton Woods institutions and US-dominated economic thought, made it a model of the successful nation state to which all nations would presumably aspire. In this vein of thinking, the material, legal, and social status of women would improve as societies improved their access to health care, education, employment, and markets. In the WID approach, there was little attention to the underlying structural gender inequalities of both traditional and modern societies that posed almost insurmountable barriers to women [17].

From a feminist perspective, the WID approach was rooted in a liberal feminism that sought to extend modernity's Enlightenment ideals of human freedom, rights, equality, and human progress to women. Although liberal feminists have never been uniform in their thought, they are generally comfortable with modernity and less questioning of its ideals or whether the historic conceptualization of a modern liberal social order by men might be incomplete without the inclusion of women's unique perspective in its development. Rather, women's equality is seen as an expression of human progress inherent in the values and ideals of modernity.

Women and Development. As second wave feminists began to turn their analysis toward the situation of women across the world, more robust feminist theories of power relations illuminated the structural nature of women's subordination [1, 8, 14]. A more structural understanding of women's subordination fueled a growing critique of development efforts for their failure to achieve greater equality and advancement not only for women, but for other disadvantaged groups in nations outside the economic mainstream [3]. Women's advocacy groups and feminist theorists began strategizing for and achieving a more active, direct role in the policy and practice of both public and private development agencies in staff, advisory, and governing roles. While the modernization orientation of development continued, the inclusion of women in key institutional and multilateral policy roles greatly expanded the range and depth of critical attention to women's issues, not only in identifying, measuring, and evaluating the impact of development programs and policies on women, but also in creating a more woman-friendly culture and policy context in international development. Governments and international agencies increasingly attuned to the importance of women in their development agendas created a legion of official and quasi-official women's commissions, committees, and task forces all over the world under the prevailing WID conflation of modernization and westernization. The 1975 United Nations Conference on Women launched the UN Decade for Women under the thematic umbrella of "Equality, Development, and Peace" and a global action plan for integrating women more fully into the development process.

The Decade for Women saw a burgeoning of diverse grassroots organizing, local consciousness-raising, issue advocacy, research, theory, and coalition-building among feminists and women's groups outside the development mainstream that were largely ignored by the official government, multilateral, and NGO apparatus. Among these were feminist theorists from both industrialized and nonindustrialized countries who applied Marxist principles and critical theory to develop a more radical analysis of women as an oppressed class and Third World women, in particular, as doubly oppressed in a global economic system that created and perpetuated dependency for the benefit of rich, capitalist nations and the men who governed them. Dependency theorists and radical feminists shared skepticism toward the possibility of full equality in a system of unequal power relations coupled with a belief in separatist organizations and institutions that would strengthen marginalized groups and protect them from cooptation.

The election of Margaret Thatcher in the UK (1979) and Ronald Reagan in the US (1980) signaled a growing political conservatism coupled with market liberalism among western governments and the still western-dominated multilateral and NGO communities. Responding to a global recession triggered by oil and international debt crises, global leaders were urged by free market economists and advocates at the IMF, World Bank, and leading academic policy research centers to reign in social welfare spending and incentivize fiscal discipline among debtor nations through structural adjustment of their economies. These structural adjustment programs, eventually known as the Washington Consensus, disrupted local economies with severe and protracted consequences for the most vulnerable members of poor nations – with disproportionate impact on women and children – and threatened progress toward women's equality goals. Social welfare advocates were widely critical of structural adjustment policies and Marxist feminists regarded these events as evidence of sinister western-induced dependency.

Against a backdrop of a shifting global economic and political climate and widening tensions regarding the status and role of women in society, the diversity and strength of women's voices increased during the Decade for Women. At the second (Copenhagen, 1980) and third (Nairobi, 1985) United Nations conferences on women, still under the banner of "equality, development, and peace," governments were able to agree on pressing global priorities for women's development. At Copenhagen, there was widespread agreement regarding the factual disparity between the legal rights of women and their capacity to exercise those rights. The focus of the development agenda recommendations, therefore, was to promote equal access for women to education, employment opportunities, and adequate health care so that women would gain essential capabilities for understanding and exercising their rights. When the Nairobi conference convened in 1985, with 10 years of history to evaluate following the 1975 first conference on women in Mexico City, it was clear that the impact of the past decade of development efforts focused on women had been limited. Believing that women's full equality would not be achieved by focusing on women and their needs in isolation, conference participants urged a broader perspective, viewing women as stakeholders and participants in all spheres of human endeavor.

The forward-looking Nairobi agenda for women's development focused on overcoming obstacles to women's full participation in society: constitutional and legal measures, equality in social participation, and equality in political participation and decision-making.

Gender and Development. By the time the Beijing conference was being planned for 1995, the global framework of women's issues had radically changed since the first conference only 20 years before. While the liberal feminist WID approach and the Marxist WAD approach still had their proponents, there was a much more widespread understanding of how structures such as gender, sexuality, class, race, and ethnicity were socially constructed [2]. The quickening pace of globalization and change had introduced a more complex dynamic to the discourse of both economic development and of feminism. Emerging ideas and methods in humanities and social sciences (e.g., postcolonialism, deconstructionism, constructivism, and postmodernism) offered new lenses and hermeneutics for understanding culture, gender, and power as social arrangements rather than as ontologically determined destinies. The extension of this analysis to power relations not only between women and men, but in the construction of structurally gendered institutions offered new ways of envisioning equality and empowerment for women [13].

These ideas were not universally welcomed. Some traditionalists saw such attempts to "politicize gender" as an affront to beliefs that anchored the stability of a social order already threatened by globalization and modernization. Delegates and conveners of the Beijing conference fielded arguments not only from WID, WAD, and GAD perspectives, but from traditionalists, such as Pope John Paul II, whose letter to Gertrude Mongella, Secretary General of the Conference, reasserted the reproductive role of women as the foundation of their human dignity. Nevertheless, representatives from 189 countries endorsed a new Beijing Platform for Action that affirmed the longstanding goals of "equality, development, and peace" espoused in previous conferences by identifying 12 critical areas of global concern: (UN website: <http://www.un.org/en/development/devagenda/gender.shtml>)

1. Women and poverty
2. Education and training of women
3. Women and health
4. Violence against women
5. Women and armed conflict
6. Women and the economy
7. Women in power and decision-making
8. Institutional mechanisms for the advancement of women
9. Human rights of women
10. Women and the media
11. Women and the environment
12. The girl child

The Beijing Platform for Action amplified the 12 critical concerns with strategic objectives and specific measures to be adopted by Governments, the international community, nongovernmental organizations, and the private sector.

The CEDAW Framework

The United Nations has maintained its commitment to women's equality and empowerment through the CEDAW, which consists of both the original CEDAW Convention (or Treaty), and the CEDAW Committee on the Elimination of Discrimination against Women, a body of experts on women's issues from around the world, established in 1982 with a very specific mandate to monitor the progress for women made in those countries that are parties to the 1979 CEDAW Convention. According to UN rules, countries ratifying or acceding to a Convention accept a legal obligation to act in accordance with its terms and to work with the Committee's in monitoring progress in fulfilling that legal obligation.

The CEDAW Convention is a blueprint for promoting basic human rights and overcoming barriers of discrimination against women and girls, while recognizing that each country should determine how to implement its principles. (UN Office of the High Commission on Human Rights, 1979) CEDAW provisions include:

Article 1: Definition of Discrimination. Defines discrimination against women to cover all facets of human rights and fundamental freedoms.

Article 2: Country duties. Countries must eliminate discriminatory laws, policies, and practices in the national legal framework.

Article 3: Equality. Women are fundamentally equal with men in all spheres of life. Countries must take measures to uphold women's equality in the political, social, economic, and cultural fields.

Article 4: Temporary special measures. Countries may implement temporary special measures to accelerate women's equality.

Article 5: Prejudice. Countries agree to modify or eliminate practices based on assumptions about the inferiority or superiority of either sex.

Article 6: Trafficking. Countries agree to take steps to suppress the exploitation of prostitution and trafficking in women.

Article 7: Political and public life. Women have an equal right to vote, hold public office, and participate in civil society.

Article 8: International work. Women have the right to work at the international level without discrimination.

Article 9: Nationality. Women have equal rights with men to acquire, change, or retain their nationality and that of their children.

Article 10: Education. Women have equal rights with men in education, including equal access to schools, vocational training, and scholarship opportunities.

Article 11: Employment. Women have equal rights in employment, including freedom from discrimination on the basis of marital status or maternity.

Article 12: Health. Women have equal rights to affordable health care services.

Article 13: Economic and social life. Women have equal rights to family benefits, financial credit, and participation in recreational activities.

Article 14: Rural women. Rural women have the right to adequate living conditions, participation in development planning, and access to health care and education.

Article 15: Equality before the law. Women and men are equal before the law.

Women have the legal right to enter contracts, own property, and choose their place of residence.

Article 16: Marriage and family. Women have equal rights with men in matters related to marriage and family relations.

Articles 17–30: Administrative provisions.

As part of the UN Commission on Women (established in 1946) the work program of the CEDAW Committee is informed by its mandate to monitor progress toward achieving goals of gender equality and women's empowerment articulated in the action agendas of the Conferences on Women. Since the 1995 Beijing conference, the Committee has produced regular country reports and a 10-year and 15-year progress report that ensure continuous scrutiny, both globally and locally, of concrete manifestations of and obstacles to gender equality and women's empowerment.

Conclusion

The CEDAW Convention and Committee has become widely regarded as a global discursive space for identifying, clarifying, and addressing women's and gender issues. By virtue of its continuous presence on the global stage, its standing as a United Nations entity, and its practice of welcoming diverse standpoints in resolving contested issues while remaining firmly committed to gender equality as a human right, CEDAW spans a range of global actors unmatched by others identified with specific geographic or political locations. While the gender equality and women's empowerment framework of CEDAW serves as a workable foundation for understanding global gender issues in business and economics, it may be of limited use for understanding gender relations in specific cultures or domains that do not aspire to share in the mainstream of global political, cultural, or economic life. In asserting its feminist principles, the CEDAW Committee has demonstrated sensitivity and responsiveness to the concerns of women in every social condition and circumstance. Although the goals of CEDAW are far from achieved, women around the world are claiming their right to equality and power in an increasingly interconnected world. As business relationships grow more complex and involve more types of hybrid enterprise across cultures, markets, and sectors, the CEDAW framework is useful for business leaders as a context for dialogue and discernment practices that sensitively address contested gender values in developing cross-cultural business partnerships that create sustainable value.

Cross-References

- ▶ [Feminist Care Ethics and Business Ethics](#)
- ▶ [Gender Issues in Corporate Leadership](#)
- ▶ [Gender Issues in Entrepreneurship](#)
- ▶ [Work/Life Integration](#)

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Abstract

Beginning in the 1980s, a groundswell of feminist theorists and philosophers challenged many of the assumptions surrounding traditional Western moral theory through what came to be known as “care ethics.” Accounting for context, valuing emotions, and emphasizing the concrete over the abstract, care ethics is a relational approach to morality that transcends traditional philosophical divisions of ethics, epistemology, and ontology. In many ways, care ethics engages in different “work” than other ethical theories because although it has a normative dimension – answering the question, “what is the right thing to do?” – it also has significant implications for how we know one another and who we are. In this respect, care ethics is not an alternative moral theory but a different way of framing or thinking about ethics. Care ethicists do not reject rules, rights, or consequences but believe that such methods do not capture the full scope of morality. Furthermore, care ethics arose out of women’s experience and feminist theory, but it is not a “woman’s morality.” Although sometimes characterized as such, care ethics does not reinforce gender essentialism. Today, feminist and nonfeminist theorists have made care ethics into a robust field of research and publication.

This chapter introduces care ethics and discusses its place and potential in business ethics. In the process, the chapter addresses some of the myths about care ethics – that it is a “touchy-feely” personal morality – by discussing practical applications in business institutions. In particular, this chapter offers a brief overview of care ethics and a review of the discussions of care ethics within the business ethics literature. The potential role of care in business decisions, corporate culture, and the management of diversity is addressed.

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The chapter concludes with an analysis of what business education might be like if care ethics were taken seriously.

Introduction

“Care ethics” or an “ethic of care” was first identified in the early 1980s through the analysis of Carol Gilligan who while working with famed developmental psychologist Lawrence Kohlberg noticed a missing “voice” in what constituted moral maturity [20]. Kohlberg was collecting data on moral development using a rubric employing the ethical hallmarks of the Western tradition: Kantian rule-based ethics and consequentialism. Gilligan observed that Kohlberg’s methods valued complex rational thought in solving a moral dilemma. However, the rubric undervalued relational, imaginative, creative, and contextual thinking. In 1982, Gilligan wrote *In A Different Voice: Psychological Theory and Women’s Development*, which gets credit for starting a revolution in ethical thinking, but in reality, a number of theorists had come to the conclusion that care was significant for moral theory [39, 45, 54].

There was a gendered dimension to Gilligan’s identification of care ethics because she found that caring was predominantly, although not exclusively, an approach employed by women. Gilligan acknowledged that women have historically been socially reinforced to value connection and relationship and this valorization was playing itself out in their moral thinking as well. Like many aspects of women’s experience, care as moral thinking has been undervalued in Western ethics, just as it had been in Kohlberg’s rubric [54]. Unfortunately, commentators, the popular press, and even subsequent textbooks have emphasized the gendered aspect of Gilligan’s findings over the breakthrough in ethical thinking Gilligan had made – one that she may not have realized the magnitude of [28]. Although it is true that women’s experience and feminist analysis gave rise to care ethics, the crucial discovery was a new way of framing morality. Care ethics is not a “woman’s morality” nor is it exclusively the purview of women, although research continues into gender differences in business decision making [4]. Another myth perpetuated by superficial understandings of care ethics is that the early work of Gilligan defines the field. Not only has Gilligan written several books and articles since *A Different Voice* that serve to clarify and develop her ideas, but many theorists from a variety of fields have weighted in on care ethics to create a robust field of study. No one has been more important to the evolution of care ethics than philosopher Nel Noddings. For Noddings, care ethics “involves attention, empathetic response, and a commitment to respond to legitimate needs” [47]. Noddings, who has written prolifically on care ethics, views care as an antidote for formulaic and analytic approaches to morality that treat ethics as abstract manipulations of principles or consequences.

Although care ethics received its modern label in the work of feminist theorists of the 1980s, some trace a genealogy of care-like thinking throughout the history of philosophy. Among philosophers who contemporary scholars identify as having

protocare ideas are Confucius [36, 50], David Hume [3], Adam Smith [65], Jane Addams [24], Simone de Beauvoir [1], and Gandhi [35].

So what is care ethics? In many ways, care ethics is one of the most challenging ethical approaches to define, partially because its definition is still being negotiated but also because its definition cannot be truncated like a categorical imperative or the utilitarian maxim, “maximize happiness for the most number of people.” Caring entails a disposition toward others but action on behalf of others as well. Daniel Engster defines care as “everything we do to help individuals to meet their basic needs, develop or maintain their basic capabilities, and live as much as possible free from suffering, so that they can survive and function at least at a minimally decent level.” [13]. Engster’s definition is one among many, each with its own emphasis. In general, care can be characterized as a relational approach to ethics that values emotion, context, and connection in a manner that integrates epistemological and metaphysical considerations with ethics.

Care is intimately tied to epistemology because knowledge is required for caring. Many care ethicists stress the kind of attention to others necessary to generate rich understanding. Noddings refers to this as “engrossment” [45]. Similarly, Selma Sevenhuijsen describes care as involving “attentiveness, responsibility and the commitment to see issues from differing perspectives” [55]. In other words, knowledge is a necessary condition of care but not a sufficient condition of care. Furthermore, care rests on a different metaphysical premise of human ontology than do Kantian ethics or consequentialism. In answering the normative question, “what is the right thing to do?” traditional moralities assume autonomous individuals making free decisions. Although care has normative implications, it assumes that human beings are fundamentally social beings that exist in a web of relationships that cannot easily be bracketed out. Finally, care ethics is ultimately measured by actions taken. Joan Tronto describes care as a labor [62] and Virginia Held characterizes care as “both a practice and a value. As a practice, it shows us how to respond to needs and why we should. It builds trust and mutual concern and connectedness between persons. It is not a series of individual actions, but a practice that develops, along with its appropriate attitudes” [30]. Because in many ways it does a different kind of work than traditional moral categories, care ethics is not an alternative or substitution for traditional ethical approaches, but it does contend that rules, rights, and consequences do not exhaust the moral domain. Held, for example, suggests that care ethics is a precondition for other ways of framing morality: “I am coming to the view that care and its related considerations are the wider framework – or network – within which room should be made for justice, utility, and the virtues” [31]. For care ethicists, rules, rights, and consequences may be helpful guides for moral behavior, but they are not a substitute for the challenging thinking through relationships and contexts for both short- and long-term implications. In this manner, care is particularist and lacks ideology in the sense of absolute principles. The caring response is not always predicated in advance but often emerges from the particular situation.

Before addressing the relationship of care ethics and business ethics, it may be beneficial to address several myths surrounding an ethic of care. First, care is other directed, but it is not altruism. One of the early criticisms of care ethics came from feminists who were concerned that women have always been asked to be the caregivers in the family, sometimes at the expense of their own well-being [66]. They were afraid that care ethics would be another tool of exploiting women into further acts of selflessness. Care is demanding in its call for us to think, feel, and act on behalf of others but not to the extent of sacrificing self-care [60]. As those in helping professions know, one is of no use to others without engaging in a measure of caring for self. Another myth is the idea that care ethics is a personal ethic and has little to offer or is too naïve an approach to provide insight for social or political contexts. In fact, this is the area of greatest growth in research and publication on care ethics. A number of theorists, feminist and nonfeminist, have come to the conclusion that institutions in society can benefit from care ethics [14, 21, 23, 46, 48, 53, 55]. Finally, care is not simply a vague notion that liking others or taking an interest in others will solve ethical dilemmas. Care ethics, as feminist and nonfeminist theorists have developed the term, engages cognitive and affective skills to address concrete issues. Noddings explains, “Contrary to the odd idea that *caring* can be described as a nice, fuzzy feeling, ethical caring requires a high degree of skill in critical thinking, but the required thinking is directed at the situations and practices of real life, not merely at the perfection of theory” [47].

Some have suggested that the ambiguity of care ethics is part of its strength and gives it a liminal quality that makes it more flexible and avoids modernist categorical limitations such as a particular understanding of normativity. Others have endeavored to fit care ethics into existing categories such as suggesting that we have a duty to care [43] or that care is essentially a virtue ethic [61]. These efforts reveal how unique care ethics is when compared to traditional approaches. Whatever care’s disposition, it does appear to capture an essential aspect of morality that cannot be ignored in business organizations. In what follows, the relationship of care ethics to business ethics is more directly explored.

Care Ethics and Business Ethics

Historically, business ethics has not embraced care ethics as quickly or as deeply as other fields such as nursing ethics. However, there is a long-standing, albeit limited, application of care in the business ethics literature. R. Edward Freeman and Jeanne Liedtka characterized the “Care Proposition” as one of the viable forthcoming approaches to business ethics in 1991, less than a decade after the term “an ethic of care” was coined. Although not referring specifically to feminist care ethics, Freeman and Liedtka described businesses in rather striking terms: “Corporations are places where both individual human beings and human communities engage in caring activities that are aimed at mutual support and unparalleled

human achievement” [17]. A few years later, Thomas J. Donaldson further suggested that caring was intrinsic to the morality of business activity in general: “business consists of the existing practices and institutions through which men and women coordinate their activities to create goods and services. And I wish to add the moral claim that business fails unless it enhances the quality of human life, the equality of human worth and the extent of human caring” [11]. Other theorists contend that care ethics offers a significant imaginative dimension to business ethics because it is more flexible than strict rule adherence [18, 52] and less susceptible to game playing or legalism [25].

A number of contemporary business theorists engage in care ethics, but few have done so in a sustained or systematic manner. Sheldene Simola, who has written articles addressing the efficacy of care in crisis management [56] and for global enterprise [57], suggests that care ethics provides superior resources for business ethics than normative systems because it offers more than decision-making insight, promoting moral awareness and action as well. Simola describes how care ethics can alert individuals to ethical issues before they happen: “care ethics, with their emphasis on attentiveness to and responsive engagement with the subjective, particular and concrete feelings and needs of others can enhance our sensitivity to and (early) recognition of emergent ethical issues” [58].

Silke Machold, Pervaiz K. Ahmed, and Stuart S. Farquhar contend that care ethics provides a method for reconceptualizing corporate governance. They view contemporary assumptions about corporate governance as guided by competition and self-interest. Care ethics offers a means for reframing management in a more relationally sensitive. They speculate:

Individuals within governance relationships, for example board members and employees, engage in a continuous process of care with the aim towards empowerment of each other. That involves, for example, managers learning about the background and identity of those within their immediate care, understanding the individual’s need for job satisfaction or a work-life balance and empathising with it [38].

Machold, Ahmed, and Farquhar are careful to couch the move to caring governance in realistic and pragmatic terms because they recognize that care remains a term of suspicion in business.

Liedtka views care as a flexible enough approach to ethics so as to address moral concerns as well as presenting market-based advantages for businesses. For example, Liedtka describes a caring relationship with customers as attending to their needs:

To say that I care about my customers or my employees would place them as particular others and the capabilities that they represent at the center of my attention, and to work with them to realize those capabilities. The customer, for instance, is seen here as having a set of needs and possibilities to which, as a care-giver, I must attend. It is these needs, rather than the organization’s prepackaged solutions, that drive my response in a process that is part of an on-going relationship, rather than a transaction [37].

Liedtka does not find care ethics at odds with the profit motive, but it does entail a genuine concern for the other rather than a superficial appearance of care.

Although rethinking corporate relationships is a major aspect of applying care ethics to business, care labor or care work has been identified as a source of analysis for feminist scholars [42, 34]. There are commercial services for which the primary activity involves care. Nursing, childcare, hospice work, human services, and social work are a few of the fields for which care is a central component. Not surprisingly, these fields have been historically populated by women and, not coincidentally, undervalued in the marketplace [32]. For example, many question the low pay of child care workers in the United States given how important and yet vulnerable children are in society. This low pay exemplifies the low value placed on care in our society. Similarly, hospitality is a form of care that has become highly commercialized in the modern service economy [26]. Hospitality as care raises questions about the ethical nature of relationships with unknown others whether the guests are strangers or customers.

In the following sections, three aspects of care and business are considered: care and corporate culture, care and business decisions, and care in the management of diversity. An institution's culture represents its system of shared meaning including language, symbols, metaphors, and values. Caring may be addressed explicitly or implicitly, as a part of corporate culture, but those who come into contact with it will know whether care is valued or not. Corporate culture is the subject of the next section. Culture and decision making are interrelated and affect one another. Caring decisions and policies attend to those affected in meaningful ways. Caring choices by a business do not entail receiving favorable outcomes in every instance. Just as a caring friend does not do everything that a friend may want, a caring business engages in a degree of self-care in preserving profit and sustainability over against the needs and wants of various constituencies. Finally, management of diversity represents an ethical reality in the business world. Rule-based or consequentialist ethics assumes interchangeable moral agents [5] with similar approaches to rational decision making – an assumption that is less and less viable in the global economy.

Care as Inquiry: Corporate Culture

As mentioned earlier, care is predicated on knowledge. The attentiveness to the other entailed in caring necessitates the building of understanding that has propositional aspects (knowledge of facts) but also felt aspects (affective knowledge). Such knowledge can be explicit and thus articulated and attended to (i.e., the names of an employee's partner and children) or tacit and thus unarticulated (i.e., how to demonstrate concern for someone when they are revealing important personal information). Because care responds to particular circumstances and contexts, it relies heavily on knowledge development to facilitate moral imagination and thus empathy. Such knowledge consists of explicit propositional knowledge as well as tacit knowledge held by the body in the form of muscle memory and is expressed as habits or skills [10, 22].

Since the early 1990s, knowledge management has been a key concept in business [12]. Fueled by economic changes, technological developments, issues of scale, increasingly complex processes, and the emergence of the internet, knowledge management is a crucial and strategic corporate function [41]. Although human resource information systems can manage enormous amounts of personal data, little attention has been given to nonpropositional knowledge or the affective and tacit knowledge that engages care. Part of the challenge is that care blurs the line between ends and means or subject and object. People care about individuals and ideas that if effectively aligned with company goals can be a powerful motivator for productivity and fulfillment. However, care is also a disposition that can be fostered in culture. Corporations are ultimately systems of relationships, and those relationships can take on different characters. Caring is one possibility [27].

Management theorists Georg von Krogh, Kazuo Ichijo, and Ikujiro Nonaka argue that sharing tacit knowledge is the first step in knowledge creation [64]. Krogh, Ichijo, and Nonaka contend that a corporate culture in which caring is highly prized includes five dimensions: mutual trust, active empathy, access to help, lenience in judgment, and courage [63]. When these elements are present to a strong degree, then the potential for what Krogh, Ichijo, and Nonaka refer to as “indwelling” or living with a concept together is operant:

When care runs high in an organization, the individual member works in a context in which colleagues show genuine interest in her progress. She can trust her colleagues and will receive active help. She can access expertise whenever required and can afford to experiment. She knows her colleagues will welcome such courage and judge the outcome of open ended knowledge creation leniently. When colleagues are supportive, individual participants are more likely to articulate their knowledge spontaneously, using new metaphors and analogies. . . . This process of mutual bestowing leads to the kind of social knowledge creation that is the source of radical innovations: indwelling [64].

Note that Krogh, Ichijo, and Nonaka are not conceptualizing care as warm fuzzy relationships or that all employees have to be close friends. Nevertheless, care entails a disposition of understanding, respect, and flexibility that can lead to personal growth and productive knowledge creation.

Enron is a counterexample of a caring culture – a caring dystopia. In the year 2000, the energy conglomerate Enron was a celebrated Wall Street darling with 22,000 employees and alleged revenue of over \$100 billion. By the end of 2001, Enron’s name became synonymous with accounting fraud and its illegal activity had repercussions that shook the US economy. Much of the attention among business ethicists has been on the illegal activity that brought down Enron, but those acts were the outgrowth of a culturally toxic environment. The documentary film, *Enron: The Smartest Guys in the Room* [19], based on the best-selling book of the same name [40], graphically portrays the cutthroat corporate culture at Enron. It is this hypercompetitive culture that fueled an atmosphere that made unethical and illegal activity possible. Even without the specific indictable acts, the environment was immoral in how it compelled employees to treat one another. Armstrong, Williams, and Barrett capture how many variables lead to an unhealthy corporate culture: “it is the impact of many small organizational factors that contribute to the overall health

and morality of an organization. It seems too simplistic to conclude that Enron and Worldcom problems are based wholly on greed and not the integration of organizational factors” [2]. Enron’s culture can be described as the antithesis of caring, with its strong emphasis on self-interest and individual advancement.

The company’s compensation structure contributed to an unethical work culture, too – by promoting self-interest above any other interest. As a consequence, the team approach once used by Enron associates deteriorated. Performance reviews were public events and poor performance was ridiculed (or employees were fired through a “rank and yank” process) [59].

Enron is an extreme example to be sure. Nevertheless, the Enron scandal reveals the need for integrating care ethical analysis into business ethics. Traditional moral approaches are very good at identifying the immorality of specific acts such as the fraud that Enron engaged in. There were clear violations of principles or rules of morality. However, such approaches are less well equipped to view the working relationships of the Enron culture as unethical. There is nothing immoral about competitiveness and ambition, but when it evolves into disregard for well-being and results in the suffering of others, it cannot be considered moral activity by care ethicists. An uncaring culture is doubly troubling: The lack of care in a corporate culture is not only ethically problematic on its own; it is ethically problematic because it makes other unethical activity more possible.

Care and Business Decisions

One of the dominant metaphors used to understand business – sometimes explicitly and sometimes implicitly – is that business is a game. It is true that business has many game-like qualities including competition, goals, and rules. Of course, there are many game and sports metaphors employed within business activity including notions of winning, losing, and teamwork. In isolation, game and sports metaphors are ethically neutral. In fact, some classic works of business ethics contend that game metaphors are particularly appropriate to describe business [6]. However, game metaphors have their limitations. If morality is reduced to the status of the rules of the game, then one can attempt to “game” the situation or “play games” with the ethical rules. For example, a strict rule-based morality can lead to interpreting rules or locating loopholes or finding alternative rules that gives one an advantage. In such cases, real morality takes a backseat to a kind of legalistic manipulation. The abstract nature of traditional morality – rules or consequences – makes such manipulation more possible, even when the moral framework is established with the best of intentions. Justification of immoral activity is made more possible in a context where ethics is defined by which principle trumps the other or what projection of consequences is most compelling. Care ethics is not immune from abuse, but because it is a relational approach to morality, caring is experienced in the relationship between people and not determined by outside imposition of an abstract set of principles. Accordingly, care is not a notion familiar in business contexts, but it is much needed as a corrective to traditional metaphors. Georg von Krogh, Kazuo Ichijo, and Ikujiro Nonaka describe the shift in metaphor: “Although corporate cultures have changed over the

past three decades, the language of the war room or a sporting event is still more familiar than that of caring or enabling” [64].

One of the hallmarks of contemporary business ethics, stakeholder theory, can be thought of as an effort to integrate relational considerations in a manner consistent with care ethics. As Daniel Palmer and Mary Lyn Stoll describe “just as stakeholder theories of corporate obligations are articulated in terms of a web of relationships, so too an ethics of care focuses primarily upon relationships that give rise to moral obligation” [49]. Although the genealogy of stakeholder theory can be traced to the 1960s, R. Edward Freeman’s *Strategic Management: A Stakeholder Theory* articulated the widely accepted understanding of the approach as “any group or individual that can affect or is affected by the achievement of a corporation’s purpose” [16]. Relationality is central to the stakeholder approach, transforming the corporation from an autonomous agent engaging in isolated decision making to one that finds itself in a web of relationships that includes customers, employees, suppliers, competitors, the community, etc. In other words, stakeholder theory shifts the ontology of the corporation from an atomistic position to one embedded in relationships – a shift analogous to that of care ethics over and against traditional ethics. In this respect, care ethics and stakeholder theory have much in common. In terms of normative decision making, care implies that businesses understand and consider the interests of stakeholders – not to the abandonment of profit but integrated into corporate interests. Care ethics cannot offer definitive rules of stakeholder consideration, but it can ask whether stakeholders are experiencing care. Palmer and Stoll suggest that care ethics has much to offer stakeholder theory including a richer articulation of the relationships. They describe, “An ethic of care would demand. . . that a full moral phenomenology of the kinds of relationships involved be articulated before considering the nature of the stakeholder obligations involved” [49]. Political theorist Daniel Engster contends that among other things, care ethics can sharpen the definition of who qualifies as a stakeholder. Engster argues that “stakeholders may be defined as any groups or individuals whose ability to care for themselves or others is directly dependent upon a firm’s actions or decisions” [15]. In this manner, care, specifically self-care, becomes the stake that various constituencies have in corporate decision making. The ascendancy of stakeholder theory in business ethics is a corollary to the rise of care ethics in their shared need to focus on business relationships.

Sometimes, the power and potential of care is understood even when the term is not explicitly invoked. In his 1989 documentary, *Roger and Me*, Michael Moore did not attempt to engage in rational arguments to dispute then General Motors CEO Roger Smith’s decision to close manufacturing plants in Flint, Michigan. Instead, Moore endeavored to bring Smith to Flint to meet the stakeholders impacted by the closures. Moore wanted to make sure that Smith had affective, proximal knowledge of the former employees rather just data and statistics. According to Moore, “My mission was a simple one: To convince Roger Smith to spend a day with me in Flint. . . and meet some of the people who were losing their jobs” [44]. Moore failed. His documentary recounts the personal stories of many of the residents of Flint who worked at General Motors, but he did not prevent any plant closings or

affect any corporate decisions. Moore never brought Smith to Flint. He did have one brief encounter with Smith:

Michael Moore: Mr. Smith, we just came down from Flint, where we filmed a family being evicted from their home the day before Christmas Eve. A family that used to work in the factory. Would you be willing to come up with us to see what the situation is like in Flint, so that people...

Roger Smith: I've been to Flint, and I'm sorry for those people, but I don't know anything about it, but you'd have to...

Michael Moore: Families being evicted from their homes on Christmas Eve...

Roger Smith: Well, I'm... listen, I'm sure General Motors didn't evict them. So, you'd have to go talk to the landlord.

Michael Moore: They used to work for General Motors, and now they don't work there anymore.

Roger Smith: Well, I'm sorry about that.

Michael Moore: Could you come up to Flint with us?

Roger Smith: I cannot come to Flint, I'm sorry [44].

Moore's efforts are an acknowledgement of the potential of care. Moore's assumptions were that Smith had considerable knowledge of the facts of the situation and was heavily invested in his fiduciary responsibility to stockholders to maximize profits. However, Moore believed that if he could get Smith to care about the Flint employees by meeting some and witnessing their circumstances, perhaps the affective connection might motivate Smith to seek other more imaginative choices.

Care and Management of Employees: Transcending Difference

One of the realities of the modern work environment is the heterogeneity of employees. A manager can no longer assume shared backgrounds, values, or systems of meaning among employees, if they ever could. Care ethics may offer some of the tools to transcend differences among individuals to help build camaraderie and solidarity. A strength of care ethics is that it endeavors to foster responsive and reciprocal relationships between people. For a relationship to be caring, one needs to be attentive to the other, including their needs, and act accordingly. In this manner, care ethics addresses the philosophical challenge of alterity or the problem of other minds. For individuals to care about someone other than themselves, they have to transcend their physical difference to gain some measure of understanding of the other. There are strong disagreements regarding whether the understanding is empathy – shared feelings – or sympathy – a knowledge of other people's feelings – but this discussion will not be entertained here. In either case, imagination (sometimes referred to as moral imagination) plays a role in being able to traverse differences between individuals. A manager who takes the time and effort to attend to employees lays the foundational knowledge that can fuel the imagination to better understand those employees.

Although not addressing care ethics specifically, Patricia Werhane argues for the essential role of the moral imagination for modern managers. In analyzing a number of case studies, Werhane finds that many businesses have sufficient ethical policies

and procedures in place, yet ethical questionable activities and scandals persist. Her conclusion is not that business managers are immoral but that they lack sufficient imagination development to deal with moral dilemmas in innovative and creative ways. Werhane claims managers “lack a sense of the variety of possibilities and moral consequences of their decisions and the ability to imagine a wide range of issues, consequences, and solutions” [65]. Caring is inherently an imaginative exercise, as one has to imagine what others are going through and imagine helpful interventions. Caring activity that is not well thought out or for which the imagination is truncated, as in stereotypes for example, can be misguided or lack efficacy.

Naming the previously unnamed is an important aspect of feminist analysis. Kimberle Crenshaw coined the term “intersectionality” to recognize the complexity of identity [8]. Specifically, intersectionality suggests that no single category of identity – gender, race, class, sexual orientation, ability – is a sufficient analytical frame for capturing identity. Human experience is too complex for easy categorization. This is particularly true in the analysis of social marginalization and oppression. Not only is one’s identity too rich and complex to be captured by a single category, but also multilayered selves are not simply *additive*. One cannot understand the experience of African-American lesbians simply by adding racism to sexism to homophobia. Oppressions interact and impact one another to create unique experiences. The development of the term intersectionality was particularly motivated by a need to problematize the category of “woman” in feminist theory as a recognition of the absence of universal women’s experience. Since Crenshaw first used the term, intersectionality has become a focal point of analysis in critical race theory and feminist social theory. Because care is about relationship, caring results in change for both parties of the relationship. International relations scholar Fiona Robinson describes “the ability to care about others involves not only learning how to be attentive and patient, how to listen and respond, but also how to rethink our own attitudes about difference and exclusion by locating that difference within relationships, thus dispelling the claim that any one person or group of persons is naturally and objectively ‘different’” [53]. For corporate managers, care ethics can be an essential tool for building the imaginative resources needed in creating a productive and caring environment across highly differentiated employee identities. Oliner and Oliner describe “diversifying” as “deliberate effort to connect with groups different from our own for the purpose of seeking mutual understanding” [48]. For Oliner and Oliner, this is an essential process in creating institutions.

Conclusion

In summary, this chapter has provided an overview of care ethics and some of its potential applications to how we think about business including the impact of an ethic of care on corporate culture, decision making, and the management of diversity. Born from women’s experience and feminist analysis, care ethics is a relatively new approach to ethical thinking given the history of traditional moral approaches such as virtue ethics and rule-based moralities. Nevertheless, there is a robust scholarship among feminists and nonfeminists developing the field of care ethics. Although there are a number of articles that have addressed the

application of care ethics to business, business ethicists have been relatively slow to engage an ethic of care.

Care in corporations is not a utopian ideal – it is being exemplified today. Oliner and Oliner mention many examples of caring from the corporate world. These examples encompass different circumstances. One aspect of their research was into corporate codes of ethics [48]. Although these tended to focus on legal and unethical practices, some addressed relational concerns. For example, the multinational health and pharmaceutical company Johnson & Johnson has a Credo that not only addresses healthy business practices but includes its relationship to employees and communities in a manner that goes beyond stakeholder theory to address dignity and respect. The Johnson & Johnson Credo has much in common with care.

Furthermore, if business is going to take care ethics seriously, exposure will have to begin with business schools. Although scholars forge ahead with new and progressive ideas, as feminist philosophers have done with care ethics, undergraduate textbooks and teachers steeped in traditions are slower to adopt change. Care ethics has not made a substantial impact on business ethics textbooks and business school curriculum as of yet. Too often the ethic of care is marginalized in texts through a brief mention or, worse, a caricature of care ethics is offered that fails to address the robust literature developed. As early as 1997, in a study of business school courses, Michelle DeMoss and Greg McCann claimed that it was important to expose business students to a care orientation as part of their ethics curriculum [9].

In *A League of Her Own*, Tom Hanks' character famously claimed, "there is no crying in baseball." Of course there is nothing in the rules of baseball regarding crying or not crying. However, baseball has been socially constructed along a particular masculinist model, which informally does not allow the display of certain emotions like crying although certainly displays of anger are quite acceptable. Similarly, business has been socially constructed according to a particular masculinist model of extreme competition with little room for caring. This model reflects modernist mutually exclusive categorical thinking which proffers that competition and caring cannot coexist. Several contemporary theorists and business professionals have rethought ethical and epistemological exclusions of emotions [7, 33, 48]. Care ethics represents one avenue of feminist effort to challenge social values. Virginia Held describes: "A feminist future in which feminist moral inquiry and culture reshape the organization of society will require fundamental reorderings and rethinking of existing practices and theories. The changes will be enormous, but there are many reasons to think both women and men will swim in them rather than drown" [29]. Business is one area of society ripe for "reordering and rethinking." However, it is not just feminists who are recognizing the moral centrality of care. Ethicist Warren Reich, for example, declares, "care is a precondition for the whole of moral life" [51]. If care is indeed so important to moral life, it needs to be a central aspect of business ethics.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [Framing Global Gender Issues: Cross-Cultural Theory and Analysis](#)
- ▶ [Gender Issues in Corporate Leadership](#)
- ▶ [Gender issues in Entrepreneurship](#)
- ▶ [Women's Work: Global Trends and Demographics of Wealth and Employment](#)

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Women's Work: Global Trends and Demographics of Wealth and Employment

57

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Abstract

Around the world, women's work is undervalued and underpaid. Wage gaps along gender lines are linked to how cultures and societies understand women's gender and work roles. Gender norms and expectations shape what we see as "women's work." In turn, this has a direct effect on the types of occupations women choose. Gender occupation segregation pushes women into some of the least valued jobs in society. This practice leads to pay inequity and other discriminatory practices. In addition, gender disparities in terms of who owns most of the world's wealth and property do not correspond with the amount of paid and unpaid labor women do in society. Women in the paid labor force face several barriers such as sexual harassment, the glass ceiling, and the sticky floor, all in addition to pay inequity. However, women are speaking out and actively trying to improve employment conditions and advance opportunities for women. This chapter provides a global perspective of women's employment and wealth trends. This chapter identifies patterns and current issues regarding women's employment as well as identifies progress and future work to be done for gender equality in the workplace.

Introduction

In today's world, many women engage in both paid and unpaid labor. The types of occupations women find themselves in are often related to their gender. This gender-based occupation segregation plays a key role in the wage gap between women and men. In many countries around the world, women face employment issues: pay discrimination, sexual harassment, and glass ceilings. Government

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policies affect women disproportionately because many women are caretakers of families and children. In addition to paid labor, most women also work in unpaid household labor. Unpaid labor combined with the issues women face in paid employment results in a tremendous burden placed on women in the world. The United Nations Development Fund for Women [1] states it is estimated women do two thirds of the world's work. This double burden many women face reveals a gender disparity in work performed. Cultural understandings of what counts as "work" create barriers for women. Oftentimes, women's work is seen as natural and is not valuable.

Women engage in the paid workforce at higher rates than ever before. According to the Organization for Economic Co-operation and Development (OECD) [2], women's participation in the paid labor force has increased significantly. As of 2005, 61.5% of women engaged in paid labor. Even though women's participation in the paid labor force has increased steadily, women still face a myriad of issues in the workforce. This chapter will outline several issues women face such as discrimination and pay inequity as well as explain patterns in women's labor. While women have made enormous strides in the workplace, much work remains to be done and inequalities persist. For example, a United Nations press release in 2011 asserts women currently do 75% of the world's work, earn 10% of the world's wages, and only own 1% of the world's property. This reveals a vast disparity between the work that women perform for society and the economic rewards provided to women. These statistics reveal women are routinely underpaid and significant barriers prevent women from being property owners and building wealth.

Gender Occupation Segregation

This section discusses current trends in global women's labor. Work in most countries is divided and segregated by gender. Women constitute a majority in types of occupations that are categorized as women's work or "pink collar" jobs. Ellen Bravo [3] states "Nearly three-fifths of women workers are employed in service, sales, and clerical jobs" ([3], p. 25). Service, sales, and clerical jobs are often the lowest paid and least valued jobs in the United States and often correlate to the cultural views of women. Another example is the global nursing industry, where women constitute 82% of the profession ([4], p. 88). This may be a result of attitudes regarding femininity and social attitudes that view women as a "nurturing" sex. Besides gender, occupation is also divided and segregated by race and class. In the United States, for example, poor women and women of color are frequently found in the least valued jobs. Typically, more women work in the service industry than men. This is true in the United States and the European Union, where 52% of women are employed in the service industry ([5], p. 106). In addition, women make up a significant portion of those employed in agricultural work and often in a part-time capacity and on a short-term basis. Women working in the agricultural industry face specific forms of discrimination. Many employees use

mandatory pregnancy tests and then fire women who are found to be pregnant ([5], p. 106). While some countries consider industrial work to be men's domain, there are many countries where women perform industrial work. For example, women are often found working in manufacturing companies where they are paid low wages and work in less than ideal conditions. The majority of employees in sweatshops and industrial factories are young women. Women working in sweatshops are often subject to numerous abuses and human rights violations such as being forbidden to use the bathroom. Around the world, women are clustered into employment that is not only low paying but also low skilled. This phenomenon is called the sticky floor. The sticky floor refers to the fact that many women are limited to low-wage jobs with little job mobility.

More so than ever, women from around the world must migrate for work. Ehrenreich and Hochschild [6] argue that third-world women migrate to industrialized nations to be employed in "women's work" such as nannies, maids, and sex workers [6]. Women are more likely to be migrant workers than men, and it is essential to reveal the power dynamics between privileged women, men, and female employees. Ehrenreich and Hochschild state "So, strictly speaking, the presence of immigrant nannies does not enable affluent women to enter the workforce; it enables affluent men to continue avoiding the second shift" ([6], p. 9). In other words, women in affluent countries are already participating in the paid labor force. Female immigrant nannies allow affluent women to reduce their unpaid labor. In conclusion, this keeps patriarchal family structures in place because it merely displaces unpaid labor onto other women. Women who migrate for work are forced to leave their own children behind to send money back home and sustain their families, thus creating a "global care chain." In "State of the World Population," UNFPA defines the "global care chain" as "an international system of care giving stratified by class and, often, ethnicity" [7]. Female migrant workers face significant employment issues such as low wages, poor conditions, coercion, and often violence and harassment ([6], p. 281).

Women often make up the informal labor sector. In "Gender and Macroeconomic Policy," the World Bank defines the informal labor sector including employment on a small scale, likely unregistered and unregulated such as households [4]. The UN document "Progress of the World's Women" states that "in developing countries over 60% of women workers are in informal employment outside of agriculture – far more if agriculture is included. The exception is North Africa, where 43% of women workers, and a slightly higher percent of men workers, are informally employed" [8]. When women work in the informal sector, they are particularly vulnerable to abuses and discrimination.

Women make up a large majority of the part-time labor force. We see this in countries such as Japan, where "40.9% of the part-time workforce is female; in the Netherlands that number is 59.7%" ([5], p. 106). Many women work part-time jobs for various reasons including the fact that women are often mothers and family caretakers [2]. Part-time jobs offer women flexibility and ability to fulfill their other familial roles and the *unpaid labor* associated with it. Because women constitute a large proportion of part-time employees, their wages are often less, and in some

countries, part-time status makes them ineligible for health benefits. In “The Price of Motherhood,” Ann Crittenden skillfully argues women pay an economic penalty when they choose to become mothers. Socially constructed gender roles and beliefs about femininity and motherhood often lead women to be the primary caretakers of children. Women are, therefore, forced to take time out of the paid labor force. This can affect women’s salary, promotions, and advancement in the workplace [9].

Unpaid Labor

Women spend more time on unpaid labor than men do. Unpaid labor women perform can include duties such as preparing food, washing clothes, cleaning the home, raising children, fetching water, and caring for pets and elderly. The majority of this domestic labor goes unpaid and undervalued. In many cultures around the world, women’s work is seen as “natural.” In fact, women’s housework is often perceived as doing nothing. Despite that, this labor is crucial to the functioning of society and the economy. The amount of time spent on unpaid labor affects women’s lives in many ways including reducing time for leisure and rest. According to the American Bureau of Labor and Statistics, in 2009, women spend more time on housework than men and men have considerably more leisure time than women [10]. Many women work paid jobs and then go home to complete domestic labor in the home. This is commonly called the double burden or the second shift of labor [11].

Wage Gap

A *wage gap* persists for women around the world. The wage gap refers to the phenomenon where women are paid less for their labor than men are. In “Employment, Social Affairs and Inclusion,” the European Commission reports that in 2008, women in Europe earned on average 17.5% less than men [12]. The country a woman resides in substantially affects the extent of the wage gap. For example, the European Commission reports women in Italy have a wage gap of 4.9%, whereas Estonia has a 30.9% gap [12]. Comparatively, as of 2007, in the United States women earn 78 cents for every dollar earned by a male, meaning women earn an average of 22% less than men [13]. In the United States, the wage gap is even greater for women of color and women with disabilities, with African-American women earning 69 cents and Latina women earn 59 cents on the dollar [13]. However, for women under the age of 30, who work full time and are childless, the wage gap is less. Perry and Gunderson [19] argue “Drilling further into the data, age group comparisons show a startling trend for gender comparisons of pay. Women earned 93% of men’s pay for workers 16–24 years old and 89% among workers 25–34 years old. This earning’s gap balloons for the age group 35 years and older showing women earning only 75% of a man’s pay” (Bureau of Labor Statistics 2009). “Young women begin work and are paid closer to their gender

equal counterparts while older female workers show the greatest wage disparity with men” ([19], p. 153). Because men and women often work in different types of jobs, laws and policies insisting on equal pay for equal work is not able truly to ensure the elimination of a gender-based wage gap. In other words, laws must find a way to address pay inequity that occurs in comparable work. There are many complex reasons that explain the wage gap. Some of the wage gap is a result of overt gender-based discrimination. However, there are many other factors that contribute to the wage gap such as gender occupational segregation, women's unpaid labor in the home, and women's prevalence for engaging in part-time work. The wage gap is a result of complex, direct, and indirect factors. Ellen Bravo argues that the wage gap is in small part a result of the fact that women work fewer hours than men. However, Bravo goes on to argue that “Researchers conclude that no more than half this differential can be attributed to actual number of hours worked” ([3], p. 22). Bravo argues that not only do women make less money than men, they make very low wages in general. Bravo states, “More than 90% of long-term low earners among prime-age adults are women” ([3], p. 24).

While many countries have laws in place to prevent pay discrimination, often these laws are ineffective or not enforceable. For example, in Japan, the Labor Standards Act of 1946 only ensured equal pay for the same work, as opposed to equal pay for comparable work ([5], p. 110). Japan has since followed up with other employment laws attempting to eradicate the wage gap, but as Hendersen and Jeydel argue, these laws have been symbolic and have not translated into real enforcement of equality for women in the workplace ([5], p. 111). Some countries such as the United States have recently taken notable strides for women's employment rights. The passage of the Lilly Ledbetter Fair Pay Act in 2009 was a momentous victory for working women to ensure that women have a fair time frame to sue after learning of their pay discrimination. However, the Lilly Ledbetter Fair Pay Act does not address the true causes of pay discrimination and is therefore a largely symbolic piece of legislation.

Discrimination and Barriers to Women's Advancement

Glass Ceiling

Women in the paid labor force have made considerable strides in terms of entering occupations previously blocked to women. For example, there are female fire-fighters, CEOs, police officers, engineers, and other professions that had previously been overwhelmingly occupied by men. In addition, many women have found themselves to be achieving increasingly rigorous roles in the corporate structure as well as running their own businesses. While some women have been able to realize leadership positions in their paid jobs, the majority of women have faced significant barriers toward advancement. The *glass ceiling* is a phenomenon that refers to the often invisible barriers to women's advancement in the workplace. Jeydel and Henderson state “women account for less than 15% of board directors,

less than 16% of executive officers, and only 2.7% of chief executives of Fortune 500 companies” ([5], p. 106). Women of color face barriers due to racism and sexism and, therefore, face a “concrete ceiling.” Jeydel and Henderson argue these statistics show us women are grossly underrepresented in top-level positions in the private sector. In part, the glass ceiling is a result of the ways women’s behavior is perceived and stereotyped in the workplace. The same behavior exhibited by a male worker versus a female worker might be interpreted remarkably different. For example, when a woman behaves assertive in the workplace, she may be perceived as being pushy and aggressive. In contrast, a man’s assertiveness is seen as effective leadership and appropriate behavior.

Sexual Harassment

Sexual harassment remains a significant issue women face in the paid labor force, regardless of the country they reside in or chosen occupation. Sexual harassment includes unwanted remarks, requests, and physical advances. When rejected, the individual perceives their workplace to be hostile and unacceptable. The perpetrator can be a coworker, subordinate, or boss and may be a male or female [14]. Sexual harassment is about power and control. Women are more often victims of sexual harassment than men in the workplace. Sadly, sexual harassment is an exceedingly common occurrence. The United Kingdom reports that 54% of women report they experience sexual harassment ([5], p. 129). Often, *sexual harassment* is viewed as an unimportant issue and trivialized in many ways. For example, when women are the victims of sexual harassment, they are told to “lighten up” or “learn how to take a joke.” This mentality perpetuates the notion that sexual harassment is not a serious offense. Despite many laws protecting the victims of sexual harassment, it still happens to a majority of women around the world. This can profoundly impact a woman’s emotional well-being as well as her ability to do her job well, which in turn may affect her ability to advance at work and receive raises. Sexual harassment can make a woman feel embarrassed, ashamed, powerless, victimized, and afraid. It is difficult to come forward about sexual harassment and can be equally difficult to prove. While many countries do have laws to protect against sexual harassment, and prosecute offenders, it has not been sufficient to end sexual harassment in the workplace. France is one country which has legally made *quid pro quo* sexual harassment and hostile work environment a criminal issue that can result in fines and imprisonment.

Maternity and Family Leave Policy

According to the International Labour Organization (ILO), most countries do not provide adequate protection for pregnant women and women on maternity leave. Currently in the United States, under the Family Leave and Medical Act passed in 1993, women are entitled up to 12 weeks of unpaid leave in which their jobs are

protected. The Family and Medical Leave Act allows women and men protection when they need to take leave due to childbirth, pregnancy, and bonding during adoption. A nation's family leave policy has a significant impact on women's lives. Typically, women are the caretakers for sick children and elderly relatives as well as ones who take time off for childbirth and adoption. This phenomenon is known as the "sandwich generation," referring to many working women who are simultaneously caring for a child under the age of 18 while caring for an elderly relative. For the "sandwich generation" of women, paid sick leave is a crucial issue. Otherwise, women are forced to take unpaid sick days at their jobs. This can affect their overall earnings and job evaluations. Therefore, a nation's family and maternity policy may affect them in different ways than men. The United States offers a particularly inadequate maternity leave policy for women when compared to other countries. However, there are many US corporations that offer paid maternity leave and some even offer paternity leave and parental leave for adoption purposes. According to the Institute for Women's Policy Research, as of 2010 only 10% of paid employees in the private sector of the United States had paid leave [15]. The ILO [16] reports that globally there has been some progress in terms of adequate maternity policy. The ILO [16] cites Nicaragua and Panama as exemplary examples in which women are provided paid leave for miscarriage, stillbirth, and other conditions related to pregnancy ([16], p. 24). In addition, some countries such as Finland, Slovenia, and Kenya are pursuing paternity leave legislation ([16], p. 24). However, despite some advances, pregnant women are often discriminated against in the workplace. Women are discriminated against through the denial of maternity leave, fired for being pregnant or nursing, denied adequate space to nurse at work, and denied promotions during pregnancy.

Gender Disparities in Wealth

In this chapter, we discussed the wage gap, which results in lost earnings for women. This can add up to significant amounts of money in a woman's lifetime. As a result, the wage gap affects women's ability to produce and maintain wealth. In addition, a government system's policies on retirement have a significant impact on women's lives and wealth. In the United States as of 2003 "women's average monthly retirement benefit was \$798, compared to \$1,039 for men" ([5], p. 130). One of the many reasons for this is women often spend less time in the paid labor force. They spend less time in the paid labor force due to childbirth and maternity leave. The result is that, as women age, they are much more likely to live in poverty. In "Equality at Work," the ILO [16] reports "829 million women live in poverty worldwide, while the equivalent figure for men is 522 million" ([16], p. xi). The global feminization of poverty has enormous impacts on other areas of women's lives such as poverty, reproduction, health status, and education.

In "Progress of the World's Women," UNIFEM [8] states women make up half of the world's population, yet they only own 1% of the world's wealth. Women's employment status often affects their ability to receive loans. UNIFEM [8] reports

75% of the world's women do not receive bank loans due to a lack of permanent and regular jobs, combined with a lack of property to use as collateral [8]. Patriarchal property laws are a contributing factor in women's wealth. Property laws often prevent women from increasing their wealth. In countries where it is legal for women to own property, discrimination and patriarchal norms where husbands make financial decisions still often prevent women from obtaining loans and credit.

The current global economic crisis has had a significant effect on women as a group and increased their overall vulnerability. According to the ILO, the economic crisis has led to millions of unemployed women. In "Facts and Figures on Women, Poverty and Economics," the ILO estimates 22 million more women are unemployed, which would mean that women have a higher rate of unemployment than men [17]. In addition to unemployment, the economic downturn has pushed many women into vulnerable and unsafe jobs according to the United Nations Annual Report [18]. The global economic crisis has set many of the advances women have made in employment back.

Models of Economic Empowerment

It is clear that to achieve gender equity, women's employment experience must improve. In addition, achieving economic empowerment for women requires increasing their access to credit and finance. In "Gender and Macroeconomic Policy," it is reported that women in Bangladesh save less because of the patriarchal norm requiring women to turn savings over to their husbands. Despite this fact, poor women are more likely to save than men are ([4], p. 60). Encouraging women to own their own businesses and take control over their finances are key areas of women's empowerment and gender equity. Around the world, women are forming their own credit unions and savings groups to give women increased economic opportunities. Typically, women use their personal and or family savings to start businesses. Additionally, in an examination of women entrepreneurs in Tanzania, only 3.9% of women used bank credit and .8% used credit from a moneylender to start their businesses ([4], p. 129). Therefore, improving opportunities for women to obtain credit from moneylenders is of foremost importance. Many NGOs and state governments are encouraging women's economic empowerment. For example, in Kenya, the Women Economic Empowerment Consort offers savings, loans, and business training to women ([4], p. 130). Globally, examples and strategies similar to Kenya are increasing. Therefore, there is hope that women's opportunities to build wealth may improve in the future.

Conclusion

Women constitute a growing proportion of the world's paid labor force. It is necessary to consider the point that most women around the world work in some type of paid labor. In addition to engaging in paid labor, women are often still expected to complete much of the unpaid domestic labor in the home. Socially constructed gender roles play a determining factor in the occupations women are

employed in and the way they are perceived and treated in the paid labor force. Around the world, women are making impressive strides to increase their wealth, reduce the wage gap, and fight gender-based discrimination in the workplace. However, much work needs to be done to ensure that women are ensured equal opportunity, equal pay, and equal treatment in the workforce. This chapter has attempted to identify key patterns in women's employment such as gender-based occupation segregation, migration for employment, part-time labor, and informal sector labor. This chapter has also outlined common aspects of gender-based discrimination in the workplace such as the glass ceiling and sexual harassment. Social change, in addition to strong government policies and international programs aimed at women's economic empowerment, is necessary to improve women's status around the world and their employment conditions.

Cross-References

- ▶ [Feminist Care Ethics and Business Ethics](#)
- ▶ [Framing Global Gender Issues: Cross-Cultural Theory and Analysis](#)
- ▶ [Gender Issues in Corporate Leadership](#)
- ▶ [Gender Issues in Entrepreneurship](#)

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Abstract

The importance of women's entrepreneurial work and its socioeconomic context has ethical import as a theoretical concern. The entrepreneurial endeavor of women involves gendered ethical issues of equality, access, and capability for women seeking to develop private enterprise in many marketplaces. The practice of entrepreneurship marks a segregation of work roles for individuals, but more so for women, due to gender identity in the market and a lack of available market, economic, and political networks. Further, gendered market and business identity estrangement induces a crucial challenge – social segregation based on both gender and socially constructed entrepreneurial roles. The role of women as entrepreneurs is examined in this chapter from a multifaceted economic class and social construction of gender framework. Moreover, women's agency and access to opportunities to develop business and market capabilities have theoretical underpinnings in ethical and economic concepts. Further, this chapter will explore a brief analysis of the ethical implications of the dialectic in gender relations pervasive in the economic and political power of women entrepreneurs.

Introduction

The concept of business is predicated on the private enterprise, or entrepreneurship, of individuals in communities. Individuals may seek the opportunity to expose their ideas in the form of a new process, product, good or service, market or technology to others in those or other communities [1, 2, 91]. However, the theoretical notion of

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entrepreneurship is based in “the scholarly examination of how, by whom, and with what effects opportunities to create future goods and services are discovered, evaluated, and exploited. . . [and] involves the study of sources of opportunities; the processes of discovery, evaluation, and exploitation of opportunities; and the set of individuals who discover, evaluate, and exploit them” ([3], p. 218). Therefore, private enterprise has theoretical foundations that guide the practice of the entrepreneur.

Moreover, entrepreneurship is the enterprise of human practice to create value and economic return, and it results in new organizations [4]. Thus, entrepreneurship creates new “context-dependent, social and economic process[es]” in the marketplace ([4], p. 20). Entrepreneurship is the historical root of business enterprise, and as such, research has been undertaken to study the ethics of internal and external entrepreneurial practices (e.g., Morris et al. 2002). Likewise, the practice of entrepreneurship has been studied based on demographic effects on the choice and pursuit of individually owned business enterprise. Harvey [5] investigated entrepreneurial business choices of women, finding that owning one’s own business is “a gendered choice in that it allows them to balance the demands of work and family. The desire to balance work and family is an important factor that often distinguishes women’s motivations for entrepreneurial activity from men’s” ([5], p. 795). Other research has also pursued similar demographic investigations [67, 69, 70, 71, 73, 75, 82, 87–89]. The environment of entrepreneurial endeavors is inclusive of external market decisions regarding access, inclusiveness versus exclusiveness and interpretations of value, which bear ethical implications. This chapter focuses on gender issues related to the environment of entrepreneurship.

Gender and Entrepreneurship

Theoretical underpinnings. Kantian thinking is useful in understanding the ethical foundations of the entrepreneurial work of women. This conception of work is the culmination of the engagement of individuals in labor processes as sole practitioners engaging various stakeholders (i.e., supply chain relationships) in the self-development of products and services offered in a marketplace. Therefore, the entrepreneurial convention involves ethical considerations of equality, access, and capability, which are cornerstones of Kant’s studies of ethics in relation to historical aspects of human nature and nurture. His views of ethical practice reflect an evolution of the development of moral behavior and the growth of social institutions based on universal codes of conduct in relationships between individuals [6]. Kant’s concern with ethical progress in the conduct of everyday human endeavors is predicated on differentiated human work as progress, rather than what he calls the “bustling folly” of haphazard nonstrategic goals ([6], p. 140/82) or perfunctory actions of mere survival (e.g., animal species actions). In other words, entrepreneurial endeavors are manifestations of his view that “a moral character in humanity” is omnipresent in human endeavors as a mode of thinking that

distinguishes the human characteristic of “hope for progress toward the better” ([6], p. 144/85). In addition, the concept of human capacity has been delineated using utilitarian and other thinking in Sen’s [84] work on institutions’ social responsibilities to human well-being [7]. Further, the moral determinations of market decision-makers is argued to be a duty to considerations of all human worth, dignity, and rights as regards to what ought to happen in human relationships among all rational beings, as found in Kant’s *Foundations of the Metaphysics of Morals* ([8], p. 5, 46/429).

Kant’s concept of duty involves “good will” in commerce, or a practice of honesty and elimination of seeking an advantage, toward customers and other market participants ([9], p. 9–10/397). The entrepreneurial work of women is predicated on unfettered access to the marketplace and the advancement of development and capability to do so regardless of gender. Kantian thinking supports the role of humanity toward all rational beings. On his view, people not only hold the duty to their own development of “capacities for greater perfection” in the “preservation of humanity as an end in itself” but, as importantly, hold responsibility toward “further[ing] the purposes of others” ([8], p. 47/429, 430; 51: 434). In other words, Kantian thinking includes the concept of equity between rational beings, which supports the dignity of women in entrepreneurial endeavors based on the “intrinsic worth” of respect for their autonomous labor ([8], p. 53/436).

In 1797, Kant’s arguments in *The Metaphysics of Morals* turned toward the idea of duty as an incentive to individuals to treat others with respect, to keep promises, and to bestow benevolence toward others ([9], p. 220). Further, Kant argues that “the concept of autonomy is inseparably connected with the Idea of freedom, and with the former there is inseparably bound the universal principle of morality” ([8], p. 70/453). Moreover, moral conduct requires rational applications of “negative” rights – the freedom “of not being constrained to action by any sensible determining grounds” ([9], p. 226). Therefore, in Kant’s view, ethics is a system involving the moral imperative that categorically binds individuals to respect the freedom others have as a right to develop their capacities for an end “of their own making” (i.e., personal economic development) as a matter of human dignity ([9], p. 381). Therefore, gender should not be a limiting factor in one’s pursuit of private enterprise for economic or self-sufficiency.

Sen argues that economics is comprised of two problems: (1) how a human “should live” and (2) how they are to be judged of “social achievement” ([84], p. 3, 4). The interpretation of these two human choices is related to the ethical consideration of individual freedom necessary to human well-being [7]. Moreover, persons are conceptualized “in terms of agency. . . and in terms of well-being” ([84], p. 41). Agency has to do with “recognizing and respecting his or her ability to form goals, commitments, values” ([84], p. 41). On Sen’s view, women’s direct access to the market system is a moral freedom that has been historically denied in developed and developing nations. Moreover, this denial is a “violation of women’s liberty and gender equity. The absence of [market] freedom militates against the economic empowerment of women” and, thus, hinders their agency and well-being ([7], p. 115) ([84], p. 41). The prime hindrances to the well-being of women have

been the historical preclusion of their access to education, safety, distribution of income and credit, and self-respect. Furthermore, the social and economic evaluation of a person's agency and well-being is the measure of her market achievement ([84], p. 47). In other words, women have been seen as passive recipients of the market system, rather than as agents of economic development [7]. Sen's agency theory is based on individual freedom: "someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives" ([7], p. 19). The right to obtain these characteristics of any economy is what Sen terms as *capacity* [7]. In other words, the access to a "capability set" for women entrepreneurs results in inclusion in entrepreneurial endeavors based on "self-goal choice" ([7], p. 73) ([84], p. 81).

The market system is made up of many individuals who have not only the understanding of the opportunities to exercise their capacities but also the abilities to "take note of other people's goals" due to the concept of "mutual interdependence" ([84], p. 85). Moreover, Adam Smith's moral theories of the market stipulate that human self-interest and ambition include admirable, ethical qualities, such as "prudence and justice" ([10], p. 245). His later treatise on the market economy is specific to the economic and ethical value of trade based in "mutually advantageous (explicit or implicit) contracts" ([84], p. 25). Further, Smith was keen on defining employment and labor based on the type of work function, rather than the specifics of the person engaging the work process, in what is called the *equalizing differences* ([11], Chap. X). More recently, Smith and Dubbink extend the moral obligations of business agents to *understand* what steps to take "to improve the well-being" of market participants ([12], p. 221). Furthermore, the notion of capacity includes the Kantian universal adherence to the concept of freedom as an ethical duty of society to not constrain or diminish personal endeavors based on gender. Therefore, market correction is needed to counteract the hindrance of women in the free access to develop their capabilities to self-labor of their own choosing of functioning as entrepreneurs and, thus, potential achievement in the marketplace.

Interpretations of work and gender. The interpretations of entrepreneurship have ethical import in the historical literature of the meaning of work, power, access to respect for one's life projects, and its application to gender. Work is the result of hopes and dreams in the search for daily meaning in life. These ideals are acknowledged by textile factory workers, service-oriented personnel, corporate staffers, and entrepreneurs. Yet, the pursuit of one's avocation can, although rarely, fulfill this objective. For example, in the film *Work*, Studs Terkel [13] illuminates an initial misconception that work is just work and little more than that. Both Adam Smith and Karl Marx addressed peoples' attitudes and behaviors and how these take shape out of the experiences individuals have in their work. The importance of Karl Marx' *Economic and Philosophic Manuscripts of 1844* [14] to the foundation of the concept of labor is represented in notions of power and struggle. I include Marx' thoughts on labor because of his keen observation of the structure of gendered employment in the cotton mills of Western Europe and his methodology in developing his theory of labor and capital using an analysis of the demographics of

gender, power, and the balance of employment among the skilled and unskilled workers in these mills. Marx' thesis is further formulated from a critique of capitalist enterprise and struggle that developed in the industrial centers of Europe, then extrapolated to other Western bases of urban labor endeavor. The human endeavor of labor within a capitalistic economy becomes the struggle for human dignity [86]. Entrepreneurship is exemplified by a search for dignity in one's own right as both owner and worker – thereby mitigating the estrangement of workers not only from the product of their labor and the owners of production since these entrepreneurs are one and the same.

On another view, Applebaum [15] integrates a number of nineteenth- and twentieth-century thinkers' analyses of “the issue of work [as] central to all societies because we must still produce our means of subsistence and survival,” as well as derive respect for human endeavor ([15], p. 459). In so doing, he provides empirical analysis to elucidate the “dignity of labor” as a theoretical perspective entailing capability and influence ([15], p. 461, [86]). An entrepreneur who has access to developing and using their influence through their own labor and product attains an aspect of power over their own economic and noneconomic means. Etzioni [16] categorizes three sources of power in business endeavors: *coercive* (physical resources of force, violence or restraint), *utilitarian* (material or financial resources), and *normative* (symbolic resources) that serve to either empower or decimate business endeavors on a global basis ([17], p. 239).

For example, the United Nations (UN) has addressed the global aspects of work, defined more broadly as employment. On this basis, being “employed” comprises any and “all persons above a specified age who during the short reference period either worked for pay or profit, or contributed to a family business (farm) without receiving any remuneration (i.e., were unpaid)” ([18], p. 76). A comprehensive definition of women's entrepreneurship needs to be inclusive of their entrepreneurial endeavors as employed work in any market system, regardless of gender or other inherited human trait that is representative of an individual's identity.

Identity and estrangement. The “private sphere” of women's lives has served to identify and estrange women from active participation in market systems, thereby “eclipsed by ideologies of total domesticity [and unpaid work] and dependence” ([19], p. 303). The ways in which an institution is structured forms peoples' sense of themselves and their possibilities. Arendt uses Marxist terms and a biological grounding of the notion of the human body as it labors and establishes a material consequence of human work in organizations, which dehumanizes the individual. Arendt proposes three “fundamental human activities – labor, work, and action” which provide identity for people ([15], p. 491). In this respect, corporations are “people-producers” ([20], p. 3) and product producers. Organizational structure is a problem when private enterprise transforms into collective endeavors known as corporations – decisions about public ownership, how to divide labor, accessing the availability of power and opportunity, and distributing people across tasks ([20], p. 7). Further, workers for impersonal organizations feel disconnected from the products they assist in manufacturing. In other words, some laborers lack an opportunity for individual choice about their work endeavors.

The concept of entrepreneurship is decidedly about the freedom of choice about how and where one's labor may be expended. Kant [21] argues that every individual has natural drives for survival, among these are "for enlarging our cognition" ([21]: 6:215). In this respect, one's choice of pursuits in life should be unfettered, regardless of personage and circumstance, which is a human moral imperative. The concept of business and property ownership has proven challenging for women across the globe, with historical hindrances evident in virtually every nation. As a private right, Kant [21] argued that moral law requires an a priori requirement that "everyone may acquire and own property" (xiii). There is no ownership of one's economic outcome in a corporate setting, only remuneration for services rendered. However, entrepreneurial enterprise is the manifestation of property ownership – of intellectual properties, processes, product, and real estate. Kant argues that these are forms of property, which are "in common," but also that individuals may "need the help of other people, and that in turn may require business contracts with them" according to Sullivan ([21], pp. xiii–iv). Entrepreneurial endeavors are "people-identifiers" because one's work and product characterize the individual and their capabilities as uniquely their own.

Women entrepreneurs are in a "dual-identity" social construct of both gender and business activity that challenges identity conflicts. Male business owners do not face the challenges and the same specific gendered hindrances or complements (see also [17] for the dual identity challenges of family businesses). "Masculine ethic" ([20], p. 22) elevates traits such as tough-minded approaches to problems, analytic abilities to abstract thinking and planning, having capacity to set aside subjective issues such as personal or emotional considerations, and space to use cognitive superiority in problem-solving and decision-making. These traits lend well to impersonal bureaucracy in management theory that includes motivation of a "machine" approach, as found in the scientific theories of management ([20], p. 23). Feminist theory has emphasized a cooperative, consensus-building team approach in Western work endeavors and project management systems ([20], p. 25). But, more theoretical feminist development needs to be done in relation to gendered entrepreneurial endeavors based on the concept of "women's work" in private enterprise [68, 72, 76, 77, 79, 83].

In Western, developed countries (USA, France, Germany, Italy, UK, and Finland), the Organisation for Economic Cooperation and Development (OECD) [22] reports that "gender differences in time use are significant" ([23], p. 128). In each of these countries, the study determined that men spent more of their time engaging in paid work than women in these same countries. Further, women spent more time engaging in unpaid work, such as family and household duties that are not accounted for in real time or economic pay. Despite the amount of paid work time, men in these countries were able to engage in greater time and variety of leisure activities than women in these countries. "The implication is that women provide household services, but other members of the household benefit" ([23], p. 128). One further indication that gender differences are significant in traditional organizational work settings is found in the statistics of rank and power in business:

“Only 13 of the 500 largest corporations in the world have a female Chief Executive Officer” according to UN’s *The World’s Women 2010: Trends and Statistics* [18].

Self-interest and entrepreneurial endeavors. The literature on entrepreneurship that I am aware of lacks full gender investigation as a genre. Eleanor Burke Leacock’s introduction to Frederick Engels’ *Origin of the Family, Private Property and the State* examines the persistent division of labor and its gendered application in the workplace in the nineteenth century versus the capitalist empowerment over labor and family concerns in Western societies. The notion and acquisition of private property fosters this division of labor, illustrating the dependence, rather than complement, of the family division of labor along gendered lines in a patriarchal structure. As capitalist “wealth increased it made the man’s position in the family more important than the woman’s” ([24], p. 41). Sen [7] sees more divisive issues related to equity and social estrangement in the gendered and socioeconomic holding of private property. On his view, private property can serve to spur self-interest and economic expansion of market sectors, but he tempers the outlook with the concern that “unconstrained” growth and inequitable access to the acquisition of private property can serve to further issues related to poverty among those historically prevented access to ownership (i.e., due to disability, gender, ages, etc.) ([7], p. 61). Historically, Kanter [20] notes that workers in the nineteenth and twentieth centuries were expected to perform their assigned labor based on the utilitarian notion of collective efficiency in productive processes to reach aggregate achievement, rather than individual self-fulfillment. In other words, family and small business endeavors gave way to capitalized industry and the corporation [20]. Therefore, the growth of entrepreneurial enterprise dwindled among those lacking significant capital to invest in private property or compete against monolithic enterprises.

In contrast, an entrepreneur’s actions include individualized “symbolic behaviors” [25, 26] and “networking styles” [27] in work-related relationships. Further, an entrepreneur’s intentions to develop and instigate their own business endeavor has economic consequences based on forming discrete social ties to others – as consumers, certainly, but also as part of the supply chain to bring the product or service to the market. Vissa [25] has investigated the “ties” to others that entrepreneurs must develop and what these particular ties mean for individualized entrepreneurial economic consequences. Moreover, in creating economic exchanges with market agents, entrepreneurs rely on a variety of symbiotic networks of individuals and organizations. Many studies of the theoretical and methodological aspects of US entrepreneurial economic endeavors exist, but fewer studies of the socioeconomic impacts of demographic characteristics have been done. Vissa [25] investigates “social similarity” in entrepreneurial tie formations in India based on the sociodemographic characteristics of ethnicity and caste, language, and occupation. McPherson et al. [28] include gender, as well as other inherited traits, in analyzing entrepreneurial behaviors in the USA, but the use of homophily theory has scant research to ascertain the particular gender characteristics that matter regarding access to and engaging in entrepreneurial activities. Further, Vissa [25, 27] and others have not investigated whether gender has a role in tie formation [29] related to social similarity, or

“homophily,” for entrepreneurs seeking complementary tasks in their respective market exchanges in various countries. The Vissa [25] study used a small sample of 75 entrepreneur participants in India, of which only three were women.

Ruef et al. [30] determined that homophily is based on “mutual attraction and trust” (Vissa 139) and that monoethnic ties held together more new entrepreneurial business ventures than multiethnic ties. Moreover, Vissa’s findings of significance demonstrated that while language positively impacts the intention for and the resulting tie relationship with market others, task complementarity also has a significant influence ([25], p. 155). However, caste only had significant impact on tie intentions but not on the actual exchange relationship formation ([25], p. 155). In other words, research is needed on how dissimilar ties, specifically on gender differences, might be reflected in intentions for, access to, and development of entrepreneurial endeavors in various countries. Further, investigation is warranted on the percentage subsets of successful reciprocated target exchanges with other individuals of same and dissimilar gender. Research needs to determine how gender differentiates, if at all, strategic initiatives by women versus men as entrepreneurs. McPherson et al. [28] focus on entrepreneurs who “connect to socially similar others because similarity fosters attraction” and trust versus socially dissimilar contacts who complement them. Moreover, “entrepreneurs often convert interpersonal ties into economic exchange ties” [31], which these latter ties “are crucial for venture growth and survival” [25] and form a “networking style” [27]. A research question could be formulated about whether economic support, product/service development, and exchange trust formation are similar or dissimilar globally as a result of market perceptions about gender roles. How are valuable entrepreneurial resources [25], such as business advice [32], “seed stage funding” [33], and supply chain confidence [34] equitably available regardless of gender?

Self-employment, “marketplace transactions,” and networks. The global economic role of women has been researched using a number of indices, such as the Gender, Institutions and Development Data Base (GID-DB) promulgated by the OECD using 161 economies of populations numbering generally more than one million individuals [23]. Gender equality is considered, among other factors, in women’s access to resources, such as education and economic status based on the role of women and their respective economic activity rate [35]. By definition, “wage employment is the most common form of employment, but own-account work and contributing family work are more prevalent in parts of Africa and Asia” ([18], p. 85). Moreover, working for oneself has attained a fuller definition by the United Nations (UN) in their most recent analysis of working individuals to take account of “persons in self-employment include those who during the reference period were: (a) ‘at work’ – i.e., performed some work for profit or family gain, in cash or in kind, or (b) had an enterprise, such as a business or commercial enterprise, a farm or a service undertaking, but were temporarily not at work for any specific reason” ([18], p. 85). In consideration of the importance of entrepreneurship worldwide to economic development and poverty impacts for developing nations, the UN also included “employers, working on their own account or with

one or several partners, hold self-employment jobs and have engaged on a continuous basis one or more persons to work for them in their businesses as employees” ([18], p. 85). The analysis of varied work forms is extended further to include “own-account workers, working on their own account or with one or several partners, hold self-employment jobs and have not engaged any employees on a continuous basis” in measuring the levels of women’s economic work activity in each country ([18], p. 85).

A number of avenues exist for entrepreneurial endeavors on a domestic and global basis, but the critical aspect of a woman’s right of entry to the economic pursuit of privately developed and owned business ventures is financial support (i.e., particularly microcredit, low interest, and no collateral structures for small entrepreneurial endeavors by women in developing countries) and market access (education and business knowledge attainment). Microcredit lending, with low interest rates and no collateral offered to women in Bangladesh and other developing economies to support their entrepreneurial endeavors, has been a vanguard of financial support in the last 15 years with significant advances made by economist Yunus and his development of the Grameen Bank [36, 37]. The repayments of these microcredit, small loans to women, which are “seed funding” for cottage industries, have been in the mid-90 percentiles.

Credit and market access are two features of entrepreneurship that have been and continue to be more difficult for women. Access to education and work experience has been hindered in both developed and developing countries, although the latter significantly impedes gender equality due to a lack of women’s empowerment on social, legal, and ethical bases. In much of the developing world, women have not had access to public space or political empowerment and, thus, have been denied the ability to develop market networks due to a lack of public education, economic market contacts and socialization, and legal aptitude. Business enterprise is built on relationships and networks – with suppliers, financiers, producers, distributors, and consumers – for success.

Social segregation and social responsibilities. Gender polarization and segregation are facts of US and global occupations in traditional business organizations [20]. The loss of identity is a crucial consideration in feelings of social segregation based on both gender and work roles, and work roles are made available because of education, circumstances, and imagination [72]. These obstacles highlight the alienation of many of the US workers portrayed in the film *Working* [13]. However, the statistics for US businesses show increased incidence of entrepreneurship among women, who own almost half of all “privately held U.S. businesses” with at least 51% ownership of the firm ([38], p. 32; [39]). This figure is reflective of the increased status of women in business in the USA, with women comprising 50.8% of the population [40] and 28.7% of all US nonfarm businesses in 2007 (compared to 28% in 2002). Women-owned firms employed 7.6 million persons (6.4% of total US employment) and generated \$1.2 trillion in receipts (3.9% of all receipts) according to the 2007 Survey of Business Owners [41]. Further, “business ownership is defined as having 51% or more of the stock or equity in the business,” according to the 2010 US Census definition [41].

In analyzing industry sectors, the US Census Bureau's Survey of Business Ownership 2007 reports the following statistics: 31.9% of women-owned US firms were in the repair, maintenance, personal, and laundry services sector (NAICS 81) and the health care and social assistance (NAICS 62) sectors [40]. An investigation of the number of women-owned companies by various states finds that California had the largest number of women-owned US firms (1.0 million or 13.3% of all women-owned US firms), with Texas and New York following in prominence. The cities of New York, Los Angeles, and Chicago, in that order, had the largest number of women-owned businesses. Further, 6.9 million women-owned US firms had no paid employees and were solo-run in 2007. These companies are reported as *nonemployer* firms, yet they generated \$182.3 billion in receipts and accounted for 88.3% of the total number of women-owned US firms per the 2007 Survey of Business Ownership [41]. While these statistics show gains in gender issues related to work and entrepreneurship in the USA, there are still obstacles to both domestic and, particularly, global women-owned business experiences.

The US economic market system has been socially stratified by gender. As a result, a number of behavioral and social constructs have been investigated regarding the access to, practice in, and success of the economic market and its constituents. Women-owned businesses have a number of similar challenges reflected in family businesses due to market access, economic and credit access, and recognition. For example, Mitchell, Agle, Chrisman, and Spence [17] examined the ranking of business stakeholder importance, or salience, to market participants based on a number of factors (*legitimacy, power, urgency*) for family firms in the USA. Stakeholder salience is also a critical determinant in gendered entrepreneurial endeavors for developing a woman's authenticity as a business owner, empowerment in the market, and market timing.

- *Legitimacy*. In Western cultures, legitimacy bears a number of definitions, including validity, acceptability, and legality. Legitimacy may be derived from "inheritance, primogeniture, vassalage, homage and fealty, mutual obligation, fiefs and subinfeudation... inheritance and privilege" ([17], p. 243). These characteristics of property ownership are representative of historical gendered legal characteristics of a "chain of legitimacy," or legacies, of male domination and power. These attributes represent opportunities, as well as obstructive challenges, for not only family-owned businesses but also women entrepreneurs. What is similar for entrepreneurs and family-owned businesses is the pursuit of passing an enterprise across generations that could result in "transgenerational sustainability," which provides ongoing family and community opportunities, continuity, and legitimacy ([17], p. 244). Further, socioemotional ties support continuation of community bonds and social capital for women entrepreneurs, as well as gender well-being. The ethical issues related to equity in entrepreneurship opportunities are not merely related to economic goals but also to the "non-economic goals and socioemotional wealth" ([17], p. 247) that are also characteristic of innovative, legitimate business structures.
- *Power*. For women-owned business, as is similar to family firms, power is derived from not only access to market participation and realized economic

wealth but also moral characteristics of a Smithian, free market system: collective community benefits, reciprocity, and long-term commitments from valued stakeholder relationships ([17], p. 248). An analysis of ethics in family firms (see [42]) is scarce in the entrepreneurial literature; this genre is even less available on gender ethics in entrepreneurship [80]. Two avenues for ethical theory application are apparent: virtue ethics, or the development of individual virtuous character and practice as a source of power, and duty-based obligations to oneself and one's community that builds influence and capacity through ally-building [43]. Among the characteristics of ethical power are those that readily apply to entrepreneurial endeavors: "integrity (honesty sincerity, socially-responsible, trustworthy),... courage (ambitious, achievement-oriented, leading, competent),... and zeal (exciting, innovative, imaginative, spirited)" ([42], p. 260).

- *Urgency*. Mitchell et al. [44] define urgency as a "call for immediate action" and a state requiring "time sensitivity and criticality" to the way in which we rank stakeholder claims (p. 867). Entrepreneurship is based on "being well connected" ([25], p. 137), which is an interminable, closely honed skill that needs development over time and space that may not be realized in a sense of urgency. Or, the lack of a sense of exigency may result in lost opportunities for needed market connections and entrance. The "structure and quality of entrepreneurs' *existing* interpersonal ties shape information access and thereby influence outcomes" ([25], p. 137). Vissa [25] points to outcomes such as capability acquisition [45], venture launch [46], and venture growth [92]. Some studies have assumed that entrepreneurs are "nonstrategic actors" and start their venture in a vacuum, absent particular strategic initiatives, or urgency [47]. However, if a market system hinders urgency for some entrepreneurs based on ethnicity, age, disability, gender, or other inherited trait through structural or institutional constructs (i.e., access to credit or business knowledge), then equity of access to the market by a woman entrepreneur becomes an ethical claim.

This chapter further traces a number of brief historical markers and contemporary literature in this author's defining of the challenges of gender and ethics in entrepreneurship endeavors. These definitions necessarily require interpretative analyses of existing theoretical and descriptive analyses of work, private enterprise, and market access.

Gender Issues

Glass ceilings and glass walls. The access to finance, supply chain, and economic market resources are hindered for many women throughout the world. Many of these issues and challenges have been experienced in the USA for both paid organizational work for women as well as for domestic women entrepreneurs. The hindrances to access for intraorganizational progress have been classified as glass ceilings (obstacles to job promotion, increased levels of hierarchal responsibility, and upward mobility in firms) and glass walls (containment within gender-segregated

work roles and/or impediments to lateral job acquisition, training, or development that would enhance upward promotion abilities). Moreover, “horizontal and vertical job segregation has resulted in a persistent gender pay gap everywhere” according to the UN World’s Women report ([18], p. ix). Further, “of the 500 largest corporations in the world, only 13 have a female chief executive officer” ([18], p. x).

The analysis of global statistics illustrates similar constructs of glass ceilings and glass walls that hinder the equitable mobility of work endeavors for women in many countries, particularly those considered to be developing national economies. For example, women comprise 52% of the global workforce, a figure essentially unchanged since 1990 based on the statistics of 196 countries or areas with a population of at least 100,000 as of 1 July 2010 [18]. However, “Northern Africa, Southern Asia and Western Asia remain the regions where women comprise a small [er] share of the labor force – 30% or less” ([18], p. 78). A number of researchers and theorists have explicated the barriers to women in developing nations, particularly due to a lack of economic access, educational capacity, ethical respect for gender, and human dignity.

Division of labor. Yelvington [48] argues that cross-cultural, transgender relations equally comport the nature of power and resistance between the economic classes and between the social divisions within the working class. The ethnic composition is interwoven with the gendered divisions of labor, overlaid on the classic notion of the division of labor within a factory system. Past colonial enfranchisement in Trinidad, for example, and contemporary enterprises of development schemes in Third World and “developing” economy countries have resulted in larger issues of how women are integrated and affixed in socioeconomic roles based on historical colonial functions on plantations and within the context of imputing gendered economic value. The dialectic of the struggle between enfranchisement and autonomy of women seeking economic well-being through paid work endeavors is reflected in the class distinctions of Trinidad.

Moreover, in Eastern and Western Africa, some 47% of women are own-account workers versus paid employees. At first glance, this may be observed as viable entrepreneurial endeavors, but these women are largely engaged in agriculture, where “own-account work and contributing family work are the prevalent forms of employment for women” ([18], p. 86). While own-account employment “allows more flexibility for women, who often have to combine family responsibilities with income-earning activities,” these women face higher economic risks because they do not have safety nets such as credit, property ownership, or access to market networks to build social or market capital; thus, unemployment and lack of socioeconomic support loom large ([18], p. 85).

Women’s agency, access, capability, and social change. The notion of *cultural entrepreneurship* provides identity and legitimacy for women entrepreneurs, and it has direct import on the measure of women’s access and agency in the market. Lounsbury and Glynn [1] investigated what entrepreneurs tell about themselves to others, with findings that “stories function to identify and legitimate new ventures, thus mediating between extant stocks of entrepreneurial resources and subsequent

capital acquisition and wealth creation” (p. 546). In other words, the stories women tell about their entrepreneurial goals, agency, and outcomes serve to familiarize them with venture capitalists and institutional investors, such as banks, NGOs, and foundations who seek to fund individual enterprises. Moreover, the Organisation for Economic Cooperation and Development (OECD) provides one measure of analysis of gender equality that includes the influences of culture on gender access, capability, and social change as these relate to economic development in cross-country comparisons [23, 35]. Further, the World Bank (WB) ([49]), International Labour Organization (ILO), and United Nations (UN) each analyze a variety of data to assess indicators of gender equality, access, and agency. For example, the UN’s Gender-related Development Index (GDI) and the Gender Empowerment measure (GEM) were replaced with the Gender Inequality Index (GII) in 2010, the twentieth anniversary of the Human Development Report of the United Nations Development Program [50]. Therefore, ongoing analysis is determining greater access and needs-approaches to facilitate women’s roles as workers and entrepreneurs through publication of the lack of agency, access, and economic gaps based on gender disparities in each country.

Global Issues

Challenges – fiscal, political, and social. The Council of the European Union put forth a series of binding articles that address the issues and challenges regarding gender bias in business and global economic development: “redressing gender disparities and enhancing the role of women are crucial for social justice and the effectiveness of development efforts” ([51], p. 5). These articles specify what constitutes gender barriers to market entry and the specific remedies to these barriers.

The Economic Commission for Europe (ECE) promotes women’s agency in entrepreneurial endeavors. For instance, a number of UN policies and strategies have resulted in action programs to address specific areas of economic intervention to assist women entrepreneurs, including the Inter-Agency Network on Women and Gender Equality. An analysis of the gender access and equality policies and strategies of specialized agencies was updated June 2, 2011 to include gender mainstreaming, women’s empowerment and income-earning capacity, and entrepreneurial endeavors [52]. In this respect, specific focus is placed on “area of trade, industry and enterprise development (subprogramme 6), [with] the objective. . . to support women’s access to entrepreneurship, particularly in transition economies” [53]. Moreover, the ECE held its 2001 Forum of Women Entrepreneurs in Geneva with over 300 participants representing 39 countries to create and develop a cybermarket of on-line networks of women entrepreneurs. The outcome was to broaden the global digital economy with technological access and inclusion of women [53].

The Gender Empowerment Measure (GEM) “is a measure of agency” and how women’s economic capabilities assist in achieving well-being [54]. In other words,

GEM “evaluates progress in advancing women’s standing in political and economic forums. . . examines the extent to which women and men are able to actively participate in economic and political life and take part in decision-making” [54]. In contrast, the GDI focuses on the expansion of women’s economic capabilities. The Gender Inequality Index (GII) replaced these two measurement tools to refine the data for greater application of collected knowledge about gender and socioeconomic inequalities. Moreover, “gender inequality varies tremendously across countries – the losses in achievement due to gender inequality (not directly comparable to total inequality losses because different variables are used) range from 17% to 85%” according to the Gender Inequality Index [55]. Further, this index measures three areas because “women and girls are discriminated against in health, education and the labor market – with negative repercussions for their freedoms” to fully pursue access and achievement in the economic market [55]. For example, the largest losses due to inequalities in society to women are in South Asia and Arab States, with measurements demonstrating a loss of gender educational and political involvement empowerment of 35% and 33%, respectively, plus 15% and 23% labor market economic achievement losses due to gender inequality in those two regions [55]. Therefore, women are hindered in developing business skills and political empowerment early in life and, therefore, lack necessary business development access to the market.

Access to credit is hindered, particularly for women: CARE and its microfinance impetus have created a “third wave, a market-based approach to economic development seeking to provide sustainable entrepreneurial business endeavors in developing nations,” such as Kenya. Microfinance involves small-amount loans at very low interest rates and no collateral to qualifying, low-income individuals seeking to create an entrepreneurial endeavor, which is considered high risk and therefore generally shunned by traditional and large financial lending institutions. To note, by lending to women in small network groups, defaults have been extremely low ([56], p. 5). Further, development indices fail to account for market trade status indicators, i.e., “micro-entrepreneurs, with their limited resources, can be among those most vulnerable to trade shifts,” which has a more significant effect on women entrepreneurs due to other socioeconomic inequalities related to education, literacy, knowledge, and hindered access to market information ([50], Chap. 2/55). The ownership rights challenge: women’s access to bank loans and credit for entrepreneurial support, their “right to acquire and own land” or other property ([35], p. 70) present insurmountable challenges in many global markets.

The powerlessness of women entrepreneurs is evident. Women lack access to “economic entitlements, effective enfranchisement, or sources of information” ([19], p. 320). Statistical measures of socioeconomic inequalities based on gender may reflect the distribution of economic resources on *average*, but not the nonmonetary, other quality of life, and access aspects to the individual mechanisms for economic distribution that leads to the “growing gap” between women and men worldwide (i.e., educational knowledge, literacy, and math skills that may determine credit requirements) ([23], pp. 54–56). The relationships between a variety of quality of life factors need clearer accounting, which the United Nations’ Human

Development Index [57] has sought to address for socioeconomic human well-being for life expectancy and educational attainment and income. But, more investigation is needed to analyze gendered results of entrepreneurial endeavors on a global basis [78, 81]. For example, gender inequality is greater in Sub-Saharan Africa, South Asia, and Arab States, thus adversely affecting women's ability to engage in entrepreneurial endeavors.

Gender inequality in economic markets is prevalent; and, due to the inequitable opportunities and gender discrimination for many women in developing and developed countries, the Convention on All Forms of Discrimination against Women (CEDAW) and the international negotiations that produced the Beijing Platform for Action of the 1995 UN Fourth World Conference on Women furthered awareness to address market opportunity challenges ([50], Chap. 2/57). Women's entrepreneurship is constrained by the "the disproportionate burden of unpaid work which they carry. That limits their choices and the time they have to generate income" [58]. Further, the "unpaid work is perhaps the biggest contribution that women make to the economy, even though their access to the paid labor market continues to rise," much more needs to be researched on the development, achievement, and empowerment of women's "own account" production and services, as well as entrepreneurial market endeavors ([50], Chap. 2/58; [23], pp. 128–131). Moreover, health issues of women, their children, and family members prevent continuity of women's private work projects due to lack of access and money for health care – such as the devastation that has resulted from the HIV epidemic in a number of developing African countries.

Further challenges in many countries are the lack of equitable legal remedies and protections for women, some of which also allow banks to require a male-signatory for any woman seeking to open a bank account or line of credit. Moreover, women do not have the right to own land and property in many countries nor are they permitted to inherit assets based on legal and social norms. These obstructions deny women the equal opportunity and status in their societies to develop and operate their own business, or the ability to have a public "voice" in community affairs. These aspects of economic independence are *critical for economic empowerment* [58].

Cottage industries. The "cottage industry" of many women has not been recognized as eligible for paid economic endeavor in many countries, but rather has been subsumed as part of overall household (unpaid) support and not recognized in many indices as business endeavors (i.e., selling milk from the family goat herd, woven fabric for clothing, etc.). In fact, index measurements have lacked measurement for these factors, and "household production could be given a market valuation if an equivalent product is offered on the market" and/or cottage industries' producers found wider market presence for their products ([23], p. 128).

Could cottage industries and women entrepreneurial endeavors reverse some of the most intractable challenges of poverty in developing communities? Poverty eradication and gender equality are among the UN Millennium Development Goals (MDGs) for the twenty-first century. Research conducted by the UN agencies and international organizations establishes close interlinks between the two concepts and indicates that gender inequalities limit economic development [35]. In other

words, human well-being includes equity in the marketplace to allow all individuals access to develop their capabilities as human beings regardless of gender and country of location [35].

Education, circumstances, and imagination. The “gender divide” in women’s access to technology is another challenge, which is linked to hindrances in education and attainment of literacy and math skills, among others. The global economy is technology-driven. Therefore, women entrepreneurs risk becoming marginalized without equal access to education and technological innovations that connect them to the market [74]. As critical, tech connections can “perpetuate existing gender-based inequalities. . . [unless access to] opportunities and resources that significantly contribute to the economic, political, and social empowerment of women” are made available ([59], p. 4). Further, ([35], pp. 72–73) argue that the “modernization-neoclassical thesis of gender inequality. . . suggests that a reduction of inequalities in the process of economic development” holds where developed, high-income countries have lower instances of gender inequalities related to market access and human well-being development. In other words, the lack of access to asset and property ownership for women or the ability to “independently leave the house” to obtain education or market participation results in gender inequality in the labor market, inclusive of entrepreneurial endeavors ([35], p. 73).

The Global Gender Gap Report Index measurements demonstrate that “Nordic countries Iceland (1), Norway (2), Finland (3) and Sweden (4) continue to demonstrate the greatest equality between men and women,” socially, economically, and legally, while the USA has reached 19th (its highest ranking in 5 years due to improved gender wage gaps and political leadership access for women) out of the 134 countries analyzed [60]. In the report, the “most comprehensive measure of gender equality” uses an analysis of how well these countries “divide resources and opportunities amongst male and female populations, regardless of the overall levels of these resources” ([35], p. 78). The report measures the size of the gender inequality gap in four areas:

- Economic participation and opportunity – outcomes on salaries, participation levels, and access to high-skilled employment
- Educational attainment – outcomes on access to basic and higher-level education
- Political empowerment – outcomes on representation in decision-making structures
- Health and survival – outcomes on life expectancy and sex ratio ([35], p. 78)

From another perspective, the UN has reported that “while Western Europe and North America have experienced a steady and continuous upward trend in women’s employability (see [61]), there had been serious setbacks in women’s labor market positions in countries of Eastern Europe, Central Asia and the Caucasus during the years of GDP decline and restructuring in the early 1990s, with women experiencing disproportionate cuts in employment, loss of job security, increasing wage differentials and cuts in social benefits” [62]. These markers of socioeconomic well-being are particularly crucial for women entrepreneurs.

Therefore, rising job uncertainty may lead to increased innovative mechanisms for paid work endeavors, such as atypical working arrangements, outsourcing some

areas of production, and self-employment as mechanisms for women to develop stable income for themselves and their dependent families. Entrepreneurial endeavors headed by women “tend to be smaller than men’s and are more likely to be in low-growth sectors” [62]. Historically, women have had greater barriers than men in developing their own viable businesses due to nonexistent or inconsistent access to credit, market information and networks, viable economic markets, and educational and vocational training. However, some progress is observed in institutional support for women’s individual business development through organizations such as the Women Entrepreneurs Support Association. For example, in Kyrgyzstan, “free legal consultations about property ownership and land rights to women interested in becoming self-employed, including people in remote areas” have been established [62].

Conclusion

Directions in entrepreneurship. The gender equality goal of the United Nations’ Millennium Development mission (MDG) for 2015 is based on women’s empowerment in the economic market using a number of measurements, such as the GII [58, 63]:

Women’s economic empowerment is central to gender equality and to MDG achievement. Supporting women to start their own businesses, or expand existing ones, empowers them, reduces inequality, and stimulates economic growth. [58]

In order for women to succeed as entrepreneurs, innovative microcredit, financial services, educational opportunities, and employment internships need to be developed further for women to freely access their desired market pursuits. Estimates indicate that in Africa, women “receive less than 10% of all credit going to small farmers and only 1% of the total credit for the agricultural sector,” yet they are a majority of the agricultural labor workforce [58]. However, despite the challenges, UNDP has developed and continues to support efforts to provide empowerment to across national boundaries by providing crucial access to equity and credit to finance entrepreneurial endeavors, some of which are formed in partnership with the private sector. Some examples are as follows:

- In Kenya, UNDP partnered with Equity Bank, UNIDO, ILO, and the Ministry of Finance to establish the Fanikisha Initiative. It enables women to access credit and provides entrepreneurial skills training;
- In Timor-Leste, UNDP supported an initiative for vocational and enterprise development training, micro credit, and job placement services. It reached more than 10,000 people, 77 per cent of whom were women; and
- In Nepal, a major UNDP microfinance programme helped create over eight thousand new entrepreneurs, of whom 68 per cent were women [58].

The goal of human development that is inclusive of creating space for women entrepreneurs of both developed and developing nations is to foster gender equality of education and access, economic empowerment, and civic participation as the goal of all “civil society, communities, local action networks, social entrepreneurs, local authorities, parliamentarians and corporations” [50].

Further research needs. Women's participation and access to the market are not delineated by entrepreneurial endeavor and compared for market access and inclusion in the entrepreneurial literature the author has noted in this chapter. This is an area ripe for research development as a further index of economic access and well-being of gender equality in entrepreneurship. The outcomes of gender equality in entrepreneurial endeavors may be similar to, but require further research on, women entrepreneurs acting as "stewards" rather than "agents" in the marketplace based on their own experience challenges and opportunities ([42], p. 262; [64, 65]). Market identity-factor and social controls may have an influence on women entrepreneurial ethics, which research may demonstrate the effects, if any, of gender on engagement in corruption, bribery, etc. [80].

This chapter suggests a need for a theoretical perspective of gender in entrepreneurship to understand the gendered actions and structures of women's individual enterprise in the global market. Long and Mathews [66] investigated the ethics in family firms, positing use of the social exchange theory to mark the interactions within and outside of these businesses. However, women entrepreneurs may be solo, in partnership, or part of a gendered collective. Therefore, social exchange theory only partially addresses the entrepreneur's intentions, schemas, and interactions with her stakeholders. Similar to Payne [42] and Long and Mathews' approach to family versus nonfamily firms' ethical culture and practices, this chapter explored some of the reasoning behind a woman entrepreneur who seeks to "create, maintain, and remain committed to the reciprocal social and moral obligations" of being a private business owner ([42], p. 289). Individual business owners and women entrepreneurs exemplify Adam Smith's moral theory of the market and its workings in communities – women seeking to be a baker, a shoemaker, or whatever capacity she has a capacity to provide.

The practice of entrepreneurship marks a segregation of work roles for individuals, but more so for women, due to women's gender identity in the market and the lack of available market, economic, and political networks to facilitate business growth and sustainability.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Business Contribution to Human Development from the Capabilities Approach Standpoint](#)
- ▶ [Capabilities, Human Rights and Business](#)
- ▶ [Entrepreneurship and Ethics](#)
- ▶ [Feminist Care Ethics and Business Ethics](#)
- ▶ [Framing Global Gender Issues: Cross-Cultural Theory and Analysis](#)
- ▶ [Poverty as a Lack of Freedom: A Short History of the Capability Approach](#)
- ▶ [The Capability Approach as Guidance for Corporate Ethics](#)

- ▶ [The Philosophical Foundations of the Capabilities Approach](#)
- ▶ [Women's Work: Global Trends and Demographics of Wealth and Employment](#)
- ▶ [Work/Life Integration](#)

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Abstract

Gender greatly impacts access to opportunities, potential, and success in corporate leadership roles. We begin with a general presentation of why such discussion is necessary for basic considerations of justice and fairness in gender equality and how the issues we raise must impact any ethical perspective on gender in the corporate workplace. We continue with a breakdown of the central categories affecting the success of women in corporate leadership roles. The first of these includes gender-influenced behavioral factors, such as the requirements and expectations of gendered verbal and nonverbal communication styles as well as appearance. We move on to address the impact of family on corporate leadership opportunities and success, discussing the asymmetrical evaluation of an individual's potential, authority, and competence based on gender stereotypes of familial obligations and expectations. Finally, we address how gender impacts access to networking and sponsorship opportunities and the long-term effects of systematic limitations on women's inclusion in the upper echelons of corporate leadership. We conclude with a summary of the questions and issues raised by our discussion and direct individuals to consider how different ethical systems and moral requirements might influence their interpretations of gender and leadership in the corporate workplace.

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Introduction

The glass ceiling, the glass elevator, the labyrinth, the leaky pipeline, the broken pipeline – all of these phrases have been used in business literature and popular media to describe the startling absence of women in positions of senior management and corporate leadership. Title VII of the US Civil Rights Act of 1964 prohibits sex (and/or gender) discrimination in hiring decisions, while the Equal Pay Act of 1963 requires that men and women be paid equally for substantially equal work. Yet, it seems that these legal requirements fail to obviate gender as a very real – and very problematic – element in the US corporate workplace.

Gender bias is a prominent and pressing issue within corporate leadership today. This bias includes denying equal opportunity to certain positions because of gender,¹ but it also includes negatively altering our treatment and expectations of individuals based on their gender and its associated stereotypes. When one's gender changes the expectations and assumptions about job performance and potential, questions of justice and fairness arise, creating a clear concern for ethical business practice. The disparity between the percentage of women in the workforce and the percentage in upper management is shocking. In the past 10 years in the United States, women have comprised approximately 46% of the workforce [1] and approximately 50–51% of management [2, 3]. Yet in 2009–2010, women only held 13.5% and 14.4% of executive officer positions [4, 5]. Women held a slightly higher percentage of executive officer positions in Fortune 500 companies (15.7% in 2002, 16.4% in 2004, then dipping down to 15.4% in 2006 and rising back to 15.7% in 2008) [6–8]. Women have made some progress in their representation on corporate boards: in 2001, women held only 12.4% of corporate board seats on Fortune 500 boards. In 2010, women held 15.7% of corporate board seats [4–8]. This trend is not limited to the United States: the nonprofit organization Catalyst tracks the status of women in the workforce in Canada, Europe, Australia, Japan, and other countries and reports similar statistical trends: the percentage of women in senior management and on corporate boards is remarkably smaller than the overall percentage of women in the workforce.²

The issues of gender equity in corporate leadership are of serious ethical concern to legitimate business practice and can be articulated as issues of fairness and justice. If we take seriously the claim that all persons (both men *and* women) are worthy of moral consideration, then all humans deserve fair and just treatment. If one gender is systematically and unfairly preferred, then moral standards have been violated. Here, we argue that with regard to corporate leadership positions, women face assumptions and treatment that is not fair or just. This treatment explains what has been termed the “leaky” or “blocked” pipeline of women in management: though women represent approximately half of all employees and half of management, they comprise only a small percentage of upper management.

In this chapter, we present a discussion of the central issues concerning how gender impacts access to opportunities, potential, and success in corporate leadership roles. We begin with a general presentation of why such discussion is necessary for basic considerations of justice and fairness in gender equity and how the issues

we raise must impact any ethical perspective on gender in the corporate workplace. We continue with a breakdown of the central categories affecting the success of women in corporate leadership roles. The first of these includes gender-influenced behavioral factors, such as the requirements and expectations of gendered verbal and nonverbal communication styles, including appearance. We move on to address the impact of family on corporate leadership opportunities and success, discussing the asymmetrical evaluation of an individual's potential, authority, and competence based on gender stereotypes of familial obligations and expectations. Finally, we address how gender impacts access to inner networking and mentorship opportunities and the long-term effects of systematic limitations on women's inclusion in the upper echelons of corporate leadership. We conclude with a summary of the questions and issues raised by our discussion and direct individuals to consider how different ethical systems and moral requirements might influence their interpretations of gender and leadership in the corporate workplace.

Behavioral Expectations

One central element of concern regarding the treatment of women in corporate leadership can be considered under the heading of "behavioral factors." By behavioral we mean such factors as verbal and nonverbal communication styles, including the specific nonverbal element of appearance. Women are faced with a number of mixed messages in the corporate and professional workplace: do not look sexy but dress in a skirt, do not make yourself stand out but always wear makeup, do not make an issue of your sex but do not show up without your panty hose [9]. If a woman looks too masculine, she is treated with contempt, but if a woman appears too beautiful, she is treated as a sex object. Women are also presented with conflicting messages in negotiating and speech. Many claim to explain the disparity in pay, for example, as a failure of women to perform well in initial salary negotiations [10]. Yet when women take up strategies in negotiating viewed as "masculine," they are consistently labeled as domineering, unfriendly, and "bitchy." In fact, in one study where women were directed to present a script of precisely the same wording as their successful and favorably viewed male counterpart, women were evaluated negatively, and potential employers indicated that they would prefer not to work with women presenting similar personality traits.

When considering the role of gender in decisions, expectations, and evaluations of corporate leadership potential and success, it is important to recall that women constitute more than 50% of the population (as of 2009, 50.7% of the overall US population) [11]. Yet the "standard" in corporate environments is consistently based on a masculine or male prototype. The measure of a woman's performance is whether she is "as good as" her male counterpart, she will be accepted as legitimate if she can compete with *him*, and she will be allowed access to his networks and opportunities if she can erase from notice those attributes that mark her as feminine. When those markers are impossible to erase, however, such as in the case of general appearance (breasts, hips) or pregnancy, the focus on how to

present oneself professionally, as a woman, can become not only difficult to negotiate but embarrassing, humiliating, and damaging to self-esteem.

Historically, women have been underrepresented in many workplace environments in leadership roles. Instead, women have largely been present as secretaries, or, in more current terms, “executive assistants.” There are many stereotypical representations of women in these roles, and those stereotypes often include the sexualized role of the submissive and the feminine. Women have therefore been expected to conform in dress and appearance, as well as in behavior and speech. The film noir picture of the sexy secretary, or the more contemporary image of the sexual submissive, permeates our cultural expectations for women and their role in the workplace. This image, however, is clearly at odds with holding leadership positions in a largely male-dominated environment. It also creates confusion over how women *ought* to behave, dress, and speak.

Christina Binkley of the Wall Street Journal, for example, addresses the role of appearance in the business world, explaining that, unlike their male counterparts, women have not held a long-time tradition in the corporate workforce. She notes how women are admonished to dress in a way that shows that they are women, but not in a way that might be construed as less serious, more serious, less professional, more professional, or threatening to their male colleagues. As if these vague requirements were not already confusing, women executives also are warned not to appear interested in fashion, and there are generally no written policies or guidelines about how they should dress. Binkley explains, “According to unwritten rules, their appearance at work should be attractive but not alluring, feminine but not girly, strong but not severe. In both politics and the executive suite, they face hazier, harder-to-meet style standards than men” [12].

Female executives, then, are charged with a daunting task: to look female but not overly feminine; to appear powerful, but not *too* powerful; and to look conservative and authoritative without appearing overly masculine or intimidating. Binkley writes, “The attention brought to clothing is a two-edged sword for authoritative women everywhere. A style misstep can be career-limiting. Yet paying too much attention to one’s appearance risks accusations of frivolity – which is equally career-limiting” [12].

This confusion that women ubiquitously experience is often referred to as the “double bind”: the behavioral equivalent of “damned if you do, damned if you don’t.” In corporate America, no matter what women do, they just cannot seem to win [13]. When women are authoritative and assertive, like the men that they compete with (as they are often encouraged to be [14, 15]), they are perceived as “bitchy” and intimidating. Yet if they behave in the expected, “feminine” manner, that is, deferential, accommodating, and nonconfrontational, they will be bowled over and forgotten, dismissed as vapid and treated as furniture. Deborah Tannen [16] and Carol Gilligan [17] both discuss this phenomenon in their well-known work on gendered linguistics and gendered moral psychology, respectively. This devaluation of women’s linguistic styles and the dismissal of stereotypically “female” reasoning approaches are strong forces hindering the success of women in corporate leadership roles [13].

Women, therefore, are less likely to self-promote for fear of backlash – from both men *and* women. Unfortunately, to succeed in roles of authority (a stereotypically male domain), one is required to set oneself apart, promote oneself, and speak with confidence and certitude. These are all traits that inspire hatred, ostracism, and disdain when demonstrated by women [18], but they are also instrumental in securing the attention and merit required for promotion to the upper ranks of corporate leadership. The presence, then, of this paradoxical set of expectations leads women to back off from overstepping their linguistic authority. Women managers are more likely to utilize a linguistic form of requests, for example, asking, “Can you prepare the presentation for tomorrow at one?” rather than demanding, “You will present your findings tomorrow at one” [13, 16].

This approach has been documented as useful, to some extent, specifically when combined with “appropriately” framed appeals to authority. Bowles and Babcock in their recent work discuss the accumulated research appraising the effect that a woman’s gender has on how her behavior and communication choices will be interpreted in the workplace [10]. They cite numerous studies documenting the impact of gender on how one’s speech and actions are perceived, and demonstrate the previously cited “double bind” that women face in the workplace. They go further, however, moving beyond the gloomy picture this research paints in order to test potential strategies women can use to mitigate the negative impact their gender has on access to leadership roles, equitable compensation, and respect. They conclude that:

To improve both negotiation and social outcomes, we propose that women combine these two strategies [maintaining femininity and presenting a compelling case] by accounting for their negotiating behavior in inherently relational terms. We refer to this approach as using a “relational account,” a strategy that makes female negotiators appear more relational (i.e., gender stereotype congruent) while simultaneously making their compensation requests seem more legitimate [10].

Research such as this is very timely and extremely helpful to women “in the field.” It does, however, bring us to question the ethical and conceptual implications for the *necessity* of such work. Should we, for example, be focusing on finding ways for women to survive the system? Or, as we suggest here, should we move beyond this preliminary stopgap and consider ways to *change* the conditions that make it necessary for women to tiptoe around the paradoxical demands on women wishing to achieve success as corporate leaders? Recognizing that the way we treat one another is an ethical *choice*, rather than a “fact of nature,” reminds us that we can choose to change the conditions for our workplace, question our assumptions about *who* ought to behave *how*, and move toward a more equitable environment that allows all of us – women and men, both – to engage our talents.

Family

The McKinsey report “Unlocking the full potential of women in the U.S. economy” outlines four barriers that women face against advancement: structural obstacles, lifestyle issues, imbedded (sic) institutional mindsets, and imbedded (sic) individual

mindsets. Of these, lifestyle issues and imbedded institutional and individual mindsets are greatly affected by what has traditionally been seen as women's role in the family.

There is an assumption in society that women are more focused on their families than men. When men have a family, they are seen as more stable and thus more responsible, which lends support to their claims on management positions. Women, on the other hand, are thought to be distracted and thus less able to do difficult and demanding work once they have families. In their careers, then, men will be more likely to seek advancement and will not worry so much about work/life balance. It is assumed that women will not seek and should not be put in positions that would compromise work/life balance and the time they have to spend with their families.

The major assumption from the lifestyle standpoint, then, is that women do or will have families, and they will not want to undertake demanding work positions because such positions jeopardize their time with their families. Such assumptions influence those who make decisions on behalf of institutions (companies) and are reflected in the biases of some individuals. These individuals include professionals in human resources and hiring managers, who make decisions about which individuals get interviews, are hired, and are worthy of promotion. This bias shows up in the current family status of women in executive offices: 41% of women in these offices do not have an intimate partner at the time of appointment, and 40% do not have children [19].

Even more concerning is the recent research [20] suggesting that high-skilled women in general are disproportionately affected by child rearing with respect to their low-skilled counterparts. Whereas the low-skilled women will "have wages that are 12% lower than their counterparts after 10 years, high scoring women have pay that is 35% lower".³ These results are interpreted to indicate a bias against women that is long ranging, however, rather than immediately observable, and the difference is *not* explained by reduced work experience, greater time off, or changes in profession or company. Researchers conclude that many studies overlook or downplay such disturbing trends in the long term economic success of high-skilled women and that the true economic cost of being a mother who is educated and highly skilled is even more striking than previously surmised.

The assumption that a woman who works and has a family has extra demands on her time is not unwarranted. As Michael S. Kimmel points out in *The Gendered Society*, it is true that in the United States, women, even mothers who work full time, continue to do more of the housework and child care than men do [21]. For working women, this is often referred to as "the second shift." But this does not affect women's desire to take more demanding jobs: both women and men are influenced by their family status in their choice of positions as well as in choosing additional responsibility. According to a survey done by McKinsey and Co. in February of 2011, a similar percentage of both men and women who have children said they would not consider taking a job with more responsibilities if it would upset work/life balance: 63% of women and 51% of men with one child said they would only pursue a job if it allows for good work/life balance, while 67% of women and 58% of men with more than one child said they would only pursue a job if it allows for good work/life balance [22]. The assumption that women cannot do

a certain job because they would have difficulty balancing their work with their families is also inconsistent with the reality of actual businesswomen. Of the few women in corporate leadership, many do have families, and they find a way to balance their corporate responsibilities with their family responsibilities.

Women in prominent organizations are aware of the inherent institutional bias against putting women with families in positions of corporate leadership. Women who have children see their opportunities for advancement decreasing, while men see their opportunities for advancement increasing: 78% of women with no children believe they have the opportunity to advance, while only 74% of women with one child and 70% of women with more than one child believe they have the opportunity [22]. In contrast, men with children see their opportunities to advance as *increasing*: 69% of men with no children believe they have an opportunity to advance, while 77% of men with one child and 80% of men with more than one child see the same opportunity [22].

Making assumptions about an individual's abilities and professional commitment based on gender and perceived familial responsibilities has a disproportionately negative impact on women and is unfair. When we fall back on social expectations about what groups *should* want, rather than what an individual has demonstrated she is pursuing, her choices are limited and in some cases she is denied meaningful work without legitimate reason. Though it is clear that some women do choose to limit their professional lives so that they have more time available for family, making an assumption that this is what a woman *ought* to choose, or that this is what a woman *will* ultimately choose, is at odds with fair and ethical treatment of employees and coworkers. Additionally, the assumption that family obligations and a robust family life are incompatible with a strong and ambitious career in corporate leadership may be unfounded.

As corporate climates evolve and as the landscape of our workplace changes, we may see corporate culture alter as well. Though not the standard, there are alternative corporate models that encourage a more balanced life for their employees and reconceptualize what it means to be a successful worker and leader [23]. As we discuss elsewhere here, the instinctive expectation that for women to survive and thrive in the corporate world they must adapt to the current system and the assumption that in order for women to be successful they must learn to be successful in the traditional society of men are both shortsighted. Both women *and* men frequently desire to have families and to experience and influence their family's day-to-day life [24, 25]. It is increasingly clear that as social roles in the family shift, the sustainability of the traditional corporate hustle will need to shift as well – not just to accommodate women, but to respond to the changing desires of men as well [26].

The outdated assumption that women are ill suited to the boardroom is also a problem from a business standpoint: Rebecca Blumenstein, for example, explains that the lack of women in corporate leadership positions is “becoming a competitive issue for the U.S. and its growth potential, according to economists, because many developing countries such as China and India are making rapid strides in how effectively they utilize women, which is helping fuel their growth rates” [27].

The fact that denying women equal opportunity to be corporate leaders is unfair is enough of a moral reason to change the practice in itself. But since such a practice also creates a competitive disadvantage for the companies where it exists, it is not clear why such denials occur in the first place.

Networks and Sponsors

An old adage says that when it comes to getting a job, “It’s not what you know, but who you know.” This still holds true in corporate America. “Networking” was a popular buzzword – people attend formal networking events to meet others who are in their industry or who are also looking to make social connections that will lead to corporate advancement. But networks can also be informal, consisting of individuals one meets on the job or with whom one went to school.

These networks often do result in new positions and corporate advancement. In response to this, companies and informal groups set up networking opportunities in their companies that are designed specifically for women in an effort to give women the same chances to advance in their careers as men. These efforts, however, are not working, in part for two reasons: first, the necessity of sponsors, not networks, and second, the criteria for promotions.

Although networking has been seen as the avenue for advancement, part of the problem is who attends the networking events. Many networking events are aimed at connecting people at similar career stages or with similar goals. Others are aimed at helping individuals find mentors. But in both of these cases, there are not many (if any) criteria that are used to screen people who want to take advantage of these events. Patricia Davis, JP Morgan Chase’s global diversity officer, was quoted as saying that these events “are great because they build a lot of goodwill in the system. . .and that makes the place feel smaller. . .But anybody can participate—you can be the worst performer or the best performer. It’s feeding the masses” [28]. Mentorship can be similarly problematic – mentors often give career advice but do little to actively promote their mentees.

In terms of advancing into corporate leadership positions, sponsors are more important than individuals met while networking and mentors. Sponsors are individuals who actively work to promote the careers of the individuals they sponsor. Sponsorship is extremely important as one moves up the levels of corporate management. As Chief Diversity Officer for Intel Rosalind Hudnell stated, “When you get to the level where decisions are made about your career that are not just up to an individual manager, feedback from other leaders becomes crucial. . .Having a sponsor who can provide that endorsement is critical” [29]. Sponsorship programs for women at JPMorgan, for example, are starting to show results for those women seeking senior-level management positions: women hold 54% of mid-level management positions and 23% of senior-level roles [28]. Yet men are 46% more likely to have a sponsor than women [28]. Even women who realize the importance of cultivating these relationships are sometimes hesitant to do so because of the popular assumption that a powerful man with a female protege

is receiving sexual favors from her [29]. Additionally, some women believe that all they need to do in order to be promoted is to work hard and be successful; eventually, someone will notice and promote them based on their success. This is partially true: women do tend to be promoted based on success. But the same metric is not applied to men: men tend to be promoted based on their *potential*, not on their proven success [30].

The members of the Women in the Economy task force also recognize the importance of having a sponsor: “Improving Sponsorship and Mentoring programs” was one of their top five recommendations for how to increase the number of women in corporate leadership [31]. But in finding sponsors, women face another challenge: there simply are not many women higher up in organizations who could serve as sponsors or even as role models [30].

The issues of sponsorship are not as straightforward as they may seem, though. While it is true that women who want to enter positions of corporate leadership need sponsors, most of these sponsors end up being men simply because there are more men in these positions. So, men who can act as sponsors must realize the importance of sponsoring promising women. This is where the importance of institutional and individual mindsets again limits women’s ability to advance. According to Barbara Annis, the CEO and founder of Barbara Annis and Associates, a consultancy firm that specialized in gender intelligence and inclusive leadership, the problem is that in many companies, “[w]hen a company has a challenge involving women, they tend to put the emphasis on women to fix that challenge” [31]. Instead, men and women need to understand the role that gender bias plays in promotions and hiring, particularly in corporate leadership positions levels. This is necessary to counteract the attitudes that diversity officers often find in both male and female hiring managers, who justify hiring men over women for certain positions for reasons including the following: “Everybody ‘knows’ you can’t put a woman in that particular slot” [31], “That job could be never be done part-time” [31], and “If you promote a woman and she goes out on leave, we won’t make our numbers” [32].

In addition to lacking sponsors, and in conjunction with differing standards for promotions (performance for women, potential for men), women often are not in the right kinds of jobs for promotion to corporate leadership positions. Women’s career paths tend to be less linear than men’s, prompting a comparison to “off-ramps and on-ramps” and “labyrinths” when discussing women’s careers [33, 34]. According to the McKinsey report on women in the US economy, “62% of women are in staff jobs that rarely lead to a CEO role” [30]. To counter this, the Wall Street Journal Task Force recommends that women take on roles and positions that will directly affect the profit and loss statement for the company, providing them with a necessary set of skills for entering corporate leadership positions.

Conclusion

At the core of these issues, however, we find a central problem: when considering the topic of “gender,” what we really seem to mean is “women.” When phrased this way, it can seem to many that the “problem” of women in corporate leadership is really just a “women’s issue.” Why, after all, should everyone else

care about the problems that women face? And if women really were as good as men at “business,” would they not rise to the top on “their own merits”? In fact, when we put it this way, the conversation seems very familiar; these questions are often strikingly similar to those asked in the context of minority concerns in the corporate workforce.

While the specifics of the difficulties for women succeeding in upper management are particular to the psychological and structural undergirdings of gender, the effects – and the arguments used to rationalize them – are closely related to those observed for other disadvantaged groups. Though women are a distinct *majority* in the overall population, they are a remarkable minority in corporate leadership roles. This has been true historically, and, as we have discussed here, the systemic and structural facts about our culture and political society are significant contributors to this reality. As such, women constitute a disadvantaged group. When a group is politically and socially disadvantaged, that group becomes the proper subject of ethical concern and social justice.

Our discussion of how gender impacts our expectations and interpretations of coworkers and employees demonstrates how the status quo is outdated and disproportionately harmful to women. The clear existence of a double bind requiring that women behave more masculinely, while at the same time negatively impacting our appraisal of them when they do, points to some very deeply ingrained biases held by both men and women. The paradoxical set of expectations that women must navigate in order to succeed as corporate leaders requires that women deftly avoid the pitfalls of self-sabotage that these conflicting demands can easily produce. The added pressure that women experience, and the additional scrutiny that they must constantly succeed under, is inequitable, unfair, and in need of change. As Deborah Rohde, a notable figure in discussions of gender in the workplace explains, “Despite considerable progress over the last quarter century, women workers are still frequently perceived as less competent than men. . . Even where male and female performance is objectively equal, women are held to higher standards, and their competence is rated lower” [35]. While a great deal of work has been accomplished in efforts to aid women wishing to succeed within the confines of the male-dominated and stereotypically masculine environment of corporate America, we suggest there are strong moral grounds for a call to reenvision what we mean by “corporate leader” and how we should expect her to behave.

As discussed in the section on family, assumptions about women’s desire to have families and their roles in their families negatively impact women who seek corporate leadership positions. Women who are seeking corporate leadership positions are aware of the demands of the job. Assuming that they do not realize the time commitment and that they would be unwilling to make such a commitment or that they should not make such a commitment if they have a family denies women equal opportunity to those positions. Further, assuming that all women want families and denying them access to positions of corporate leadership on those grounds is also problematic. This denial makes the treatment of women unfair.

Additionally, as Davis, Yoo, and Baker report, many of the boards and corporate leadership positions at large companies in the United States are comprised of an interlocking network, that is, many boards and corporations are run by a small group of elite individuals [36]. As discussed earlier, the McKinsey report states that women have limited access to the informal networks and sponsorships which often help boost individuals into corporate leadership. This lack of access shows that positions of corporate leadership are not open to all because they are not open to individuals who are not part of these informal networks or who do not have sponsors advocating for them.

Given the barriers that stand in the way of women reaching the upper echelons of corporate leadership, it is no surprise that the percentages of women in corporate leadership positions are so low. The issue is not that corporations lack women with the talent and skill to take on these positions – rather, the problem is that the barriers that stand in the way often lead women to believe that there is no real opportunity for advancement [30]. This is both a practical problem for business and a moral problem that requires attention. The issue, though, is the pervasiveness of the barriers. If we are to have real gender equity in corporate leadership, change must occur not only within the higher levels of corporations themselves but all the way down through the ranks, including the mindset of the employees' direct supervisors [30]. As we have suggested here, gender bias is an insidious force in corporate America and has a striking effect on the treatment and relative success of women in corporate leadership. Though it is not always obvious or intentional, gender bias has a very real influence on which individuals we choose to run our businesses and how we perceive those individuals. The ethical issues raised by the presence of gender bias in corporate leadership, therefore, should be of concern not just to women but to us all.

Cross-References

- ▶ [Feminist Care Ethics and Business Ethics](#)
- ▶ [Framing Global Gender Issues: Cross-Cultural Theory and Analysis](#)
- ▶ [Gender Issues in Entrepreneurship](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [Women's Work: Global Trends and Demographics of Wealth and Employment](#)
- ▶ [Work/Life Integration](#)

Notes

1. It is not the only inequality; other inequalities, such as race and class, are present as well. These can often intersect with gender, but can stand alone, as well. In this chapter, our focus is on gender, specifically.
2. Though the present levels of women in corporate leadership around the globe are problematic, the experience of women today trying to enter the

- ranks of corporate leadership differs from the experience of women who were attempting the same feat over a generation ago. Similarly, older women today have a different experience when they work to attain high-level positions of corporate leadership. Though the differences between the two groups are important and worthy of research, they are not the main focus of our work here.
3. “Low skilled” is determined here by performance on the Armed Forces Qualification Test resulting in placement within the bottom third of NLSY respondents. High skilled respondents are identified as those falling within the top third of test takers. Wilde, 2010, p.16.

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Abstract

Some provisions of the UN's Convention on the Elimination of Discrimination Against Women (CEDAW) are clearly important from the perspective of business ethics, particularly those calling for equal rights for women to employment and financial security. Some other provisions of CEDAW are equally as important for ethical business practices and Corporate Social Responsibility (CSR), but are frequently overlooked because of the presumption that they are not strictly business concerns: the rights of women to participation in public life, marriage, and family rights; the rights of rural women to adequate living conditions; and general rights to equality. This chapter will discuss the conceptual commitments that underlie the assumption of a clear demarcation between work and life concerns, and examine the criticisms of this assumption made by feminism. It will, in particular, be interested in:

- The public/private distinction
- The meaning of "work" or "labor"
- The relationship between CSR and care ethics
- Fostering a broader understanding of the family or familial relations
- Examining the connection between fair wages and work/life integration

These discussions suggest that the ability for businesses worldwide to uphold the tenets of CEDAW is dependent upon a reconsideration of the character of the Ideal Worker and a nuanced understanding of the effects of workplace policies on the wider communities in which businesses operate. In particular, though work/life integration is not strictly speaking a "women's issue," the ethical and policy considerations addressed herein currently have disproportionately negative effects for women; thus, addressing them is crucial for achieving the aims of gender equality.

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Introduction

When taking the provisions of the United Nations' Convention on the Elimination of Discrimination Against Women (CEDAW) as a guideline for approaching gender issues in business ethics, it is clear that some provisions – such the declaration that women have equal rights to employment, and should not be discriminated against on the basis of marital status or maternity, and the claim that women have equal rights to full participation in economic life – are of obvious concern for anyone interested in ethical business practices. Indeed, employment law in many countries reflects a concern with the prohibition of such discrimination, and public discussion of sexism in business practices tends to focus exclusively on this form of discrimination, particularly in hiring practices. One might be left with the impression, then, that as long as barriers to women's employment are eliminated, one's business practices can be assured to be fully ethical. However, it is important to notice that CEDAW provisions with implications for business ethics extend beyond prohibitions against employment discrimination. In fact, other provisions of CEDAW – including the right to full participation in public life, equal rights within marriage and family life, and rights to adequate rural living conditions – have significant implications for ethical business practices. Because workers, whatever their genders, are always also members of families and communities, there are important connections between concerns that we have often understood as strictly divided between one's "work" life and one's "private" life. Moreover, workplace policies not sufficiently attuned to these connections have disproportionately negative impacts on the lives of women workers.

Though attending to concerns about work/life integration is fairly new in the business world, the insight that work life and private life cannot be thoroughly disentangled is not a new one for feminists. If this is so, why have discussions of ethical business practice so infrequently included policy changes supporting better work/life integration, or practices fostering gender equality beyond employment discrimination? Feminist philosophers have pointed out that there are important conceptual commitments underlying our collective failure to notice the many respects in which our approaches to business ethics and workplace policy have strongly gendered effects. This chapter will discuss the conceptual commitments that underlie the assumption of a clear demarcation between work and life concerns, and examine the criticisms of this assumption made by feminism. It will, specifically, address the public/private distinction, the meaning of the notion of "work" and women's work, particularly in an age of globalization, the relationship between care ethics and the idea of Corporate Social Responsibility, the concept of "family," and the implications of the idea of a fair wage. Throughout, its aim will be to shed light on the various aspects of business practice that must be considered when taking CEDAW as a central feature of business ethics, particularly when taking seriously the insights of feminist philosophy.

The Public/Private Distinction

The vast majority of thinking about ethics, whether in philosophy, or in policy discussions, focuses its attention on what we typically understand as public life. In, for example, classical contract theory, the question of right living is the question of the citizen's obligations to other citizens and to the State, and concomitantly, the citizen's rights with respect to each of these. Similarly, in contemporary thought about global justice, the question of ethics is the question of how universal human rights are to be reconciled with our obligations to others the world over, regardless of citizenship status. In each case, the subjects of ethical concern are neutral and interchangeable (insofar as their social status is understood to be ethically irrelevant), and thus as fundamentally non-private. The so-called private sphere – that of the home, the family, the marriage, and so on – might perhaps become an object of moral order (if, for example, we choose to stipulate what forms of marriage relationship or treatment of children are ethical), but this is typically thought of as a separate realm of inquiry, and certainly not the one of paramount importance for ethics. The secondary status of the “private sphere” in this public/private distinction is implicit, as feminists have pointed out, in its omission from the majority of philosophical discussions of “justice,” as well as in the comparatively recent development of laws prohibiting violence within the home or marriage. Only by presuming a sharp division between the public life of the neutral citizen, and the private life of the family, does the standard approach to ethics become intelligible.

This public/private distinction is implicit, moreover, not only in standard approaches to business ethics, but also in typical workplace policies. In many cases, for example, workplace policies (and employment law) depend upon the assumption that the employer-employee relationship may be considered in isolation or abstraction. On this view, policies regarding absenteeism, tardiness, or benefits may (or must) be determined solely with reference to the workplace relationship. Thus, each employee functions as an analog to the neutral citizen of standard contract theory: as an autonomous agent to be treated as equal under the rules of the workplace – or, minimally, as bound by the same rules as others of her or his status – and whose life beyond that workplace is irrelevant to those rules.

It is in view of this implicit distinction that work/life integration becomes a problem to be dealt with, as it is at the root of what Joan Williams ([18], p. 2) calls the “Ideal Worker norm.” The Ideal Worker is the figure assumed by many workplace policies, the employee who “works at least 40 h a week year-round,” who does not need time off for caring for sick children, maternity leave, or taking aged parents to doctor's appointments. The Ideal Worker, in short, is the worker whose “private” life outside of the workplace makes no encroachment or demands upon the “public” life within the workplace.

It is important to ask, however, whether a clear public/private distinction is truly viable from the perspective of business ethics. For, while it is certainly true that a business full of Ideal Workers might make for greater profits, feminists and feminism offer many reasons to question the viability of the public/private distinction

and the Ideal Worker norm. Indeed, whether coming from liberal democratic, critical theory/Marxist or transnational critical perspectives, feminists have important criticisms of the public/private distinction to consider.

Writing from a feminist perspective on liberalism, Susan Moller Okin argues [10] that the public/private distinction is unsustainable for several reasons. First, Okin suggests, the family itself is necessarily a political space insofar as it is shot through with differential distributions in power – which are themselves reinforced by women’s legal and economic vulnerabilities, and thus hardly contained within the “private” realm. Moreover, Okin points out, “the domestic sphere is itself created by political decisions” ([10], p. 127), both through phenomena like the legal recognition of particular domestic relationships via marriage, and through extra-legal policy decisions (as we will see in later sections). Thus, even if we subscribe to the liberal view that de jure regulation of family relations is unacceptable, social realities entail that the family, and the rest of the private realm, will necessarily be significantly shaped by public life, political and policy decisions.

Feminists working from within the tradition of Critical Theory (which has roots in Marxism) also question the strict demarcation between public and private spheres, but at the same time raise doubts about the standard liberal feminist view. Nancy Fraser, for example, points out that the notion that there is just one public sphere – everything that is not the private home – and that women have been wrongly excluded from it, “turns out to be ideological; it rests on a class- and gender-biased notion of publicity, one which accepts at face value the bourgeois public’s claim to be *the* public” ([2], p. 116). On the contrary, there have always been multiple publics, according to Fraser; it is simply that the public of the dominant ruling class purports to be the most important one, and thus becomes the one that feminists become concerned with integrating. Thus, while Fraser would agree that “private” relations of gender pervade our public interactions, she would suggest that it is mistaken to assume that this means we all are, or ought to be, part of a singular public, our claims to privacy notwithstanding.

In her book *Feminism Without Borders*, Chandra Talpade Mohanty offers further reasons to question the public/private distinction, particularly within the age of globalization, which has seen a “massive incorporation of Third World women into a multinational labor force and into domestic service” ([8], p. 71). Mohanty, like other scholars of globalization, points out that Third World women play a hugely significant role in the global economy, through employment in “world market factories, sweatshops and home work” ([8], p. 74). However, unlike some economists who might be inclined to see this fact as purely innocuous, Mohanty argues that the overwhelmingly female demographics of such business ventures is telling, as multinational corporations deliberately recruit Third World women in an effort to avoid paying fair wages or having to document employees for tax purposes. In doing so, Mohanty suggests, such corporations both exploit *and* contribute to a sexist and racist stereotype of Third World women as passive or controllable, as well as a strictly gendered division of labor – which are then blamed on the “backward” customs of the Third World country. Thus, in both transnational and local cases,

we see public and business policies as both drawing on and contributing to supposedly private gender arrangements.

With these criticisms of the public/private distinction in mind, the notion of the Ideal Worker, whose work life is clearly distinct from his private life, is increasingly untenable. The Ideal Worker is therefore, as Williams points out, not a neutral concept at all, but “framed around the traditional life patterns of men,” and “excludes most women of childbearing age” ([18], p. 2). The notion of the Ideal Worker – along with the dominant notion of “professionalism,” which demands “a way of life devoted to work perceived as one’s calling” ([11], p. 79) – thus depends upon and reinforces the assumption that work in the public sphere is done by men unencumbered by responsibilities in the private or “home” sphere (which must, on this logic, be attended to by someone else, usually a woman).

This is not to say that any use of a public/private distinction is illicit, nor that we may not, for certain purposes, distinguish between our private lives and our public or professional ones. It is, however, to insist that we take seriously the connections between the two, particularly where business ethics and policy are concerned – taking care, for example, to avoid practices that presume Ideal Workers whose lives in the workplace are abstracted or isolatable from their lives outside of it.

Domestic Labor and the Value of Women’s Work

Closely connected to the assumption of a clear demarcation between public life and private life is, as the previous section implies, the presumption that domestic labor, or labor done within the home, is not “work” as such. Indeed, the assumption that “the workplace” is fundamentally opposed to “the home” is rooted in the notion that labor done in the home is not labor at all. Typical domestic labor – such as cooking, cleaning, washing, caring for children – is still disproportionately done by women, even when both partners in a heterosexual relationship hold jobs outside the home ([9], p. 1134). As feminists have pointed out, while this situation results in a kind of “second shift” for many women, this work is not understood to be work, but instead simply “what moms (or wives) do.” This means both that women are disproportionately affected by changes to work/life integration policies, and also that women’s work is frequently assumed not to be as important, or as valuable, simply because it is done by or associated with women.

The gendered division of labor that results in (particular forms of) domestic work being reserved for women has additional effects in work outside the home. As Marina Prieto-Carrón points out, paid work outside the home often reflects gender divisions and hierarchies of “private” life, as “men occupy virtually all managerial positions in manufacturing, and the principle of gender divisions established in families is reproduced on the factory floor,” such that women are directed to lower-paying positions, based on “the belief that women are more suited to jobs that are similar to domestic skills at home” ([12], p. 6). This gendered division of labor in nondomestic work has significant consequences both for women’s career advancement and for their

earning potential: Once particular jobs become feminized or associated with women (i.e., secretarial work), they lose status, leading to lower wages ([16], p. 18).

There thus appears to be a kind of chicken-or-egg problem for women's work and domestic labor: Is women's work or domestic labor devalued because women are the ones doing it, or are women pushed into domestic labor and/or feminized jobs because these jobs are less valuable or lucrative? The answer to such a question is likely not straightforward. Further complicating this picture, moreover, is the fact that women of color do (and have done, for some time) a disproportionate amount of the world's domestic work, particularly in the industrialized first world. Because domestic workers – especially in the United States and Europe – are and historically have been overwhelmingly women of color [1], it is crucial to take seriously the extent to which particular forms of work are devalued or discounted in part because of the influence of racist and sexist oppression. Moreover, this oppression is so thoroughly pervasive that even well-meaning persons may remain ignorant of it without constant vigilance – as is evident in the too-frequent presumption that “working women” or “mothers working outside the home” is a new phenomenon. Women of color, as Angela Davis points out [1], have been working outside their homes (often caring for the homes of others) for hundreds of years, only to be ignored by mainstream feminist efforts to bring about better workplace policies on family leave. It is thus crucial to remember that the problem of work/life integration is not a new problem; nor is it a problem reserved for “professional” women.

Another important consideration, when approaching the question of women's work and work done in the home, is that labor done within the home is not limited to labor done for the family or domicile. Indeed, many rural and Third World women participate in global supply chains through work based in their homes [12], especially for the textile industry. While such arrangements for home-based work might have the appearance of fostering a well-integrated work/life relation, however, this is not necessarily the case. In practice, such arrangements can mean less safe working conditions and less job security for women who engage in it, since such arrangements are often excluded from the same Corporate Codes of Conduct adopted for factory-based work. This results in greater instability of income and even physical danger to many rural and Third World women, thus failing “to deal with deeply embedded structures of inequality, such as low wages and the segmentation of women into the lowest paid and more insecure jobs” ([12], p. 13). It is, then, important to stress that, if we are to adopt business practices in line with the goals of CEDAW, it is not enough to merely allow workplace arrangements that permit women to spend more time at home. Rather, the devaluation of women's work and the presumed public/private distinction must be addressed in more fundamental ways.

Corporate Social Responsibility and Care Ethics

Another important concern for a feminist approach to business ethics, which itself depends upon a troubling of the public/private distinction and a revaluation of labor typically thought of as “women's work,” is the ethical approach known as care

ethics. Care ethics is an approach to ethical philosophy pioneered by feminists, which is centrally concerned with rethinking the autonomous, isolated subject at the center of most theorizing about morality. Such abstracted figures are, according to feminist care ethics, at the heart of the majority of ethical and moral theory, and (at least in part) account for the centrality of the value of “justice” in these accounts. In contrast, advocates of care ethics suggest that this exclusive focus on justice as *the* virtue par excellence distracts from the development of the moral value of caring. Human beings, according to care ethicists such as Virginia Held, are fundamentally relational creatures, dependent upon others: “Every human being has been cared for as a child or would not be alive” ([5], p. 3). For this reason, ethical approaches that presume isolated, autonomous subjects as the agents of ethical living are unable to provide a rich picture of the good life, insofar as they cannot account for the “moral value and importance of relations of family and friendship,” or “the value of caring relations in such contexts as these” ([5], p. 12) and how those values can be encouraged or developed. Because persons only become ethical agents insofar as they have been cared for – as infants, as children, as students, and as dependent upon communities for their sustained existence – any ethical approach that does not recognize “care” as an indispensable human value is seriously remiss.

This insight of care ethics is important to take seriously from a business ethics perspective, particularly in light of the recently renewed interest in Corporate Social Responsibility. Because the outlook of CSR is interested not merely in compliance with the law, but also frequently in “address(ing) important social and economic issues” ([21], p. 458), CSR would, from a feminist perspective, involve instituting policies and practices that foster the virtue of caring in the community – or, minimally, do not inhibit the cultivation of this virtue by its members.

Unfortunately, however, many workplace policies inhibit the cultivation of care as a value in the way that care ethics would suggest. Indeed, as our discussion of the public/private distinction indicates, the Ideal Worker norm presupposed by many workplaces severely curtails the abilities of many people to engage in the kind of caring many feminists would advocate – and the cultural devaluation of caring leads care-related jobs to be among the lowest paying ([5], p. 109). Moreover, the negative implications of this fact are not limited to its effects on women, or care workers. As Joan Williams points out, dominant workplace policies, combined with a persistently gendered division of labor, result in a situation in which men are actually harmed by being deprived of the opportunity to cultivate this important aspect of their characters [20]. Though business practices are, of course, not the singular cause of this deprivation of men – the wider cultural intransigence of strictly delimited gender roles is surely at work – official policies can and do play a part. Williams points to a particularly dramatic example of this in “Knussman v. Maryland, in which a Maryland state trooper was told that he could not take parental leave after the birth of his child ‘unless [his] wife [was] in a coma or dead’” [19]. The widely held presumption that only one partner must be responsible for child care is, through such policies, enforced – with the result that conventional social arrangements, even those that may not be desirable, are rendered effectively obligatory.

Still, the reasons for many men's failure to cultivate the sort of characters that care ethics would encourage are complex. Ironically, as Katharine Silbaugh points out, "nothing has disserved men more than employment and educational discrimination in their favor (!)" [15]. A long history of wage discrimination, through which men have consistently been paid higher salaries for doing comparable work to women, even when men had fewer educational credentials, has given rise to a situation in which men are now more concerned with taking time off or changing jobs to accommodate the needs of their families. That is, sexist discrimination has meant that men have more to lose in altering their current careers, both in terms of wages, and in terms of job security – insofar as women now are statistically outpacing them in terms of education [15], and efforts to mitigate the effects of discrimination are now becoming more widespread. The point here is not to suggest that men are unfairly oppressed by being the beneficiaries of sexism, but instead to claim that our complex sets of social and business practices have wider-ranging effects than we may initially suspect, and to offer reasons for rethinking their value.

In short, if we take seriously the notion that Corporate Social Responsibility involves the imperative to implement business practices that are sustainable within the community, and minimally, do not harm a great number of its members, it is necessary to take seriously the claims of care ethics. As Gregory Guitián puts it, "CSR...should include work/family conciliation policies as a normal component of the social sustainability or social responsibility policy of the firm, in as much as they constitute a clear contribution to 'human ecology' of society in both short term and long term" ([4], p. 518).

Expanding the Notion of Family/Kinship

Much of the discussion of work/life integration policy, including (to a certain extent) this chapter, assumes a particular model of family life: a nuclear family headed by two parents – typically, a couple in a heterosexual marriage – with children. While this model is the overwhelmingly dominant one in many parts of the world (particularly for the privileged classes of the United States), assuming it when discussing work/life policy or the ethics of those policies can be extremely problematic. It is problematic both because many people in the world do not operate within such a strictly delimited nuclear family setup (living, instead, with some assortment of extended family members, several of whom may be responsible for tasks like child care and domestic labor), and because many other people live in families or kinship arrangements that are not structured by heterosexual marriage. Ignoring the existence of these non-normative living arrangements is a problem, moreover, not only because the ethical theorizing or policy making that results remains unable to deal with a significant segment of the human population, but also because this exclusion perpetuates the privileging of those in the dominant arrangement at the expense of persons in non-normative ones.

The reason for this (perhaps unintended) consequence is similar to one we encountered in the previous section – policies may often have the effect of sanctioning dominant social arrangements, thereby implicitly reinforcing their legitimacy over against the (tacit) illegitimacy of others. That is, should we understand the ethical problem of work/life integration to be primarily about providing parents time off to care for their children, and institute policies providing for this specifically, we “promote and encourage child rearing provided primarily by parents” ([13], p. 727). And while this may in fact be a good thing (though it is unclear that it is necessarily better than, say, the promotion of childcare by extended kinship networks, or the promotion of government-sponsored childcare by professionals), it also often has the additional consequence of lending legitimacy to the nuclear, heterosexual family model while leaving workers with other life models in the lurch. As Gowri Ramachandran rightly points out, if the right to take advantage of family leave policies applies “only to those workers who conform to traditional gender and family-structure norms – those whose obligations are to their children and spouses, as opposed to their siblings, grandchildren, close friends, domestic partners, or some broader group in need – then we will have transferred wealth from social nonconformists to social conformists” ([13], p. 728). Thus, it may not be enough, from a feminist viewpoint, to simply allow workers flexible schedules to care for their families, particularly when the dominant social model of “family” disadvantages so many people.

Particularly pressing, from a feminist perspective, are policies that explicitly restrict the familial or kinship relations eligible to receive benefits to those structured by heterosexual marriage or common-law relations. Because homosexual workers are not afforded the same legal protections as heterosexual workers in the vast majority of the world (insofar as only a handful of countries offer the legal benefits of marriage to homosexual persons, and firing, harassing, and sometimes even killing people on the basis of homosexuality remains legal in many locations), a feminist perspective on business ethics would demand that, at a minimum, benefits for fostering better work/life integration not exclude same-sex domestic partners. This could be accomplished, moreover, in ways that are in line with CEDAW’s directive to respect and value cultural differences: As Ramachandran points out, “a more universal type of benefit would help to remake the workplace” by including “a right to refuse overtime shifts, not only for child-care reasons, but for *any* reason; timeoff options that are available whether the person uses that time for family-related reasons or other reasons. . .” ([13], p. 731). While such a shift in policy would likely result in some increase in expenses, it is important to keep in mind that its benefits are crucial from a CSR perspective, insofar as it would contribute to greater inclusivity, as well as providing a way to work toward greater involvement in care by men.

The Importance of Fair Wages

A final consideration when approaching business ethics from a feminist perspective is the indispensability of fair wages for workers. As CEDAW suggests, full human

flourishing requires financial stability. Unfortunately, all too often, women's work is devalued – this is the case both in the lower valuation of labor typically done by women, and in a persistent wage gap, through which women are consistently paid less than their male counterparts for doing the same jobs [17]. As Susan Moller Okin [10] has pointed out, this financial disadvantage makes women uniquely vulnerable in multiple respects, insofar as it often makes them dependent upon men, and may even make it more difficult for them to leave abusive relationships. If a woman in such a relationship is unable to support herself or her children alone as a result of low wages, her options in the face of abuse (or even unhappy marriage) are quite few. Moreover, women who do not earn a sustainable living wage are at a significant disadvantage when it comes to their abilities to maintain good living conditions and to participate fully in public life, each of which CEDAW suggests are crucial to promote in order to achieve gender equality and women's human rights. Beyond the benefits that most saliently benefit women, however, fair wages promote better work/life integration for all workers, insofar as they improve living conditions and make workers' employment situations less precarious – thus addressing some of the care-related issues from our previous sections.

Of course, what constitutes a fair wage is an open question, and indeed a point of significant disagreement among feminists and business ethicists. On the one hand, theorists working from a Marxist perspective would suggest that no wage paid under a capitalist system is fair, insofar as capitalism requires, for its sustained existence, that workers are paid less than the value of the goods or services they produce. Because the capitalist's aim is to make a profit, he or she necessarily pays workers as little as possible, while charging as much as possible for the products resulting from their labor. And, because the capitalist owns the materials necessary for that production, workers who want to survive are faced with no choice but to work for whatever wage the capitalist(s) will pay –thus effectively consigned to the position of wage slavery [6]. On the other hand, theorists working in the liberal democratic tradition would suggest that there is nothing inherently unfair about differences in income or wage-dependence – though the majority of today's liberals would suggest that this does not mean that *every* distribution of wealth is equally fair. Following John Rawls' influential account, most liberals today would likely suggest that, for an income distribution to be fair in the moral sense, it would have to be of the sort that provides some minimum standard of living for those least well off, such that anyone who did not know her actual place in society could agree to its income distribution, bearing in mind the notion that she might in fact be among the least well off [14]. Because the vast majority of income disparity depends upon factors that are accidental and thus not morally relevant (we are not in control of many such factors, i.e., our intelligence, physical abilities, etc.), moral fairness of income distribution requires that anyone, regardless of situation, be able to agree to it. While this notion of fair wage is rather different than the one currently in place in most parts of the world today, it is also quite distinct from the Marxian notion of fairness.

Whatever our answer to the question of fair wages, it is crucial, from a feminist perspective, that policy changes aimed at making work/life integration more feasible must *not* be understood as a substitute for fair wages. That is, whether we believe that

fairness would require strictly equitable distribution or merely distribution to which we could all agree, even if not equitable, the fact remains that some minimum wage that provides from a sustainable living is necessary for upholding the tenets of CEDAW. Indeed, as Domenec Melé points out, “paying unjustly low wages is another way of violating family independence. . . If real pay is insufficient to bring up a family, then a basic right is trampled under foot which, to a large extent, conditions all the rest” ([7], p. 653).

The importance of fair wages suggests that some businesses’ methods of dealing with economic difficulties may be problematic from an ethical perspective. Specifically, some businesses have begun using flextime as a new feature of “total rewards” to compensate for stagnating wages during the economic downturn [3]. While the use of flextime is in a certain sense welcome, from a feminist perspective on work/life integration, there are legitimate reasons to be concerned about this practice. Most pressingly, if the feminist approach to business ethics and CSR is correct, such accommodations as flextime should not be understood as “special” benefits that would offset lower wages, but normative features of ethical business practice that should be available to all workers.

Conclusion

Ethical business practice and CSR in the case of work/life integration requires, from a feminist viewpoint, rethinking some major animating business concepts and changing our practices accordingly. They demand, specifically, a reimagining of the Ideal Worker and a willingness to recognize the linkages between public and private life, a recognition of the value of caring in the wider community and the importance of fostering such care, and a willingness to expand the dominant, restrictive notion of family life. They require, moreover, the change of corporate policies while still paying the kind of fair wages that allow for the life of flourishing that CEDAW recognizes as crucial for upholding women’s human rights.

Cross-References

- ▶ [Feminist Care Ethics and Business Ethics](#)
- ▶ [Framing Global Gender Issues: Cross-Cultural Theory and Analysis](#)
- ▶ [Poverty as a Lack of Freedom: A Short History of the Capability Approach](#)
- ▶ [The Classic Social Contract Tradition](#)
- ▶ [Women’s Work: Global Trends and Demographics of Wealth and Employment](#)

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Part 17

Free Markets, Morality and Business Ethics

Tibor R. Machan

Abstract

Let me offer just a few words about the relationship between morality and ethics. The two terms are often used interchangeably but there is a subtle, not unimportant difference in what they mean.

“Morality” refers to a system of *interpersonal* guidelines of human conduct, of how people ought to treat each other, what are their duties and obligations *to* each other. “Ethics” refer to a system of personal guidelines for adult human beings, answering the question “How ought I to act or conduct myself?” Ethics is more basic and comprehensive.

There are some interesting philosophical reasons for using these different terms and they have some substantive importance. With the emergence of morality in the modern era, in the works of such philosophers as Thomas Hobbes, there had been an understanding that concerning personal, private behavior, human beings will do what they are innately motivated to do, by their passions, drives, or instincts, so there is no reason to wonder how they *ought to act* because they *will act* as they must so as to fulfill these passions or instincts. Putting it another way, the *virtue* of prudence was relegated to an innate drive instead of being treated as a moral character trait in the modern philosophical era. What emerged in its stead was the profit *motive*.

Yet, when it comes to fields such as professional, including business, ethics, the issue is precisely how one ought to conduct oneself not only *vis-à-vis* others but in relation to one’s professional commitments. It is this topic that the rest of this chapter addresses.

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Introduction

Ethics concerns how one ought to conduct oneself in life, with the basic standards of proper conduct, with how one ought to act. It assumes people need answers to this question because they lack instincts or hardwiring to guide them as other living beings do.

Business ethics is about how to do the right thing as one carries out business objectives, as one practices one's profession of "wheeling and dealing." Other fields like medicine, engineering, farming, the arts, sciences, etc., also have special questions about how to pursue their own objectives. All these rest on the idea that we have no innate knowledge about how to do the right thing.

Business faces the additional problem of having a bad reputation. Indeed, in some societies practicing business is a crime but in many, including those in the West, doing business tends to be demeaned, morally, not like working in education or science or the arts.

Is this view correct? Is business inherently morally defective or corrupt? Business ethics assume that it is not. So the issue of how to do the right thing and avoid doing the wrong is very germane for business professionals. The moral principle supporting business is prudence, taking reasonable care of oneself in life, including economically. Business is the profession that emerges from this, just as medicine emerges from the prudential care for one's health – health care and wealth care, one might say.¹

On the Assumptions Underlying Ethics

Ethics assumes that we have free will and that there are stable enough standards of right conduct. Both are controversial. The first is doubted mainly because it looks like science rules out free will; because the law of causality makes everything predictable, because we cannot detect free will with the use of our senses; because if God knows all, He surely knows what we will do; and because free will seems odd compared to the rest of nature.

In response to the first set of doubts it can be pointed out that (1) science, contrary to the skeptic's view, may not *impose* requirements on what exists in the world. Science has the task of discovering and identifying what exists and if it turns out that free will exists, science may not say "That cannot be?" Metaphysics can – "no contradictions can exist" – but science is to report and examine, not set limits or rule out. Also, (2) the law of causality is universal, that is true (just as metaphysics would hold) but what *kind of causes* can exist depends upon what *kind of beings* there are. And if a being can cause its own behavior or conduct, this would mean there could be *agent causality* (not simply *mechanical causality*). There is prima facie evidence of agent causality – one knows about oneself that one causes things to happen or not happen. And even in the animal world, there appears to be causation by animal agents – beavers build dams, for example, bees construct hives, etc. (3) As to whether free will can be observed, here it needs to be noted that not

everything known to exist is known by observation – an example is black holes, which absorb all light that would make them observable, yet we know they exist by *inferring* their existence from surrounding evidence. This is, also, how people's intentions, motives, feelings, pains, etc., are known, not by direct observation, and this is how free will might be known (its existence is inferred from other things we know, such as the immense human diversity we see around the world and in history). (4) God's knowledge, in turn, is not like yours and mine, so when one says, "God knows what you will do," this is by no means something straightforwardly clear. It is, rather, very likely to be mysterious. So, not much can be inferred from it about free will. Finally, (5) there is also the fact that there are myriads of things and types of things in nature, a great variety of them, so something with free will would not be all that strange, given that moving from the simplest to the more complex entities there emerge things with quite unusual attributes. Free will would just be one more of the vast variety of them.

The above suggests that free will may be *possible* – so moral responsibility *could* exist – but why believe that it *does* exist?

First and most importantly, knowledge is impossible without free will – without the human mind being unconstrained, unprejudiced, and independent as one seeks to understand the world. This is why juries and scientific researchers, among others, can be trusted yet there is no guarantee they will be right.

Second, there is the determinist's dilemma: In advocating determinism, the determinist assumes others have free will and so can change their minds based on thinking through his arguments. Also, third, introspection is often trusted, so when one introspects – recalls by self-examination or memory – one's having freely made decisions, choices, and so forth, this supports the idea that one has free will enabling one to frequently act as one will.

Finally, scientists – some psychophysicists and neuroscientists, for example – have shown that the higher human brain – the cortex – enables one to exercise self-control, self-governance, or self-determination (sovereignty), which accounts for why we can restrain and discipline ourselves in the face of objectionable inclinations, desires, impulses, etc. So, free will seems quite plausible. When the cortex is damaged, impulsiveness goes unrestrained.

The second assumption, that stable and lasting – "universal" – ethical or moral standards exist, is doubted because (1) ethical claims seem not to be verifiable, provable; because (2) one cannot deduce a moral claim from factual claims; because (3) there seem to be endless different ethical systems; and because, (4) again it is odd that human beings would be the only ones with a developed moral nature.

The brief response to these skeptical objections goes as follows: (1) As to moral standards, knowing what is right and wrong is not exactly like knowing things like there is a tree there or a car just turned the corner; it is like medicine – it requires a theory of what is the human good (as in what is good health) and then inferring what are good actions and what are bad ones; (2) when we reach moral conclusions via reasoning, we are not engaged in deduction but induction or inferences, so the same rules do not apply – in fact, in all practical fields we do this, as in medicine or

engineering, reach conclusions on the basis of theories; (3) the great variety of moral opinions concern details, specific ways of acting in different circumstances, but there could well be basic principles that apply to all human beings just because they are human (like “Pay attention”); finally, (4) as with free will, morality may well be (nearly) unique to human life – and, after all, there is much that is only found in human life, such as science, marriage, culture, art, criminal procedures, etc.

Let me add to this discussion of the assumption of free will as necessary for a *bona fide* moral life that this is also one major reason for supporting a classical liberal/libertarian polity and free market economy. Without a sphere of personal authority in one’s life, one cannot conduct oneself in morally significant ways. Initiative is necessary for ethics – those who are not free to choose cannot be or be held responsible for what they do; they cannot reasonably be praised or blamed, other than in the fashion of being egged on or discouraged, the way animals are prodded by their trainers. Here is the most fundamental source of the human requirement for freedom.

Assumptions of Business Ethics and Ethical Theories

As noted before, there are also two assumptions that underlie business and business ethics as such: (1) the right to private property and (2) the moral virtue of prudence (of looking out for oneself and one’s loved ones). Business ethics – in its most developed, unsullied version – presupposes a free marketplace wherein commercial and business life is conducted by free human beings.

Commercial and business endeavors, from the simplest to the most complex, are part of what human beings may undertake on their own initiative, as sovereign agents whose actions are not subjugated by others (monarchs, majorities, parliaments, etc.) but flow from their own judgments and may only be interfered with when they violate the rights of others.

This is the condition of a community wherein business may be carried out freely instead of being directed from above by supposedly superior governors. (It is a peculiar idea, from this perspective, that some men and women ought to have the authority to, for example, legally impose regulations on the business conduct of other men and women – it assumes, misguidedly, that the former are innately more ethical or virtuous and knowledgeable. Only if it has been proven that a crime has been committed may government interfere with business conduct. More about this in the discussion of government regulation of business and other professions.)

1. *The right to private property.* For business to exist as a practice or institution in a society, individuals in that society have to be free to own, acquire, part with, exchange, give away their resources, etc., including their time, skills, and labor (or even what they have come to buy through sheer good fortune). If this were not the case, business or commerce could not transpire. This is controversial because many object to ownership by individuals. Many believe only the public or government can own things – varieties of communists and socialists hold this

view. Commerce or business, to the extent there is any of it in such societies, amounts to acting with the permission of the people or government to, as it were, feign a market process, a permission that may be revoked anytime. In a commercial or business society, however, one takes part in the exchange system as a matter of a basic right, the right of ownership.

2. *The virtue of prudence.* Prudence is the moral or ethical virtue that requires one to take decent care of oneself. Insofar as one is a natural, living being, this means one ought to prosper to some extent. Commerce or business (the professional arm of commerce) is an ethically decent undertaking because it is prudent for a living human being to make good deals when the opportunity for them arises – it promotes one’s prosperity. This, too, is controversial because many object that attempting to prosper distracts from more lofty (important or noble) undertakings, such as preparing for the afterlife with prayer and penance. If these people are right, seeking prosperity could be sinful, morally wrong. (As we well know, there are those who renounce commerce or business to the point of physically attacking those who are engaged in it, e.g., those who worked in the World Trade Center on September 11, 2001, reportedly on the grounds that they were being materialistic.)

Before proceeding to the discussion of business ethics topics, here is a brief outline of prominent and contending ethical systems. These have been in competition, as it were, from time immemorial and continue to be offered to us as candidates for answering the basic question of ethics, namely, “How ought I to act?”

1. Ethical hedonism is the view that everyone ought to seek to obtain as much physical pleasure in life as possible. This has appeal because physical pleasure is an easily recognized value, something that we can all accept as good, so it is easily verified, and that in turn makes it appeal to the scientific mentality that is so widespread in our age. (Jeremy Bentham is a most prominent ethical hedonist.)
2. Utilitarianism is the view that everyone ought to seek to promote the greatest happiness of the greatest number of (i.e., most) mainly people but perhaps animals, too. Two types of utilitarianism have been advocated – act and rule – but only rule utilitarianism is popular. It requires that one identify a set of rules or principles to guide one’s conduct, with the goal of promoting the greatest happiness of the greatest number (which is often referred to as the public or common or humanity’s interest or welfare). (John Stuart Mill is the most prominent defender of utilitarianism.)
3. Altruists hold that we ought to advance the well-being of others first and foremost – mainly other people but perhaps also animals. Two versions have been advocated – subjective and objective altruism. The first identifies what will benefit someone by reference to that person’s desires or preferences, the second by reference to various facts about the person. (Auguste Comte is a famous advocate of altruism.)
4. Ethical egoism is the view that we ought all to promote our own well-being, first and foremost. Some egoists are subjectivists, others objectivists – the first, as with altruism, identify what is good for oneself by reference to one’s desires or

preferences, the second by reference to one's thorough knowledge of oneself, one's needs, talents, and anything else important. (Max Stirner is a famous subjective ethical egoist and Ayn Rand is well known as an objective ethical egoist.)

Some less prominent schools of ethics include Stoicism, asceticism, the various religious schools of ethics, and so on. Stoics promote detachment as the way to live, the ethics of self-denial, etc.

Subjectivism, Relativism, and Consistency

As a part of a discussion of the moral responsibility of business managers, we need to briefly ask whether ethical subjectivism and relativism be compatible with ethical judgments about the conduct of business professionals. Why and why not? What implications are there of ethical subjectivism and relativism?

Basically, ethics cannot be subjective or relative all the way down, as it were, for then, of course, unethical conduct would simply be conduct that differs from what many support. Crime too assumes some firm, universal standards of proper interpersonal standards of conduct.

Also, as a last preliminary matter, is being inconsistent or contradicting oneself about right versus wrong a problem? Is there anything really wrong with it? Why or why not? How does this relate to a prominent issue of our time, multiculturalism?

Essentially, the answer is that there are certain basic principles bearing on how adult human beings ought to act, simply by virtue of their common humanity, throughout history and the globe. These promise to provide the foundations of ethics and professional (such as business) ethics, although once serious differences emerge within human communities, differences will also become evident in how people should conduct themselves – fathers versus bachelors, parents versus grand-parents, farmers versus engineers, artists versus scientists, for example, may find that different subsidiary principles will guide their proper conduct.

No decision is going to be defended here as to which ethical system is the right one for people to follow. However, it is evident that a version of ethical egoism or eudemonism is most hospitable to the institutions of commerce and business. Unless prudence is indeed a moral virtue, areas such as medicine, business, nutrition, and the like could not have moral standing, for each is focused on improving life for human beings.

A Selection of Business Ethics Topics

I will consider a few select areas of human economic life and explore what are morally proper ways of guiding them. For now, all that can be done is to see how common sense morality would help with understanding these areas. A detailed discussion would have to include a determination of which ethical system should be the ultimate guide for ethical human conduct.

Ethical Elements of Employment

The employment relationship exhibits the assumptions on which business ethics rests by (1) every prospective employee owns his or her own labor (skill and time) and every prospective employer owns the resource from which to pay employees; and (2) each normally strives to enhance his or her own lot through the relationship. The first shows the right to private property, the second the motivation of prudence.

How can employment go wrong? Remember it is undertaken and involves a commitment or promise to achieve a purpose, namely, to enhance the value of the enterprise (to make it profitable, to have it prosper) through some craft, profession, or service (making cars, selling real estate, fixing tires, helping someone with psychological problems, curing a disease, etc.). Thus, the call for applicants is for these purposes – make a profit by way of a skill. And acceptance of a job also involves this.

If this call is betrayed by invoking some irrelevant criteria on either side – race, national background, gender, sexual orientation, age, height, etc. – the relationship is corrupted. Nepotism, for example, is trade that aims to enhance family members' welfare because they are family members, not because they are fitted to do the job well, so it is (usually) a violation of business ethics. Sexism, racism, and other kinds of discrimination qualify as well.

There can be reasons, however, why some normally irrelevant considerations would be justified – as when a family obligation overrides business goals (usually in privately owned firms, not in publicly held companies, since the discretionary authority does not ordinarily, unless called for in a stockholders' election, exist in the latter).

Special workers' rights, a type of positive rights, are grounded on the belief that workers as a class are vulnerable to exploitation in the marketplace, that they lack bargaining power.

All human beings have basic, negative rights – for example, to life, liberty, the pursuit of happiness, property, and so forth. These are what the US Declaration of Independence lists, as well as the Bill of Rights. They are negative in that they prohibit people from intruding upon others. Murder, robbery, kidnapping, assault, and similar crimes involve violation of these basic negative individual rights. Government is supposed to secure or protect these rights for all citizens.

Positive rights are entitlements to being provided with resources or services, such as the right to education, health care, unemployment compensation, a minimum wage, health and safety provisions at work, and so on. They rest on the view that all persons in need are owed some support from others and government must secure this support.

Because working people are supposed to lack bargaining power – they lack wealth that enables them to call the shots in dealing with employers – it is argued they have these positive special workers' rights.

It is often noted that negative and positive rights coexists uneasily because to respect and protect the former the latter must be sacrificed, or vice versa. It is also argued that their coexistence undermines the rule of law because judges or

bureaucrats must decide which of the two kinds of rights deserve more vigilant protection. The rule of law is the idea that some set of principles, not judges or bureaucrats, would help in deciding the law.

Advertising

To advertise is to promote goods and services in impersonal ways, with the aid of gimmicks and other attention-getting devices. The idea is that without such promotion one's works would not come to the attention of potential trading partners. So, it is prudent to advertise.

Ads contain but do not focus on disseminating or spreading information. So, it is wrong to criticize ads for failing to tell the whole truth – all the truth customers can use. Customers need to obtain the information that will enable them to make prudent purchases.

Ads can go wrong by relying on stereotyping, being offensive, being tasteless, or simply failing to be effective. While ads are not about providing information, if they contain factual claims, these must be true. But they can contain much embellishment, ornament, humor, and such so as to call attention to what one has to offer. Ads are, in essence, part of trying to make a living for those whose wares they promote. (Even junk mail or telemarketing should be so understood.)

A criticism of ads is that they create desires in us that we then must satisfy and doing so leads to dependence on the producers (JK Galbraith, Vance Packard), so they are instruments of exploitation and manipulation. This view calls into question the sovereignty of consumers; it treats impulse buying as the norm, not a consumer failing but something one cannot resist engaging in. In response, it can be argued that ads do create desires but we are capable of governing our desires; we can choose to resist them, channel them, etc. (FA Hayek). This debate calls to mind the earlier-covered dispute between determinists and advocates of free will.

Moral Responsibility of Corporate Managers

Two major theories about the moral responsibility of corporate managers dominate business ethics discussions – shareholder and stakeholder. The former states shareholders hire managers of the firms in which they own a share or have an investment and these managers owe it to them to manage the firm in a profitable way, the make it prosper. The latter states corporate managers are morally responsible to advance the well-being of all who may be affected by the management of the corporation.

Another version of this dispute involves three theories – that of Milton Friedman, of Ralph Nader, and of Miller-Ahrens-Machan. Friedman advances the exclusivist position – company managers should focus solely on the bottom line, make the firm profitable, period, nothing else (within the rules of the game). Otherwise they get involved in matters that should be dealt with by the

public authorities (what public projects to support, etc.). Nader holds that since corporations were originally created by the government (the king or royal court), they are arms of public policy and now this means economic democracy, with managers doing what the majority of voters want them to do. Miller-Ahrens-Machan argue that the primary obligation of managers is to make the firm profitable and once that has been addressed, there can be other matters with which managers should also be concerned – the quality of the community, employee satisfaction, the arts and sciences, the environment, and what have you. This is the view that profit should dominate but not be the exclusive concern of business managers.

Depending on which of these views is right, different policies follow for various, more particular issues, such as insider trading, hostile takeovers, outsourcing, and so forth.

Corporate Governance: Stakeholder Versus Shareholder Ways

Three issues that are prominent in discussions of corporate governance are (1) hostile takeovers, (2) outsourcing, and (3) insider trading.

Hostile takeovers involve a group of aspiring managers offering to unseat current managers by offering shareholders greater value (improving earnings, generally managing the firm more successfully, etc.). It is deemed hostile because current management tends to oppose the effort. But it could also be viewed as friendly, at least to shareholders. Local authorities often oppose such takeover attempts because they could involve relocating the firm, etc.

The policy of outsourcing involves obtaining labor from places where it is less expensive than around the existing workplace – such as India, Pakistan, and South Korea – so as to reduce cost and improve profits. Stakeholder theorists object this too on the grounds that the bottom line should not be the main consideration in management decisions.

Insider trading involves making use of information about companies that have not been made public (although they need not have been obtained wrongfully). Objections to such trade rest on the belief that it is unfair, yet so are journalistic scoops that are, in contrast, usually praised and rewarded. Sometimes special organizations, such as the New York Stock Exchange, will ban insider trading, but there may not be any general ethical justification for the ban; it is only that the organization deems it to be a good policy.

Government Regulations

Two legal principles give federal government regulation of business legal justification in the USA. They are the interstate commerce clause and the police power of government. It is possible, however, that they are not consistent with business ethics since they may depend on a legal tradition that is morally and politically problematic.

There are four *ethical* arguments for government regulation: the creature of the state argument, advanced by Ralph Nader and his followers; two types of market failure argument invoked by, among others, John Stuart Mill and John Kenneth Galbraith; positive rights to provisions argument advanced by such political philosophers as Alan Gewirth and John Rawls, and the judicial inefficiency argument proposed by the Nobel Laureate economists Kenneth J. Arrow.

Creature of the state: The first argument states that corporate commerce is a creature of government itself – it was brought into existence by acts of the British mercantilist government so as to enhance the wealth of the country. Since government created them, it is authorized to and indeed ought to regulate them to accord with the public purpose. Clearly, morally, if one has created something, one is responsible for it and may do with it what is reasonable, responsible.

Market failures: Although the free market is generally a good provider of goods and services, sometimes it is inefficient. For example, this happens when public services, such as the provision of electricity or water, are involved. There competition involves duplication and, thus, inefficiency in the use of resources. So companies should be made into monopolies or taken over by the state. Throughout the world, this view has led to the abolition of free markets in some industries and the institution of extensive government regulation of prices, wages, labor relations, etc.

Others have gone further and said government must correct the unwillingness or inability of markets to provide certain values – for example, public libraries, which the market will not furnish. Government regulation, then, is but the legitimate effort of a government to remedy what the market ought to but fails to achieve. We know what these are through the vote. The underlying idea here is utilitarianism – the central obligation of the state is to secure the greatest happiness of the greatest number and when the market fails to achieve this, government must step in with its remedial regulatory policies.

The positive rights argument: Some hold that we have basic human rights not only to not be killed, assaulted, or robbed (i.e., to life, liberty, and property) but also to be provided with various goods and services from other persons around us. The positive rights to health care, social security, public education, unemployment compensation, or safety and health protection at the workplace are examples. Government is established among us to secure all these rights, and government regulation must be instituted so as to adjust private endeavors so that these provisions will be forthcoming. The argument is really dependent for its force on the theory of positive rights.

Judicial inefficiency: Some social problems that privatization cannot solve, namely, some kinds of pollution. When A pollutes the air mass and B suffers as a result of this, neither can A find B so as to secure permission, nor B find A to launch lawsuit. So, there is neither a market nor a judicial solution available to the parties. Ergo, government must take over and regulate the sphere of judicial inefficient human endeavors. (This is not so much an argument for government regulation of business as one for government administration of what some view as unavoidably public spheres.)

There are certain reasons why government regulation of business – or anything else that is peaceful – is objectionable, including the very likely incompetence of regulators, the regulators' usually close link to the regulated, the delay of products reaching the market (e.g., in medicine), and the often overlooked public choice issue (which shows regulators to be interested mainly in pursuing their own agendas and not the public interest which is, in any case, very elusive; but the most severe objection comes from jurisprudence).

In the classical liberal tradition of jurisprudence, where one is deemed *not guilty* and thus not subject to penalties or punishment unless one has been convicted via due process of law, any imposition of burdens on suspects or the accused amounts to *prior restraint*. This is unjust since it subjects such individuals to burdens they have not been shown to deserve and amounts to ruling or governing them without their consent.

So then, by the standards of a *bona fide* free society, government regulations are unjustified and impermissible, whereas regulations established by private sector agencies, such as insurance companies – that may, for instance, prohibit walking up at drive-up bank windows for their clients – is entirely legitimate. By this line of reasoning, government regulations of commerce are impermissible while setting standards of professional practices via the private sector are not. (The topic is discussed in detail in [4]).

Business Abroad

Doing business in cultures other than one's own poses the problem of whether the same basic ethical principles apply. Since, however, every culture, however different, is populated by human beings, some *basic* ethical principles would indeed apply (if ethics is in fact an aspect of human life). For example, forced labor is unethical and should be illegal anywhere.)

Business ethics derives from some such basic principle(s). If business is being conducted in any culture, ethics will require certain types of conduct and forbid others from all business professionals and those engaged in commerce. Yet, there will also be special requirements based on the cultural characteristics that prevail.

Basically, in no circumstances may people in business engage in the violation of human rights – especially the right of free association or freedom of trade (something that would involve relying on conscripted labor, stolen property, etc.). Less basic principles of business ethics may vary from culture to culture – based on, for example, the prevailing religious practices or economic conditions (e.g., widespread veganism would cancel business in meat, severe poverty may make child labor permissible). If firms do business with other firms – or governments – that do violate basic human rights, they would escape guilt only by providing some kind of support for abolishing the institutions and practices (e.g., slavery, apartheid, conscription) that violate these basic rights.

Friendship and Commercial Life

In many academic institutions, you will find professors of this and that proclaiming that commerce is a dehumanizing institution. It makes people treat one another as objects or, at most, as means to various ends, not as full persons.

The doctrine is called “commodification” – making people into commodities, things for nothing other than to be purchased. The charge is that in a fully capitalist, free market society, the system would encourage everyone to treat all others as a mere useful product, like one’s chair or automotive tires. For this reason, the argument goes – and it had got its biggest boost from Karl Marx, in the nineteenth century, when he took capitalism to task very influentially for doing all kinds of nasty things to people – the free market, with its capitalist economic system, is not really good for human beings at all. But it is something conservative critics also maintain, e.g., Richard Weaver.

At first sight this may sound like a credible point to make against capitalism. When you go to the grocery store, for example, you tend to treat the cashier or the manager as no more than means to your ends of walking out of the place with what you need at home. You do not much socialize with these people, not at least initially. They are just functionaries to you. If they were machines and could do what you need from them, that would be perfectly fine. Or so it can seem, from a superficial examination of what happens in markets. Your broker, doctor, auto-mechanic, shoe repairer, and the rest, they are not your personal friends. They are instruments used to satisfy important needs of yours but they could easily be replaced with someone else or some tool. (Nowadays, you can even check out by using auto-scanners, with no need for a person at all.)

Trouble is that to focus on this element of the market – that it is mostly impersonal on a certain level – betrays a narrow vision. As if people would leave it at that, except in the most unusual circumstances, for example, when they are in a hurry and need to get done with shopping as fast as possible. But normally that is not how it is at all.

Thus, Neera K. Badhwar argues instead – in her “Friendship and Commercial Societies,” *Politics, Philosophy, and Economics*, August 2008, V. 7, No. 3, 301–326 – that commerce is actually where much of our intimate social life gets its start. And anyone can check this out easily enough.

Just consider that wherever one works, one has colleagues with whom one has near-fraternal relationships. In fact, sometimes places of work become virtual “homes away from home,” where people not only meet and talk and grow close but get involved quite seriously in each other’s lives. Kids are discussed, as are spouses and extended families. Close friendships, or at least palships, develop frequently. Some colleagues become lovers and in time even marry.

The myth that market transactions are impersonal is just that, a myth, and it comes from shallow, superficial reflection on what goes on in markets. It may be no accident that the idea is so popular in the academy, where there is often a kind of isolation among faculty, with few becoming close with one another, although there

is enough exception to this that it should raise doubts in the minds of those who spread the myth. Even down at the grocery store, or the pet shop or car dealer, customers and vendors frequently depart from their initial reason for coming together and start discussing sports, ethnic food, music, or family troubles. And from that now and then full-blown, genuine friendships emerge. What the critics do not appreciate is how well people can multitask in life, that while they do business they can also address the arts, sciences, education, family affairs, and the rest.

Karl Marx was wrong – the free market is by no means only what he called “a cash nexus,” wherein everyone thinks only of the bottom line. That is because it would be entirely unnatural for human beings to be that way and because the bottom line is itself a *bona fide* human concern.

Political Economies Very Briefly

From the particulars of the several areas of business ethics it is important to move to a consideration of the broader area of political economy, the general framework of socioeconomic affairs in human communities. We will here take a brief look at several such frameworks.

Feudalism

The feudal system involves a hierarchical social structure, usually with a monarch or other supreme ruler, or family, in charge, and various layers of nobility in gradually descending order of importance, with the serfs or people of equivalent position comprising the bottom. It was the predominant type of order of Europe and, indeed, much of the world, and many of the legal features of contemporary societies can be traced to it (e.g., the police power).

This system of political economy derives largely from historical events and certain prominent ideas advanced in various philosophical and theological systems, including the notion that some people are naturally or by divine edict superior in moral and other respects to the rest and ought, therefore, to have a paternalistic relationship to them. A form of elitism – the entrenched superiority and often rule of the select few – is usually at the center of the feudal ideal, including aristocracy (although since this means the rule of the best, there is some ambiguity about whether it can support anything that is entrenched, static, since who the best are could change drastically over time).

In a feudal system the royal family usually directs, from above, the major social institutions – commerce, religion, the arts, property holdings, and professional positions. Accordingly, the economic system of *mercantilism* is closely linked to feudalism, as is the institution of a state church. (Although, often the prevailing church authorities can be separated from the state and this can give rise to complex dilemmas of spiritual and political leadership.)

It is fair to say that the idea of a constitution arose, in part, in opposition to feudal rule, so we will consider it next.

Constitutionalism

The term “constitution” derives from “to constitute.” This means “to be the basic structure for something.” Constitutionalism could be connected with a monarchy or with a democracy. (A parliamentary system is also a form of partly decentralized rule by council via the participation of political representatives from various regions of a country.) Usually, constitutions will list basic principles of decision making and of the limits of power or authority of the governing administration. In the USA, for example, the federal constitution has within it a Bill of Rights that provides a list of limits on the government’s authority and scope.

Such a system is usually recommended because of the predictability of the rules that govern the lives of people within a given geographical area. Yet, since there is no way to predict for the long range what problems will face people, the constitution usually needs to be interpreted to apply to topics that were not in evidence when it was originally drafted. A great deal of controversy surrounds just how this process should be implemented. The USA has the system of judicial review. If the legislatures or other law-making bodies proposed policies that some see to be in conflict with the constitution, the matter can be brought to the attention, ultimately, of the US Supreme Court and a judgment could then be forthcoming as to whether this measure accords with or violates the constitution – whether it is legal.

Another source of controversy about constitutionalism is whether it is ultimately democratic, whether it does justice to the idea that government must be by the people. A constitution projects the ideas of the drafters or framers way into the future, past their own lives and citizenship.

Socialism

Socialism is actually a system focused on the nature of human life as a whole. Socialists see the human being as part of a large whole, society, or even humanity. As Marx claimed, “the human essence is the true collectivity of man,” meaning that a human being is a specie being, the kind that is fully aware of belonging to “the organic body” of humanity.

The stress in socialism is laid on the health of society or humanity as a whole, although this cannot be separated from the well-being of the constituent parts, namely, the individual human beings who compose society or the species.

What in particular needs to characterize a good or just human community is cooperation, as opposed to competition or rivalry, in all realms of life – economic, scientific, political, and athletic. In that most important realm, the economic, socialism proposes the collectivization of the administration of all production and distribution of value (although such administration does not preclude subjecting some spheres of economic life to limited competition, a policy that is dubbed “market socialism”). So while socialists do not necessarily embrace the idea of central microeconomic management and planning, they do favor the supervision of society’s economic affairs from the viewpoint of the public at large with private initiative taking a subservient role.

Socialism can take several forms. Some claim that at least at the beginning of a socialist society there must be central planning by those who understand the need

for socialism, helping thereby to upgrade those who are lagging behind in their awareness of this need. Some would want a more democratic socialism whereby members of the community set priorities for the whole, in a kind of ongoing conversation about the priorities. Some others, as already suggested, see only a limited need for socialization of economic and other matters, albeit one that is vital (mostly as far as the satisfaction of basic human needs is concerned).

Just like human language, so human life in general is to be seen as a social process and the idea that we can make a significant difference to our lives as individuals is just as much of a mistake as the idea that we can invent our own language. That is perhaps one of the key reasons for claiming that socialism is the proper form of human social life.

Communism

In general, communism is a system of sharing whatever is of value among members of human communities, with no private life or individual ownership in play. In Karl Marx's version, communism is the final, mature stage of humanity's development, when all will have been fully emancipated. (History is the process of humanity's development toward its maturity, with earlier systems, such as tribalism, feudalism, capitalism, and socialism as developmental stages.)

In communism there will have emerged a "new man," one that has overcome the drive of selfishness and has embraced a full public spiritedness whereby love of all is the norm and work is always for the love of it, never for private gain. Government will have become moot, unnecessary, other than for minor administrative purposes.

Fascism

This form of government relies on inspired or charismatic leadership. It has no theoretical base, no framework other than the idea that some may be invested with enormous trust to lead a society to success. Fascists have been socialists, capitalists, welfare statists, communitarians, and the like – there is no necessary link between fascism and any of these political economics systems. What does matter is that someone of great insight and fortitude lead the society akin to how a captain leads a team or military unit.

Capitalism

This is the economic system in which the institution of the right to private property – that is, for any individual or any group of them, to own anything of value (not, of course, other human beings, who are themselves owners) – is officially protected.

There is dispute about the label, mostly because its definition is often a precondition of having either a favorable or unfavorable view of the system. Put differently, "capitalism" is the term used to mean that feature of a human community whereby citizens are understood to have the basic right to make their own (more or less wise or prudent) decisions concerning what they will do with their labor and property, whether they will engage in trade with one another involving nearly anything they may value or spend their lives withdrawn from the marketplace.

Thus, capitalism includes freedom of trade and contract, the free movement of labor, protection of property rights against criminal and foreign aggression as well as government intervention, as well as the freedom to abstain from market transactions (John Locke, Adam Smith, M. Friedman, F. A. Hayek, and Ayn Rand).

Welfare Statism

The welfare state or, from the economic viewpoint, the mixed economy, may be understood as a combination of the principles of capitalism and socialism. Sometimes the emphasis in this system is placed not so much on economic as on certain moral considerations. Basically, the welfare state consists of a legal system that aims at securing for everyone the negative right to liberty and the positive right to well-being.

The welfare state balances the two values that together seem to its advocates to be the bedrock of a civilized society. No one ought to have his or her sovereignty seriously compromised; nor should anyone be permitted to fall below a certain standard of living.

This idea is difficult to uphold because at different times one or another of these objectives will probably take priority and in mostly democratic systems political leaders will vacillate between giving more support to one or the other. The right to strike, for example, which is the negative liberty to quit one's job in an effort to gain respect for one's terms of employment, may conflict with the positive right to be provided with various services, for example, health care, mail delivery, or education.

It is indeed a prominent feature of the welfare state that both (what are referred to as) negative and positive rights receive legal protection. Negative rights involve respect for a person's life, liberty, and property, that is, everyone is by law supposed to abstain from interfering with these. Positive rights in turn involve respect for a person's basic needs, that is, everyone who is unable to secure the requirements of survival and even flourishing is supposed to have those provided by way of the appropriate public policy (e.g., taxation, mandated services, public education, national health care). (Negative rights were the subject matter of John Locke's political philosophy, while positive rights were the concern of T. H. Green, among others.)

The moral underpinnings of the welfare state can be utilitarianism, altruism, or certain intuitively held moral precepts. Utilitarianism requires that all pursue the general welfare, and whatever public policies to facilitate this were needed would be justified. Although many utilitarians believe that the general welfare is best achieved in a largely laissez-faire system, they do not oppose government intervention if without it many in a society may fail to achieve a decent and prosperous form of life (see, e.g., Keynes). Altruists often hold that to make certain that people fulfill their primary obligation to help others, it is necessary to introduce public measures so as to secure such help. Finally, there is the claim that by our common intuitions it is evident that both a measure of personal liberty and social welfare must be guaranteed to all, lest the quality of life in society fall below what it should be.

While people object to the welfare state from several other perspectives, its supporters regard it as the most stable modern political orders. Although it is characterized by much dispute and controversy, in the long run, its supporters maintain, the system seems to be overall satisfactory and just (John Rawls, James P. Sterba).

Communitarianism

Communitarianism is positioned between the collectivist system of socialism and the individualist one of capitalism. Roughly, it rests on the view that human beings are necessarily or essentially parts of distinct human groups, communities, with their diverse values, histories, priorities, practices, laws, cultures, etc.

Some communities can be Spartan, others Stoic, yet others bohemian and so forth. Each can have its peculiar way of life without implying any objective condemnation of some alternative form. Yet, participation in the community's form of life is not a matter of individual consent.

Communitarians often unite in their criticism of bourgeois society or liberal capitalism because of the emphasis in these latter on individuality, privacy, personal freedom, consent, competition, etc. Communitarians believe that the view of human nature underlying such liberal capitalist views is seriously flawed. They are convinced also that the central idea of liberal capitalism is what has come to be known as *homo economicus* or "economic man." That idea figures heavily in economic analysis and views individuals as autonomous entities who enter the world fully formed, ready to make choices in the market, and self-sufficient. While there are other conceptions of the human individual that might support liberal capitalism, it is this that has occupied the attention of communitarians and it is in contrast to this view that they have advanced their position (C. Taylor, M. Sandel).

Conclusion

Business ethics is possible in the Western semi-capitalist economic context because the profession of business itself is mostly welcome in the type of legal infrastructure that developed societies possess, ones wherein private property rights and free trade are reasonably secure. But this claim needs to be qualified.

Nowadays, because of numerous precautionary government restrictions, people in the commercial sphere lack full sovereignty. For example, governments prohibit buying or selling labor at a price cheaper than the minimum wage, even if an upstart company requires cheap labor to enter the market at all. The terms of trade between willing parties have thus been coercively constrained by a third party. The government has restrained trade even though the traders have done no wrong, have committed no crime, nor been identified as likely to do as (as clear and present dangers to the peace). (What public policy justification may be offered in support of such restraint of trade is irrelevant here. That issue belongs within debates about political economic systems.)

There are lots of impediments to free enterprise even in the developed nations, arguably the freest in the history of the world. In various parts of the globe, once one is hired, the employer becomes legally obligated to take care of one's security for just about the rest of one's life. That is one reason that unemployment is unusually high in such regions. It is much more expensive and risky for entrepreneurs to hire under the burden of such an involuntary open-ended liability; they know they will be legally unable to lay off employees even when economic pressures would rationally require that they do so. One cannot make a rational business decision in such a situation. Given people's changing

preferences, innovations, and all sorts of factors that can influence business, a firm must have flexibility, must have the freedom to act. It must be able to say, “Look, we can no longer do business, so we must part.”

Of course such a situation is also quite unjust for another reason, insofar as the employee is not bound to the firm in the way the firm is to the employee. This is not to suggest that a “fair” solution would be to shackle both parties equally! (This is akin to how employers are – but customers are not – prohibited to discriminate unjustly, are not as free as are their counterparts in the employment relationship.)

In a fully capitalist system, employees and employers would each be free to trade with each other either directly or through representatives. Without that flexibility, which is what private property rights make possible – giving one as much freedom to remove one’s labor as to provide it – the dynamism of the marketplace is stifled. At the very least, it is an unnecessary difficulty standing in the way of pursuing what market agents take to be their best economic opportunities and to take best advantage of them.

So the institution of private property rights is one of the fundamental prerequisites of business and of business ethics. In order to pursue your economic well-being, you have to own stuff, including your own time, resources, and labor. You can then trade them. Free trade means that nobody can dictate the terms under which you trade what is yours. Nobody puts a limit on it. (The only prohibition would be against theft and fraud, which are not cases of bona fide trade to begin with. You have not gotten the consent of someone from whom you steal, and thus you are violating the sine qua non of free trade.)

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Entrepreneurship and Ethics](#)
- ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)
- ▶ [Utilitarianism](#)

Notes

1. Some material in this chapter is drawn from my [1, 2] and, especially, [3].

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Pro-Market Versus Anti-Market Approaches to Business Ethics

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Nicholas Capaldi

Abstract

Within the field of business ethics there is a conflict or at least a tension between those who have a favorable attitude toward business and those who exhibit an adversarial attitude toward business. More precisely, we summarize *the conflict between pro-market and anti-market approaches to business or commerce*.

Introduction

A *market economy* is one in which (a) there is private property, (b) there is no central allocation of resources, and (c) prices are determined competitively by supply and demand. Pro-market is here understood as favoring a market economy, wherein the role of government is to protect property rights, enforce contracts, and provide for contractual dispute resolution. Pro-market approaches generally assume that the norms of a market economy are either primary or at least consistent and coherent with the norms of other institutions (government, law, family, religion, etc.). One can be pro-market without being pro-business; that is, one could be a supporter of the norms of a market economy without being an apologist for every practice of every business precisely because some business people will engage in practices that undermine the market economy.

Anti-market approaches are critical of markets either because they see internal contradictions in a market economy or they allege that market norms are in conflict with more fundamental norms (social, political, religious, etc.). Anti-market writers rarely identify themselves as anti-market; such self-designation would be fatal to employment in a business school. Nor do such writers even see themselves as

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anti-market. On the contrary, some of them such as Edward Freeman and Tom Donaldson insist that they are pro-market. What makes these writers anti-market is (1) their opposition to the policy that the primary object of business is to make a profitable product or service; (2) their insistence that business should achieve or help to achieve “other” overriding goals; (3) their identification of something as a business ethics “problem” because of a conflict between profitability and other goals; (4) their insistence that the alleged problems require resolution through nonmarket structures such as government regulation or a restructuring of corporate governance—in essence, the insistence that businesses function not like economic institutions but more like political, religious, or even academic institutions; (5) their appeal to abstract concepts drawn from a wide variety of disciplines other than economics.

No one questions whether there are other goals besides making profitable products and services. What is at issue is: (a) What are these other goals? (b) How are these goals to be prioritized? (c) How are these other goals related to the goal of producing profitable products and services?¹ Clearly, there is no consensus on answering these three questions. There is a background debate which can be characterized as a debate between rival visions of political economy [2].

The origins of Business Ethics, a relatively new field coming into prominence in the 1980s, clearly reflect its anti-market bias. “The field of business ethics was destined to be economically and politically liberal. . . . The field’s business school roots can be traced back to the University of California-Berkeley in the 1960s, where many of the first leaders of the nascent Business and Society field worked or were trained. Early research in this area focused on corporations’ ‘social responsibilities’ and sought economic reforms to assuage the inequalities perceived to be inherent in capitalism. These liberal scholars, resident in business schools’ Management departments, helped to establish the broader ‘social issues in management’ field that later spawned the more specialized area of business ethics” [3].

The Academic Context of Business Ethics

If one were to take an intellectually unbiased approach to any practice one would ask the practitioners what are the inherent norms of that practice. In addition, one could note that commerce has been around for centuries so one could ask the historical question of how those norms have evolved over time. Or, one could ask if the norms vary with place or culture and describe how various present-day cultures instantiate various normative frameworks. In the first instance one could consult business persons; in the second instance one might consult historians; in the third instance one might study comparativists. None of this was done in the specific field of business ethics. Instead, business ethics immediately became an academic discipline, but of a peculiar type.

During the 1960s and 1970s, the public (or those who claim to speak on its behalf) underwent an important sea change. Deliberation about ethical matters and initiation into ethical decision making had largely been left to centers of cultural authority that operated quite independently of the academy: religion, the family, the professions, and other intermediate institutions. For a variety of reasons, these traditional centers of authority were discredited and institutional leaders were persuaded that there were “ethical experts” [4]. The question is where does one find ethical experts?

By 1980, business schools had already become “professionalized.” In 1959, the Ford Foundation [5] and the Carnegie Foundation [6] had completed studies urging that (a) business education in general become more academic and less tied to practitioners and (b) there be the implementation of a “management science” based on the application of theory to practice [7]. The Management discipline is the primary locus of the field of business ethics in American business schools. The people who teach business ethics largely come from two backgrounds: philosophy and management.

Let us examine management first. Most of the PhDs in Management have a social science background. Traditionally, the social sciences have encouraged empirical studies, and to engage in such a study with regard to ethics would involve such things as an analysis of how business-people make moral decisions much the same way as marketers study consumer preferences. This purely traditional approach does not challenge the status quo of current ethical decision making; nor does it by itself reflect a normative management science – something that professionals could authoritatively teach business practitioners. Something more is needed – what that is will reflect developments in philosophy. In short, it will be the evolution of intellectual developments in philosophy that made the idea of normative management science tenable.

Prior to 1970, professional philosophy had treated ethical issues in an unpromising fashion: either professional philosophers had construed their task as meta-ethical (clarification of ethical discourse) or they were content to point out the difference between facts and values in a way that precluded a normative science of ethics. All of that changed during the 1970s and is best represented in the work of John Rawls, who published *A Theory of Justice* in 1971 [14]. From then on, philosophers felt themselves empowered to engage in normative work. Medical ethics and business ethics became the two growth subfields in philosophy. Utilitarians, Kantians, and virtue ethicists (Aristotle) developed elaborate methodological terminologies and did not hesitate to apply these conceptual schemes to the resolution of a whole host of public policy issues. During the 1970s, social scientists in general and management specialists in particular focused on methodological concerns and were quick to borrow from the discipline of philosophy the idea that they too could engage in normative work.

What accounted for this vast sea change? The intellectual answer is the domination of the culture by the belief in the existence of an authoritative and viable social technology. This belief is an expression of the Enlightenment

Project (EP) [8]. *The Enlightenment Project is the attempt to define, explain, and control the human predicament through the use of scientific technology.* The argument went something like this: Since Galileo and Newton, among others, physical science has been successful in explaining, predicting, and controlling the physical universe. There must be an analogous social science that will enable us to explain, predict, and control the human and social world, that is, produce a social technology, and thereby solve all human problems and bring about a utopia, a heaven on earth. Speaking of heaven, Christianity had been continuously embarrassed by claiming that certain scientific views were illegitimate (e.g., Galileo's trial and Darwin), only to find that we now live in a post-Christian or secular society. The new EP social science even claimed to explain how religious belief was a form of pathology. The long march of the EP from eighteenth century French intellectuals to nineteenth century positivism to complete domination of the universities in the twentieth century was aided by the spectacular scientific (e.g., "Sputnik" and the conquest of space in the 1960s) and technological advances (e.g., triumph of pharmacology in psychiatry) post World War II. Almost everyone now went to college, and no one could be taken seriously in any field without a college degree, and colleges and universities trained all the professions including opinion makers in the clergy and media. Universities controlled the commanding heights of communication.

What the EP does is to explain both how there can be management science and how social scientists and philosophers can engage in normative theorizing and education. We can not only explain what ought to be done but even educate students to do the "right" thing – after all education could be conducted scientifically. *Exactly how does the EP accomplish this?*

There are two versions of explanation in physical science: elimination and exploration. In *elimination* we substitute new ideas for older ones. An example of elimination is the replacement of Ptolemy's geocentric view of the universe with Copernicus' heliocentric view of the universe. This is useless in the social sciences because social theorists, at least on the surface, claim, initially, to be explaining our values, not immediately replacing our values.

In *exploration*, we begin with our ordinary understanding of how things work and then "explain" what is behind those workings. In time, we change our ordinary understanding. The new understanding does not evolve from or elaborate the old understanding, but replaces it by following out the implications of some hypothetical model. The replacement "explanation" appeals to underlying structures. An example from physical science is the atomic theory to explain chemical behavior or the behavior of gases.

Exploration is the preeminent mode of explanation in social science. By alleged analogy with physical science, social scientists seek out the hidden structure behind the everyday understanding of social activities. Marx and Freud are historically prominent examples of social scientists who sought to reveal a hidden structure behind everyday activities. Exploratory explanations seek the formal elements underlying the everyday world rather than believing that the everyday world can constitute its own level of understanding.

The problem with both elimination and exploration is that there is no way to confirm or disconfirm an elimination or exploration in the social sciences, that is, we never reach a structural level that is observable with advanced technology. Instead, one fashionable terminology replaces another. It is an intellectual carrousel on which the riders and the tunes change, but there is no progress. There are no formal criteria and no consensus that helps us to choose among competing explorations. Social theorists are obliged to appeal to informal criteria or intuitions about which hidden structure hypothesis “better” captures our ordinary understanding. There is, of course, no independent way of establishing this. The prominence of Richard Rorty and his view that philosophy is an interminable conversation of incommensurable voices reflect this situation.

Nevertheless, exploration became the preeminent mode of explanation in contemporary philosophy, and eventually in business ethics. An example is utilitarianism. Utilitarianism begins with the hypothesis that utility maximization is the underlying structure of our ordinary moral judgments. This is supplemented by the further hypothesis that there is a timeless and transcultural biological substructure to such judgments, namely, maximizing pleasure and minimizing pain. The substructure claims such explanations exhibit realism, causality, deductivity, and empirical verifiability. Although the ordinary moral judgments remain epiphenomena that do not exhibit law-like behavior, the underlying substructure allegedly permits scientific exploration.

There are two objections to exploratory philosophical theories. We will use utilitarianism as an example, but this applies to all so-called philosophical theories. First, some will deny that utility is a principle sufficient to capture our ordinary moral intuitions; this reflects what moral intuitions a specific theorist takes to be part of the core and what the theorist takes to be peripheral. Substantive moral disagreements will always lead to disagreements about hidden structure. Second, some will deny that there is a transcultural and timeless substructure. To an outsider it begins to appear as if the hidden structure hypothesis is no more than a rationalization for a private agenda. In any case, there is no external way to confirm or disconfirm any hypothesis and no way to choose among rival hypotheses. What this reflects is that the theorist is offering a “higher”-level exploratory hypothesis about other people’s exploratory hypotheses. But choosing among competing “higher”-level explorations involves us in an infinite regress.

Faced with this impasse, some, like Foucault, have been led to argue that the process is simply a power struggle. A recent development is the appearance of an anti-market approach drawn from Continental European philosophical sources. There is now an International PhD program at Lund University, Sweden, called Critical Management Studies. Critical management studies problematize the status quo. They focus on the “darker” side of business and organizations. Critical theory includes the Frankfurt School and related authors and lines of thought such as Foucault, critical poststructuralism, certain versions of feminism, and so on.

What we are left with is the following. Not only are there significant moral disagreements, most of these controversies cannot be resolved through sound rational argument. Either we have different foundational commitments or we

have different rankings of the good. Resolution is not possible without begging the question, arguing in a circle, or engaging in infinite regress. Neither can we appeal to consequences without knowing how to rank the impact of different approaches with regard to different moral interests, nor appeal to preference satisfaction unless we already grant how we shall correct preferences and compare rational versus impassioned preferences, as well as calculate the discount rate for preferences over time. Any appeal to disinterested observers, hypothetical choosers, or hypothetical contractors also fails. Disinterested deciders will choose nothing. Intuitions will always be met with contrary intuitions.² There is no good reason to believe that these debates can be brought to closure in a principled fashion. As Alasdair MacIntyre put it, “There seems to be no rational way of securing moral agreement in our culture” [10]. The partisans of any position find themselves embedded within their own discourse, unable to step outside of their own respective hermeneutic circles without embracing new and divergent premises and rules of inferences.

Note should be taken of an alternative not subject to the dysfunction of exploration, namely, the form of reflection (not theorizing) we call “explication.” All reflection is ultimately reflection on primordial practices that existed prior to our theorizing about them. Explication is a mode of understanding social practices which presupposes that all such practices function with implicit norms. To explicate a practice is to make explicit the implicit norms. The closest analogue to explication is case law in Anglo-American jurisprudence. In explication we try to clarify that which is routinely taken for granted in the hope of extracting from our previous practice a set of norms that can be used reflectively to guide future practice. We do not change our ordinary understanding but rather come to know it in a new and better way. Explication is a way of arriving at a kind of practical knowledge that takes human agency as primary; it mediates practice from within practice itself. Explication is inherently pro-market because it takes the market economy as the given to be explained in its own terms.³

Many failed to grasp the implications of this impasse; others promised in a variety of ways to overcome it [13]. Needless to say, there is no consensus either inside or outside the discipline of philosophy. None of this deterred professional philosophers and others from engaging in normative pronouncements.

Under the guise of ethical “theorizing” many contemporary philosophers and others employed concepts from classic famous philosophers such as Aristotle, Kant, or Mill. The liability of this mode of generic theorizing is that it begins with very abstract principles and then seeks to apply them to specific ethical issues. It is a liability because in the application the theorist must make additional assumptions so that the original abstract principle can be used to arrive at any and all conclusions. In the case of Aristotle, for example, one can reinterpret Aristotle through a specific version of “Thomism,” as MacIntyre does, and end up with a quasi-Marxist critique of market economies; or, as Robert Solomon did, reinterpret Aristotle as a communitarian; or in the case of Elaine Sternberg, Douglas Den Uyl, and Douglas Rasmussen, we arrive at an admittedly neo-Aristotelian

but pro-market view. John Hasnas can be described as a pro-market Kantian. There are also philosophers, like Machan and Mack, who use the clearly pro-market position of Ayn Rand (itself a version of Aristotle) as a starting point for business ethics.

The predominance of exploration in the field of business ethics is best exemplified by the influence of Rawls. John Rawls offered an exploration in his book *A Theory of Justice*. He does not start with an explication of existing practice but with an imaginary original position. He is not interested in where we are and how we got there but where we ought to be. In the hypothetical “original position” we choose principles of justice “behind a veil of ignorance,” without knowledge of “[one’s] place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength,” even one’s sex [14].

Rawls is anti-market in the following senses: he is an egalitarian⁴; he asserts that we should never be tempted to exploit our differences⁵; he rejects “excessive” inequalities of wealth; “[s]ocial and economic inequalities” are to be to the greatest benefit of the “least advantaged” (*Difference Principle*),⁶ a response to socialist concerns about equality; finally, he specifically attacks Nozick’s libertarianism because it does not guarantee all citizens sufficient means to make full and effective use of their basic liberties. The influence of Rawls on business ethics can be seen prominently in the work of Thomas Donaldson [15, 16] and Christopher McMahon [17]. Starting from a hypothetical contract, Donaldson argues that Corporations acquire social responsibilities beyond the creation of wealth and jobs. McMahon advocates codetermination that requires legally binding boards of directors to be composed in equal parts of representatives of employees and investors. McMahon’s work is cited by Denise Rousseau [18] who has a political agenda that is to be superimposed on management: “democracy is the power of the people and is manifest in ways. . .that promote participation in and influence over the decisions affecting their everyday lives.”⁷

The Predominance of Anti-market Approaches

There are pro-market explorations in contemporary philosophy. Robert Nozick in *Anarchy, State, and Utopia* (1975) also offers an exploration, but it is pro-market. Nozick postulates a Lockean state of nature without a contract. Primarily focused on the insecurity of individual rights in a free market, human beings are led by an *invisible hand* to join in protective associations with the state emerging as the dominant protective association. The major obligation of the state is to provide protection against force, theft, and fraud and to enforce contracts.

One might expect the field of business ethics then, or at least the philosophical oriented part, to be roughly divided between pro and anti-market explorations. That turns out not to be the case. “Although Nozick’s negative rights theory is now

often noted briefly in textbooks' overviews of rights theory, it is virtually never used as a basis for ethical argument in the business-ethics literature."⁸ On the contrary, business ethics explorations are overwhelmingly anti-market. Why is that the case?

First, since the nineteenth century [19], intellectuals [20] in general and academics [21–24] in particular have been highly critical of markets and market-oriented cultures and societies.

Second, many contemporary intellectuals see themselves in an adversarial position to an alleged market-society which they insist upon characterizing as being run by a conspiratorial and dangerous "establishment." C. Wright Mills, in his 1956 book, *The Power Elite*, described the establishment as follows:

The power elite is composed of men...in positions to make decisions having major consequences.... [T]hey are in command of the major hierarchies and organizations of modern society. They rule the big corporations. They run the machinery of the state and claim its prerogatives. They direct the military establishment. They occupy the strategic command posts of the social structure, in which are now centered the effective means of the power and the wealth and the celebrity which they enjoy [25].

In his book *Biz-War and the Out-of-Power Elite*, Jarol Mannheim [26] argues that intellectuals who followed Mills have built a shadow counterpower structure and are actively engaged in a "social network" war against business. The counter-structure consists in (a) infiltrating and redirecting⁹ philanthropy (contrary to donor intent) to (b) sponsoring tax-exempt foundations that support the conducting of research in universities and left-leaning think tanks, which in turn (c) provide the intellectual legitimation to alter public opinion through influence on the media which eventuates in (d) changes in the law that limit markets.

We cite as an example of this ingrained hostility a statement by George Brenkert, long-time editor of *Business Ethics Quarterly* in an essay on Entrepreneurship:

The argument for entrepreneurship and an entrepreneurial society is for a society in which some sub-set will provide leadership...the entrepreneurs will be the spark plugs, as it were, of this economy and society. Instead, then, of a Platonic society, which looked to its philosopher kings, our entrepreneurial society will look to its entrepreneur bosses [27].

Third, Schools of Business are mostly housed within universities, and universities are dominated by the political left [28, 29]. This domination reflects in part both the general adversarial attitude of intellectuals to commerce and the EP which encourages the belief in a social technology overseen by academic experts.

While schools of business in general are more centrist, business ethics programs in particular are housed within the management area. Management personnel, and to a less extent marketing faculty, are generally much further to the left than faculty in accounting and finance. Given their social science background and proclivity with its focus on alleged institutional structures, management faculty focus on the structure of highly centralized and large organizations like major corporations; this, despite the fact that the overwhelming majority of business school graduates will never work for such organizations.

I cite two writers who call attention to this anti-market bias. First, Marianne Jennings [30] argues that the AACSB (American Association to advance Collegiate Schools of Business) guidelines on curriculum and instruction contain little in the way of substance and reflect the sort of bias against the market economy that prevails elsewhere in the university. Second, James Hoopes [32] has given a broad but critical historical overview of the management literature of the twentieth century, a review in which he documents the unwillingness of management gurus to see profit as legitimate unless subordinated to another goal.

One specialty within business ethics is the subfield of Corporate Social Responsibility (CSR). Pro-market approaches to CSR link various kinds of business philanthropy to its contribution to the bottom line. This is routinely dismissed by anti-market writers as not really CSR [31].

Anti-market approaches to CSR are dominant. This hostility is fueled by a traditionally leftist understanding of the social world and its problems: going back to Rousseau's critique of Locke, the present world allegedly reflects an unfair bargain in which the haves (as perceived by some) have imposed an unfair system on the self-perceived have-nots. At the same time, the post-1989 left has become understandably disenchanted with Government planning and control of markets. It is now much more favorably inclined to democracy, while at the same time being mindful of how democratic governments are corrupted by special interest groups and collusion between big government and "big business". This anti-market version of CSR appeals to a kind of triangulation in which civil society is the dominant element. Civil society allegedly is represented by NGOs, that is, so-called nongovernmental organizations (foundations, think tanks, philanthropies, charities, overtly activist organizations, etc.). NGOs will presumably solve social problems through a redistribution of wealth and power carried out within a market society and through market mechanisms. The market mechanisms here are large and usually multinational corporations. They focus on big corporations both because these private organizations have substantial financial resources and because, going back to the classic of Berle and Means, there is recognition and exploitation of the insight that managers are not owners. NGOs seek to drive a wedge between stockholders and stakeholders and exploit the agency problem on behalf of various selected stakeholders. NGOs expect managerial cooperation for three reasons: managers are worried about bad publicity, litigation, and the threat of outside agitation; there is a new kind of celebrityhood available to managers who are cooperative or enablers; and they fully expect to train future managers (not entrepreneurs) to become compliant and in turn this will increase the power, prestige, and rewards of business school faculty and law school faculty. In all of this, there is a new and rising ruling class: NGOs staffed by intellectual leftists (academics and law school graduates primarily) who offer to mediate the relation of corporations with each other and government and all other institutions. The best example of this is Peter Drucker who placed his final hope in a society "where nonprofits rather than corporations will create a morally legitimate system

of management”.¹⁰ Anti-market advocates of CSR never specify an overall program, but remain a loose federation freed of the burden of providing a comprehensive alternative program.

Specific Issues in Business Ethics

Nature and Purpose of the Publicly Traded Corporation

This is the fundamental issues: *almost everything follows from this, and that is why the Friedman versus Freeman debate is crucial.*¹¹

Pro-market: *the major function of such a corporation is to make a profitable product or service (thereby creating both wealth and jobs).* Corporations (or firms) are to be understood as enterprise associations within a larger civil association. A corporation is an enterprise association, that is, individuals are voluntarily involved in the pursuit of a common substantive purpose, specifically a productive undertaking: “. . .interminable engagement in the continuous promotion or protection of an enduring interest. The response sought. . .[is] that of others not thus associated as a productive enterprise seeks buyers or consumers. . .” [35]. The common purpose cannot be “equality” or “fulfillment,” etc., because these are not substantive purposes. As an enterprise association, a corporation cannot have two or more discrepant purposes; if there are multiple purposes, then they must be prioritized or systematically related. *From this it follows that economic efficiency trumps all other considerations.* For market advocates, this issue was decided long ago (1918) in US Corporate Law by *Dodge v. Ford Motor Co.* The primary fiduciary responsibility of managers is to their shareholders. “[I]n the United States and the United Kingdom the vast majority of managers (76 percent and 71 percent, respectively) took the view that the corporation belonged to the shareholders. In sharp contrast, in Germany 82.7 percent of senior managers thought their company belonged to all of the stakeholders. France was not much different with 78 percent. . . . In Japan an astonishing 97 percent of managers thought that the company belonged to all stakeholders” [36].

This is not to say that making a profit is the only thing that matters; nor does it say that one must make a profit not matter what, or that the end justifies the means. As Friedman put it, “to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.”¹²

Anything which contributes to the bottom line is OK, otherwise not. So, for example, discrimination works against efficiency and is therefore bad; certain forms of corporate philanthropy might contribute to the bottom line and are therefore good; others do not. Surely this will vary with the individual industry, company, etc.

Advocates of the market see the potential of an infinitely expanding economy (Simon) powered by private property and competition among individuals and individual corporations in a market where sellers try to satisfy buyers. The market

does not have an overall goal; it exists to satisfy the self-defined interests of the participants. In a true market, there will be winners and losers, but the interests of all concerned will be maximized over time. By maximizing the creation of wealth, the market provides both the maximization of present and future economic opportunity for all and the resources with which private individuals and other institutions can address other nonmarket issues.

Social problems are to be addressed primarily by other institutions. Once another objective(s) is added to the bottom line then the question of the relation or prioritization of that objective becomes relevant. As the Business Round Table put it:

The weakness of the stakeholder model is the absence of an overall objective function which implicitly or explicitly specifies the tradeoffs from expenditures on various items, including each of the firm's stakeholders. This in turn implies that the top managers of such organizations cannot be held accountable for their decisions because without an overall objective function, there is no way to measure and evaluate their performance. . . it would leave the board with no criterion for resolving conflicts between interests of stockholders and of other stakeholders or among different groups of stakeholders.¹³

Anti-Market advocates want the USA to be more like the EU and Japan. The Corporation *should* be viewed as a social entity [37–39]. This is exemplified in Freeman's focus on the stakeholder. To date, different and sundry anti-market authors do not offer a comprehensive account of what the other objectives should be or how the list of other objectives is to be prioritized.

Absent such a comprehensive account, we suggest that anti-market advocates need to provide an account of the economy in which it would have an overall (collective) goal to which the interests of individuals and individual corporations are subordinate. This does not have to be a planned economy but a highly regulated one in which conflicting interests are continually adjusted through nonmarket mechanisms. Anti-market critics do not have a clear and coherent alternative, only a laundry list of aspirations. They know what they are against but not what they wish to substitute for it.

With regard to growth, anti-market writers either deny (e.g., finitude of resources or transformation of the environment, discussions of "sustainability") or eschew the possibility of infinite growth. They maintain either that growth is finite and therefore should be subject to government control and rationing on grounds of fairness, or that growth *should* be limited in order to achieve other more worthy social objectives.

Relation of Government to the Corporation (Regulation, Environment, Globalization, and Property Rights)

Pro-market: The major purpose of the government is to protect property rights and punish the use of force and fraud. Injuries to third parties can be handled through negotiation and litigation (torts). Most if not all government regulations are counterproductive. Globalization is the gradual (and grudging) acceptance of the USA and UK model of free markets, limited government, the rule of law, and a culture that promotes individual initiative.

Anti-market: The best argument on why regulation fails was written by Cass Sunstein [40] (Obama's regulatory Czar), but Sunstein thinks we can learn from this how to make regulation work! The Environment (notice the capital "E") is a global ecological responsibility which cannot be adequately addressed by either markets or individual nation-states. The Environment requires that we conceive of the world as an enterprise association (collective goal) requiring either world government with world regulatory authority or the modified view of civil society discussed earlier under CSR. Globalization is the world as enterprise association. Property rights may be overridden in the new globalization [41]. The same argument for an implicit world government is used with regard to multinational corporations. Generally speaking, anti-market writers like to invoke the notion of universal human rights as embodied in the UN Universal Declaration of Human Rights [42]. What we witness here is the replay of the argument of the perceived "have-nots" against the perceived "haves".

Responsibility of Management to Employees

Pro-market: Employment at will is a good thing because it encourages entrepreneurs to take the risk of starting new businesses and it allows employees to find better positions. Affirmative Action is a good thing if it seeks out the best employees, but it's a bad policy if it requires that hiring, promotion, and firing be done to achieve other social objectives. In the latter sense it is actually illegal. Sexual harassment is illegal and counterproductive. Workers in foreign countries should not be abused, but they should be paid market wages in their country. Finally, executive compensation should be determined by market forces – supply and demand.

Anti-market: Employment at will is bad; workers should be granted a form of tenured job security. Firing would have to be justified at an "official" (expensive) hearing. On this, see P. Werhane who consistently takes the anti-market line [43]. Affirmative action as something akin to quotas should be the policy. Both affirmative action and sexual harassment get redefined as diversity. The expression "sweat shop" is expanded to cover not only inhumane treatment but paying wages on a local scale rather than home-based scale.

With regard to executive compensation, anti-market writers maintain that either (a) present compensation is the result of force and fraud or (b) there is no true market because of the existence of unequal bargaining power, that is, present distribution of resources is the result of historical accident and not a market. These writers may opt for (a) starting over or (b) constant regulatory oversight. What we witness here, again, is the replay of the argument of perceived "have-nots" against the perceived "haves".

Responsibility of Employees to Management

The extant literature is almost wholly anti-market. There is rarely any discussion of what employees owe management. Most of the literature focuses on when

employees should blow the whistle or whether there should be insider trading. Pro-market writers favor inside trading (on economic efficiency grounds); anti-market writers oppose it (on grounds of fairness).

Market “Failure”

Pro-market advocates maintain that (a) free markets do not fail, (b) part of a market’s functioning is to eliminate through competition less efficient or fraudulent entities, and (c) inevitably government regulation or agendas provide the distortion or incentive for “bad” behavior.

Anti-market advocates trace everything back to the original conception of a market as a place where individuals are encouraged to pursue their self-defined interest. Milton Friedman is cited as the author of an amoral ideological management theory that frees students from any sense of moral responsibility [44]. There is, of course, no empirical evidence to substantiate this claim [45], but this is not about evidence but ideological perspective. Anti-market writers generally subscribe to some version of environmental determinism (an essential component to the idea of a social technology based on social “science”). Hence there is a tendency to attribute many problems to advertising. Pro-market writers think that consumers should exercise some responsibility for choices and that parents should be responsible for monitoring that to which children are exposed (social problems to be addressed by other institutions and not the market). Curiously, there is little discussion of what it means to be a fit participant in a market economy. Anti-market writers, again on the assumption of environmental determinism, never consider it a failure on the part of the participant – the blame is always placed on institutional structures – that is, the market.

Teaching Business Ethics

Pro-market proponents take as their major responsibility explaining how markets operate, what the norms of market activity are, and how those norms relate to other nonmarket norms. If those proponents think market norms are fundamental to all norms, they need go no further. If some of those proponents believe that other norms are more fundamental but that market norms are consistent and coherent with the fundamental nonmarket norms, they can present such a case.¹⁴ Getting students to take the whole package seriously and to internalize those norms is a more complicated task and involves the whole educational system.

Anti-market proponents take as their major responsibility the exposure of the “failure(s)” of markets (pro-market writers would describe this as “business bashing”). It would also be part of their responsibility to advocate market reforms and actively lobby for those reforms in the classroom. Anti-market proponents are not merely scholars and teachers but consider themselves as participants in a larger drama – to teach business students is to get them to internalize anti-market norms.

Conclusion

Table 62.1

Issue	Pro-market	Anti-market
Narrative	Liberty	Equality
Politics	Civil association ¹⁵	Enterprise association ¹⁶
Legislation	Equality of opportunity	Equality of result
Law	Rule of law	Distributive justice (fairness)
Role of the government	Protect property rights; enforce contracts; resolve contractual disputes (litigation)	Regulation for common good; protect third parties
Corporation	Nexus of contracting individuals [46]	Social entity
Purpose of publicly traded corp	Profitable product or service (economic efficiency)	Serve the common good
Board of Directors	Technical expertise for advice and consent	Represent all stakeholders
Role of management	Primary fiduciary responsibility is to creditors and shareholders	“Multi-fiduciary” duty to stakeholders within the social good; priority of distribution over production
Relation of management to Employees	(a) Contractual autonomy; (b) hierarchy; (c) internal entrepreneurship	Democratic participation
employees	(a) Employment at will; (b) right to work; (c) meet contractual obligations	(a) Collective bargaining; (b) whistle-blowing
Insider trading	Yes – enhances market efficiency	No – incompatible with fairness
Foreign outsourcing	Yes – improves productivity	No – “sweatshops”
Executive compensation	Supply and demand	Fairness
Affirmative action	To improve productivity	To improve fairness and diversity
CSR and philanthropy	If it contributes to bottom line	Serve the common good

Cross-References

- ▶ [A Marxist Ethic of Business](#)
- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [David Hume and the Scottish Enlightenment](#)
- ▶ [Kant’s Categorical Imperative and the Moral Worth of Increasing Profits](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [Utilitarianism](#)

Notes

1. Friedman makes the larger case that without market freedom all other freedoms would disappear. [1].
2. This argument was originally made by Engelhardt [9].
3. Explication is exemplified in the works of Marcoux Capaldi [11, 12].
4. [14], p 10. “. . .an initial position of *equality* [italics mine] as defining the fundamental terms of their association.”
5. [14], p 151 “everyone’s well being is dependent upon a scheme of cooperation without which no one could have a satisfactory life. . .” (See also pp 522, 527, 570–577).
6. [14], p 75.
7. [18], p 116.
8. Ryan, L. op. cit., p 38.
9. “Responsible Wealth” is a project of United for a Fair Economy that recruits and trains wealthy individuals in philanthropic activism.
10. Quoted in [32].
11. Both of these classics are widely reprinted [33, 34].
12. Friedman, op.cit.
13. “Statement on Corporate Governance,” September 1997, pp 3–4.
14. See note 11.
15. Advocates of a civil association recognize a common good understood as the procedural norms that permit individuals to pursue their private goods; as such, the common good is not a collective entity.
16. Advocates of an enterprise association understand the common good as a substantive entity, specifically a collective good which subsumes the good of individuals.

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Abstract

Much of the current business ethics literature takes *corporations* and *social responsibility* as its key operative concepts. Meanwhile, much of the business and economics literature is moving to seeing *entrepreneurship* as a foundational activity. In this chapter I argue that business ethics should be refocused away from corporations and the social and toward entrepreneurs and the individual.

Introduction to Entrepreneurial Ethics

Ethics is about values and virtues. What things in life are worth pursuing – are health, wealth, love, beauty, creativity, and so on, *values*? And what character traits are necessary to achieve those good things – are honesty, courage, perseverance, a commitment to fairness, and so on, *virtues*?

In the past generation, while more attention is being given to entrepreneurship as an economic phenomenon, entrepreneurship has received little attention as an ethical phenomenon.

Yet entrepreneurship is a value-laden enterprise. As a business activity, entrepreneurship demands resourcefulness and resilience, risk tolerance and courage, and it can be a vehicle for achieving exalted financial goals.

In this introductory chapter, we sketch entrepreneurial ethics and explore its implications for the foundations of business ethics.

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The Values of Entrepreneurship

What could it mean to see entrepreneurship as an ethical phenomenon?

Let us approach the question by first asking: Why do we work? “Because I have to,” say some. “Because I want to,” say others. Unless one is born into wealth or wins the lottery, making a living is foundational to life. Yet, beyond making a bare living, work can be a means of achieving many goals – financial security, creative expression, sociability, and even adventure. Many of those who do not have to work often find their work to be a vehicle for pursuing those goals.

One basic work choice is to go to work for an existing business, that is, to become an employee, or to go into business for oneself, that is, to become an entrepreneur.

So let us ask, secondly: Why do many people choose entrepreneurship over working for others? Their reasons can be negative – there may be no employment opportunities available so entrepreneurship is the best available option. Or their reasons can be positive – they believe that as entrepreneurs they can achieve greater wealth, autonomy, and self-expression.

Wealth: Entrepreneurs typically have ownership positions in their businesses and thus a chance at greater earnings than salaried or hourly employees. That wealth in turns means a chance at greater financial security and all the good things that money can buy.

Autonomy: Entrepreneurs are deciders and initiators. Consequently, they have greater power over their thoughts and actions and more flexibility in the use of the time than most employees. Expressed negatively, autonomy means not having to take orders from bosses, being more easily able to avoid bureaucracy, office politics, and so on.

Self-expression: Entrepreneurs build businesses from the ground up, typically generating the idea and making it happen. As a result, entrepreneurs typically experience stronger psychic ownership of their businesses. Their business is *my idea done my way*. Put negatively, entrepreneurs do not experience their work life as being a cog in someone else’s machine.

Entrepreneurship, accordingly, is a vehicle for the pursuit of several important physical and psychological human values: wealth, autonomy, and self-expression. Of course, working as an employee can realize those values, yet entrepreneurship makes them central and more likely to be realized.

Further, entrepreneurs *trade* with others when purchasing raw materials, when selling to customers, and when they hire employees to help grow the business. Entrepreneurs create new networks of voluntary traders, and they enter into and maintain already existing networks. Trading networks are also of great human value, and they are based upon mutual commitments to deal with each other on the basis of voluntary exchange, rather than, say, on the basis of treating the other as an object of charity or plunder.

Accordingly, entrepreneurship is based upon several value commitments: the importance of autonomy, self-expression, voluntary trade, and the creation and enjoyment of wealth.

The Virtues of Entrepreneurship

If entrepreneurship is a *value*-oriented enterprise, what *virtues* make that enterprise successful?

Let us consider a typical entrepreneurial process. It begins when someone has a *new business idea*. The entrepreneur is *ambitious* and exhibits *guts* in taking *initiative* in developing the idea into a new enterprise. Typically, through *experimentation* and *perseverance*, the entrepreneur *produces* something of value. The entrepreneur then becomes a *leader* convincing customers of the new product's value and in teaching new employees how to make it. The entrepreneur and the customers and the entrepreneur and the employees *trade to win-win* results. The entrepreneur has achieved a measure of *success* and then is able to *enjoy* the fruits of his or her achievement.

What does this sketch of the entrepreneurial process have to do with virtue? Virtues are action-guiding character traits that aim at good results.

If we cash out the above italicized entrepreneurial-process traits in terms of *virtues* – that is, in terms of character traits and commitments that enable and constitute good action – then we make the following connections:

The entrepreneur's *generating new business idea* connects to the virtue of *rationality*. Rationality is the commitment to the exercise of one's capacity for reason. The entrepreneur's coming up with a business idea, evaluating it, and planning to make it real require the exercise of rationality.

The entrepreneur's *ambitious* drive for success connects to the virtue of *pride*. Pride can be based upon past accomplishments, but it can also be future oriented – wanting to be the best one can be and not settling for less. The entrepreneur's ambition is his or her taking pride in the business part of his or her life.

Entrepreneurial *initiative* connects to the virtue of *integrity*. Integrity is a commitment to acting on the basis of what one believes to be true and good. If the entrepreneur believes a business idea to be good, then the activity of making the idea a reality integrates thought and action.

The risk of failure is a feature of entrepreneurship, and fear is a natural response to the possibility of failure. So the *gutsiness* that entrepreneurial action involves connects to the virtue of *courage*. Courage is acting to achieve what one thinks is good even when aware of the risk of failure.

The entrepreneur's working through *experimental* process of product development connects to the virtue of *objectivity*. To be objective means judging based on one's awareness of the facts, being open to new data (including unwanted negative data). An element of objectivity is the virtue of intellectual *honesty*, that is, a commitment to recognizing the facts of the matter for what they are.

The entrepreneur's *perseverance* through difficulties, disapproval, and self-doubts connects with the virtue of *independence*. Independence is the virtue of trusting one's own judgment and acting on the basis of one's best judgment despite frustrations, distractions, or the disagreeing opinions of others.

The entrepreneur's *productivity*, that is, his or her sticking to it until the job is done, connects to the virtue of *productiveness*. Productiveness is a commitment

Table 63.1 Entrepreneurial success traits and moral virtues

<i>Entrepreneurial traits</i>	<i>Moral virtues</i>
New ideas	Rationality
Ambition	Pride
Guts	Courage
Initiative	Integrity
Perseverance	Independence
Experimentalism	Objectivity (including honesty)
Productivity	Productiveness
Leadership	Leadership
Win-win trade	Justice
<i>Entrepreneurial consequences</i>	<i>Moral values</i>
Experiencing success: wealth, autonomy, self-expression	Self-esteem, happiness, flourishing

to creating value, to being self-responsible for bringing into existence that which one needs or wants.

The network of traits that make for effective *leadership* are complex and variable. Yet, through whatever individual capacities and personality traits, entrepreneurs have to show others the value of the new business's products or services, convince customers and investors to commit funds, and teach employees how to perform the business's functions. Entrepreneurship necessarily involves a commitment to *leadership*.

The entrepreneur's *trading to win-win results* with customers and employees connects to *justice*. The virtue of justice entails a commitment to evaluating and interacting with others according to merit. In a business context of voluntary deals, justice means that each party judges the merits of trade independently and agrees voluntarily to the terms of the trade, and follows through accordingly.

And finally, the entrepreneur's *achieving and enjoying success*, both the physical and psychological rewards that business achievement can bring, connect to the general *moral values of flourishing, happiness, and fulfillment*. As the entrepreneur's business life is a component of his or her overall life, the entrepreneur's engaging in the actions that lead to flourishing in business is a component of an overall flourishing life. In Aristotelian terms, the entrepreneur's actions both constitute and lead to a life that is fully realized.

Summarizing all of the above in a table [3], we get the following (Table 63.1).

Entrepreneurial Ethics as a Business Ethics Code

The virtues constituting the table's right column embody *an entrepreneurial code for business ethics*. That set of virtues describes entrepreneurial activity abstractly. Conversely, the success traits of entrepreneurs in the table's left column are particulars of a general set of virtues that can be applied in all walks of life.

Relevant questions then for the business ethics of entrepreneurship are:

- (a) What are the values of entrepreneurship, upon which all successful business is based?
- (b) What are the character virtues of entrepreneurship that enable successful business?
- (c) How do we teach and inspire those values and virtues in students and business professionals?

Now for some implications.

One implication is that approaching business ethics via entrepreneurship connects business to ethics positively and organically. The virtues and values embedded in the practice of entrepreneurship sets a foundation for a business ethic based on the assumption that successful business practice has *within* it the resources to develop an ethic. That approach contrasts to the assumption often made that ethics is alien to business and must be grafted on or imposed from without.

Another implication of an entrepreneurial ethic is that business ethics should focus first on creativity, productivity, and trade. That is, it should not take those elements take them for granted or as amoral givens. If the basis of business is creative productivity and trade, then the basic focus of business ethics should be upon that which enables individuals to be or become creative producers and traders.

A third set of implications emerge when we contrast an entrepreneurial business ethics to the dominant model of business ethics for the past half-century, that is, “corporate social responsibility” (CSR).

Entrepreneurial Ethics Contrasted to Corporate Social Responsibility

Corporate Social Responsibility’s three constituent words indicate its three framing assumptions as a model of business ethics:

1. The first tells us that *corporations* are our model of business practice to analyze and prescribe to.
2. The second word tells us that the *social* is our focus.
3. In the literature, *responsibility* is usually cashed out in terms of *avoiding harm* and *distribution to others*. Or it is interpreted conjunctively with the second word to mean *social* responsibility.

On corporations as the standard model. The vast majority of examples in business ethics focus on large, well-known corporations – Wal-Mart, Microsoft, Exxon, McDonald’s, and so on, and much of the business governance literature focuses upon corporate governance, with its hierarchical structure.

Yet, the corporation is not the only business type or even the most plentiful type. Firms can be organized as sole proprietorships, partnerships, and corporations, and the US Census Bureau data indicate that large corporations are a fraction of overall business activity: “About three quarters of all U.S. business firms have no payroll.

Most are self-employed persons operating unincorporated businesses” [4]. Further, in 2007, there were 27,757, 676 firms in the US, but the number of firms with more than 100 employees was approximately 126,000, which is about one-half of one percent.

What these numbers suggest is that the business ethics literature’s focus on the mature, large corporation obscures the reality of the business environment most people experience. Most businesses are small businesses and closer to their entrepreneurial roots.

Further, every corporation *starts* as an entrepreneurial venture. Many such ventures perish, a few go on successfully; a very few become large. But there is a value to understanding businesses causally. The basic principles of business – buying and selling, hiring, firing, and quitting – including its moral principles, are in place from the beginning. So, a focus on entrepreneurship enables us to articulate those moral principles and then see how they develop as the business grows in size and complexity.

On the social focus: CSR typically assumes, as in the following example from the Committee on Economic Development, that business exists to serve social purposes, often top-down social purposes: “business functions by public consent and its basic purpose is to serve constructively the needs of society – to the satisfaction of society”[2]. Such formulations do not mention individuals and assume that the society has priority over the individual.

Yet, it is not clear that this is the reality or importance of business. The basic business transaction is that between a buyer and a seller: two individuals come together, each bringing value to the transaction, and they go their separate ways after to enjoy the results of the transaction. Before buyers and sellers can trade, each has to engage in productive work, and productive work is basically individual. An individual wakes up in the morning, decides to get out of bed and go to work. He or she makes dozens of decisions and performs hundreds of particular actions in the course of a day. At work, those actions add up to productivity, the results of which enable the person to become a buyer or a seller.

Entrepreneurial ethics highlight this individuality of business: entrepreneurial activity is primarily *individual*. It starts with an individual’s idea, an individual’s productive efforts, and then develops into a social network of value-adding individuals producing and trading with each other. What we call firms, markets, and other relevant social groupings are associations of individuals adding value together. Such social groupings are formed bottom-up and remain in existence as long as they serve mutually the interests of the individuals involved.

So, while social interaction is an important part of business ethics, it is consequent. A business ethic based on entrepreneurialism makes issues of individuality primary and issues of sociability secondary.

On responsibility as avoid-harm and distribution: In CSR, the broad concept of *responsibility* is typically given two sub-meanings. One meaning is avoiding harm to others – for example, not engaging in fraud, not damaging others’ property, and so on. The other is to engage in charitable or redistributionist activities – for example: “Traditionally in the United States, CSR has been defined much more

in terms of a philanthropic model. Companies make profits, unhindered except by fulfilling their duty to pay taxes. Then they donate a certain share of the profits to charitable causes. It is seen as tainting the act for the company to receive any benefit from the giving” [1].

While there certainly are places for anti-harm and philanthropic principles in ethics, from an entrepreneurial perspective this concept of responsibility is narrow and secondary. CSR typically makes no explicit mention and certainly does not emphasize the priority of productivity as a moral responsibility.

By contrast, the focus of entrepreneurs first and foremost is upon production, not philanthropy; and entrepreneurs are focused upon creating value, not avoiding harm. The entrepreneur’s operative question is: *How can I create value?* Or in other words: *How can I be more productive?* or *How can I make money?* (with an emphasis upon *make*). Creating, producing, and making are primary.

One reason for this is that causal production comes before distribution. Before we can ask the distribution question of *Who gets what?*, the *what* has to be brought into existence. That is the basic responsibility. Before one can make a distribution claim on the value a business has created, one must have productively contributed to the creation of that value. The issue of distributive justice falls out of the productivity: A fair determination of who gets how much depends upon each person’s productive contribution.

While entrepreneurial ethics make our responsibilities to be creative producers primary, CSR’s emphasis on distributive responsibilities, especially charitable distributions, overlooks productive responsibilities.

The same point about moral priorities applies to the avoidance of harm. Part of successful productivity is not harming the legitimate interests of others while achieving one’s own goals, but the focus is on the positive creation not the non-harm. By analogy, if one’s goal is to travel from New York to Los Angeles, one’s focus is upon successful transportation; one’s primary focus is not upon not harming Nebraskans along the way.

To summarize in abstract terms, the avoid-harm principle says that we should *not* engage in win-lose interactions with others, and the redistribution principle says that we *should* engage in lose-win interactions. What is missing is the great moral import of making possible win-win interactions.

Entrepreneurial ethics make first our responsibilities as individuals to be productive traders. The dealings of productive traders are neither harmful (win-lose) nor charitable (lose-win). Instead, they are win-win.

The morality of productiveness is prior to the morality of distribution. So business ethics should be focusing first and predominantly on self-responsible productiveness and the social conditions that foster it.

Conclusion

While entrepreneurship is beginning to receive attention in the business ethics literature, it has the potential for refocusing our attention on business fundamentals. The questions, in the contrasts between traditional CSR and entrepreneurial ethics, are:

Should we focus first upon start-ups and innovative firms, or upon mature corporations?

Should we focus upon individuals first, or upon the social?

Should we focus upon production and trade first, or upon harm-avoidance and charity?

What entrepreneurial ethics suggests is: Do not start business ethics with corporations. Do not start with the social. And do not start with philanthropic accounts of responsibility. Start by making morally foundational productive individuals who engage in win-win trade, and build from there to the increasingly complex social structures the business world creates.

Cross-References

- ▶ [Aristotle on Character Formation](#)
- ▶ [Gender Issues in Entrepreneurship](#)
- ▶ [Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values](#)
- ▶ [The Empirics of Virtue Theory: What Can Psychology Tell Us About Moral Character?](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)
- ▶ [Virtue as a Model of Business Ethics](#)

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Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values

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Abstract

In this chapter, we argue that certain political/legal conditions need to be met for business to have an appropriate ethical environment. In addition, we indicate why the moral principles that define those conditions are not the same as those that would constitute the nature of business ethics itself.

Introduction

A social system is a set of moral-political-economic principles embodied in a society's laws, institutions, and government, which determine the relationships, the terms of association, among the men living in a given geographical area. . . *Capitalism is a social system based on the recognition of individual rights, including property rights, in which all property is privately owned.*

Ayn Rand, "What is Capitalism?" *Capitalism: The Unknown Ideal*

We are probably all familiar with the hackneyed remark: "‘Business ethics,’ there's an oxymoron for you." Sometimes it is even said that "profit" is a four-letter word.¹ Indeed, much of what passes for business ethics today is really a case of business bashing.² *But does business ethics have to be business bashing?* We think not. Yet, in order to see how this is possible we need to realize that many of the criticisms of business activity that we find in our culture (and in business ethics literature) are not criticisms of particular persons and firms for conduct that violates basic canons of morality. They are not criticisms of where people lie or cheat; give up on personal

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integrity, or any personal responsibility; or simply forgo the pursuit of excellence in any form. Rather, these criticisms are systemic in nature – that is, they aim to analyze the very institutions that define and sanction business activity.³ We find here criticisms of such institutions as private property, the sanctity of contracts, free exchange, and the pursuit of profit.

There is, of course, nothing sacrosanct about these institutions. They can be and ought to be examined. Yet, the point is that once this sort of analysis begins, it should be recognized that one is engaging in a critique that is not so much concerned with the particular practices of persons and firms but with the system itself. It is a critique that properly speaking belongs to the realm of political philosophy.

Now this may seem a trivial observation, because it is quite common for texts on business ethics to have discussions on questions of justice and for there to be some selections from representative views of justice – for example, selections from Rawls, Nozick, and usually some communitarian or socialist-leaning thinker. Furthermore, there is usually some discussion of basic approaches to questions of normative ethics where we find consequentialist, deontological, and sometimes virtue-ethics approaches outlined. However, the problem here is that, generally, there are some important differences being ignored. Particularly, it is seldom noted whether one is talking of justice for persons or for institutions. Moreover, there is hardly ever any consideration of what kinds of institutions are involved and how that might be important to not only the answers that are offered but to determining the questions that need to be asked. Indeed, there is generally a failure to discuss the differences between justifying and evaluating the political/legal institutions that define and sanction business activity and justifying and evaluating the conduct of people and organizations that work within their orbit.⁴

Moral Foundations

If one is to properly assess the morality or ethics of business activity, then one needs to understand and appreciate the ethical basis of the political/legal institutions in which they function.

We do not regard this thesis as particularly controversial, but we do think that what it involves has not been fully appreciated by either the critics or the defenders of business activity. To appreciate the importance of this thesis, it must be made clear what is meant by that most abused word, “capitalism.” To begin with, we understand it to refer to an economic and social system that is defined in terms of the institutions of private property, sanctity of contract, free exchange, and the pursuit of profit. Yet, there is more to understanding capitalism than this – one needs to consider the particular sort of ethical norm that underlies and supports these institutions. We will illustrate with three examples.

1. Even though there might be a large demand for this service and thus, a great opportunity for profit, “Murder Incorporated” is not regarded in a capitalistic system as a legitimate business firm. It is considered criminal, and it is not allowed to operate legally.

2. The term “profit” does not mean merely a return on an exchange that is over costs. It involves a free exchange. The gunman’s offer, “Your money or your life” is not considered a free exchange – even though most of us would prefer remaining alive to losing our money. Making such offers is regarded as criminal and legally prohibited.
3. If Mary obtains William’s property through an exchange but knowingly and willingly plans or refuses to fulfill the terms of the exchange, then Mary’s possession of William’s property is a taking of William’s property without William’s consent, because Mary possesses William’s property on terms other than to what William agreed. Such actions on Mary’s part are viewed as criminal fraud and are legally prohibited.

Clearly, Murder Incorporated, the gunman, and Mary are behaving not only in a morally wrong manner, but they are also engaging in activities that fail to qualify as examples of capitalist activities. They fail to represent what Nozick called the “capitalist acts between consenting adults” ([14], p. 163). But even more, they are engaging in activities that destroy the very institutions that define a capitalist socioeconomic system.

There is, then, an ethical dimension to understanding capitalism *as the particular type of socioeconomic system it is*. Moreover, it is an ethical dimension that gives paramount and fundamental importance to the legal protection of the institutions of private property, free exchange, sanctity of contract, and the pursuit of profit. The most powerful way to express this ethical dimension is to say that the activities of Murder Incorporated, the gunman, and Mary are violating the *rights* of the persons with whom they are involved. Rights define and sanction the central institutions of capitalism. *For the purposes of this chapter, we will say, then, that ideally speaking the ethical norm that defines what kind of activities may legally function in a capitalist socioeconomic system is individual rights.*⁵

The concept of individual rights is complex, but it can be expressed as follows: Individual human beings have a basic, negative, moral right to liberty. The term “right” is used here to refer to a claim or entitlement that individuals have on how others will treat them. “Moral” means that this treatment *ought* to exist but need not necessarily exist. “Negative” refers to the type of treatment that others owe to individuals – that is, they may *not* use individuals without their consent. Specifically, persons are prohibited from initiating, or threatening to initiate, physical force in any or all its forms against other persons. This right is considered *basic* in the sense that it is not founded on any other right and is the source for other, derivative rights – that is, rights that flow from the exercise of this basic right.

An individual’s basic right to liberty is also understood to entail two corollary basic rights: the right to life and the right to private property. The former is the right to live one’s life according to one’s own choices, and not to be physically compelled or threatened. The latter fundamentally involves not the right to an object, but the right to an action and consequence of producing or earning that object. So understood, this implies that the lives and resources, as well as conduct, of individuals may *not* be used or directed to purposes to which they have not consented.

These rights apply to every human person, but they also require a legal system for their actual implementation.

Further, given that individuals have such basic rights, they may not be coercively prohibited from doing what is morally wrong. People ought to be free to *choose* the morally wrong course of action. Physical compulsion and coercion – the boundaries of which are determined by individual rights – may be used ultimately only in defense against, or in response to, the exercise of physical force or coercion, which is generally understood to include extortion and fraud.

These rights, on the one hand, provide wide legal latitude for individuals to exercise their lifestyle choices. Economically, Nozick expressed this idea when, as already noted, he talked of “capitalist acts between consenting adults,” but this general idea also extends well beyond the economic arena to the choices of people to hold false moral and religious beliefs and to engage in morally wrong activities. On the other hand, since these rights only require that others refrain from initiating or threatening to initiate physical force in any or all of its forms, this means that those who do not approve of the beliefs and activities of others are free to disassociate themselves from them. They have the freedom to refuse to not only support these beliefs and activities but also to criticize them and to attempt to persuade people to change their ways. Individual rights thus require toleration, but they do not require support, approval, or acceptance of *what* people choose to believe or do. They only require acceptance of their right to choose – that is, not to have their lives, conduct, or resources nonconsensually used or directed.⁶

A Liberal Order

*Capitalism is not only an economic and social system; it is also a certain type of political/legal order. It is a liberal order.*⁷

As we noted at the beginning of these remarks, much of the criticism of business activity is systemic and amounts to the type of criticism that usually takes place in political philosophy. Therefore, it is important to be clear regarding just what the basic issues of political philosophy are and in what the justification for individual rights consists. However, a full analysis of these issues and the argument for individual rights is far beyond what can be achieved in an essay of this size. So, in what follows we will make extensive use of the analysis and argument that was developed in our book, *Norms of Liberty* [15], and refer the reader to that work for a more complete account and defense of what is said here.

Accordingly, the basic issues of political philosophy may be expressed in two questions:

Is there a connection between the ethical and the political/legal orders, and if so, what is the nature of the connection between them?

If there is no ethical basis for a society’s political/legal order, then, its legitimacy is, to say the least, dubious. Of course, it might be the case that there can be no

morally legitimate political/legal orders. Yet, even if it is granted that there is some connection between the two orders, it certainly should not be assumed at the outset that there is a direct or isomorphic relation between the two, much less an identity. To say that some activity X is morally right or good and that it ought to be done does not, by itself, imply that doing X ought to be politically/legally required. Further, to say that doing X is morally wrong and ought not to be done does not, by itself, imply that doing X ought to be politically/legally prohibited. Further, these claims are obviously not semantically equivalent. Indeed, Aquinas implies that there is a difference between demands of justice that are morally binding and demands of justice that are morally *and* legally binding [1, II-II, q. 23, a. 3, ad 1, and II-II, q. 80, a. 1] [1]. Thus, it cannot be simply assumed that politics is ethics writ large.

There needs to be something that connects the ethical and the political/legal orders. Indeed, this is, *de jure*, the fundamental *datum explanandum* of political philosophy, and it is incumbent on the political philosopher to show what justifies moving from one order to the next. This cannot merely be assumed. Because of the *prima facie* difference between moral and political claims that was noted above, the onus of proof is on the person who seeks to move from the ethical to the political/legal. Without such proof, there is then no ethical justification for a political/legal order.⁸

Determining the nature of the connection between the ethical order and the political/legal order is a question that has had different answers throughout the history of political philosophy. Broadly speaking, there have been two traditions of answers: an ancient and a modern one. The ancient tradition, working with the idea of a “polis” and a more or less monistic understanding of the human good, does not distinguish between the ethical order and political/legal order. Statecraft is primarily a version of soulcraft – that is to say, the function of political is “to make men moral.”⁹ The modern tradition, working with the idea of a society that extends far beyond that of a “polis” as well as a more pluralistic view of the human good, rejects the idea that statecraft is soulcraft and makes securing peace and liberty the primary aim of the political/legal order ([15], Chaps. 2 and 3).

Liberalism belongs to the modern tradition of political philosophy. Indeed, what both the critics and proponents of liberalism do not often realize is that the essential uniqueness of liberalism as a political theory is its divestment of substantive morality from politics. Liberalism stands in direct opposition to how politics has been conceived since Plato, as the effective institutionalization of the ethical. Liberalism’s true uniqueness is its endeavor to *distinguish* politics from morality in the same way it is generally recognized to have done with respect to theology.

The reasons for liberalism distinguishing politics from ethics are complicated and more than we can discuss at this time. Moreover, many of liberalism’s proponents have not adequately considered all that is involved in justifying this distinction. Nonetheless, a good way to get an accurate understanding of liberalism is to consider a task or problem that has seldom been considered by any other political tradition. Thus, this task is called “liberalism’s problem” because liberalism

has been, mostly, the only political tradition to appreciate its fundamentality and importance. This problem is expressed as a set of interrelated questions. We have expressed this as follows:

How is the appropriate political/legal order – the order that provides the overall structure to the social/political context – to be determined? What is its ethical basis? Since the structure provided by the political/legal order will rule over all equally, how can the universalism of political/legal structural principles square with the pluralistic and self-directed character of human well-being? Hence, how is it possible to have an ethical basis for an overall or general social/political context – a context that is open-ended or cosmopolitan – that will not require, as a matter of principle, that one form of human well-being be preferred to another? How, in other words, can the possibility be achieved that various forms of well-being will not be in *structural* conflict? ([15], p. 271, emphasis added and minor changes made).

Clearly, this problem presupposes the following: That society is not (and should not be confined to) simply a “polis.” That there is a great degree of diversity to be found in the well-being of different persons and that much of this comes from their communities and cultures. That there can be conflicts between forms of well-being. That self-direction is fundamental and crucial to the activity of human well-being or moral activity. That the aim of the political/legal order is to have principles that apply to all equally, and that any conflicts between forms of well-being should not be a structural feature of any social system. All these claims are quite plausible. Nonetheless, they require support, and such support can be found in *Norms of Liberty*.

The reason it is not necessary for us to provide such support here is because our task is not so grand. We want merely to show that *if* one takes liberalism’s problem as a fundamental and crucial one, then it becomes possible to see not only how liberalism can distinguish the political/legal order from the ethical but also how individual rights are a different type of ethical norm. This conclusion will in turn make a difference to how we understand and defend the institutions that define capitalism and provide the context for business activity. Finally, it will make a difference to how we conceive “business ethics.”

Assuming that liberalism’s problem is both fundamental and crucial, then how does one find the ethical basis for its solution? The criteria¹⁰ that need to be met to determine the ethical basis for a solution to liberalism’s problem are as follows:

1. It must not *structurally* prejudice the overall social context more toward some forms of human well-being than others.
2. It must be universal or equally applicable to all forms of human well-being – that is, it must be social in the open-ended or cosmopolitan sense.
3. It must be *concretely* present in any and every form of human well-being – that is, it must be grounded in some common critical element that runs through any and all forms of human well-being (or its pursuit).
4. It must appeal to some aspect of human well-being in which every person has a necessary stake.

Together these conditions do *not* constitute the basis for an ethical norm that offers guidance to individuals in seeking human well-being or in fulfilling obligations to others. Particularly, they do not constitute a basis for norms that one would

employ primarily in evaluating people and institutions *within* a capitalist system. Rather, they constitute the basis for an ethical norm that regulates conduct so as to establish conditions that secure and maintain the *possibility* of individuals pursuing their own form of well-being and engaging in moral activity among others.

Such a norm is an ethical principle whose function is primarily political or legal. This ethical principle is *not* used to guide conduct in pursuit of well-being or moral activity, because it does not consider the particular situation, culture, or nexus¹¹ of persons. Rather, this ethical principle's function is to provide the structural framework (or backdrop) that provides *the* general social context for the *pursuit* of one's well-being. Such a principle is an ethical *metanorm*.

Simply put, *liberalism is a political philosophy of metanorms*. Yet, this claim is seldom understood or appreciated. One recent author tells us that liberalism is a "normative political philosophy, a set of moral arguments about the justification of political action and institutions" ([9], p. 9). Another writer tells us that there is an "opposition . . . between liberal individualism in some version or other and the Aristotelian tradition in some version or other" ([12], p. 259). In both cases, we see liberalism treated as an ethical philosophy to be contrasted with other ethical philosophies.¹²

Herein lies much of the problem. Norms are not, in fact, all of one type differentiated by subject or thinker alone. It may be that some norms regulate the conditions under which moral conduct may take place, while others are more directly prescriptive of moral conduct itself. In light of this possibility, it is not appropriate to say that liberalism is a "normative political philosophy" in the usual sense. As said, liberalism is a political philosophy of metanorms. *It seeks not to guide individual conduct in moral activity, but rather to regulate conduct so that conditions might be obtained where moral action can take place*. To contrast liberalism directly with alternative ethical systems or values is, therefore, something of a category mistake. Such a move assumes an isomorphic relationship between the ethical and the political which is precisely what liberalism is trying to alter.¹³

Rights as Metanorms

Individual rights are metanorms, and the political/legal institutions of capitalism – that is, the institutions of private property, sanctity of contract, free exchange, and the pursuit of profit – are their real-world manifestations.

As we argue in *Norms of Liberty*, seeking to protect the possibility of self-directed action – that is, protecting the possibility of exercising *practical reason* – in a social context is the only thing that satisfies the criteria for solving liberalism's problem. By establishing the political/legal structural conditions that protect the possibility of self-direction,¹⁴ we

1. do not structurally favor or prejudice one version of human well-being over any other, because it is the exercise of practical reason that is being protected, not the achievement of its object;

2. protect something that is not only common to, but also required by, every form of human well-being. Every form of human well-being or moral activity involves the exercise of practical reason;
3. protect something that is concretely present in every form of human well-being. It is through the exercise of practical reason that generic goods and virtues achieve reality, determinacy, and value for an individual, and it is through the agency or self-direction of the individual that practical reason functions;
4. protect an aspect of human well-being in which every individual has a necessary stake. Every form of human well-being necessarily involves exercising practical reason; and
5. recognize that each and every individual ought to pursue and achieve their own form of well-being and not act in self-sacrificial ways.

Protecting the possibility of the exercise of practical reason in a social context is not central for normative ethics, because normative ethics is concerned with the right or appropriate use of practical reason, but it is vital in solving liberalism's problem. The questions that constitute liberalism's problem are different from the questions that constitute normative ethics, and so the ethical principles that are required for solving liberalism's problem are not reducible to the ones that are required for solving the issues faced in normative ethics. Protecting the possibility of self-direction in a social context is, then, the ethical basis for solving liberalism's problem.

Self-directed action cannot exist when some persons direct others to purposes to which they have not consented. Moreover, since the initiation of physical force is the single most basic and threatening encroachment upon self-direction, the purpose of the individual right to liberty is to forbid legally such activity in all its forms. The individual right to liberty allows each person a sphere of freedom – a “moral territory” – whereby self-directed activities can be exercised without being invaded by others. This translates socially into a principle of compossible *and* equal freedom for all.¹⁵

The freedom must be equal, in the sense that it must allow for the possibility of diverse modes of human well-being, and, therefore, must not be biased structurally in favor of some forms of well-being over others. The freedom must be compossible, meaning that the exercise of self-directed activity by one person must not encroach upon or reduce that of another. Thus, a theory of individual rights that protects the self-direction of persons can be used to create a political/legal order that will not necessarily require that the well-being of any person or group be sacrificed to any other.

It is important to realize that the individual right to liberty is not directly concerned with the promotion of human well-being itself, but only the condition for its possibility. It is, thus, not the consequences per se that determine when someone's liberty is violated. What is decisive is whether the action taken by one person toward another secures that other's consent or is otherwise a function of that other's choices. For one might violate another's rights and produce a chain of events that lead to consequences that could be said to be to that other's apparent or real benefit. Alternatively, one might not violate another's rights and produce

a chain of events that lead to one's apparent or real detriment. Yet, since the purpose here is to structure a political principle that protects the condition for the possibility of human well-being among others – *as understood in terms of "liberalism's problem"* – rather than leading to human well-being itself, the consequences of actions are of little importance (except insofar as they threaten the condition in which rights were designed to protect in the first place). The concern here is not with how acts will turn out, but rather with setting the appropriate foundation for the taking of any action in the first place.

It must be emphasized that the right to liberty – and individual rights in general – are not norms in the sense of guiding us toward the achievement of human well-being or moral excellence. And contrary to appearances, they are not ordinary interpersonal normative principles either. Individual rights express a type of moral principle that must obtain if we are to reconcile our need for sociality in its widest sense with diverse self-directed forms of human well-being. In other words, we need a robust social life, but we also need to succeed as individuals approaching a particular form of well-being.

Norms and obligations that specify how to live, both with respect to achieving one's own goals and with respect to living among others, are one thing; norms that define the setting for such interactions and obligations are quite another. The "obligations" one has to another in the latter case are due to a shared need to act in a peaceful and orderly social/political context. These are metanorms. The obligations one has in the former case are a function of what is needed to live well and cannot be generated apart from the particular actions, context, culture, traditions, intentions, and practices in which one finds oneself acting. Those actions and contexts call forth evaluative norms by which success, propriety, and merit can be measured and judged in particular cases. Individual rights are metanorms. They are not, however, *called upon* by the progress of a culture or an individual, but rather *depended upon*. As such, individual rights are politically and legally primary.

Business Ethics

Business ethics is not business bashing, and providing ethical support for the institutions that define business activity does not imply that there is no such thing as business ethics.

Individual rights may be metanorms that provide the ethical support for the institutions that provide the context for business activity. Nevertheless, the very point of speaking of metanorms is to provide the context for the application of the insights from normative ethics. Therefore, there is plenty of room for the discussion of ethics in business even if there is ethical support for the institutions that define business activity.

One effect of our foregoing remarks has been to suggest that in a world where rights are not understood as metanorms and where "liberalism's problem" is not at the center of one's understanding of political philosophy there is very little room for

something distinctively called “business ethics.” We make this claim because only where political philosophy allows for a distinction between norms and metanorms is it possible to have a sphere of moral understanding distinct from the political. As it stands now, business ethics is little more than a slightly specialized version of political philosophy, and the basic theories of political philosophy inform almost completely the various approaches to business ethics. This traditional or usual approach to business ethics is applicable to both ideologies of the “left” and the “right.” The propensity to adopt a framework of free markets and stockholder supremacy may be as much informed by the same mistake as an approach which advocates governmental control and stakeholder theories. That basic mistake is to assume that all norms have the same ontological and functional status differing only in degrees of “priority.” We define this position elsewhere [15, 16] as “equinormativity.” Both the left and the right may accept equinormativity, thus essentially reducing business ethics to a single sort of moral problem – namely, what set of normative principles should govern social life? The “right” answers with something like maximal liberty, while the “left” answers in terms of equality or fairness. Business ethics is then understood in terms of, and measured by, its contributions to one of these political philosophical frameworks.

By contrast, if we see political philosophy as essentially concerned with recognizing the centrality of liberalism’s problem, making political philosophy a matter of considering the appropriate metanorms, then it is conceivable that business ethics could be a normative field quite distinct from questions of metanormativity (and thus political philosophy) and containing its own set of problems, principles, and normative conclusions. The framework in which business ethics (and any institutional ethics) would operate would, of course, be the metanormative, but its concerns would be entirely different, and discussions of business ethics could not be reduced to issues of metanormativity. If, on the other hand, one’s posture toward political philosophy is to deny the centrality of liberalism’s problem and to embrace equinormativity,¹⁶ then finding a distinctive domain for business ethics becomes increasingly problematic.

For the preceding reason, we believe that our approach “makes room” for business ethics. Yet, if there is something distinctive about business ethics, it would have to be connected to what is distinctive about business as an activity. Strangely enough, many texts on business ethics simply proceed as if everyone understands what business is (e.g., it somehow concerns “corporations”). When business is defined, the definitions simply presuppose the approach to political philosophy we have rejected above. In one text, for example, business is said to be “a complex fabric of human relationships – relationships between manufacturers and consumers; employers and employees; managers and stockholders; and members of corporations and members of the communities in which those corporations act” ([8], p. 1). Besides giving us no clue as to what links all these paired relations together,¹⁷ the “definition” is so open-ended and inclusive as to incorporate the whole of society, thus making business ethics simply a species of political or social theory. We have little doubt that the authors of this way of looking at business were quite pleased with such a result, but it merges business ethics into social ethics making business ethics an example, and not a separate subject area.

In another text, we were told that “the question on ‘what business per se is, and what its proper concern is?’ is a social question that must be answered in a social context . . . Business is a social enterprise. Its mandate and limits are set by society” ([5], pp. 10–11). Like the previous example, this definition either begs all the important questions in political theory or is simply platitudinous. Of course, we cannot beg the question either, but the earlier parts of this chapter are meant, as we noted, to address the main points of political philosophy. To say that “society” defines “business” (or any other activity) is simply to say that it is nothing in itself and could be defined in any way. That is little help in identifying a special subject of business ethics. Now that we have opened up the possibility for the distinctive subject area of business ethics, how can we define “business” in such a way that we can begin to properly think about an ethics in relation to it?

On this score, we need not make any claims to originality. The best definition we have found is the one offered by Elaine Sternberg: “the defining purpose of business is to maximize owner value over the long term by selling goods or services” ([18], p. 32). What this definition may imply by way of an ethics is well worked out by Sternberg in her book, *Just Business* [18]. Our task in closing our remarks here is to say a few things about the salient features of this definition.

One, first of all, realizes that this definition does not cover everything one might do. It is not so connected with everything in one’s social environment that we must leave it up to “society” to tell us which among our activities qualifies as “business.” One’s charitable or family activities are not covered by this definition. Indeed, not even all of one’s commercial activities are covered, for the definition does not apply to one as a consumer. At the very least, then, we can carve out an area for business ethics that is not reducible to a version of political philosophy and may have some uniquely specifiable norms connected with it.¹⁸ The first main term to focus upon after realizing these general characteristics is to “maximize.” Let us skip over that term for just a moment and focus first upon “owner.” Owner is a complicated term carrying with it notions of property and proprietary relationships. In this respect, it is likely to be tied into various legal and social relations that define specific rules for determining when one is an owner or the agent of an owner. Whatever those specific rules and relations may be, the point here is that one *owns* something, even if all that one owns is one’s own labor. The implications of an ability to exclude and to dispose freely are contained in the idea of ownership. Given that, we can say very fundamentally that *business ethics is addressed primarily and essentially to owners.*

Going back now to the first term, we learn that business is about maximizing something. This in itself suggests that whatever is being pursued is not being pursued in a partial or deferential way. We might expect, therefore, that norms calling for such limitations on the pursuit of value would rather be contrary to the nature of business. Of course, what is being maximized here is “owner value.” Because we are talking about ethics, this is the term in the definition that might be called the “responsibility locator.” In the definitions cited above, the responsibility locator was essentially the “society,” whereas here responsibility falls squarely on the shoulders of owners. This locus of responsibility suggests that the risks and the burdens – as well as the benefits – are to be borne by the owners. They may solicit

others in the pursuit of their ends, but the ultimate spring of responsibility is the individual owner.

The owner is also doing something in particular, and this definition suggests that the principle thing the owner is doing is “selling.” One may think that owners also buy, and while that is true, it is a derivative and instrumental function. If owners buy, they do so in order finally to sell. That in part is what differentiates a business person from a consumer. Consumers buy. They may also sell, but they do so in order to buy more. Consumers and business persons are both “traders,” which explains why the term “trader” is too broad for this definition. Of course, to other sellers a given seller (business person) may look like (and is) a buyer (consumer). That is a matter of perspective. But again, the responsibility locator tells us that the perspective we need to take here is that of the owner. The owner as a business person is a seller.¹⁹ One other thing to notice is that the owner/seller is making offers “over the long run.” We understand the point here to be that the owner/seller is making iterated trades. One exchange to maximize value for an owner does not a business make. We recognize this when we speak of someone being *in* business.

That seller/owner is offering something, and as the definition specifies, the seller/owner is offering “goods or services.” The “or” in “goods or services” may be either inclusive or exclusive, but the main point is that something is offered to others that the owner’s hope will be of value to them and from which value will be returned to the owner. What is sold may be tangible (e.g., a product) or intangible (e.g., advice), but what is offered is offered with the expectation of a return of value greater than any alternative use of the resources that go into the offering itself. If the owner had another better alternative, but chose this one, then the owner would not be maximizing. Any fiduciaries to owners must, therefore, also consider what would maximize for the owner they represent. That is what it means to be a fiduciary. It is important to note, however, that the returned value to an owner need not always be in monetary form. Because of the “place holder of value” nature of money, money is the preferred medium of the return of value since it does not define the end to which it is put. Moreover, its objective properties make it easiest for all parties to work with in calculating value. But it is conceivable that owners may take less money for some offering if they are gaining more of something else they might value, for example, the approbation of their peers, the excitement of the deal, or an initial investment in the anticipation of a greater gain later. The point, though, is that those calculations belong to the owner and no one else.

Each of the terms of the Sternberg definition, as well as the definition as a whole, will raise interesting questions about the appropriate ethical norms and guidelines. In a world where business relationships are intricate and multi-faceted, some of the issues may become very complex. While the approach we have taken here may rule out in principle any calls for the sacrifice of the owner’s pursuit of maximal value to others or to society, it does not thereby mean that the owners are exempt from *paying* for services they receive from others (or society); nor does it mean that owners need not be concerned about broader social issues than simply the “bottom line.” As we noted, however, our concern here is not with these issues. Our concern has been to define a specific sphere of inquiry within which we can explore the sorts of obligations

and recommendations that a business person might need to consider. In doing this, we have made a simple assumption: knowing what a business *is* is necessary for understanding the ethical obligations and recommendations appropriate to it.

Conclusion

We “make room for business ethics” by first understanding what essentially characterizes its subject matter. The other thing one needs to do, and which we did in the earlier parts of this chapter, is to provide a context in which business ethics can be understood in its own unique way. With these preliminaries, then, one is now ready to launch into an investigation of business ethics.

Cross-References

- ▶ [Corporations and Fundamental Rights: What is the Nature of Their Obligations, if any?](#)
 - ▶ [Pro-Market Versus Anti-Market Approaches to Business Ethics](#)
 - ▶ [Property Rights Versus Governments](#)
 - ▶ [Property Rights Versus Utilitarian Ethics](#)
 - ▶ [Virtue as a Model of Business Ethics](#)
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Notes

1. This chapter has been taken, with minor changes, from [13].
2. Tibor R. Machan and James E. Chesher discuss this phenomenon and differentiate business bashing from business ethics (See [10], p. xii; and see also [11]).
3. Many texts on business ethics (see, for example, [2, 6, 7, 17]) are filled with criticisms that are systemic in character, for instance: a capitalist system of private property and free exchange fails to embody the ideals of “economic” or “social” justice; capitalism fails to promote the common good or reflect our most important social values; the function of business activity ought *not* to be simple to make a profit; the job-market in capitalism fails to provide fulfilling (or non-alienating) work; and the ethos of capitalism promotes (or allows for) moral mediocrity. Indeed, Machan and Chesher observe that “most texts do not concern so much the occasional difficulties that arise in business but discuss its very essence, such as making profits, owning shares, employing workers, and trading on the stock market” ([10], p. xi). (For some particularly egregious examples of this systemic critique, see [4, 6]).
4. We illustrate and discuss this tendency below, when we discuss equinormativity.
5. We are aware, of course, that there has been for some time a growing movement away from this understanding of capitalism and that even in the United States what passes for a capitalist socioeconomic system now is but really an instance of the mixed economy where many business interests routinely seek, obtain, and use government coercion for their own advantage (See [3], p. 3). Recently, this mixed system has been called by the media “crony capitalism.”
6. The most basic way by which one’s life, conduct, and resources are used or directed without one’s consent is through the use of physical force ([15], p. 89 n15).
7. Of course, we mean “liberal” in the classical sense – as expressed, for example, by John Locke or Frederic Bastiat.
8. These last two paragraphs are taken with minor changes from *Norms of Liberty* ([15], p. 85).
9. Aquinas distinguishes between the two orders, but ultimately this is not based on some principled difference between them but simply the practical difficulties in achieving the common good of the political community.

10. This is only part of the list developed (See [15], p. 272).
11. The term “nexus” refers to that set of circumstances, talents, endowments, interests, beliefs, and histories that descriptively characterize the individual.
12. Of course, nothing could be further from the truth than saying that liberalism and Aristotelianism are necessarily opposed. MacIntyre is right, however, to the extent that the “opposition” would be greater without the metanormative distinction.
13. These last two paragraphs are taken from *Norms of Liberty* ([15], pp. 33–34).
14. Self-direction is “the act of using one’s reason and judgments upon the world in an effort to understand one’s surroundings, to make plans to act, and to act within or upon those surroundings” ([15], p. 89).
15. This paragraph and following four are adapted from *Norms of Liberty* ([15], pp. 89–92).
16. Equinormativity assumes that all ethical norms are of the same type and have the same function.
17. Hoffman and Moore go on to mention the relations as being “economic” but then immediately mention that they are moral as well, leaving open the possibility of an infinite number of characterizations and thus, no specialized way to group the named relations.
18. Sternberg outlines a number of the general normative parameters right after offering the cited account of what it means to be a business.
19. Sternberg notes that “selling” includes leasing, renting, and the like ([18], p. 217).

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Part 18

Property Rights: Material and Intellectual

Robert W. McGee

Abstract

This chapter compares and contrasts utilitarian ethics and rights-based ethics. It discusses the structural flaws of utilitarian ethics and suggests using rights-based ethics as an acceptable alternative.

Introduction

Utilitarian ethics is the dominant ethical system for economists and certain other policy makers. Yet it has structural flaws that cannot be remedied if one wants to stay within the utilitarian paradigm. Remedying the structural flaws causes one to go beyond utilitarian ethics and into rights theory. However, applying rights theory can only identify unethical conduct. It cannot tell us whether non-rights-violating activity is ethical or unethical. Any activity that violates rights is *prima facie* unethical, but activities that do not violate rights may or may not be unethical, depending on the particular activity.

Competing Ethical Systems

The initial issue to be addressed is which ethical system is to be applied to the analysis of property rights. Although various ethical systems often reach the same result when applied to particular cases, sometimes the results differ, depending on which set of ethical principles is applied.

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Baron, Pettit, and Slote [1] identified and discussed three different ethical systems: Kantian ethics, consequentialism, and virtue ethics. Graham [17] subdivided ethical systems into eight categories: egoism, hedonism, naturalism and virtue theory, existentialism, Kantianism, utilitarianism, contractualism, and religion. Broad [6] split ethical theories into five categories. Other scholars have used different classification systems [15, 27, 51, 57]. However, when boiled down to their essentials, most rational systems of ethics are based on some form of utilitarianism or rights theory, or some combination thereof.

Kantian ethics addresses issues of duty and rights and asks questions such as “What if everyone did it?” the underlying premise being that the act would be good if the result were human flourishing or a positive result [22–26, 49]. Consequentialism [17, 42, 43, 48, 51, 52, 54] asks, “What are the consequences?” of a particular act or policy, the underlying assumption being that the act is ethical if the end result is good, or as Shakespeare [47] would say, “All’s well that ends well.” It is basically a utilitarian approach.

Utilitarian ethics is about comparing the good and bad. If the good outweighs the bad, the policy or act is good. Otherwise, it is bad [5, 36, 53]. Virtue ethics holds that a policy or act is good if the result is human flourishing, which is basically utilitarian, although rights are not always ignored. Egoism and hedonism both incorporate utilitarian concepts, such as maximizing pleasure and minimizing pain. Religion, while basically irrational, does incorporate both utilitarian theory and rights theory. “Thou shalt not kill” and “thou shalt not steal” are forbidden both because they violate rights and because they result in negative-sum games, although the reason religionists give is “because God says so.”

Since most rational ethical systems are based on either utilitarianism or rights theory, we will limit our discussion to these two basic approaches without getting into the fine distinctions that separate one branch of ethical theory from another.

One must examine utilitarian ethics if for no other reason than because it is the dominant ethical system among economists and many other policy makers, legislators, and philosophers. Failure to examine utilitarian approaches would result in an incomplete analysis. However, there are major structural deficiencies with utilitarian approaches that cannot be overcome by massaging. Thus, it will be necessary to go beyond utilitarianism to provide a complete and comprehensive analysis of ethical issues.

The other approach we shall examine is the rights approach. Rights theory was chosen because a proper application of rights theory overcomes most of the deficiencies of utilitarian ethics, as we shall see.

The two approaches might be summarized by the following flowcharts (Figs. 65.1 and 65.2).

The basic premise of utilitarian ethics is that an act or rule is ethical if the gains exceed the losses. The basic premise of rights theory is that an act or policy is unethical if someone’s rights are violated. However, rights theory does not answer questions such as whether an act or policy is ethical if no one’s rights are violated. For example, victimless crimes such as prostitution, polygamy, and ingesting

Fig. 65.1 Utilitarian ethics

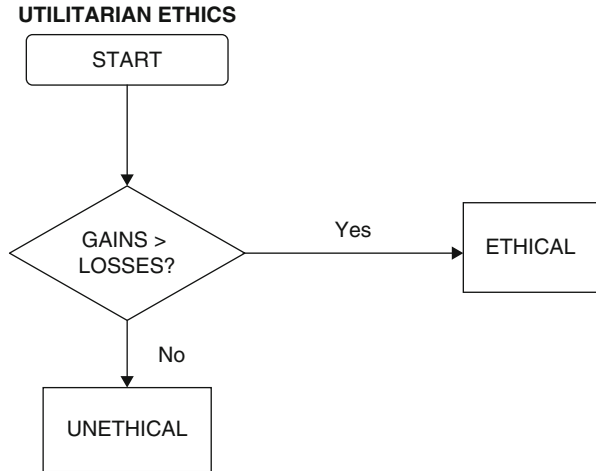
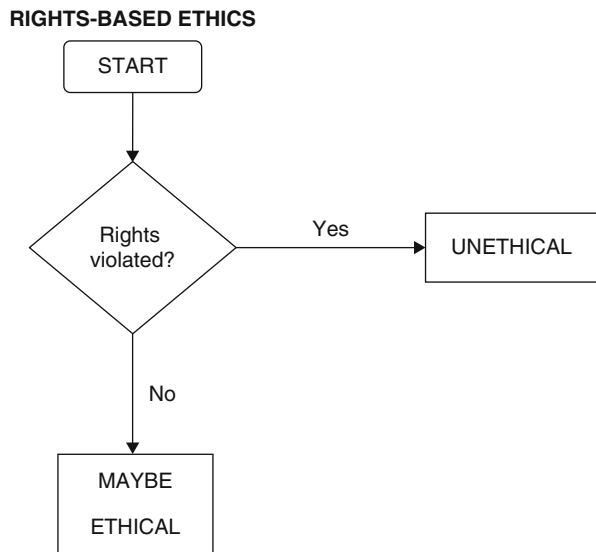


Fig. 65.2 Rights-based ethics



marijuana or hard drugs does not violate anyone’s rights, but rights theory cannot be used to determine if those acts are ethical. All that can be concluded is that such acts should not be illegal because making them illegal violates the rights of the participants. Sometimes, applying utilitarian ethics and rights theory to a particular case will reach the same result, but sometimes the results will be different.

Utilitarian Ethics

According to classical utilitarian ethical theory, an act is ethical if the result is the greatest good for the greatest number [5, 36, 50]. On the surface, it is a statement that is difficult to quibble with. What is the alternative, to do something that does not result in the greatest good for the greatest number?

However, there are a number of flaws with this approach. One flaw, although perhaps not obvious, is the fact that it is mathematically impossible to maximize more than one variable at the same time ([18, 55], p. 11). One may attempt to achieve the greatest good or one may attempt to better the lot of the greatest number of people, but one may not do both at the same time.

Another criticism of utilitarian ethics is that one tends to forget those who are not benefitted. What happens to those who do not gain from a particular act or policy? Are they in the same position as before or are they made worse off? If so, by how much? Are they made just a little worse off or do they suffer major worseoffness? There is no way to accurately measure gains and losses [45, 46] because all costs are subjective [7]. Thus, it is also impossible to compare interpersonal utilities, which are discussed below.

Another question that might be asked is whether an act or policy is ethical if a small minority benefit a great deal while the vast majority of people are harmed just a little. Questions such as this must be addressed whenever a protectionist economic policy is being considered. If a proposed tariff on the importation of foreign textiles results in increasing the price of all shirts sold within the country by \$5, is adopting the tariff a good policy if it saves 5,000 jobs in the domestic textile industry, even though it also increases the price that 300 million consumers must pay for each shirt or blouse? What if the cost increases by \$8? Or \$2? What if the number of jobs saved is 30,000? Or 200? [33]. A utilitarian might reach a different conclusion, depending on what the numbers are in a particular case. It is impossible to measure the gains and losses precisely, of course, but estimates may be made.

This brings us to the next problem – measurement of gains and losses. In the example given above, the cost per shirt and the number of jobs saved were both given, but in the real world, such numbers are not readily apparent. Someone must make estimates, which are nearly always different than the final figures. After the fact, it might be possible to look back and see what the actual result was and what the actual price change and jobs saved were. Or maybe it would not be possible to measure gains and losses even after the fact because price changes and job gains and losses are caused by more than just a change in tariff policy.

Another inherent problem with utilitarian approaches is that it is not always easy, or even possible, to identify all individuals and groups that are affected by a particular act or rule. Frédéric Bastiat (1801–1850), a French political economist, gave perhaps the best illustration of this weakness in his essay, *What Is Seen and What Is Not Seen* ([2], pp. 1–50). In the opening paragraphs of that essay, Bastiat states what has become a classic quote:

There is only one difference between a bad economist and a good one: the bad economist confines himself to the *visible* effect; the good economist takes into account both the effect that can be seen and those effects that must be foreseen. ([2], p. 1)

He goes on to illustrate this point using an example that has come to be known as the *Broken Window Fallacy*. The story begins when a young boy breaks a pane of glass. A crowd gathers and begins to discuss what they have seen. Someone points out that something good has resulted from this event. Such accidents keep glaziers in business. Broken windows are good for the glass business. Without such happenings, glaziers would be out of work. If the glazier charges 6 francs to replace the glass, he is 6 francs ahead.

A bad economist would end the analysis at that point and would conclude that it is good to break glass because doing so keeps glaziers in business. It stimulates the glass business.

One might think such a conclusion is impossible, a view that no one would espouse, but modern day economists (if you can call them that) continue to reach such conclusions. In August 2011, for example, some economists and politicians asserted that Hurricane Irene, which caused billions of dollars of damage up and down the east coast of the United States, helped to stimulate the US economy because the damage caused to houses and other buildings had to be repaired, causing an increase in demand for housing and other real estate and thus was a source of job creation. Another modern example is the view that war is good for the economy because it stimulates certain sectors of the economy, most notably those sectors that supply the military.

That is what is seen. What is not seen is what would have happened in the absence of the broken glass, the hurricane, or the war. Raising the question of what is not seen is what makes Bastiat's example of enduring value. In his broken window example, he points out that since the owner of the broken glass must spend 6 francs to replace it, he now has 6 francs less to spend on other things, such as a new pair of shoes or a book. Rather than having both a window and a book, he now has just a window. If the bad economist takes this fact into consideration, he might conclude that the breaking of the pane of glass resulted in a zero-sum game, since the glazier's gain is exactly offset by the glass owner's loss.

But that is not the end of the story. There are two losers and only one winner. The glazier wins, while the owner of the pane of glass loses, along with the book seller or the cobbler. We cannot identify who the second loser will be, since the owner of the pane of glass never had the opportunity to decide whether he would use the 6 francs to buy a book or a pair of shoes. Thus, all we know is that there are two losers, although we cannot identify who the second loser is.

All we can conclude is that destruction of property results in a negative-sum game because the losers exceed the winners. That conclusion is valid whether it is a broken pane of glass, a war, or a hurricane. One of the structural weaknesses of utilitarian ethics is that it is not possible to identify all the winners and losers.

Another weakness of utilitarian approaches is that it is not possible to compare interpersonal utilities [9, 16, 21, 37, 38, 40, 41, 46], a topic that entire books have

been devoted to [13]. That is one of the structural deficiencies of utilitarian ethics, a deficiency that some economists continue to either ignore or gloss over [19, 29, 32].

Value scales of each individual are purely ordinal, and there is no way whatever of measuring the distance between the rankings; indeed, any concept of such distance is a fallacious one. Consequently, there is no way of making interpersonal comparisons and measurements, and no basis for saying that one person subjectively benefits more than another. ([46], p. 258)

It cannot be said that a dollar has more value to a poor man than to a rich man. Such a statement misapplies the law of diminishing marginal utility. If the rich man and the poor man both find a dollar lying on the sidewalk and both decide to use it to purchase a candy bar, it cannot be said that the poor man derives more pleasure from consuming the bar than does the rich man. In some cases, the rich man might actually gain more pleasure, especially if he is hungry and the poor man has just finished dinner.

But interpersonal utilities cannot be compared even if both men have just finished dinner, so it cannot be said that transferring wealth from the rich to the poor will increase overall utility in society. What can be said with a high degree of certainty is that a policy of wealth redistribution from the rich to the poor will likely have a long-run effect of decreasing wealth in society, since it will take away the incentive for rich people to continue to produce wealth and it will reduce the incentive of poor people to work, since they are getting something for free, without the necessity of working for it.

All of these deficiencies of utilitarian ethics make it an imperfect tool for arriving at ethical decisions. However, these deficiencies pale when compared to the one deficiency that makes utilitarian ethics fatally flawed – the total disregard of rights [34, 35].

A true utilitarian would totally disregard rights when performing a utilitarian analysis. All that counts is whether the winners exceed the losers or whether the result is a positive-sum game. Some utilitarians even deny that rights exist. Jeremy Bentham is a classic example of this view.

...there are no such things as natural rights – no such things as rights anterior to the establishment of government. . . *Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts. ([4], pp. 52–53) [56].

Fyodor Dostoevsky (1821–1881) provides a classic example in the literature of the application of utilitarian ethics. In *The Brothers Karamazov* [12], he asks the question of whether it would be permissible to torture one small baby to death if the result would be eternal happiness for everyone else. A utilitarian would be quick to respond that such an act would be justified, since it would prevent much greater suffering by many millions of people. One need not measure the precise extent of the gains and losses to arrive at such a conclusion, since the gains so far exceed the losses. How could one possibly conclude, on utilitarian grounds, that the baby should not be tortured to death?

In *The Devil and Miss Prym* Paulo Coelho [8] raises a similar question when the villagers of a poor, declining village are given the opportunity to greatly improve their lot when all they have to do is murder one of their members. The loss of one murdered villager, who happens to be old and in ill health anyway, is more than offset by the gains to the other members of the community. If one were to apply utilitarian ethics, the clear choice would be to murder the villager.

The Property Rights Approach

The Dostoevsky and Coelho examples are outrageous but they serve to illustrate the strict application of utilitarian ethical principles. The rights of the baby and villager are totally ignored in this utilitarian calculus. All that is considered in their regard is the amount of suffering they would have to endure, which is then compared to the benefits to the rest of the community that would result if they were tortured or murdered.

The strength of the property rights approach is that the deficiencies of utilitarian ethics can be circumvented. There is no need to try to maximize one or more variables using some kind of mystical utilitarian calculus. There is no need to attempt to measure gains and losses, which cannot be done anyway, since interpersonal utilities cannot be compared. There is no need to identify which groups would be affected or how they would be affected. The only question that needs to be asked is whether someone's rights are violated. If the answer is *yes*, the act or policy is automatically unethical. If the answer is *no*, then the act or policy should not be prohibited whether it is ethical or not.

Before continuing, we must make two digressions to elaborate on some points that might not be readily apparent. The first digression has to do with determining the ethics of a situation where no one's rights are violated by a particular act or policy. Rights theory does not answer this question for us. An act or policy that does not violate rights may be ethical or unethical, but we cannot apply rights theory to determine the ethical nature of the event.

For example, smoking marijuana does not violate anyone's rights. Therefore, in a just state that allows individuals to do whatever they want so long as they do not violate anyone's rights, smoking marijuana should be allowed. But it cannot also be said that smoking marijuana is either ethical or unethical unless we go beyond rights theory and apply some other principles to determine the ethical nature of the act.

Some religionists would be quick to assert that smoking marijuana is unethical because it defiles the body, which is a temple of the Holy Spirit. Mormons and some other religious groups use this argument to dissuade their members from consuming coffee, Coca-Cola, and other caffeine products (I do not know what their policy is on chocolate but, to paraphrase Socrates, a life without chocolate is not worth living).

Others might argue that smoking marijuana is an ethical act because it reduces pressure in the eyes, which benefits glaucoma victims, or that it reduces blood

pressure or reduces tension, which have positive health benefits. Perhaps the consumption of marijuana could be either ethical or unethical, depending on the facts and circumstances. If smoking it causes one to be lethargic and lazy and less capable of productive work, the argument could be made that it constitutes an unethical act if one begins with the premise that one has an ethical duty to “do something with your life.”

One might examine other victimless crimes along the same lines to try to determine the ethical implications of doing something that harms no one except perhaps yourself. If one begins with the premise that doing things that are life affirming is ethical and doing things that are harmful is unethical, then one might conclude that smoking cigarettes is unethical even if done in the privacy of one’s own home, even if children or others are not present to inhale the secondary smoke, because smoking is harmful to the person who smokes. Ayn Rand might dispute this line of reasoning, at least in her precancer days.

Hiring the services of a prostitute is widely considered to constitute immoral conduct, but doing so does not violate anyone’s rights, whereas outlawing the practice does violate the contract and property rights of at least two people, the prostitute and his or her client. If a pimp (broker) and brothel owner are involved, their rights are also violated by the prohibition. Applying utilitarian ethics to the issue would lead one to conclude that the practice is ethical, since there are at least two winners and no losers, but applying rights theory does not lead us to an answer regarding the ethics of the act.

One may examine a number of other victimless crimes along the same lines. Bigamy and polygamy are widely considered to be unethical acts these days, although they were approved of in the Bible and there may be valid economic reasons for entering into such relationships. Applying utilitarian ethical principles to the issue leads us to conclude that these acts are ethical, since all parties agree to enter into the relationship, thus making all participants winners, with no losers. Applying rights theory to the issue leads us to conclude that the act should not be prohibited, since no one’s rights are violated, although rights theory cannot help us to determine whether such a relationship is ethical. We must look beyond property rights to make that determination.

The second digression requires us to discuss the concept of harm. It is often asserted that we must not do anything to harm anyone else. Such a position seems obviously valid on the surface, but a closer examination of the concept of harm soon reveals that the matter may not be resolved so easily.

For example, let us say that a large grocery chain decides to open a location across the street from a mom and pop grocery store. The chain store plans to offer a wider range of products at lower prices and will stay open 24 h a day. Mom and pop cannot compete on price because their small volume precludes them from taking advantage of quantity discounts. They cannot offer the same large variety of products the chain store offers and they cannot stay open 24 h a day because they need to sleep and take a few days off now and then.

There is no doubt that the chain store will harm mom and pop’s business. It may even drive them out of business. However, no one’s property rights are violated as

a result of opening the chain store across the street. Thus, the application of rights theory would lead us to conclude that the chain store should be permitted to open across the street.

Applying utilitarian ethical principles might also lead us to this conclusion, since the general public would benefit by a wider variety of goods that are available 24 h a day at lower prices. The only people who would not benefit are mom and pop, compared to everyone else in the neighborhood, although it might be pointed out that mom and pop would be harmed severely whereas each other member of the community would benefit just a little bit. One problem of this utilitarian calculus is that mom and pop's loss cannot be compared to the gains of the rest of the relevant community because it is impossible to compare interpersonal utilities.

If some zoning board or other community group or government prevented the chain store from opening across the street from mom and pop, the property and contract rights of the store owners (the shareholders) would be violated. What is less obvious is that the property and contract rights of each member of the community would also be violated, since they would be prohibited from entering into contracts with the chain store and trading the property they have (cash) for the property they want (e.g., groceries).

Two Kinds of Rights

Since we are talking about rights, it might be worthwhile to elaborate on what kind of rights we are talking about. So far, the discussion has focused on negative rights. But negative rights are not the only kind of rights. The other kind of rights is called positive rights. There is a big difference between these two categories of rights.

Simply stated, negative rights come before government, whereas positive rights come from government. Property existed before governments [3, 10, 11, 14, 28, 30, 31, 39]. Indeed, the main reason why governments were formed was to protect property rights, as well as other negative rights, such as the right to life and liberty. Stated negatively, these rights constitute the right not to be deprived of life, liberty, or property. It was more efficient to form groups to protect these rights than to have each individual protect them individually.

As Bastiat [3] pointed out, a group of individuals cannot morally do anything that an individual cannot do. An individual can protect property. So can a group of individuals. Merely forming a group of individuals into a government does not create any mystical rights that individuals do not themselves possess. Groups of individuals can delegate the rights they have to some organization, such as a government, but they cannot give that organization any rights they themselves do not possess.

A government has no moral authority to confiscate property unless the individuals who formed the government also have this right. A group of individuals cannot morally justify the forcible taking of property by voting just because they have formed a government. For example, two wolves and one sheep who vote on what to have for lunch might decide that it is the sheep that will be the main course, but such a vote violates the rights of the sheep, thus making the vote invalid. The fact that the majority voted to deprive the sheep of its rights is irrelevant.

Rent control is one example of this supposed mystical transformation of rights that would allow groups to have rights that individuals do not possess. Landlords have the right to do with their property as they see fit. They have the right to charge whatever they want for rent. If they attempt to charge more than the market rate, they will have vacancies.

If one tenant tries to force the landlord to reduce the rent from \$1,200 to \$700 a month at the point of a gun, the landlord's rights are violated by the tenant. If 20 tenants get together and try to force the landlord to reduce the rent to \$700 a month at the point of a gun, the landlord's rights are violated. If those tenants form a government or capture the government and pressure the government into forcing the landlord to reduce their rent to \$700 a month, the government is violating the landlord's property rights. The fact that it is some government rather than one or more individuals that is holding the gun to the landlord's head does not change the ethics of the situation. One person's right to use his own property as he sees fit (the landlord) must be violated so that others (tenants) can enjoy this positive right to the rent subsidy.

All positive rights regimes are of the same nature. The right of one party must be sacrificed or violated so that someone else can exercise some right that would not exist in the absence of some government creating the right. Positive rights are created by governments and such so-called rights always violate someone's negative rights.

These positive rights regimes are not new. They go back to the days of the guilds, if not before. The button-making guild in seventeenth century France prohibited button makers from making more than a certain number of buttons and prevented button makers from making any new designs unless they received prior approval from the guild [20, 44]. Those who dared to be creative and exercise their brains to create something new stood to be punished or even jailed if they tried to sell their newly created property to the public. In those days, it was not even possible to become a button maker unless the guild approved that person for membership. One person's right to earn a living was prohibited by some governmentally approved group that wanted protection from competition.

The right of restaurant owners to refuse to serve anyone they want for any reason they want is violated by the governmentally created right not to be discriminated against on the basis of race, gender, sexual preference, age, etc. The right to earn a living by supplying accounting, legal, or medical services is violated by laws that protect members of the American Institute of Certified Public Accountants, the American Bar Association, and the American Medical Association from competition.

Governments can create positive rights only by violating the negative rights of others. Exercising a negative right, on the other hand, does not violate the rights of anyone. My right to property does not violate your right to property. My right to enter into contracts does not violate your right to enter into contracts. Thus, the only rights regime that is ethical is a negative rights regime. That does not mean that all exercises of negative rights constitute ethical acts. Ingesting marijuana, caffeine, cocaine, or other drugs might constitute unethical conduct but they do not violate anyone's negative rights.

Conclusion

Although utilitarian ethics is the dominant ethical system for economists and certain other policy makers, it is a fatally flawed ethical system. Applying rights theory overcomes many of utilitarianism's basic flaws but does not tell us whether a non-rights-violating activity is ethical. All that rights theory tells us is that any activity that violates rights is automatically unethical.

Cross-References

- ▶ [Kant and Hegel on Property](#)
- ▶ [Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values](#)

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Abstract

This chapter discusses the body as property doctrine and then applies it to a variety of topics and issues, including the justification for taxation, victimless crimes, dwarf tossing, prostitution, suicide and assisted suicide, taking drugs, regulating access to certain foods, selling and renting body parts, occupational licensure laws, polygamy, gay marriage, and sexual acts between consenting adults.

Introduction

The body is perhaps the most basic kind of property. Everybody owns one – their own. Or do they? You can own your own body only if no individual or group of individuals prevents you from using it as you see fit. If some individual, group of individuals, or government prevents you from doing with your own body as you see fit, you are no longer a complete owner. You are sharing ownership with those who place limits on your use of your own body. To the extent that someone else has a property interest in your body, you are a slave.

This chapter reviews the body as property doctrine and applies it to some cases where governments have taken a partial ownership interest in the bodies of the citizenry.

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The Body as Property

Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a *Property* in his own *Person*. This no Body had any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*. It being by him removed from the common state Nature placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other Men. For this *Labour* being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others. [50]

The body as property doctrine begins with the premise that the body is property. It is a reasonable premise since all alternative premises are untenable. John Locke [50] provided one of the earliest comprehensive discussions of the topic. Others have built upon his work [25, 41, 49, 52, 60, 71–73, 77].

An extension of this premise is that my body belongs to me and your body belongs to you. Such a premise might seem obvious, but this view is not the only one that has been accepted throughout history. In slave societies, going back to biblical times, one person's body was sometimes considered the property of another person.

Your male and female slaves are to come from the nations around you; from them you may acquire slaves. You may also acquire some of the temporary residents living among you and members of their clans born in your country, and they will become your property. You can will them to your children as inherited property, and can make them slaves for life . . . (Bible: Leviticus 25: 44–46)

In the former Soviet Union and other totalitarian societies, a person's body belonged to the state. One reason why people in the former Soviet Union were not permitted to leave was because of the belief that the state had an investment in them (education, etc.). In a conversation I had with a Cuban immigrant, she told me that when she told the Castro government she wanted to leave Cuba and come to the United States, they told her she could leave but only after reimbursing the Cuban government \$35,000 for the value of the education they provided to her. Rather than pay, she waited until she was in Costa Rica (as a member of the Cuban National Ballet), where she deliberately broke her own leg, which enabled her to stay in a local hospital rather than return to Cuba. She used the opportunity to escape to the United States.

The slave ownership concept and the state ownership concept have not been totally eradicated in modern societies. They are still with us to a certain extent.

The military draft is one example [34, 37, 87]. In governments that require compulsory military service, the underlying premise is that the state owns the bodies of the citizenry and has the moral authority to compel individuals to do certain things, such as serve in the military and risk their lives in what at times amounts to unjust wars or foreign follies. One policy that the US President George W. Bush and others have advocated is a year or more of compulsory civilian service to the government or to some organization on the government's approved list. *The Universal Service Act of 2003* is only one example to force people to give up 2 years of their life to the state. Luckily, it did not pass, but the idea is alive and well.

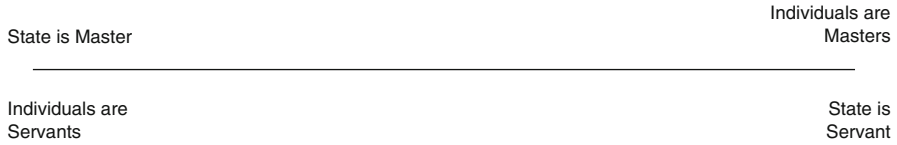


Fig. 66.1 Relationship of the individual to the state

There are basically just two views of the relationship between the individual and the state. According to one view, the state is the master and the people are the servants. The other view holds that the people are the masters and the state is the servant. Totalitarian regimes believe in the first view, whereas liberal democracies believe in the second. However, it would not be correct to say that liberal democracies totally believe in the view that the people are the masters and the state is the servant, as indicated by policies like mandatory military or civilian service.

These two extreme relationship possibilities may be viewed as a continuum where most relationships between the government and the people fall somewhere in between. The range of relationships may be depicted as follows (Fig. 66.1).

Just because a country elects its representatives does not mean that it is a just regime. Both Hitler and Mussolini came to power through the democratic process [38, 85]. And it should not be overlooked that a group of people can be tyrants as well as individuals. James Madison warned us about untrammelled majoritarianism in *The Federalist* [35]. The French Revolution is one example of mob rule that could be given. The Cultural Revolution in China is another example of mob mentality [13, 48].

Democratically elected representatives are also capable of treating the citizenry like slaves. Any elected official who advocates compulsory community service or compulsory military service falls into this category.

Individuals are free to the extent that they can do with their bodies as they see fit. To the extent that they cannot, they are slaves, either of a traditional slave owner or of some government.

Some forms of government slavery are not as obvious as others. To the extent that prostitutes are punished for renting out their bodies, the government owns their body. The same goes for a woman who is punished for renting her womb for surrogacy purposes or someone who is arrested for selling their blood or other body parts [25, 77]. If they cannot use their bodies for these purposes, then they do not own their body. The government owns it.

Fabry [25] raises an interesting as well as scary issue. While harvesting the body parts of a recently deceased person may sound reasonable to the average person, how about harvesting the vital body parts of a person who is still living so that the lives of two or more other individuals can be saved? Applying utilitarian ethics to this case would lead one to conclude that such an act would be ethical since two or more people are saved, whereas only one person dies. Such examples serve to illustrate the deficiency of utilitarian analysis.

An extension of the body as property doctrine is the belief that individuals own the fruits of their labor. John Locke spoke about this concept several centuries

ago [50]. Harvard philosopher Robert Nozick [60] spoke about it more recently. Both Locke and Nozick took an entitlement approach. They would agree with the position that my body belongs to me and that I have a superior claim to it. No one else has a claim to my body that is superior to mine.

Likewise, I am entitled to keep the fruits of my labor. If I mix my labor, either mental or physical, with land or other assets, the result, whatever I have created, is mine and no one else's. I am free to consume this property, sell it, save it, give it away, rent it to others, or destroy it, and it is no one's business but mine. I am more entitled to the fruits of my labor than is anyone else.

Frederick Douglass, a former slave who became a great orator and abolitionist, related a story about his former slave master, who had sent him to work in the Baltimore shipyards. After working for a full week alongside freemen, he had to return to his slave master and turn over all of his earnings to him:

I was living among *freemen*, and was in all respects equal to them by nature and attainments. *Why should I be a slave?* There was *no* reason why I should be the thrall of any man. Besides, I was now getting, as I have said, a dollar and fifty cents per day. I contracted for it, worked for it, collected it; it was paid to me, and it was *rightfully* my own; and yet upon every returning Saturday night, this money – my own hard earnings, every cent of it – was demanded of me and taken from me by Master Hugh. He did not earn it; he had no hand in earning it; why, then, should he have it? ([21], p. 634)

Douglass was espousing the entitlement theory. It seems obvious that people are entitled to the fruits of their labor and that their claim is superior to those of everyone else. However, philosophers, politicians, and economists over the centuries have managed to obscure this simple rule of moral philosophy by arguing that if some people have too much, there is somehow a moral obligation to give some of their assets to others, and if they will not do it voluntarily, then some government should do it at the point of a gun. British philosopher Gerald Cohen [14] was one exponent of this view. John Rawls takes a slicker approach, arguing that individuals are basically entitled to keep the fruits of their labor, except in cases where someone might be made worse off as a result of the exercise of their property rights [69]. In such cases, governments are justified in confiscating one person's wealth and redistributing it to someone else.

Bertrand de Jouvenel [44] wrote an entire book on the ethics of this position, titled *The Ethics of Redistribution*, which disputes this view. Antony Flew's book, *The Politics of Procrustes* [27], also challenges the view that government somehow has the moral authority to confiscate the property of some and distribute it to others for no other reason than the fact that some people have more than others. Murray Rothbard [73] provided a more succinct analysis in his essay, *Egalitarianism as a Revolt Against Nature*.

Walter Williams addresses the view that social justice requires redistribution of wealth as follows:

But you might say, if government didn't do all that it's doing we wouldn't have a *just* society. What's *just* has been debated for centuries but let me offer my definition of social justice: I keep what I earn and you keep what you earn. Do you disagree? Well then tell me how much of what I earn *belongs* to you – and why? ([91], p. 62)

Frédéric Bastiat (1801–1850), a French political economist, calls forced redistributions plunder. He tells us how to identify this cancer on the body politic as follows:

But how is this legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime.

Then abolish this law without delay, for it is not only an evil itself, but also it is a fertile source for further evils because it invites reprisals. If such a law – which may be an isolated case – is not abolished immediately, it will spread, multiply, and develop into a system. ([5], p. 21)

We have now reached this stage. Such legalized plunder (redistribution) is all around us. Many politicians, philosophers, and economists who advocate redistributionist policies begin with the underlying premise that the government is entitled to 100% of the fruits of your labor but graciously allows you to keep some of those fruits. They believe that the government has the first claim on your assets but graciously allows you to keep whatever they decide not to take [59].

Tax Slavery

Robert Nozick ([60], p. 168) views redistribution of wealth as a “violation of people’s rights.” He states that “taxation of earnings from labor is on a par with forced labor” ([60], p. 169). He points out that taking x hours worth of earnings is like taking x hours from a person’s life. It is the equivalent of forcing a person to work for x hours. However, whereas a slave does not have a choice as to what work to do, wage earners do have a choice. They can work as laborers, doctors, lawyers, or certified public accountants. They can also choose not to work. Thus, wage slavery is not quite the same as the kind of slavery that existed in the United States (and other places) prior to the freeing of the slaves.

However, these are distinctions without a difference. The fact that wage earners get to choose their employment does not mean that they are not wage slaves. If they choose to work, they must cede a portion of their lives to some government. If they can avoid payment of tax by choosing not to work, they must be content with living at a subsistence level, which is not a very desirable option.

“The central core of the notion of a property right in X ... is the right to determine what shall be done with X ” ([60], p. 171). If some government forcibly takes property from Peter and redistributes it to Paul, who has done nothing to earn it, that is a violation of Peter’s property rights. The fact that the forcible taker is some government does not change that basic fact. What makes matters worse is the fact that governments are formed to protect property rights, not to disparage them. To the extent that a government engages in forcible redistribution of wealth, it is illegitimate and need not be obeyed:

Seizing the results of someone’s labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes

your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you. ([60], p. 172)

The tax system of most countries begins with the premise that the government is somehow more entitled to a portion of the fruits of your labor than you are. In the United States, some politicians, philosophers, and economists have been whining that the rich do not pay their fair share of taxes and that they should be forced to pay more. Some billionaires, including Warren Buffet and Bill Gates, also espouse this view. They never define what fair share is, however, which is understandable, since there is no objective way to determine what fair share is.

Those who pay little or no taxes likely believe that the rich should pay more than they are currently paying, whereas those who actually pay taxes often believe that they are being forced to pay more than their fair share, especially if they feel that they are not getting their money's worth from government. It is difficult to justify the statement that those who pay more than one million dollars in taxes each year are getting an equal amount of benefits from the government. It would be easier to justify the statement that they are getting ripped off since they receive relatively few benefits compared with what they are forced to pay. In many cases of high-income taxpayers, the government probably does more *to* them than it does *for* them since high-income people probably own a business and have investments. They stand a higher probability of being audited, and their businesses are forced to comply with burdensome and costly regulations [17], in addition to their tax burden, which mere wage earners do not have to worry about. The Internal Revenue Service has been known to abuse its power and confiscate assets without probable cause or due process. Some individuals have even committed suicide as a result of IRS harassment and abuse [10, 36].

Studies by the Tax Foundation have found that in some years, the top 1% of the US taxpayers paid more in individual income taxes than the bottom 95% [66, 81]. That being the case, it is difficult to make the argument that the rich are not paying their fair share and that they should be forced to pay more, especially if they are already paying more for government than what they are receiving in services. Kantian ethics would point out that they are being used as a means or a resource rather than being treated as ends in themselves, which Kantians would conclude is unethical [46].

Table 66.1 below lists the top marginal federal individual income tax rates in the United States from its inception in 1913 to 2011. Because the US tax system has graduated rates, some of the income individuals earn is taxed at lower rates.

The percentages listed in Table 66.1 do not reflect the total tax burden, however. The table reflects just the top marginal tax bracket for the federal income tax. The federal government also assesses Social Security and Medicare taxes as part of the payroll tax system. Individuals also pay a plethora of other taxes in addition to the federal income tax. Most states and some municipalities also assess an income tax. The federal and state governments assess a gasoline tax. Municipalities assess real estate taxes, which can take more than 20% of an individual's income in some cases. Most states and some municipalities also assess a sales tax. Both the federal

Table 66.1 Top marginal individual income tax rates in the United States 1913–2011

Year	Rate	Year	Rate	Year	Rate
2003–2011	35	1964	77	1925–1931	25
2002	38.6	1954–1963	91	1924	46
2001	39.1	1952–1953	92	1922–1923	58
1993–2000	39.6	1946–1951	91	1919–1921	73
1991–1992	31	1944–1945	94	1918	77
1988–1990	28	1943	88	1917	67
1987	38.5	1941–1942	81	1916	15
1982–1986	50	1936–1940	79	1913–1915	7
1965–1981	70	1932–1935	63		

Source: Tax Foundation [80, 82]

government and most states also tax corporations on income that will be taxed again if and when distributed in the form of dividends. The federal government also taxes the estates of the deceased, and some states have an inheritance tax that is similar to the federal estate tax. Thus, the figures in Table 66.1 grossly underestimate the total tax burden.

The most outrageous confiscations occurred in 1944–1945, when the top rate was 94%. Those rates only reflect the liability for the federal income tax. When the Social Security tax and state and local income taxes are added, it is likely that some individuals had to pay more than 100% of marginal income in taxes, a rate that cannot be justified on any moral ground. Such individuals become total slaves of government at that point. For the super rich, they might earn enough income in January to qualify for the top tax bracket, which means they are total slaves of the government for the last 11 months of the year when one adds the other federal, state, and local taxes to the federal income tax liability. They are well beyond the point where there is a moral duty to pay.

The total tax burden in the United States is difficult to calculate especially since each of the 50 states has its own tax system and structure. However, overall calculations are made by the Tax Foundation [83], an organization that estimates the day each year when taxpayers are no longer required to pay taxes and can keep the fruits of their labor.

Table 66.2 shows the Tax Freedom Day for selected years for the United States [82]. In 1900, the extent of slavery to government was less than 6%. In recent decades, that percentage has been increasing. In the year 2000, the average individual had to work for the government for 4 months before being free to work for himself.

As can be seen, the extent of tax slavery has increased greatly since 1900, rising from less than 6% to as much as 33%.

Scholars have picked up on this notion and have calculated Tax Freedom Day for some other countries. The Adam Smith Institute [1] calculates Tax Freedom Day in the UK. The Fraser Institute [61, 85] calculates it for Canada. Wikipedia [90] summarizes the calculations for a number of think tanks in various countries and updates the statistics periodically. However, different countries and scholars calculate the percentage using different methodologies so that statistics presented

Table 66.2 Tax freedom day: the United States – selected years

Year	Tax freedom day	All taxes as a percentage of income (% slave of government)
1900	January 22	5.9
1910	January 19	5.0
1920	February 13	12.0
1930	February 12	11.7
1940	March 7	17.9
1950	March 31	24.6
1960	April 11	27.7
1970	April 19	29.6
1980	April 21	30.4
1990	April 21	30.4
2000	May 1	33.0
2010	April 9	26.9
2011	April 12	27.7

Source: [84] (data in the first two columns of [Table 66.2](#))

below are not strictly comparable. [Table 66.3](#) summarizes the results for some of those countries.

Cyprus is the country with the least degree of tax slavery, followed closely by India, although it must be pointed out that the statistic for India is much older than the statistics for most of the other countries. Countries with the highest degree of tax slavery are generally European Union countries.

Some Objections

Some readers may raise objections at this point. Those who worship the state would be quick to assert that all taxes are completely legitimate, especially if the government is democratically elected, since our elected representatives represent us and do our bidding. They may even go on to say that we consent to be taxed, and if we think that taxes are too high, we can reduce them through our elected representatives. Then, there is the argument that we receive benefits from taxes and that taxes are needed in order to keep our freedom and protect our other rights [40], which has a grain of truth to it.

Another possible objection might be, “What would happen to the poor if government did not take care of them?” or “How would we educate our children if the government did not provide schools for them?” or “How would people be provided with health care or pensions if the government did not do it?” These are fair questions. Let us examine them.

A good place to start might be a story about Davy Crockett (1786–1836), an American folk hero, frontiersman, and member of the US Congress. Walt Disney made a television series about him in the 1950s.

The story involves a speech he gave on the floor of the House of Representatives to address a pending bill to provide relief for the widow of a distinguished naval

Table 66.3 Tax freedom day: selected countries

Country	All taxes as a percentage of income (% slave of government) (%)	Year	Country	All taxes as a percentage of income (% slave of government) (%)	Year
Cyprus	19.40	2010	Greece	44.60	2010
India	20	2000	Czech Rep.	44.90	2010
Malta	26.80	2010	Finland	45.20	2010
United States	27.70	2011	Lithuania	45.40	2010
Australia	30.70	2008	Slovakia	45.50	2010
Ireland	31.90	2010	Denmark	45.70	2010
South Africa	36	2008	Italy	46.00	2010
Luxembourg	36.80	2010	Israel	47.40	2010
Spain	37.00	2010	Poland	48.00	2011
Uruguay	38.60	2010	Slovenia	48.30	2011
New Zealand	39	2008	Romania	48.60	2010
Bulgaria	39.50	2010	Netherlands	50.20	2010
Brazil	40	2008	Germany	54.60	2010
Estonia	40.70	2010	Sweden	55	2010
UK	40.80	2011	France	56.40	2010
Portugal	40.90	2010	Norway	56.70	2007
Canada	42.70	2011	Belgium	58.50	2010
Croatia	43.70	2010	Hungary	59.40	2010
Latvia	43.70	2010			

officer. When he rose to begin his speech, most members of Congress thought he was going to support the pending legislation. Instead, he pointed out that the Congress did not have the constitutional authority to make such a payment. The gist of the speech was that the Constitution enumerates the various functions of government and that providing charity is not one of those enumerated powers. While individuals are free to contribute whatever they want to private charitable causes, Congress does not have this authority. Funds that are used for charity constitute misappropriations. Basically, what he said was that the money appropriated by Congress for this or other charitable acts was not theirs to give.

His speech has become known as the “Not Yours to Give” speech. It was reprinted in a book [24] and has been reprinted many times since. It is on the internet, both in print form and as a YouTube video.

This process of the government giving money that is not theirs (government is a mere fiduciary) has a name. It is called false philanthropy. While there is nothing wrong with spending your own money on charitable causes, there is nothing charitable about spending someone else’s money on causes that you deem to be charitable. It amounts to little more than theft. It is a misappropriation of funds and a betrayal of the public trust. Frédéric Bastiat (1801–1850) wrote about

this concept of false philanthropy in the 1840s. It is not a new concept, although it appears to be an unknown concept in the halls of the US Congress and all other welfare states:

Here I encounter the most popular fallacy of our times. It is not considered sufficient that the law should be just; it must be philanthropic. Nor is it sufficient that the law should guarantee to every citizen the free and inoffensive use of his faculties for physical, intellectual, and moral self-improvement. Instead, it is demanded that the law should directly extend welfare, education, and morality throughout the nation. ([5], p. 25)

... legal plunder is based partially on philanthropy, even though it is a false philanthropy. ([5], p. 28)

The mission of the law is *not* to oppress persons and plunder them of their property, even though the law may be acting in a philanthropic spirit. Its mission is to protect persons and property ... if the law acts in any manner except to protect them, its actions then necessarily violate the liberty of persons and their right to own property. ([5], p. 68)

Another point worth mentioning, one I find especially amusing, is that many of the arguments advanced to justify taxes are based on non sequiturs. The part I find most amusing is that it is often philosophy professors, some of whom teach courses in logic, who advance these arguments. They feel perfectly comfortable teaching about the methodological flaws of non sequiturs on Monday morning and then spend the afternoon justifying one or another tax policy by using non sequiturs to support their arguments. The cynical among us might call it an open and shut case of philosophical malpractice.

Let us take an example. A commonly heard argument is that we must support free public (government) education, the underlying premise being that if we did not, the young would not be educated, or perhaps only the children of the rich would be educated, which would ultimately lead to the decline of civilization and a return to barbarism, where life is nasty, brutish, and short, to borrow a phrase from Hobbes [39]. Anyone who objects to public education must be insane, selfish, rich or a racist, or some combination thereof.

However, upon closer examination, one finds a number of moral problems with supporting government education. But first, let us finish the discussion of the non sequitur arguments. When placed in the proper grammatical structure, the advocacy of free public (government) education might be stated as follows: Children must be educated; therefore, the government has to do it.

One may challenge the statement that children need to be educated. The Amish and other religious groups believe that only basic education is needed just enough so that children can do figures and read the Bible. Some Muslims believe that the only education needed is to read and memorize the Koran. Let us not go down that path. Let us concede the point and assume that it is an extremely good idea that children be educated.

Just because children need to be educated does not mean that the government has to do it. There are several other options. Individual parents could perform this task or could retain the services of one or more teachers to do it, either individually or as part of a private school. Those who are too poor to pay for the education of their children can rely on charitable or nonprofit organizations to educate them, or they

can do it themselves through home schooling, although someone who is poor might not have sufficient talent to educate a child. If they had any smarts, they probably would not be poor.

Before the advent of free government schools in the United States, local communities found ways to educate children well and economically even if they could not afford to pay. There is no reason why the private and nonprofit sectors cannot use those same methods, which have been proven to work in the past [8, 9, 16, 30, 31, 70, 89].

The point is that assigning government the job of educating children is only one of several options, and it is generally not the best option, since governments are notorious for doing a relatively poor job of just about everything. The private sector has shown that it can do a higher quality job at a lower cost for a wide range of activities [20, 26, 62]. Thus, if one takes the utilitarian position that the most efficient way to do something is the only ethical way to do it [7, 63–65, 78], then allowing governments to educate our children is unethical.

There are other reasons why allowing government to educate our children is inherently unethical. Such a practice must necessarily violate someone's property rights and is also inherently unfair. It is unfair that childless couples (or individuals) should be forced to pay for the education of other people's children. It is also fundamentally unfair to force people who pay for the education of their own children to also have to pay for the education of other people's children. Why should Jews have to pay for the education of Christian children and vice versa? Why should anyone have to pay for the education of Muslim children, especially if they receive educational vouchers to send their children to Muslim schools?

At this point, one may hear the argument that there is an obligation to pay for the education of future generations. The previous generation paid for your education; therefore, you have a moral obligation to pay for the education of the next generation. There are several problems with this line of reasoning. For one, it is a non sequitur. One might just as easily argue that "Since John, age 70, was forced to pay for your education, you have a moral obligation to pay for the education of Sally, age 7, who is not related to either you or John." Such arguments are completely untenable.

Another point that could be made is that the statement is not true. It is not always true that "the prior generation" paid for your education. Perhaps your parents paid for it or perhaps you paid for it or perhaps you received scholarships or funding from some charitable or nonprofit organization. There are so many flaws in the argument that we have an obligation to pay for the education of other people's children that I find it incredible that the argument continues to be advanced and believed. Any such forced payments must necessarily violate someone's property rights. It is a forcible taking of the fruits of someone's labor, an example of tax slavery where the government is the slave master and the taxpayer is the slave.

Now let us examine the main arguments that have been advanced to support the belief that there is a moral duty to pay taxes. These arguments are discussed and analyzed in more depth elsewhere [55], but a brief discussion is called for here.

One of the favorite arguments pro-tax advocates make is that taxes are the price we pay for civilization. This statement, or one like it, was made famous by Oliver Wendell Holmes (1841–1935), an eminent American jurist ([29], p. 71). Holmes and Sunstein [40] elaborated on this view by pointing out that taxes are needed to pay for the protection of our lives, liberty, and property.

Their line of reasoning is good as far as it goes. Even if we concede the point that taxes are needed to fund the governmental functions that protect our lives, liberty, and property, it does not address the rationale for being forced to pay for government programs that merely redistribute wealth from those who have earned it to those who have not. Such redistributions actually disparage property rights rather than protect them. If we begin with the premise that the only legitimate function of government is to protect life, liberty, and property, then justifying the funding of other governmental functions becomes untenable since doing so necessarily disparages property rights.

An argument that is related to the Holmes argument is the “government couldn’t exist without taxes” argument. The underlying assumption here is that it is desirable for government to exist. Again, even if we concede the point that government is necessary for the protection of life, liberty, and property, in some cases, it does not follow that government is the only provider of these services. What if some individuals or group of individuals (like a homeowners’ association) decide that it would prefer to provide its own protection rather than availing itself of the protection provided by the local government? Do members of the homeowners’ association have a moral obligation to pay taxes to support the local police even if they have waived their right to use their services? In effect, forcing them to pay taxes to support others but not themselves cannot be justified on any moral grounds. It is an example of false philanthropy. The same might be said for Social Security, Medicare, education, or any other program where it is possible to opt out. (At present, it is usually not possible to opt out of these governmentally provided programs in the United States, which is unfair to those who want to opt out.)

The point is that practically, any service that is currently provided by some government can be provided better and cheaper by the private sector or by some nonprofit organization. Study after study has shown this to be the case [20, 26, 62, 67]. Since that is the case, why is government forcing people to pay for inefficient services that they do not want, and why should taxpayers be forced to pay for these inefficient programs?

Another problem with the “government couldn’t exist without taxes” argument is that taxation is not the only form of funding governments receive. They also get funding from user fees, lotteries, and donations (e.g., Ted Turner donated one billion dollars to the United Nations). Prior to the adoption of the income tax in the United States in 1913, the federal government existed quite well without the income tax. Thus, history has shown that it is possible for governments to exist without taxes. The argument that government cannot exist without taxes is therefore patently false. What is true is that the large, bloated redistributionist welfare states cannot exist without taxes.

Another argument to justify taxes is the “what if everybody did it (evaded taxes)” argument. It is a form of the Kantian Categorical Imperative [45, 46]. This argument raises some interesting issues. Of course, if everyone evaded all taxes, governments could no longer exist in their present bloated welfare state form.

But is that a bad thing? If governments limited their funding to user fees, lotteries, and donations, they would be confined to their more legitimate functions of the protection of life, liberty, and property and would no longer be able to violate property rights and take the fruits of people's labor by force. Tax slavery would end. They would not have the ability to redistribute wealth, which is inherently unethical (false philanthropy), and they would be far less likely to engage in foreign military adventures that destroy lives and dissipate national treasure.

If people only evaded *unjust* taxes, it would not be long before there would be no unjust taxes and more justice, which is a good thing. If people refused to pay taxes to oppressive and corrupt governments, soon there would be fewer oppressive and corrupt governments. If people refused to pay taxes for wasteful spending, soon there would be less wasteful spending.

Another argument that has been used throughout the millennia to justify taxation and to brand tax evasion as unethical is the argument that "the law is the law" [15]. The underlying premise here is that one must obey the law regardless of what the law is, whether it is just or unjust, a view that Gandhi, Martin Luther King, Henry David Thoreau, and others would disagree with.

Dietrich Bonhoeffer, a German theologian who was killed at the direct command of Hitler, preached that we have an affirmative duty to resist evil. "Not to speak is to speak. Not to act is to act." Or as Edmund Burke has said: "All that is necessary for evil to triumph is for good men to do nothing." Thus, in some cases, there is a moral duty to evade taxes not only because doing so prevents the theft of the fruits of people's labor but also because cutting off the funding to evil regimes reduces the amount of evil that can be done.

The "We have a duty to others to pay taxes" argument also falls apart upon closer examination. The *others* who are usually included in this argument might be other taxpayers or other members of some ethnic or religious group.

There is a strain of thought within the Jewish literature that one Jew must never do anything to disparage another Jew [15]. If one Jew evades taxes, it makes all Jews look bad; therefore, no Jew should ever evade taxes. But what if Hitler were the tax collector? Do Jews have a duty to pay taxes to Hitler? This question was asked on a number of surveys. In many cases, it was the strongest of 18 arguments to justify evading taxes. However, a survey of Orthodox Jews [56] found that even Orthodox Jews had some problem with totally justifying tax evasion in such a case. Their hesitancy to fully endorse evading taxes paid to Hitler was because of "the law is the law" and "never disparage another Jew" arguments.

Another variation of this *we have a duty to others* argument is the view that if we pay less, others must pay more. This statement may or may not be true. Since governments often spend more than what they collect in the form of taxes, it is entirely possible that one person's evasion may not result in others paying more, since the entire deficit is financed, either by issuing government bonds or by the printing press. There is often little relationship between what is spent and what is collected.

Another weakness with this line of reasoning is that it is not always unethical to evade taxes even if others have to pay more. For example, if an armed robber comes into a restaurant and demands that the clientele collectively raise \$100 to fund his

bus ticket to Mexico, and that they decide how much each must give based on the ratio of the money they have on them, it is not unethical for someone to fail to report the \$20 he has hidden in his shoe. There is no duty to turn money over to a thief, even if the other people being robbed have to pay more. It is the thief who is acting immorally, not those who hide their own property so it will not be confiscated. Likewise, it is not unethical for a Jew living in Nazi Germany to evade taxes even if non-Jews have to pay more as a result.

The ability to pay argument has been used for centuries to justify taxing some people more than others [18]. Karl Marx advocated it in his *Critique of the Gotha Program* [51]. There are a number of weaknesses with this line of reasoning. The underlying assumption is that some people have a moral right to live at the expense of others. Taxing the rich more than the poor is a form of exploitation. A Kantian would be quick to assert that it treats individuals as resources or a means to an end rather than as ends in themselves, which is inherently unethical. It is also redistributionist since it involves the forcible taking from those who have earned the income and distributing it to those who have not.

The *majority rule* argument has also been used to justify taxation and to disparage tax evasion. This argument has several underlying assumptions that suffer from fatal weaknesses. It cannot be said that any taxes imposed are automatically fair just because *we consent to be taxed*. Some of us may consent to be taxed, but it cannot be said that all of us consent to be taxed. Some of us do not consent to be taxed, and many of us do not consent to be taxed at current levels.

While it is true that in a democracy the majority rules, it does not follow that if a majority decides to exploit some segment of the population (the rich), it has a moral right to do so. The recognition of property rights takes precedence over the opinions of any majority.

A related underlying assumption is that our elected representatives represent us, and thus, if they decide a tax should be imposed, they do so with our consent. They do not. The Public Choice School of Economics has spent several decades discrediting this belief [86]. Our elected representatives represent a collection of special interests which, in many cases, do not represent the will of their constituencies. It should also be pointed out that the individual members of any constituency do not all think alike. Perhaps 51% hold one view and 49% hold a diametrically opposed view. That being the case, all that can be said is that some elected representatives might represent the views of some portion of their constituency some of the time.

It cannot be said that some tax is just merely because a majority of representatives have voted for it. More is needed to justify taxation. Majorities can be wrong, and elected representatives are often wrong because they vote the way special interests want them to vote or because they vote the way some misguided constituency wants them to vote.

Lysander Spooner states:

... no man can be taxed without his personal consent ... Taxation without consent is as plainly robbery, when enforced against one man, as when enforced against millions ... If the government can take a man's money without his consent, there is no limit to the additional tyranny it may practise upon him. ([79], p. 222)

Another commonly heard argument to justify taxation is the *I receive benefits, therefore I must pay* argument. John Rawls has replied to this line of reasoning as follows:

There is no more justification for using the state apparatus to compel some citizens to pay for unwanted benefits that others desire than there is to force them to reimburse others for their private expenses. ([69], p. 283)

While there may be some duty to pay for benefits you actually receive and benefit from, it is not possible to justify the view that there is a moral obligation to pay for benefits that you do not use. It also cannot be said that there is a moral duty to pay the full price for the benefits that some government provides. For example, if some local government runs a garbage monopoly and requires you to pay \$30 a month for picking up your garbage, it cannot automatically be said that you morally owe the government \$30 since its monopoly on garbage collection legally prohibits private garbage companies from competing and charging \$20. While there might be a moral duty to pay \$20, it cannot be said that there is a moral duty to pay the full \$30 because the government is running an inefficient monopoly that is costing you an extra \$10 a month while violating the property and contract rights of private sector garbage providers who are prohibited from competing for your business.

What Rights Do Tax Slaves Have?

There is no moral obligation to obey a slave master. To argue otherwise is completely untenable. Frederick Douglass [21] was quite articulate in pointing out this fact in his autobiography. To the extent that some government passes laws or regulations that result in making you its partial or total slave, there is no moral duty to obey.

But that is not the end of the story. What rights do these partial or total slaves have? In the pre-Civil War United States, a strong argument could be made that slaves possess the moral right to kill their slave masters, especially if their master beats them; rapes them, their wife, or their children; or takes away their children to sell to another slave master. A slave that attempts to escape is justified in making the attempt and is justified in killing the slave master or any of the slave master's employees who would try to prevent the escape.

The rights of the slave to kill the slave master become less clear where the slave master is some government and where the individual is only partially enslaved. It becomes a matter of degree. At some point, the homicide becomes justifiable, but it is difficult to draw the line. The spectrum of choices may be depicted as in (Fig. 66.2).

It is more justifiable to kill a slave master who confiscates 100% of your income than one who confiscates just 1%. But what about the slave master who confiscates 20% of your income and gives you some benefits (that you did not ask for) in return? Would a mere 20% slave be morally justified in killing the slave master?



Fig. 66.2 When does killing a slave master constitute justifiable homicide?

If killing would not be justified, how about a punch in the nose? Applying the theory of justifiable homicide to the collection of taxes presents some other interesting questions as well.

If someone were in the 94% marginal tax bracket from July 1 to December 31, a strong case could be made that killing the government slave master would be justifiable for the last 6 month of the year but would be much less justifiable in January or February, when the wage earner is in a lower marginal tax bracket and therefore less of a slave.

The issue becomes even more complicated when one considers the fact that we are talking about more than just one slave master. The federal government of the United States, for example, is not the only taxing jurisdiction. The states and local governments also impose taxes, and they are imposed on more than just income. There are also property taxes, sales taxes, Social Security and Medicare taxes, and a wide range of taxes other than income taxes. What if the total taxes taken amount to 94% of income but no individual slave master takes more than 10%? Does that make any particular slave master's killing less morally justifiable? Is it morally justifiable to kill only those slave masters who confiscate more than a certain percentage of income? What line of moral reasoning can we use to determine that minimum justifiable percentage? These questions have not been raised in the literature. Perhaps it is time to start a debate on this issue.

Some taxes are more justifiable than others. Taxes like a gasoline tax might be justified if 100% of the proceeds are used to maintain the roads, but it becomes less justified if part of the tax is either used for other purposes, such as funding education, or is used for social engineering purposes such as to reduce gasoline consumption.

Another complicating factor is that killing the slave master may not solve the problem if the slave master is the government. If a plantation slave in the 1850s was to kill his slave master and successfully escape from the plantation, the slave would be free, but such cannot be said for killing an IRS agent or a member of Congress who has voted in favor of tax slavery. Tax slaves would not be free even if they managed to kill a dozen of the government's tax collectors. All that would happen is that the tax slave would be either killed or imprisoned. Thus, killing the agents of the government slave master is not a viable solution to the problem of tax slavery even if the killing might be morally justified.

One solution would be to move to a jurisdiction that imposes lower taxes, but that would not totally solve the freedom issue; it would merely reduce the percentage of income that is confiscated and thus the degree of tax slavery. It might also be pointed out that jurisdictions that impose low or no taxes usually have limited job opportunities, unless you work in the banking, casino, or tourism industry.

Another option would be to refuse to pay, which would increase anxiety, perhaps lead to health problems, and perhaps expensive lawsuits and incarceration. Of course, one could kill tax collectors and rely on a jury to save you, but that is a risky proposition, and you would have to incur high legal fees and would probably be in jail pending the outcome of the trial. The bottom line is that there is no easy solution in trying to protect your property rights from the slave masters. All that can be said is that there is no moral duty to pay some taxes and that protecting your property rights is morally justifiable.

Victimless Crimes

The body as property doctrine includes much more than just tax slavery. It can be applied to many acts that are illegal where there are no identifiable victims. Such victimless crimes might include dwarf tossing (my favorite), prostitution, taking illegal drugs, selling (or renting) body parts, suicide, assisted suicide, polygamy, eating fatty foods, smuggling, and occupational licensure laws. Again, the underlying premise is that individuals own their own bodies, and any government that prevents individuals from using their bodies as they see fit necessarily violates their property rights. A corollary is that there is no moral duty to obey such laws.

Dwarf Tossing

For philosophical reasons, dwarf tossing is my favorite example to illustrate the body as property doctrine. In 1993, I published an article in the *American Journal of Jurisprudence*, titled “If Dwarf Tossing is Outlawed, Only Outlaws Will Toss Dwarfs: Is Dwarf Tossing a Victimless Crime?” [53]. That article generated a lot of commentary and heat, including hate mail from dwarfs. It later became the basis for a module in a Harvard University philosophy course. I just learned a few minutes ago while searching the internet for recent publications on this topic that the practice has been banned by the UN Human Rights Committee [88].

For those who have never heard of dwarf tossing, let me give you a brief summary. It is (or was) a sport. Originated in Australia, it consists of a dwarf or midget being picked up and thrown. Whoever throws the dwarf the farthest wins. Australian bars used to have dwarf tossing contests and awarded prizes for those who could throw the dwarf the farthest.

It was a safe sport, at least compared to midget wrestling, in terms of injuries. The injury rate was far less for dwarf tossing than for midget wrestling. One reason for the reduced injury rate was because the dwarf generally wore a football helmet and pads and was tossed into a mattress. They usually wore a harness so that the tosser could get a firm grip.

A variety of do-gooders got together to put pressure on various legislatures and local councils to ban the practice. The usual arguments for banning the sport were because it demeans all dwarfs or it exploits little people or for the sake

of propriety. Brigham Fordham [28] discussed these various reasons and expanded the argument to include a wider variety of what has been called freak shows.

The problem with banning dwarf tossing or a freak show is that it violates the right of the dwarf or freak to use their bodies as they see fit, including economic gain. From an economic perspective, dwarf tossing is a win-win situation or positive-sum game. There are more winners than losers. The dwarfs win because they can earn a six-figure income on the dwarf tossing circuit. The spectators win because they would rather pay to see a dwarf tossing event than choose any alternative activity (otherwise, they would not go to a dwarf tossing event). No one's rights are violated by the practice, whereas the rights of the dwarfs, the spectators, and the sporting event sponsors are violated by banning the practice. The fact that dwarfs can no longer use their bodies for tossing purposes means they no longer fully own their own bodies; some government has an ownership interest in their bodies. There is no moral duty to obey such laws, although one must weigh the pros and cons of breaking the law, since there may be penalties.

There is another aspect of this ban that has been more or less neglected in the literature. Davis [19] and McGee [53] are two scholars who have raised the issue, which is whether banning the practice discriminates against people on the basis of size. While bans on dwarf tossing could be worded in such a way that people of all sizes would be prohibited from lending their bodies for this purpose, such laws would have a disparate impact on little people since larger people would not usually participate as tossees in a dwarf tossing event. However, such arguments distract us from the main philosophical question, which is whether any government has the moral authority to prevent dwarfs from allowing themselves to be tossed.

Prostitution

A number of economic studies have been made of the prostitution profession [3, 23, 32, 33, 43, 58]. They tend to analyze economic aspects of the profession without making judgments. Basically, they take a utilitarian ethical perspective, although they do not necessarily come out and say that prostitution is good because the result is a positive-sum game, which is what a pure utilitarian would conclude, since there are two (or more) winners and no losers. Some scholars have gone the extra step and concluded that prostitution is a moral act [25], but space does not permit a discussion of this interesting argument.

This chapter will not explore that particular moral argument. Instead, we will apply the body as property doctrine. Since the body is property, and since self-ownership dictates that individuals have the right to use their body in any way they want, provided they do not violate the rights of others, one must conclude that individuals have the right to rent out their bodies, or parts thereof, for purposes of prostitution. That is not to say that it is moral to do so. All that can be said is that they have the right to do so. A corollary is that anyone who interferes with the exercise of that right is acting immorally since they must necessarily violate the property and contract rights of the prostitute.

One question that has not been asked in the philosophical literature, to the present author's knowledge, is what lengths prostitutes can go to in order to defend this right if someone attempts to deprive them of the right to use their body as they see fit? Certainly, the person who is violating the right does not have a superior claim on the use of force than the person whose property rights are being violated. Thus, at a minimum, we can say that if someone attempts to deprive a prostitute of this right by throwing a punch, the prostitute has the right to throw at least one punch in return, if not more. If the rights violator draws a pistol to deprive a prostitute of this property right, the prostitute also has the right to draw a pistol or perhaps two pistols. This issue has not been addressed in the literature and needs to be explored in more depth, but space constraints do not permit a full analysis at this time.

Suicide and Assisted Suicide

I have lumped suicide and assisted suicide together because they are so closely related that efficiency would dictate that they be discussed together. Again, the body as property doctrine holds that individuals own their own body and that they have a superior claim on it. They have the right to do anything they want with it, provided they do not violate the rights of others. That includes the right to kill it.

Since they have the right to kill it, they also have the right to hire someone to kill it for them. It is a simple application of agency theory. The agent can do anything the principal can do. That does not mean that killing oneself is moral or that someone who is hired to assist in such a killing is acting morally. All that can be said is that anyone who tries to prevent a suicide, whether assisted or not, is acting unethically because such prevention violates someone's property rights and also contract rights in cases where someone is hired to assist.

Various ethical rules or systems can be drawn from to determine whether the practice is moral. Religious doctrine, for example, might hold that suicide and assisted suicide are immoral based on the doctrine that "thou shalt not kill," although in the Christian Bible it also states that there is "a time to kill and a time to heal" (Ecclesiastes 3). It might also be pointed out that killing is glorified in various parts of the Christian Bible, especially if it is done in the name of God. In Deuteronomy (13:12–19), for example, the instruction is given to kill all the inhabitants of the town, including livestock, which includes women and children, although little doggies might escape this fate since they are not considered livestock. Killing is glorified in other passages of the Bible as well (Deuteronomy 2:24–34; Genesis 6:17–23; Numbers 21: 32–35; 25:1–9; Joshua 11:19–20; 2 Chronicles 25:12, to cite a few). The Bible justified Samson's suicide as well as the 3,000 men and women he killed in the process (Judges 16:25–30).

Utilitarian ethics, on the other hand, might hold that suicide is ethical since there is one winner and no losers, thus producing a positive-sum game. If the suicide is assisted, there are two winners since the person who assists also benefits, provided payment is received. The case may be made that the person who assists benefits

even if payment were not received, since the assister has chosen to assist rather than to use that time to do something else, and has thus ranked assisting in the suicide higher than any other competing activity.

Some arguments to prohibit suicide and assisted suicide have been made, which explains why these practices have been made illegal in some jurisdictions. The “interests argument” has been used to prohibit suicide and assisted suicide as well as a number of other activities between or among consenting adults. Let us examine that argument.

In the case of suicide, one might argue that the state has an interest in preventing suicide, for example. In a US Supreme Court case, justices Scalia and Stevens implied that an individual’s right to autonomy might at times have to yield to some nebulous community interest ([54], p. 41).

The problem with this line of reasoning is that only living, breathing individuals can have interests. Yet the argument is often made that there is some public interest to protect or that individual rights must sometimes be circumscribed because of some compelling government interest. Ayn Rand makes the following point in this regard:

Since there is no such entity as “the public,” since the public is merely a number of individuals, any claim or implied conflict of “the public interest” with private interests means that the interests of some men are to be sacrificed to the interests and wishes of others. Since the concept is so conveniently undefinable, its use rests only on any given gang’s ability to proclaim that “The public, c’est moi” – and to maintain the claim at the point of a gun. ([68], p. 114)

The same line of reasoning could be used to dismantle the government’s compelling interest argument. The government has no compelling interest because it has no interest. Government is merely an institution created by men to protect rights. It is not a living, breathing human being, so it cannot have any interests of any kind, let alone compelling interests. If government can ever claim to be legitimate, it can only claim legitimacy to the extent that it protects negative rights, like the rights to life, liberty, and property. If someone wants to relinquish the right to life by committing suicide, it is none of the government’s business.

The argument has been made that government is acting legitimately in prohibiting physician-assisted suicide because it is protecting life. But this argument totally ignores the fact that the individual in question volunteers to give up the right to life by hiring a contract killer. If an individual decides to give up the right to life, government has no legitimate authority to prohibit the transaction. Governments exist to protect the legitimate negative rights that individuals hire them to protect. When they protect rights that the individuals who hire them (taxpayers) do not want to have protected, they cease to act legitimately.

Another aspect of this topic that needs to be addressed is who should be permitted to assist in a suicide where assisting in suicide is permitted? In jurisdictions where assisting in a suicide is permitted, the law generally permits only physicians to assist. Why is that? Why should physicians have a legal monopoly on contract killing? Why should physicians be the only ones who are permitted to legally kill someone who wants to die? [54].

Creating a monopoly constitutes anticonsumer behavior. Monopolies of any kind tend to result in higher prices and lower quality than would be the case in a free market environment. Limiting the eligible pool of death providers to physicians constitutes special interest legislation.

Killing someone does not require 8 or more years of university education. Providers who have only 4 years of university education could do an equally good job at a fraction of the price a physician would charge. High school dropouts could do an effective job for even less, although the quality of the service might not be as high [54].

The point to be made with regard to suicide and assisted suicide is that individuals have a claim on their body that is superior to the claim of any other individual or group of individuals. Whether suicide or assisted suicide is moral is subject to debate and is beside the point. What can be said with certainty is that anyone who interferes with the right of individuals to end their life violates their right to do with their own body as they see fit. Such interventions constitute unethical conduct.

Drugs

If one begins with the premise that individuals own their body, one may proceed logically to conclude that they can put anything they want into their body, even if it is bad for their health or even fatal. Yet this argument is seldom addressed in the literature. Those who advocate making certain drugs illegal do so because of the harm it does to individuals or to *society*, whatever that means. Such a position smacks of nannystatism, the belief that the state has an obligation to make decisions for the citizenry because the people are not capable of making their own decisions.

What is often overlooked is that outlawing certain drugs can also have adverse effects, including death. For example, the Food and Drug Administration (FDA) in the United States routinely bans numerous drugs from importation into the United States even though the drugs have been found to be safe in Europe or elsewhere. Some of those drugs are lifesaving, in the sense that they prevent or reduce the probability of things like heart attacks. According to some estimates, these prohibitions lead to the totally unnecessary deaths of tens of thousands of people a year in the United States [4, 76]. FDAREview.org has published a number of studies that estimate the number of deaths the FDA causes each year because of its regulations.

The above argument regarding drug legalization is utilitarian, of course. I thought I would point that out in case you missed it. Utilitarian arguments look at winners and losers and determine the ethics of a particular act or policy based on whether the winners exceed the losers or whether there is a net benefit.

Milton Friedman, the Nobel Prize winning economist, has used utilitarian arguments to advocate the legalization of drugs [30]. He spews forth very persuasive economics-based arguments to show that legalizing drugs results in net benefits, since the quality of what is available would be increased, leading to fewer overdoses, and the costs would be much lower since the supply would not be crimped. If formerly illegal drugs became legal, drug stores would sell them and

consumers would be able to buy high-quality drugs at such low prices that the criminal element would no longer find selling drugs to be a profitable venture. Thus, the crime rate would also decline.

Various individuals and groups have also pointed out the benefits of certain drugs, such as medical marijuana, which can be used to reduce eye pressure in glaucoma patients and might also reduce blood pressure and perhaps have certain other health benefits. Again, these arguments for the legalization of drugs are all utilitarian-based. They all ignore the basic issue, which is one of property rights. If individuals own their bodies, they therefore have the right to ingest anything they want, even if it kills or harms them.

One might object, perhaps arguing that allowing people to take certain drugs would increase health care costs, which all of us would have to pay for. However, that argument is true only if health care is paid for through taxes. In a privatized health-care system, taxpayers would not be called upon to pay for other people's health-care benefits, and private insurers could charge addicts higher premiums to offset the added cost of taking them on as customers.

Banning Food

Some do-gooders have called for the banning of certain kinds of food or foods that contain certain chemicals or ingredients, such as trans fat, sugar, or certain sugar substitutes [6]. Fast-food restaurants like McDonald's have been castigated for selling high caloric foods, and certain New York state legislators have called for banning table salt in all New York restaurants. Groups of rabid vegetarians have tried to ban meat or at least red meat.

The arguments that have been used to object to these abuses have often been utilitarian-based, arguing that the do-gooders are exaggerating the harm to be done by this or that food or chemical or arguing that anything done in moderation will not harm you. On occasion, some form of rights-based argument might make the six o'clock news. Such arguments generally revolve around the notion that individuals should be able to make their own life choices. The do-gooders counter that banning certain food items will reduce health-care costs or, alternatively, the failure to ban the item will increase health care costs, which all taxpayers must pay for. Again, that argument is faulty, at least in a health-care system that does not force some people to pay for other people's benefits.

The fact that the banning of any food, including poison, violates someone's property and contract rights, is usually not mentioned. Yet that is exactly the case. Since individuals own their bodies, they have the right to ingest whatever they want to ingest. Anyone who prevents them from doing so violates their property rights. If they cannot ingest what they want, the government has an ownership interest in their body and they are part-slave. The fact that the slave master might be doing something that actually benefits their bodily health is irrelevant, as far as the rights issue is concerned.

Those who are prohibited from selling such products as well as those who would enter into contracts to purchase the product have their right to contract violated, another point that is seldom discussed, either in the literature or in debates on the issue. Needless to say, there is no need to obey such laws. Governments that institute such laws are acting illegitimately, beyond the scope of their authority, and there is no moral duty to obey an illegitimate government.

Selling or Renting Body Parts

Many people die needlessly each year because they cannot legally buy the body part they need. The supply of kidneys, livers, lungs, and hearts all would increase if there were a market for these organs. Yet governments often ban their sale, which means that people who need them have to rely on donations [11, 22, 25, 47].

It is a basic law of economics that if the price is artificially kept below the market clearing price, the result will be a shortage. If there is a shortage of certain organs available for transplant, people die. Again, I would like to point out that this line of reasoning is utilitarian-based. The rights aspect of the argument is often ignored.

If individuals own their bodies, they have the right to do whatever they want with their body or body parts, including selling off parts of it, either premortem or postmortem. To the extent that some government prevents them from doing so, it violates their property rights. The government assumes a part ownership role, which means the affected individual becomes part-slave.

Renting one's body is also often illegal. Prostitution has already been discussed, which involves the renting of certain body parts for what some may consider to be immoral activity. But other rental options are also available, such as the renting of a womb for surrogacy purposes. In some jurisdictions, it is illegal to rent a womb for childbearing purposes, although it is legal to become a surrogate and it is legal for the prospective parents to reimburse the renter for certain expenses [42, 57].

The question that needs to be answered is, "Why should it be illegal to rent out a womb when giving away the use of it is perfectly legal?" The oft-given answer is *reasons of public policy*, whatever that means. Some people do not want other people to be able to rent out their wombs for some reason. Maybe it is because of the fear that some black or Hispanic woman who is poor and needs the money might be exploited by some white couple from the suburbs [12], or maybe, it is because some busybody just does not think it is right to rent your womb to someone else. The fact that renting out your womb once or twice might actually make it possible to put food on the table or send your child to a better school is often overlooked. Renting out your womb is a way to escape poverty, at least for awhile. It might be pointed out that renting out a womb meets the utilitarian test since the winners exceed the losers. In fact, there are no losers, only winners.

While a strong utilitarian case can be made for allowing women to rent their womb, the real issue is one of property rights. Women own their wombs. If they are prohibited from renting them out to the highest bidder, their property rights

are violated. To the extent that some government prevents them from using their womb as they see fit, they are a partial slave of government because government has an ownership interest in their body.

Occupational Licensure Laws

People have a right to earn a living. Having a right means there is no need to ask government for permission. If you need government approval to work, you no longer have the right to work. Yet that is exactly what happens when some government requires you to have a license as a condition of performing certain kinds of work. The body is property. Likewise, the fruits of one's labor are property.

Objections may be raised at this point. One oft-heard objection has to do with protecting the public interest. The argument might go something along these lines. The government needs to protect the public from incompetent doctors, dentists, lawyers, accountants, hair stylists, mechanics, manicurists, etc. If it were not for government, the public would be unprotected.

Anyone who is familiar with the way the market economy works can quickly see the flaws in this line of reasoning. It is not a question of regulation versus no regulation but rather who does the regulating, the government or the market. The market, if allowed to function, is usually a very good regulator. Incompetents are forced out of business. Those who are negligent or criminal can be dealt with through the market and the legal system.

Milton Friedman [30, 31] and others [2, 75, 92] have been pointing out the flaws in occupational licensing laws for decades. Studies have shown that occupational licensure requirements often harm the public more than they help [74]. Even with occupational licensure, there is no guarantee that the public will be protected since many incompetent practitioners continue to practice in a number of fields.

These arguments, of course, are utilitarian-based. The point is not so much whether occupational licensure laws produce a positive or negative-sum game but rather whether anyone's property or contract rights are violated, which is always the case whenever some occupational licensure law prevents someone from offering services or products to the public. The body is property, and those who own the body are entitled to the fruits of their labor. No one has a superior claim. Whenever some government prohibits someone from using their body to perform medical, dental, or accounting services, it becomes a part owner in their body, and they become part-slave.

Milton and Rose Friedman have proposed a Constitutional amendment that would protect the right to work without government interference. Their proposed amendment reads as follows:

No State shall make or impose any law which shall abridge the right of any citizen of the United States to follow any occupation or profession of his choice. ([31], p. 305)

Their proposed amendment is good as far as it goes, but it could be improved. As presently worded, it does not protect residents who are not citizens. It also does not prohibit the federal government from violating the right to work.

The federal government has exerted (misused) its authority to regulate professions even if they have a negligible effect on interstate commerce. For example, anyone who transports steel rolls in an Ohio steel mill from one end of the property to the other is required to have a federal driver's license, even if the distance is only a few hundred feet and even if the driver never leaves the company premises.

Polygamy and Gay Marriage

The body is property. As such, the owner has the right to marry it off to anyone who is willing to accept it as a spouse. Yet governments all over the world have made laws that prohibit certain kinds of marriages. In some states of the United States, it was a crime for a person of one race to marry a person of a different race. Unbelievable as that may sound to the present generation, there were such laws on the books even after the passage of the Civil Rights Act of 1964.

Many people also find the possibility of homosexual marriage and marriage to multiple partners to be offensive or disgusting and have pressured governments to prohibit such kinds of marriage, even though no one's rights are violated by the practice. The objection is often raised, at least in the case of marriage between individuals of the same sex, that allowing such a practice will lead to the decline of the family and to the end of Western civilization. The Bible calls homosexuality an abomination, and allowing such abominations to manifest themselves in the local community will corrupt the young, who should only feel horny to have sex with someone of the opposite sex, and only then after they are properly married, preferably by a priest, minister, or rabbi.

The problem with this line of reasoning is that forcing your views on others at the point of a gun must necessarily violate their property and contract rights. Entering into a same-sex marriage does not violate anyone's rights and should therefore be permitted. One might also point out that such marriages are positive-sum games since there are two winners and no losers. One may counter argue that *society* is harmed or that the local community is offended by such a practice, but these are phony arguments. For one, as was pointed out earlier, *society* does not exist. Only individuals exist. If government has any legitimate reason for existing, it is to protect life, liberty, and property, not to prevent people from being offended by acts between or among consenting adults. If some government prohibits you from marrying the individual of your choice, it claims a property right in your body, which makes you part-slave.

One may extend this argument to polygamy, the practice of marrying more than one person. Again, if you own your own body, you have the right to do whatever you want with it, provided you do not violate the rights of anyone else. That includes entering into contracts with more than one person for marriage purposes. Although some people may be offended by such a practice, their rights are not violated.

Marriage should be treated like any other contract between or among consenting adults. Treating marriage just like other contracts could lead to some interesting

possibilities, including term contracts. Employment contracts have definite terms. Why not marriage contracts? Partners in a marriage contract could have 2-year or 5-year term marriage contracts that terminate automatically unless renewed. Such contracts would reduce the need for and expense of divorce. The contract could state how property, children, and pets would be divided at the end of the contract.

The best solution would be for government to get out of the marriage business. The only role of government should be to recognize and enforce whatever contractual terms the parties agree to.

Sexual Acts Between Consenting Adults

The body is property. Perhaps I have mentioned that before. If you own your body, you have the right to do anything you want with it except use it to violate someone's rights. If you are prohibited from using your own body as you see fit, you are a partial slave of whatever government prohibits you from using it as you see fit.

That includes performing any kind of sex act you want, either by yourself or with a consenting adult. Yet some governments prohibit certain sex acts and even treat them like felonies, which mean individuals who perform them can go to prison for more than 1 year or at least that is the rule in the United States.

Sodomy is one such prohibited act that comes to mind. Sodomy can include either anal or oral penetration. Homosexual men are known to engage in various forms of sodomy, but so are heterosexuals and lesbians. To the extent that they are prohibited from doing so, their body becomes partly owned by some government. One might also point out that utilitarian analysis would lead us to conclude that such acts are good since it is a positive-sum game. There are at least two people who benefit while no one is made worse off. But utilitarian analysis is beside the point. What matters is whether you are free to use your body as you want or not.

Conclusion

I hope I have made my point, which is that utilitarian arguments, while interesting, are beside the point. What counts is whether anyone's rights have been violated. That is what the body as property doctrine is all about. To the extent that some government prevents you from using your body as you see fit, you no longer own your body. The government has a property interest in it. To that extent, you are a slave of government. There is no moral duty for a slave to obey a slave master. Thus, all laws that prevent you from using your body as you see fit are illegitimate and need not be obeyed.

Slaves have a right to resist their slave masters. The extent of resistance that is justifiable depends on the facts and circumstances. What complicates the analysis are the cases where the extent of the slavery is less than 100%. More studies need to be done on this issue to establish some ground rules.

Cross-References

- ▶ [Business and Liberty: An Ethical Union](#)
- ▶ [Kant and Hegel on Property](#)
- ▶ [Property Rights Versus Governments](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)

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Abstract

One of the few legitimate functions of government is to protect property rights. That is one of the reasons why governments have been formed historically. When governments use force or threat of force to confiscate private property or prevent owners from using their property as they see fit, they cease to be legitimate. This chapter explores some instances where governments have abused their power by disparaging property rights and examines some of the ethical issues involved.

Introduction

The state is that great fiction by which everyone tries to live at the expense of everyone else.

([6], p. ix)

The illegitimate use of a state by economic interests for their own ends is based upon a preexisting illegitimate power of the state to enrich some persons at the expense of others.

([50], p. 272)

Through the years, some men have discovered how to satisfy their wants at the expense of others without being accused of theft; they ask their government to do the stealing for them.

([22], p. 19)

One of the reasons governments were formed was to protect property rights. Groups of individuals found that establishing a separate agency to protect life, liberty, and property was a more efficient way of protecting rights than trying to do it individually. In legal terms, one might say that citizens are the principals and governments are their agents. A corollary of this relationship is that the agents possess no powers

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that the principals do not possess ([6], pp. 2–3). Thus, whenever a government does something that would be a crime for an individual to do, the government is acting without authority.

Let's take a look at some examples. If a US steel manufacturer attempts to forcibly prevent a US auto company from buying foreign steel, the steel manufacturer would be guilty of a crime, but if the steel manufacturer or some steel lobby persuades Congress to forcibly prohibit the importation of foreign steel, it is perfectly legal. Likewise, if a real estate investor uses force to confiscate the home of an elderly widow so that he can use the property to build a parking lot for one of his Atlantic City casinos, it would be a crime, but if he persuades the government to use the eminent domain laws to confiscate the property and sell it to him, it is perfectly legal [37].

This process of using the law to feather one's own nest at the expense of someone else is called rent seeking by economists [14, 66]. In the nineteenth century, Bastiat (1801–1850) called the practice a perversion of the law [6].

This chapter addresses some instances where the government abuses its power and its agency relationship with the citizenry by engaging in activities that would be a crime for an individual and that are violations of property rights. Unfortunately, such practices are widespread.

The ethical aspects of such practices have been almost uniformly ignored in the philosophical and business ethics literature, although there are a few exceptions [11, 18, 60]. It is time that these practices are examined through an ethical microscope.

Antidiscrimination Laws

We are brought up to believe that discrimination is bad, that there is something inherently unethical about it. But that is not at all the case. When a young man chooses to ask the prettiest girl in the room to dance, he is discriminating against all the less pretty girls in the room. There is nothing unethical about that. It is just life. When universities select only the smartest students, they are discriminating against the less smart students. There is nothing ethically improper about that, either. What is unethical is when some university discriminates against whites by choosing less qualified blacks or Hispanics, especially when it is a government-owned university.

The case is less clear when the university is privately owned because private universities are private organizations, and the government has no business interfering in the decisions of private individuals or groups. Individuals should be able to discriminate for or against any individual or group of individuals they want for whatever reason they want. While it may be immoral in some cases to discriminate against certain individuals and groups, no one's rights are being violated, and thus, the practice should not be illegal. Individuals or groups who persuade some legislature to punish employers for exercising their right to discriminate are acting unethically because they are using the force of government, which is constituted to

protect rights, to instead violate the contract and property rights of those who are discriminating.

There is no such thing as the right to a job. If there were, then employers would be obligated to hire people they do not want or need. Thus, employers who discriminate on the basis of skin color, age, sexual preference, percentage of body fat, national origin, or breast size are not violating anyone's rights. If a restaurant like Hooters, which is known for hiring waitresses who have breasts that are considered to be desirable by the local male population, wants to hire only women who have a certain size breast, or who have a certain ratio of waist size to breast size, they should be perfectly free to do so. No one's rights are violated by such hiring practices, and the quality of the restaurant's atmosphere is enhanced by doing so. Having that kind of waitress makes it easier to attract a certain clientele.

The same can be said for all restaurants. It would probably be a good management decision to hire Koreans rather than blacks or Hispanics if you own a Korean restaurant. It adds to the authenticity. It would be better to hire Chinese people if you own a Chinese restaurant. If you own a Jamaican restaurant, it would probably be better to hire Jamaicans than Scandinavians.

The owners have a property right in the restaurants they own. While they may be acting immorally in some cases by hiring only individuals who possess certain characteristics, they are not violating anyone's rights by doing so and thus should not be punished for hiring the individuals of their choice. If some group of individuals persuades the legislature to punish restaurant owners for exercising their property and contract rights, those legislators and individuals are acting unethically. This fact has not been pointed out in the literature.

Antidiscrimination laws may also be harmful to the community in ways that cost lives. For example, if a fire department is forced to hire weaker females who have difficulty carrying a hose up a ladder or an injured person down a ladder, rather than a stronger male who has no difficulty with these tasks, the decision may result in deaths. If a police department is forced to promote a certain percentage of blacks or Hispanics even if they cannot pass the qualification exam, the community will be forced to be served by less qualified individuals. Governments with inferior police forces are abrogating their fiduciary duty to serve their communities.

Using the force of government to prevent life insurance companies from charging whatever rates they choose is another ethical issue that has not been adequately examined. If some antidiscrimination law prohibits life insurance companies from charging different rates to men and women, the property and contract rights of those companies are being violated. In most societies, women live longer than men. Stated differently, insuring a man's life is a higher risk than insuring a woman's life. Since that is the case, it makes sense to charge men a higher premium than women. If insurance companies are forced to charge the same rates for men and women, then women will have to subsidize the rates that men pay for life insurance, which violates their property and contract rights as well.

The same can be said for prohibiting the charging of differential rates on the basis of race. If whites live longer than blacks, it makes sense to charge blacks higher insurance premiums because they pose a higher risk. Being prohibited from

doing so means that whites will have to subsidize blacks, which interferes with the contract rights of whites and violates both the property and contract rights of insurance companies. Legislators who push through such legislation and those who encourage them to do so are acting unethically because their actions violate contract and property rights. The insurance company executives who determine what rates to charge, on the other hand, are not acting unethically. All they are trying to do is manage their risks.

Antismoking Laws

Those who advocate the passage of antismoking laws are missing the point. Ostensibly aimed at promoting health and reducing the risk of cancer, heart disease, and other diseases, such laws always violate property rights and interfere with contract rights as well. Whether individuals should be allowed to smoke in a certain place should be determined on the basis of property rights. If the owner of the property allows people to smoke, they should be able to smoke [60, 69].

For example, if a restaurant or bar owner wants to allow smoking on the premises, smoking should be allowed. If some owners want to prohibit smoking or allow smoking only in certain areas, or only on Mondays, Wednesdays, and Fridays, they should be able to make such rules. Legislators who pass laws to prohibit smoking on private property, and those who encourage them to pass such laws, are acting immorally because they are using the force of government, which is supposed to protect property rights, to disparage those rights instead. To the extent that governments have such laws, they are illegitimate and morally need not be obeyed, although there may be penalties for not doing so.

Employers should also be able to hire only nonsmokers if they want to. Any law that prohibits employers from discriminating on the basis of smoking habits violates the property and contract rights of the people who own the business. Individuals have the right to smoke on their own property and on the property of anyone else who allows them to smoke. They have no right to smoke on property that is owned by someone who forbids smoking.

The argument has been made that health-care costs are increased if people smoke, the underlying utilitarian premise being that preventing people from smoking is a good thing because it is a positive-sum game. A related argument is that smokers are entitled to health care [52], with the underlying premise that the rest of us will be forced to pay for their health-care costs if they are allowed to smoke.

There are flaws with both of these ideas. For one, there is no such thing as a right to health care. Individuals have a right to health care only if they can find someone to provide it and only if that person agrees to provide it. The collectivist argument that everyone is entitled to health care has the underlying premise that someone else must be forced to pay for it and provide it. Peter must be forced to pay for Paul's health care.

Forcing one person to pay for another person's health care is inherently unethical, as well as a violation of the payer's property rights. If someone wants to smoke, that is their right because they own their own bodies and they can ingest substances that harm them, but they must be willing to bear the cost of their decisions without forcing others to subsidize their lifestyles by paying part of the cost of their health care. Insurance companies should be able to charge higher health insurance premiums to smokers, and those who do not smoke should not be forced to subsidize the health-care costs of those who do.

The Food Police

The body as property doctrine begins with the premise that we own our own bodies. If we do not, then our bodies are owned by someone else, most likely some government or some slave master. Yet the food police would dictate what substances we can put into our body. To the extent that they can force their views on us, we no longer own our own bodies. They do.

Certain legislators in New York State, New York City, and elsewhere have tried to ban table salt from restaurants [19]. Foods containing trans fats have been banned in various places [3]. There is a movement to outlaw various foods that are considered to be unhealthy. Coffee was banned in Sweden for 75 years, although it is now legal to drink coffee there. Fast-food restaurants have been sued for making people fat or unhealthy. We have been warned about the dangers of fast foods, artificial sweeteners, red meat, any meat, fish, apples, cranberry sauce, any food that is not organic, pork, chicken, eggs, irradiation, popcorn, cola drinks, alcoholic drinks, and on and on [7].

While there is nothing wrong with warning people about potential evils, whether real or a figment of your imagination, it is wrong to forcibly prevent people from putting whatever substances they want into their own bodies. Individuals who forcibly attempt to prevent someone from putting caffeine or meat into their mouth would be committing a crime, but if some government does it, it is often legal. However, since governments (agents) cannot do anything that individuals (principals) cannot do, any such act on the part of government is illegitimate. Legislators who advocate such acts and those who encourage them to do so are violating the property and contract rights of those who would otherwise engage in such activities.

The Right to Bear Arms

The right to self-defense is perhaps the most basic of all human rights. It is one of the reasons why governments were formed. Yet governments everywhere prohibit individuals from using certain weapons, such as firearms, to defend themselves. It is a clear violation of property and contract rights, yet such violations are almost uniformly ignored.

A number of utilitarian arguments have been made on both sides of the issue. Those who want to prohibit the private ownership of firearms argue that such a prohibition would reduce the number of deaths and other violent crimes [68]. They might even cite statistics to support their arguments.

Those who support the right to own and use firearms argue that allowing the citizenry to defend themselves with firearms reduces crime, and they also cite statistics to support their claims [28, 56]. Both sets of arguments are utilitarian based. If prohibiting firearms is good, it is because the result is a positive-sum game. Likewise, if permitting people to own firearms is good, it is because the result is a positive-sum game. People get caught up in the argument about which position is a positive-sum game. They ignore the basic issue, which is that any prohibition of the right of self-defense is a violation of property rights, and most prohibitions are a violation of contract rights as well since those who want to sell firearms are unable to do so and those who want to enter into contracts to purchase firearms are also unable to do so.

There is no doubt that if the flight attendants on those 9/11 airplanes had been permitted to exercise their right to bear arms, the Twin Towers of the World Trade Center would still be standing. The fact that they were forbidden to carry weapons made it possible for four airplanes to kill nearly 3,000 people and cause more than a billion dollars of property damage. Those crashes also caused the US stock market to fall by about a trillion dollars and led to a number of other events and policies that reduced the freedom of millions of people, such as warrantless searches at airports, the occasional groping of genitals by TSA agents, tapping telephones and e-mail accounts, depriving individuals of the right to attorneys, and keeping people imprisoned without due process, which are some of the powers the US government was given in the so-called Patriot Act and a few other similar pieces of legislation.

What ethical issues are raised by violating this basic right of self-defense? There is nothing inherently ethical or unethical about owning a firearm, just like there is nothing inherently ethical or unethical about owning a pencil. Ethics become an issue when individuals do certain things with those weapons and when other individuals attempt to prevent people from exercising their right to defend themselves with a firearm. Those who attempt to prevent people from having the ability to defend themselves with firearms are acting unethically because they violate someone's property and contract rights. Those who sell the weapons act ethically if they sell weapons to law-abiding citizens and act unethically if they knowingly sell such weapons to criminals or potential criminals.

The Ethics of Rent Seeking

Rent seeking is a term economists use to describe situations where private parties use the force of government to enhance their economic position at the expense of someone else, often the general public [14, 66]. Any kind of protectionist economic legislation would qualify, as would the abuse of many regulations that unjustly deprive someone of their property or contract rights.

Farmers are subsidized for planting some crops and have price supports for others, so they cannot take a loss [12]. The government can subsidize or penalize any industry or even a company within an industry by interpreting an existing regulation a certain way or issuing a new regulation that has the effect of helping or hurting a particular company.

The antitrust laws have been used to prevent competition rather than foster it [1, 63], as have antidumping laws [36, 40, 42, 45]. Occupational licensure laws [58, 70] have been used to prevent competition, ostensibly in the name of protecting the public. Various industries have persuaded legislatures to set rates, which has the effect of pushing out competition [17, 32, 33]. Often it is the large companies that abuse their influence with the legislature to make it difficult or impossible for smaller, more efficient companies to compete.

The airline industry in the United States is at the mercy of the federal government, which can assign or take away landing rights at any airport in the country. Airline executives have partially captured the airline regulators by persuading them to make a rule that prohibits any non-US airline from both taking off and landing in the United States without first making an intermediate stop outside the country. As a result, non-US carriers can land in New York, provided they originated from somewhere outside the United States, or they can fly from New York to some place outside the United States, but they cannot fly direct from New York to Los Angeles. They would first be required to land at an airport outside the United States, such as Vancouver, Canada, before continuing on to Los Angeles. Because of such rules, the domestic US airlines have an oligopoly on air travel between all locations in the United States.

The key to determining whether an act or policy is ethical is to ask the question, "Would it be a crime if I did it as an individual?" If the answer is *yes*, the act or policy is unethical.

The Ethics of Eminent Domain

Eminent domain laws give governments the authority to confiscate private property for public uses [31, 57]. Originally, public uses included things like building a road or constructing a post office. However, that is no longer the case [8, 24, 65]. The idea of takings has been broadened to include cases where the main beneficiary is some private individual or group rather than the general public.

Governments are supposed to pay just compensation to the property owners for the property they confiscate. However, that often does not happen. Property owners are often offered a much lower price than what would be considered fair.

There are at least three problems with eminent domain laws. For one, the compensation that governments pay is not always just. Secondly, some property that is confiscated is taken to benefit private interests rather than the public [8, 24, 46]. Third, governments are supposed to protect property rights; eminent domain laws allow them to disparage such rights.

Let's say that some government confiscates the ancestral home of some 80-year-old widow. The home has been in the family for 200 years. They offer to pay her \$X

because that is the amount some government bureaucrat thinks the house would sell for. The problem is that the ancestral home is worth much more than \$X to the 80-year-old widow. She would not be justly compensated at that amount. Such undervaluations are commonplace with eminent domain [24, 29].

Another problem with determining just compensation is that the market value of the property declines dramatically as soon as some government condemns the property. If the government is only required to pay market value for the condemned property, and if the fact that the property has been condemned greatly reduces the market value of the property, the owners of the property are being ripped off by the government twice, once for artificially reducing the property's value through condemnation proceedings and again by not paying the price that would be fair to the person who owns the property [9].

The other problem with eminent domain laws is that private parties such as real estate developers sometimes use the eminent domain laws to advance their own interests at the expense of the property owner. One example that made the press was the case where Donald Trump, a billionaire real estate developer, convinced the Casino Redevelopment Authority in Atlantic City, New Jersey, to condemn the home of Vera Coking so that Trump could build a parking lot for one of his casinos. She had lived in the home for almost 40 years when she received notice of the condemnation proceedings. The government offered her \$251,250 for the property, which was the appraisal value. However, she had previously turned down an offer of \$1,000,000 by another casino operator, which provides strong evidence that the property was being considerably undervalued ([9], p. 161).

Eminent domain laws and their abuse present a major ethical problem. This kind of legal action also highlights the clash between utilitarian ethics and rights theory. One of the main reasons governments were formed is to protect property rights. Owners of property are entitled to keep, use, and enjoy their property against the whole world. When it comes to rights, it does not matter whether some majority stands to benefit if the property would be put to another use that benefits some local community. Owners are entitled to their property without regard to the local community.

Yet eminent domain laws would deprive owners of their property using utilitarian ethics to justify their actions [25]. Applying utilitarian ethical principles would sometimes lead to the conclusion that private property may be confiscated if the result is more winners than losers or if the community as a whole benefits by the confiscation. Utilitarian ethics totally disregards property rights. That is one of the problems with utilitarian ethics.

Those who use eminent domain laws to abuse property rights are acting unethically. People who fall into this category include real estate developers and the government officials and bureaucrats who do their bidding. How much force are property owners morally allowed to use to protect their property rights is an issue that has seldom been discussed in the literature.

Although more research and discussion are needed on this issue, some guidelines can be given. It seems just that property owners have the right to use at least as much force against those who would confiscate property as the property rights

abusers are prepared to use against the property rights owners. A case could be made that the property owners are morally entitled to use even more force, whatever is necessary to protect their property. If some government is prepared to use guns to confiscate the property, it seems fair that the private owners would also be justified in using guns to prevent the taking. Thus, one may conclude that killing the agents of the government that have been sent to confiscate the property would constitute justifiable homicide rather than murder. The argument that the taking is legal because some government is the perpetrator does not hold up to analysis since governments do not have the moral authority to confiscate private property, even if some government official or legislature gives them the legal authority to do so. Governments are formed to protect property rights. Governments that confiscate property are illegitimate and need not be obeyed.

Zoning Laws

The same line of reasoning that can be applied to eminent domain laws can also be applied to zoning laws. To the extent that zoning laws prevent property owners from doing with their property as they see fit, they constitute a partial taking.

Zoning laws limit the use to which owners can put their property. In some communities, property owners are required to refrain from painting their houses a certain color or are prohibited from using certain building materials or are prohibited from doing certain things with their property just because some zoning board says so.

If some property owner wants to use his property to build a hotel or warehouse or factory and some government prevents him from doing so because of some zoning law, he can no longer use his property as he sees fit. Some government becomes a partial owner, in the sense that the government in question can dictate what the property can be used for. The fact that some government is the perpetrator of such property rights abuses makes matters worse since governments are formed to protect property rights, not to disparage them.

The theory behind zoning laws is utilitarian ethics. It is thought that certain restrictions should be placed on the use of private property if doing so benefits the community. Individuals in some residential community do not want to have a steel mill constructed down the street from them. Thus, the regulator could conclude that prohibiting the steel mill from setting up shop in a certain location is in the community's interest. What is being ignored in such decisions is the property owner's right to do whatever he wants with his own property. The only solution to these systematic property rights abuses is abolition of all zoning laws since that is the only way to protect property rights.

Although some zoning board decisions are made with good intentions, others are made for sinister reasons. For example, if some group of local unions wants to prohibit Wal-Mart, a nonunion shop, from opening a store in New York City, one easy way to accomplish that goal would be to pressure the local zoning board into denying Wal-Mart's application for a building permit. In a just society, no building

permits would be required since property owners would have the absolute right to do whatever they want with their own property. Anyone who uses zoning laws to prohibit property owners from using their property as they see fit is acting unethically.

Protectionism

In every country it always is and must be the interest of the great body of the people to buy whatever they want of those who sell it cheapest. The proposition is so very manifest, that it seems ridiculous to take any pains to prove it; nor could it ever have been called in question, had not the interested sophistry of merchants and manufacturers confounded the common sense of mankind. ([64], p. 461)

Protectionism is not new. Proponents were found in ancient Greece [2, 53]. Plato thought that trading with foreigners would allow undesirable characters to enter the polis, along with gold and silver, all of which corrupt the soul. Aristotle also thought exchanging products for money had a corrupting influence and thought that the best state was one that was self-sufficient, although both Plato and Aristotle recognized the benefits of the division of labor (but not comparative advantage).

The theories supporting protectionism have been refuted for well over 100 years – by Bastiat [4, 5] in France, Cobden and Bright in England, and John Prince Smith in Germany. Adam Smith's refutation, *The Wealth of Nations*, was published in 1776 [64]. Richard Cantillon's contribution to the debate, *Essai sur la Nature Du Commerce en Général* was written in the 1720s and 1730s and published in 1755 [15].

Yet protectionist sentiment remains strong [23, 49, 67]. As Vilfredo Pareto [51] pointed out in 1927, the benefits of protectionism are concentrated, while the costs are diffused.

Even if it were very clearly demonstrated that protection always entails the destruction of wealth, if that were taught to every citizen just as they learn the abc's, protection would lose so small a number of partisans and free trade would gain so few of them that the effect can be almost, or even completely, disregarded. The motives which lead men to act are quite different. ([51], p. 377)

If it is immoral for Ford or General Motors executives to personally prevent a willing US consumer from entering into a contract to buy a foreign automobile from a willing seller, is it any less immoral to ask government to do the job for them? The effect is the same whether the corporate executives physically restrain a consumer from walking into a Toyota or Hyundai dealership or whether they let the government intervene in their behalf by not allowing the automobile into the country in the first place. Also, are corporate executives who ask for government protection not acting immorally because their action denies the right of consumers to exercise their right to property – to choose the product of their choice? Such action is a perversion of the law because it allows some people to exploit the person, liberty, and property of others [6, 59].

Bastiat summarizes the ethics of this phenomenon quite well.

See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime ([6], p. 17).

According to this proviso, the welfare state is a perversion of the law, and protectionist measures such as tariffs and quotas are merely examples of one form of welfare – corporate subsidies.

Numerous arguments have been made over the years to support various protectionist policies (summarized in [42]). They are all based on an incomplete utilitarian analysis – utilitarian because they attempt to measure gains and losses and incomplete because they do not include all gains and losses in the utilitarian calculus.

There is no doubt that free trade has winners and losers [30]. Joseph Schumpeter [61] referred to this market phenomenon as creative destruction [20]. In order for new industries to be born, old industries must be permitted to die. In order for assets to be reallocated to their most efficient uses, they must be transferred from less efficient uses, which can entail the loss of jobs by some, so that new jobs can be created elsewhere. Numerous studies have found that free trade regimes create more jobs than they destroy, often by a factor of 2 to 1 or 3 to 1, yet protectionists are the ones who have the ear of the legislature, which is often only too happy to grant the wishes of the protectionists [27, 42].

Although protectionism cannot be justified on utilitarian grounds because the losers exceed the winners, the real issue, which is almost universally ignored, is one of property and contract rights. Individuals have the right to trade the property they have for the property they want. Any law that prevents them from doing so must necessarily violate their contract and property rights. That being the case, anyone who attempts to persuade some legislature to pass any form of protectionist legislation is acting immorally because the result of such legislation is the violation of property and contract rights. Any legislator who supports such legislation is also acting immorally.

Protectionism is a perversion of the law, an illegitimate use of governmental authority. To the extent that a government abuses its authority by violating property and contract rights rather than protecting them, it is illegitimate and need not be obeyed. Those who are having their property and contract rights violated by such perversions of the law have the moral authority to disobey and to resist. In such cases, there is nothing morally wrong with smuggling and ignoring any laws that would violate anyone's contract and property rights.

Outsourcing

Outsourcing has received a lot of bad press. Journalists and pundits would have us believe that it is somehow inherently evil [34]. Yet, outsourcing is just an application of the advice Adam Smith gave in 1776 – do what you do best and trade for everything else.

It does not make sense for General Motors or Ford to make their own tires, mufflers, and steel when other companies can do it better and cheaper. Antitrust laws might prohibit them from even trying, which is another issue. What does make sense is for General Motors and Ford to outsource and have companies that specialize in those products to make them. From a utilitarian point of view, it is more efficient, which makes it ethical ([54], p. 115; [55], pp. 284–285, [62]). I am not saying that what is most efficient is also automatically ethical. All I am saying is that a strain of utilitarian thought takes this position.

If outsourcing is ethical when General Motors and Ford go down the street to get their tires, mufflers, and steel, how can it be unethical if they get these same products from foreigners? While it may be true that American jobs are destroyed when American companies choose foreign producers, one might just as easily say that jobs in foreign countries are destroyed when they choose to do business with American producers. Either way, jobs are created in one place and destroyed in another place [20, 30]. There is evidence to suggest that outsourcing is especially beneficial to developing countries because it increases the rate of economic growth and creates jobs that pay more than the limited other alternatives the local population would otherwise have [26, 35, 38, 48].

It cannot be said that merely destroying someone's job constitutes an immoral act because there is no such thing as the right to a job. If there were, it would mean that someone has a moral obligation to buy whatever it is that you are selling even if they would prefer to buy from someone else, a position that is untenable.

Destroying a job in one country is offset by creating a job somewhere else. As was mentioned above, studies have found that free trade regimes create more jobs than they destroy. Stated differently, protectionist regimes destroy more jobs than they save or create.

Corporate Welfare

Corporate welfare can take many forms, some of which are not readily apparent. Any kind of subsidy is a form of corporate welfare. Tax breaks are considered a form of corporate welfare in some circles, while in others they are considered an incentive to do something or to not do something.

One might define corporate welfare as the transfer of wealth, either directly or indirectly, from some government to one or more corporations, where the transfer is not the result of exchange. Price supports fall into the category of corporate welfare, as do any kind of protectionist measures, from subsidies, price supports, low-interest loans for exporting companies, and loan guarantees to tariffs, quotas, and antidumping laws.

Some commentators use utilitarian arguments to criticize corporate welfare. The Archer Daniels Midland Corporation is a case in point [13]. ADMC is one of the more prominent recipients of corporate welfare. It has cost the American economy billions of dollars as a result of sugar industry protection, subsidies for ethanol and

grain exports, and other items. In some years, up to 43% of its profits have been the result of some kind of subsidy.

The subsidies are highly inefficient. For every \$1 in ethanol profits, the cost to American taxpayers is \$30 [13]. Some of the other products they make also involve subsidies that are inefficient.

Governments sometimes compete to see who can provide the largest subsidies to a particular industry. The Boeing v. Airbus controversy is a case in point. In that case, the US government and the EU were competing to subsidize their aircraft manufacturing industries [16]. Both sides of the dispute tried to claim the moral high ground when in fact that was nothing moral about what they were doing.

In 1994, Secretary of Labor Robert Reich challenged the Cato Institute to construct a list of business subsidies that don't make sense, a challenge it accepted. The result was a report that documented 125 federal subsidy programs that cost American taxpayers more than \$85 billion [47]. The focus was on inefficiencies, which is utilitarian based, although issues of fairness were also discussed.

The federal government is not the only source of corporate welfare. State, county, and local governments also participate in subsidizing corporations. Sports stadiums are one example. The Miami Heat basketball team threatened to leave Miami if the government did not build a new stadium for them, even though the current arena was only 8 years old at the time. The Florida Panthers hockey team also threatened to leave if the government did not build a stadium for them. Miami taxpayers balked at the idea for the Heat, so the Heat had to use its own money to build the stadium, but Broward County politicians were willing to float an issue of tax-exempt bonds to fund the Panthers stadium [10].

There are a number of things wrong with subsidizing sports arenas. For one, all the taxpayers are being forced to subsidize it, even though only a small percentage of them will actually go to the arena to see a sporting event. The argument has been made that building stadiums is good for the economy because it creates jobs, but this is a false argument. If the several hundred million dollars had not been spent on building a stadium that the public does not want, it would flow to some other use that the owners of the funds prefer to spend their money on. Before money can flow into the construction of a new stadium, it first must be sucked out of some other sector of the economy, causing that sector to shrink.

Antitrust laws have been called a form of corporate welfare [21] because they protect established corporations from competition at the expense of newer corporations and the general public. They penalize beneficial and efficient practices. They can and have been used to hobble competitors. Whenever the government hobbles competitors, the available supply of the products they produce decreases and their price increases, which harms the very consumers the antitrust laws were established to protect. Corporate officials who utilize the antitrust laws to hobble their competitors are acting unethically. As Bastiat [9] has pointed out, if the government is doing something that individuals could not do without committing a crime, the law is being perverted. That is exactly what happens when the government enforces an antitrust law. If private individuals tried to do what the

government does in such cases (penalizing or shutting down a competitor by the use of force or the threat of force), they would be guilty of a crime.

Bailing out big banks, small banks, auto companies, insurance companies, or any other company is also a form of corporate welfare. The case of the General Motors bailout is especially disgusting. General Motors had been making cars for years that Americans (and others) didn't want, which caused them to lose billions of dollars, leading to eventual bankruptcy. Yet those same people (taxpayers) were forced to subsidize General Motors by bailing them out, thus forcing the same people who chose not to buy General Motors automobiles to turn over a portion of their incomes so that General Motors employees could continue to receive their bloated wages and pension benefits.

Corporate officers who request a bailout or subsidy are acting unethically because they are using the force of government to confiscate assets from the general public and transfer those assets to their corporation. If they confiscated individuals' assets on their own they would be guilty of a crime, but if the government does the stealing for them, it is just a way to get other people's assets that they are not able to get through voluntary exchange in the marketplace. The politicians who support such subsidies are also acting unethically. Instead of protecting property rights, they are confiscating the property of the citizenry so that it can be transferred to private interests, special interests.

The Ethics of Smuggling

There is nothing inherently ethical or unethical about smuggling. It depends on the facts and circumstances. Prior to the American Revolution, smugglers smuggled untaxed tea into the American colonies. They helped tea drinkers evade the tax that was thought to be unfairly imposed since the American colonists did not have a vote. No taxation without representation was the call of the day. The British were not entitled to the tax, and the smugglers merely helped the colonial tea drinkers obtain the tea they wanted. Since the smugglers were facilitating commerce, creating jobs, and helping people to exercise their contract and property rights, the argument could be made that they were acting ethically by engaging in smuggling.

How about arms smuggling? This kind of smuggling has acquired a bad name over the years. Newspaper reports would have us believe that any kind of smugglers are acting unethically and that arms smugglers are death merchants.

Sometimes that may be true but sometimes it may not. For example, during the various wars that occurred shortly after the dissolution of Yugoslavia, the United States and United Nations imposed an arms embargo on the combatants. The problem was that the Serbs had all the weapons and the Bosnians were practically defenseless, except for a few revolvers here and there. As a result, the Serbs were free to slaughter thousands of Bosnians who were unable to defend themselves. Snipers were placed in the hills above Sarajevo and made a great sport of picking off unarmed men, women, and children. If the Bosnians would have been able to defend themselves, perhaps fewer lives would have been lost.

The argument has a utilitarian taste to it since part of the argument pushes the view that lives could have been saved if the Bosnians would have been able to defend themselves, but the real issue is one of property rights. Individuals have the right to defend themselves, and placing an arms embargo on them violated their very right to life. Arms smugglers performed a valuable service by helping them to defend this right. Thus, a strong argument could be made that that particular group of arms merchants performed a positive service, both from a utilitarian ethical perspective and from a rights perspective. There is no moral duty to obey an unjust law, and prohibiting innocent men, women, and children from defending themselves seems like one of the most unjust laws that could be enacted. There may even be a moral duty to disobey such laws, especially if it is possible to do so without major risk to oneself.

Conclusion

What is the solution? What can individuals do to prevent these violations of their contract and property rights? When it is individuals who violate these rights, victims can often go to court or punch the offenders in the nose to get justice or to protect their rights. But if some government is the rights violator, a solution is not as readily apparent. Victims of these property and contract right abuses cannot avail themselves of the legal system because the system allows governments to commit these rights violations. As Bastiat [6] would say, the law has been perverted.

One solution is to do nothing, to just let government continue to violate your rights. But that is not really a solution because your rights continue to be violated. Another solution would be to shoot the food police as soon as they enter a restaurant and try to take away your table salt, but that might be viewed as too extreme and would subject you to severe penalties, unless you could rely on the jury system (in countries where there is a jury system) to absolve you of liability.

From a moral perspective, victims have at least as much moral authority to defend themselves from such rights violations as do the violators, if not more. If the table salt police are prepared to punch you in the nose once for using table salt in a restaurant, you should at least have the moral right to punch them in the nose once, if not twice. After all, it is your rights that are being violated, not theirs. A case could be made that you have the right to punch them in the nose as many times as it takes until they take their hands off your table salt.

Unfortunately, what is moral and what is legal is not always the same thing. Although the table salt police give up any moral authority when they try to confiscate your table salt, the law is on their side, which allows them to get away with violating your right to table salt. But that does not do anything to alter your moral right to defend your property to whatever extent is necessary to retain your right to use your property as you see fit.

Governments that violate the rights they were instituted to protect lose their legitimacy. Such governments need not be obeyed, although there may be a penalty for not obeying. All that can be said from a philosophical perspective

is that there is no moral duty to obey, even if there may be a legal duty. If the rights abuses get to the point where they become insufferable, as was the case in the 1770s in the United States, the people have a right to secede and form a new government that is more to their liking, or they can join another existing government that will do a better job of protecting their property rights.

For example, if the government of New York State becomes too oppressive, citizens can either secede to form a new government that is more to their liking or they can secede and become part of New Jersey, which is across the Hudson River from New York City. Or they could become part of Hawaii, which is in the Pacific Ocean, thousands of miles away. Just because New York City is not contiguous to Hawaii does not mean it cannot become a part of Hawaii. Alaska is not contiguous to the lower 48 states of the United States, yet it is a state, and Hawaii is thousands of miles from California, separated by water, yet it became a state.

The point is that the people have the right to choose their own government and their own leaders. It is a basic tenet of democracy. If the government they have is not up to the task, and if its leaders cannot be replaced, as is often the case, they have the right to secede and form a new government, just as the American colonies did in the 1770s and the southern states tried to do in the 1860s [39, 41, 43, 44].

Cross-References

- ▶ [Kant and Hegel on Property](#)
- ▶ [Making Room for Business Ethics: Rights as Metanorms for Market and Moral Values](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)
- ▶ [The Body as Property Doctrine](#)

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Stephan Kinsella

Abstract

The purpose of property rights is to allocate owners of scarce resources to permit peaceful, cooperative, productive use of these resources. For external, non-bodily resources, this allocation is done in accordance with the libertarian-Lockean first-use/first-own homesteading principle. So-called intellectual property rights such as patent and copyright are monopoly privileges granted by the state that dilute and undermine property rights in scarce resources. This chapter explores the nature of property rights and argues that intellectual property is incompatible with genuine private property rights. The chapter also criticizes utilitarian arguments in favor of intellectual property as being fallacious in terms of ethics, methodology, and economics.

Introduction

All libertarians favor property rights, and agree that property rights include rights in physical, material (sometimes referred to as “tangible”) resources. These resources include immovables (realty) such as land and houses, and movables such as chairs, clubs, cars, and clocks.¹

This chapter is based on “Against Intellectual Property,” first published in the *Journal of Libertarian Studies* 15, no. 2 (Spring 2001). See also my article *The Case Against IP: A Concise Guide*, MISES DAILY (Sep. 4, 2009), my blog post “Selected Supplementary Material for *Against Intellectual Property*,” *C4SIF Blog* (Mar. 1, 2012), c4sif.org, and resources available at <http://c4sif.org/resources/>. These and other publications of mine cited herein may be found online at my website (www.stephankinsella.com/publications/). I hereby grant a Creative Commons Attribution 3.0 License (creativecommons.org/licenses) in this chapter.

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Further, all libertarians support rights in one's own body. Such rights may be called "self-ownership" as long as one keeps in mind that there is dispute about whether such body-ownership is alienable in the same way that rights in homesteadable, external objects are alienable.² In any event, libertarians universally hold that all material scarce resources – whether homesteadable or created, immovable or movable, or our very bodies – are subject to rightful control, or "ownership," by specified individuals.

As we move away from the material (or corporeal) toward the immaterial (incorporeal), matters become fuzzier. Rights to reputations (defamation laws) and against blackmail, for example, are rights in very immaterial types of things. Most, though not all, libertarians oppose laws against blackmail, and many oppose the idea of a right to one's reputation.³

Also disputed is the concept of intellectual property (herein referred to as IP). Are there individual rights to one's intellectual creations, such as inventions or written works? Should the legal system protect such rights? Below, I summarize current US law on intellectual property rights. I then survey various libertarian views on IP rights, and present what I consider to be the proper view.

Summary of IP Law

Types of IP

Intellectual property is a broad concept that covers several types of legally recognized rights arising from some type of intellectual creativity, or that are otherwise related to ideas.⁴ IP rights are rights to immaterial things⁵ – to *ideas*, as expressed (copyrights), or as embodied in a practical implementation (patents). Tom Palmer puts it this way: "Intellectual property rights are rights in ideal objects, which are distinguished from the material substrata in which they are instantiated."⁶ In today's legal systems, IP typically includes at least copyrights, trademarks, patents, and trade secrets.⁷

Copyright

Copyright is a right given to authors of "original works," such as books, articles, movies, and computer programs. Copyright gives the exclusive right to reproduce the work, prepare derivative works, or to perform or present the work publicly (17 USC §§ 101, 106 *et pass*). Copyrights protect only the *form* or *expression* of ideas, not the underlying ideas themselves.⁸

While a copyright may be registered to obtain legal advantages, a copyright need not be registered to exist. Rather, a copyright comes into existence automatically the moment the work is "fixed" in a "tangible medium of expression," and lasts for the life of the author plus 70 years, or for a total of 95 years in cases in which the employer owns the copyright.⁹

Patent

A patent is a property right in inventions, i.e., in devices or processes that perform a “useful” function (35 USC § 1 *et seq.*; 37 CFR Part 1). A new or improved mousetrap is an example of a type of device which may be patented. A patent effectively grants the inventor a limited monopoly on the manufacture, use, or sale of the invention. However, a patent actually only grants to the patentee the right to exclude (i.e., to prevent others from practicing the patented invention); it does not actually grant to the patentee the right to use the patented invention.¹⁰

Not every innovation or discovery is patentable. The US Supreme Court has, for example, identified three categories of subject matter that are unpatentable, namely “laws of nature, natural phenomena, and abstract ideas” (*Diamond v Diehr*, 450 US 175, 185 (1981); see also 35 USC § 101). Reducing abstract ideas to some type of “practical application,” i.e., “a useful, concrete, and tangible result,”¹¹ is patentable, however. US patents, since June 8, 1995, last from the date of issuance until 20 years from the original filing date of the patent application (35 USC § 154(a)(2)) (the previous term was 17 years from date of issue).

Trade Secret

A trade secret consists of any confidential formula, device, or piece of information which gives its holder a competitive advantage so long as it remains secret.¹² An example would be the formula for Coca-Cola[®]. Trade secrets can include information that is not novel enough to be subject to patent protection, or not original enough to be protected by copyright (e.g., a database of seismic data or customer lists). Trade secret laws are used to prevent “misappropriations” of the trade secret, or to award damages for such misappropriations (See the *Uniform Trade Secrets Act* [UTSA]). Trade secrets are protected under state law, although recent federal law has been enacted to prevent theft of trade secrets (*Economic Espionage Act of 1996*, 18 USC §§ 1831–39).

Trade secret protection is obtained by declaring that the details of a subject are secret. The trade secret theoretically may last indefinitely, although disclosure, reverse-engineering, or independent invention may destroy it. Trade secrets can protect secret information and processes, for example, compilations of data and maps not protectable by copyright, and can also be used to protect software source code not disclosed and not otherwise protectable by patent. One disadvantage of relying on trade secret protection is that a competitor who independently invents the subject of another’s trade secret can obtain a patent on the device or process and actually prevent the original inventor (the trade secret holder) from using the invention.

Trademark

A trademark is a word, phrase, symbol, or design used to *identify* the source of goods or services sold, and to distinguish them from the goods or services of others.

For example, the Coca-Cola[®] mark and the design that appears on their soft drink cans identifies them as products of that company, distinguishing them from competitors such as Pepsi[®]. Trademark law primarily prevents competitors from “infringing” upon the trademark, i.e., using “confusingly similar” marks to identify their own goods and services. Unlike copyrights and patents, trademark rights can last indefinitely if the owner continues to use the mark. The term of a federal trademark registration lasts 10 years, with 10-year renewal terms being available (15 USC § 1501 *et seq.*; 37 CFR Part 2).

Other rights related to trademark protection include rights against trademark dilution (15 USC §§ 1125(c), 1127), certain forms of cybersquatting (15 USC § 1125(d); Anticybersquatting Consumer Protection Act, PL 106–113 (1999); HR 3194, S1948), and various “unfair competition” claims. IP also includes recent legal innovations, such as the mask work protection available for semiconductor integrated circuit (IC) designs (See 17 USC § 901 *et seq.*), the *sui generis* protection, similar to copyright, for boat hull designs (See 17 USC § 1301 *et seq.*), and the proposed *sui generis* right in databases, or collections of information.¹³

In the United States, federal law almost exclusively governs copyrights and patents, since the Constitution grants Congress the power “to promote the progress of science and useful arts.”¹⁴ Despite the federal source of patents and copyrights, various related aspects, such as *ownership* of patents, are based on state law, which nevertheless tend to be fairly uniform from state to state (See [28], and *Chisum on Patents*, § 22.03; 17 USC §§ 101, 201). Federal trademarks, by contrast, not being explicitly authorized in the Constitution, are based on the interstate commerce clause and thus only cover marks for goods and services in interstate commerce.¹⁵ State trademarks still exist since they have not been completely preempted by federal law, but federal marks tend to be more commercially important and powerful. Trade secrets are generally protected under state, not federal, law.¹⁶

Many laymen, including libertarians, have a poor understanding of IP concepts and law, and often confuse copyrights, trademarks, and patents. It is widely, and incorrectly, believed that in the US system, the inventor who files first at the patent office has priority over those who file later. However, until last year, the US system actually had a “first-to-invent” system, unlike most other countries, which have traditionally had a “first-to-file” system for priority.¹⁷ (The America Invents Act, enacted in late 2011, changed the US system to a first-to-file system similar to that of other countries.)¹⁸

IP Rights and Relation to Material Property

As noted above, IP rights, at least for patents and copyrights, may be considered rights in ideal objects. It is important to point out that ownership of an idea, or ideal object, effectively gives the IP owners a property right in *every* physical embodiment of that work or invention. Consider a copyrighted book. Copyright holder *A* has a right to the underlying ideal object, of which the book is but one example. The copyright system gives *A* the right in the very *pattern* of words in the book; therefore,

by implication, *A* has a right to every tangible or material instantiation or embodiment of the book – i.e., a right in *every* physical version of the book, or, at least, to every book within the jurisdiction of the legal system that recognizes the copyright.

Thus, if *A* writes a novel, he has a copyright in this “work.” If he sells a physical copy of the novel to *B*, in book form, then *B* owns only that one physical copy of the novel; *B* does not own the “novel” itself, and is not entitled to make a copy of the novel, even using his own paper and ink. Thus, even if *B* owns the material property of paper and printing press, he cannot use his own property to create another copy of *A*’s book. Only *A* has the *right to copy* the book (hence, “copyright”).

Likewise, *A*’s ownership of a patent gives him the right to prevent a third party from using or practicing the patented invention, even if the third party only uses his own property. In this way, *A*’s ownership of ideal rights gives him some degree of control – ownership – over the material property of innumerable others. Patent and copyright invariably transfer partial ownership of material property from its natural owner to innovators, inventors, and artists. As I have argued elsewhere [32], patent and copyright grant a *negative servitude* in the property of others to the IP holder.

Libertarian Perspectives on IP

The Spectrum

Libertarian views on IP range from complete support of the fullest gamut of IP imaginable, to outright opposition to IP rights. Most of the debate about IP concerns patent and copyright; as discussed below, trademark and trade secret are less problematic. Therefore, this chapter focuses primarily on the legitimacy of patent and copyright.

Pro-IP arguments may be divided into natural-rights and utilitarian arguments. Libertarian IP advocates tend to adopt the former justification.¹⁹ For example, natural-rights, or at least not explicitly utilitarian, libertarian proponents of IP include, from more to less extreme, Galambos, Schulman, and Rand.²⁰ Among precursors to modern libertarians, Spooner and Spencer both advocated IP on moral or natural-rights grounds.²¹

According to the natural-rights view of IP held by some libertarians, creations of the mind are entitled to protection just as material property is. Both are the product of one’s labor and one’s mind. Because one owns one’s labor, one has a

natural law right to the fruit of one’s labor. Under this view, just as one has a right to the crops one plants, so one has a right to the ideas one generates and the art one produces ([50], p. 819).

This theory depends on the notion that one owns one’s body and labor, and therefore, its fruits, including intellectual “creations.” An individual creates a sonnet, a song, a sculpture, by employing his own labor and body. He is thus entitled to “own” these creations, because they result from other things he “owns.”

There are also utilitarian pro-IP arguments. Federal Judge Richard Posner is one prominent utilitarian (although not libertarian) IP advocate [51]. Among libertarians, anarchist David Friedman analyzes and appears to endorse IP on “law-and-economics” grounds,²² a utilitarian institutional framework. The utilitarian argument presupposes that we should choose laws and policies that maximize “wealth” or “utility.” With respect to copyright and patent, the idea is that more artistic and inventive “innovation” corresponds with, or leads to, more wealth. Public goods and free-rider effects reduce the amount of such wealth below its optimal level, i.e., lower than the level we would achieve if there were adequate IP laws on the books. Thus, wealth is optimized, or at least increased, by granting copyright and patent monopolies that encourage authors and inventors to innovate and create.²³

On the other hand, there is a long tradition of opposition to patent and copyright. Modern opponents include Rothbard, McElroy, Palmer, Lepage, Bouckaert, and myself.²⁴ Benjamin Tucker also vigorously opposed IP in a debate in the nineteenth century individualist-anarchist periodical *Liberty*.²⁵ These commentators point out the many problems with conventional utilitarian and natural-rights arguments given to justify IP rights. These and other shortcomings of standard pro-IP arguments are surveyed below.

Utilitarian Defenses of IP

Advocates of IP often justify it on utilitarian grounds. Utilitarians hold that the “end” of encouraging more innovation and creativity justifies the seemingly immoral “means” of restricting the freedom of individuals to use their physical property as they see fit. But there are three fundamental problems with justifying any right or law on strictly utilitarian grounds.

First, let us suppose that wealth or utility could be maximized by adopting certain legal rules; the “size of the pie” is increased. Even then, this does not show that these rules are justified. For example, one could argue that net utility is enhanced by redistributing half of the wealth of society’s richest 1% to its poorest 10%. But even if stealing some of *A*’s property and giving it to *B* increases *B*’s welfare “more” than it diminishes *A*’s (if such a comparison could, somehow, be made), this does not establish that the theft of *A*’s property is justified. Wealth maximization is not the goal of law; rather, the goal is justice – giving each man his due.²⁶ Even if overall wealth is increased due to IP laws, it does not follow that this allegedly desirable result justifies the unethical violation of some individuals’ rights to use their own property as they see fit.

In addition to ethical problems, utilitarianism is not coherent. It necessarily involves making illegitimate interpersonal utility comparisons, as when the “costs” of IP laws are subtracted from the “benefits” to determine whether such laws are a net benefit.²⁷ But not all values have a market price; in fact, none of them do. Mises showed that even for goods that have a market price, the price does not serve as a *measure* of the good’s value.²⁸

Finally, even if we set aside the problems of interpersonal utility comparisons and the justice of redistribution and we plow ahead, employing standard utilitarian

measurement techniques, it is not at all clear that IP laws lead to any change – either an increase or a decrease – in overall wealth.²⁹ It is debatable whether copyrights and patents really are necessary to encourage the production of creative works and inventions, or that the incremental gains in innovation outweigh the immense costs of an IP system. Econometric studies do not conclusively show net gains in wealth. Perhaps there would even be *more* innovation if there were no patent laws; maybe more money for research and development (R&D) would be available if it were not being spent on patents and lawsuits. It is possible that companies would have an even greater incentive to innovate if they could not rely on a near 20-year monopoly (see [57, 86, 87], for further examples of costs of patent and copyright laws).

There are undoubtedly costs of the patent system. As noted, patents can be obtained only for “practical” applications of ideas, but not for more abstract or theoretical ideas. This skews resources away from theoretical R&D.³⁰ It is not clear that society is better off with relatively more practical invention and relatively less theoretical research and development. Additionally, many inventions are patented for defensive reasons, resulting in patent lawyers’ salaries and patent office fees. This large overhead would be unnecessary if there were no patents. In the absence of patent laws, for example, companies would not spend money obtaining or defending against ridiculous patents. It simply has not been shown that IP leads to net gains in wealth. But should not those who advocate the use of force against others’ property have to satisfy a burden of proof?

We must remember that when we advocate certain rights and laws, and inquire into their legitimacy, we are inquiring into the legitimacy and ethics of the use of *force*. To ask whether a law should be enacted or exist is to ask: Is it proper to use force against certain people in certain circumstances? It is no wonder that this question is not really addressed by analysis of wealth maximization. Utilitarian analysis is thoroughly confused and bankrupt: Talk about increasing the size of the pie is methodologically flawed; there is no clear evidence that the pie increases with IP rights. Further, pie growth does not justify the use of force against the otherwise legitimate property of others. For these reasons, utilitarian IP defenses are unpersuasive.

Some Problems with Natural Rights

Other libertarian proponents of IP argue that certain ideas deserve protection as property rights because they are created. Rand supported patents and copyrights as “the legal implementation of the base of all property rights: a man’s right to the product of his mind” ([29], p. 130). For Rand, IP rights are, in a sense, the reward for productive work. It is only fair that a creator reap the benefits of others using his creation. For this reason, in part, she opposes *perpetual* patent and copyright – because future, unborn heirs of the original creator are not themselves responsible for the creation of their ancestors’ work.

One problem with the creation-based approach is that it almost invariably protects only *certain types* of creations – unless, i.e., every single useful idea one

comes up with is subject to ownership (more on this below). But the distinction between the protectable and the unprotectable is necessarily arbitrary. For example, philosophical or mathematical or scientific truths cannot be protected under current law on the grounds that commerce and social intercourse would grind to a halt were every new phrase, philosophical truth, and the like considered the exclusive property of its creator. For this reason, patents can be obtained only for so-called practical applications of ideas, but not for more abstract or theoretical ideas. Rand agrees with this disparate treatment, in attempting to distinguish between an unpatentable *discovery* and a patentable *invention*. She argues that a “scientific or philosophical discovery, which identifies a law of nature, a principle, or a fact of reality not previously known” is not *created* by the discoverer.

But the distinction between creation and discovery is not clear-cut or rigorous.³¹ Nor is it clear why such a distinction, even if clear, is ethically relevant in defining property rights. No one creates *matter*; they just manipulate and grapple with it according to physical laws. In this sense, no one really creates *anything*. They merely rearrange matter into new arrangements and patterns. An engineer who invents a new mousetrap has rearranged existing parts to provide a function not previously performed [90]. Others who learn of this new arrangement can now also make an improved mousetrap. Yet the mousetrap merely follows laws of nature. The inventor did not invent the matter out of which the mousetrap is made, nor the *facts* and laws exploited to make it work.

Similarly, Einstein’s “discovery” of the relation $E = mc^2$, once known by others, allows them to manipulate matter in a more efficient way. Without Einstein’s, or the inventor’s, efforts, others would have been *ignorant* of certain causal laws, of ways matter can be manipulated and utilized. Both the inventor and the theoretical scientist engage in creative mental effort to produce useful, new ideas. Yet one is rewarded, and the other is not. In one recent case, the inventor of a new way to calculate a number representing the shortest path between two points – an extremely useful technique – was not given patent protection because this was “merely” a mathematical algorithm.³² But it is arbitrary and unfair to reward more practical inventors and entertainment providers, such as the engineer and songwriter, and to leave more theoretical science and math researchers and philosophers unrewarded. The distinction is inherently vague, arbitrary, and unjust.

Moreover, adopting a limited term for IP rights, as opposed to a perpetual right, also requires arbitrary rules. For example, patents last for 20 years from the filing date, while copyrights last, in the case of individual authors, for 70 years past the author’s death. No one can seriously maintain that 19 years for a patent is too short, and 21 years too long, any more than the current price for a gallon of milk can be objectively classified as too low or too high.

Thus, one problem with the natural-rights approach to validating IP is that it necessarily involves arbitrary distinctions with respect to what classes of creations deserve protection, and concerning the length of the term of the protection.

Of course, one way to avoid this difficulty is to claim that *everything* is protectable by IP, with perpetual (infinite) terms. Spooner [47, 50, 60], for example, advocated perpetual rights for patent and copyright. Schulman advocates a much

broader concept of creations or ideas protectable by IP. He argues for property rights called “logorights” in any “logos” that one creates. The logos is the “material identity” or identity-pattern of created things. The owner of a logos would own the order or pattern of information imposed upon, or observed in, material substances.

The most radical of all IP proponents is Andrew Joseph Galambos, whose ideas, to the extent that I understand them, border on the absurd.³³ Galambos believed that man has property rights in his own life (primordial property) and in all “non-procreative derivatives of his life” [45, 46]. Since the “first derivatives” of a man’s life are his thoughts and ideas, thoughts and ideas are “primary property.” Since action is based on primary property (ideas), actions are owned as well; this is referred to as “liberty.” Secondary derivatives, such as land, televisions, and other material goods, are produced by ideas and action. Thus, property rights in material items are relegated to lowly secondary status, as compared with the “primary” status of property rights in ideas. (Even Rand once elevated patents over mere property rights in material goods, in her bizarre notion that “patents are the heart and core of property rights” ([29], p. 133). Can we really believe that there were no property rights respected before the 1800s, when patent rights became systematized?)

Galambos reportedly took his own ideas to ridiculous lengths, claiming a property right in his own ideas and requiring his students not to repeat them [45], dropping a nickel in a fund box every time he used the word “liberty,” as a royalty to the descendants of Thomas Paine, the alleged “inventor” of the word “liberty”; and changing his original name from Joseph Andrew Galambos (Jr., presumably) to Andrew Joseph Galambos, to avoid infringing his identically named father’s rights to the name.³⁴

By widening the scope of IP, and by lengthening its duration to avoid making such arbitrary distinctions as Rand does, the absurdity and injustice caused by IP becomes even more pronounced (as Galambos demonstrates). And by extending the term of patents and copyrights to infinity, subsequent generations would be choked by ever-growing restraints on their own use of property. No one would be able to manufacture – or even use – a light bulb without getting permission from Edison’s heirs. No one would even be able to build a house without getting permission from the heirs of the first protohuman who left the caves and built a hut. No one could use a variety of life-saving techniques, chemicals, or treatments without obtaining permission of various lucky, rich descendants. No one would be able to boil water to purify it, or use pickling to preserve foods, unless he is granted license by the originators (or their distant heirs) of such techniques.

Such unbounded ideal rights would pose a serious threat to material-property rights, and would threaten to overwhelm them. All use of material property would by now be impossible, as every conceivable use of property, every single action, would be bound to infringe upon one of the millions of past, accreted IP rights, and the human race would die of starvation. But, as Rand noted, men are not ghosts; we have a spiritual aspect, but also a physical one ([91], pp. 326–27, 467). Any system that elevates rights in ideas to such an extreme that it overrides rights in material things is clearly not a suitable ethical system for living, breathing human beings.

No one living can actually act in accordance with such an unrestricted view of IP. The remaining advocates of IP all qualify their endorsement by limiting the scope and/or terms of IP rights, thus adopting the ethically arbitrary distinctions noted above.

A deeper problem for the natural-rights position lies in its undue emphasis on “creation,” instead of scarcity, as giving rise to property rights, as discussed below.

IP and Property Rights

Property and Scarcity

Let us take a step back and look afresh at the idea of property rights. Libertarians believe in property rights in material goods (resources). Why? What is it about material goods that makes them subjects for property rights? Why are material goods property?

A little reflection will show that it is these goods’ *scarcity* – the fact that there can be *conflict* over these goods by multiple human actors. The very possibility of conflict over a resource renders it scarce, giving rise to the need for ethical rules to govern its use. Thus, the fundamental social and ethical function of property rights is to prevent interpersonal conflict over scarce resources.³⁵ As Hoppe notes:

[O]nly because scarcity exists is there even a problem of formulating moral laws; insofar as goods are superabundant (“free” goods), no conflict over the use of goods is possible and no action-coordination is needed. Hence, it follows that any ethic, correctly conceived, must be formulated as a theory of property, i.e., a theory of the assignment of rights of exclusive control over scarce means. Because only then does it become possible to avoid otherwise inescapable and unresolvable conflict ([93], p. 235 n. 9).

Others who recognize the importance of scarcity in defining what property is include Plant, Hume, Palmer, Rothbard, and Tucker.³⁶

Nature, then, contains things that are economically scarce. My use of such a thing *conflicts* with (excludes) your use of it, and vice versa. The function of property rights is to prevent interpersonal conflict over scarce resources, by allocating exclusive ownership of resources to specified individuals (owners). To perform this function, property rights must be both *visible* and *just*. Clearly, in order for individuals to avoid using property owned by others, property borders and property rights must be objective (intersubjectively ascertainable); they must be *visible*.³⁷ For this reason, property rights must be objective and unambiguous. In other words, “good fences make good neighbors.”

Property rights must be demonstrably just, as well as visible, because they cannot serve their function of preventing conflict unless they are acceptable as fair by those affected by the rules ([93], p. 138). If property rights are allocated unfairly, or simply grabbed by force, this is like having no property rights at all; it is merely might versus right again, i.e., the pre-property rights situation. But as libertarians recognize, following Locke, it is only the first occupier or user of

such property that can be its natural owner. Only the *first-occupier* homesteading rule provides an objective, ethical, and nonarbitrary allocation of ownership in scarce resources.³⁸ When property rights in scarce means are allocated in accordance with first-occupier homesteading rules, property borders are visible, and the allocation is demonstrably just. Conflict can be avoided with such property rights in place because third parties can see and, thus, sidestep the property borders, and be motivated to do so because the allocation is just and fair.

But surely it is clear, given the origin, justification, and function of property rights, that they are applicable only to *scarce* resources. Were we in a Garden of Eden where land and other goods were infinitely abundant, there would be no scarcity and, therefore, no need for property rules; property concepts would be meaningless. The idea of conflict, and the idea of rights, would not even arise. For example, your taking my lawnmower would not really deprive me of it if I could conjure up another in the blink of an eye. Lawnmower-taking in these circumstances would not be “theft.” Property rights are not applicable to things of infinite abundance, because there cannot be conflict over such things.

Thus, property rights must have objective, discernible borders, and must be allocated in accordance with the first-occupier homesteading rule. Moreover, property rights can apply only to scarce resources. The problem with IP rights is that the ideal objects protected by IP rights are not scarce; and, further, that such property rights are not, and cannot be, allocated in accordance with the first-occupier homesteading rule, as will be seen below.

Scarcity and Ideas

Like the magically reproducible lawnmower, ideas are not scarce. If I invent a technique for harvesting cotton, your harvesting cotton in this way would not take away the technique from me. I still have my technique (as well as my cotton). Your use does not exclude my use; we could both use my technique to harvest cotton. There is no economic scarcity, and no possibility of conflict over the use of a scarce resource. Thus, there is no need for exclusivity.

Similarly, if you copy a book I have written, I still have the original (material) book, and I also still “have” the pattern of words that constitute the book. Thus, authored works are not scarce in the same sense that a piece of land or a car is scarce. If you take my car, I no longer have it. But if you “take” a book-pattern and use it to make your own physical book, I still have my own copy. The same holds true for inventions and, indeed, for any “pattern” or information one generates or has. As Thomas Jefferson – himself an inventor, as well as the first Patent Examiner in the USA – wrote, “He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.”³⁹ Since use of another’s idea does not deprive him of its use, no conflict over its use is possible; ideas, therefore, are not candidates for property rights. Even Rand acknowledged that “intellectual property cannot be consumed.”⁴⁰

Ideas are not naturally scarce. However, by recognizing a right in an ideal object, one *creates* scarcity where none existed before. As Arnold Plant explains:

It is a peculiarity of property rights in patents (and copyrights) that they do not arise out of the scarcity of the objects which become appropriated. They are not a *consequence* of scarcity. They are the deliberate creation of statute law, and, whereas in general the institution of private property makes for the preservation of scarce goods, tending . . . to lead us “to make the most of them,” property rights in patents and copyrights make possible the creation of a scarcity of the products appropriated which could not otherwise be maintained.⁴¹

Bouckaert also argues that natural scarcity is what gives rise to the need for property rules, and that IP laws create an artificial, unjustifiable scarcity. As he notes:

Natural scarcity is that which follows from the relationship between man and nature. Scarcity is natural when it is possible to conceive of it before any human, institutional, contractual arrangement. Artificial scarcity, on the other hand, is the outcome of such arrangements. Artificial scarcity can hardly serve as a justification for the legal framework that causes that scarcity. Such an argument would be completely circular. On the contrary, artificial scarcity itself needs a justification ([63], p. 793; see also pp. 797–99).

Thus, Bouckaert maintains that “only naturally scarce entities over which physical control is possible are candidates for” protection by *real* property rights ([63], pp. 799, 803). For ideal objects, the only protection possible is that achievable through *personal* rights, i.e., contract (more on this below).⁴²

Only material, scarce resources are the possible object of interpersonal conflict, so it is only for them that property rules are applicable. Thus, patents and copyrights are unjustifiable monopolies granted by government legislation. It is not surprising that, as Palmer notes, “[m]onopoly privilege and censorship lie at the historical root of patent and copyright” ([61], p. 264). It is this monopoly privilege that creates an artificial scarcity where there was none before.

Let us recall that IP rights give to pattern-creators partial rights of control – ownership – over the material property of everyone else. The pattern-creator has partial ownership of others’ property, by virtue of his IP right, because he can prohibit them from performing certain actions *with their own property*. Author X, for example, can prohibit a third party, Y, from inscribing a certain pattern of words on Y’s own blank pages with Y’s own ink.

That is, by merely authoring an original expression of ideas, by merely thinking of and recording some original *pattern* of information, or by finding a new way to use his own property (recipe), the IP creator instantly, magically becomes a partial owner of others’ property. He has some say over how third parties can use their property. He is granted, in effect, a type of “negative servitude” in others’ already-owned property” (See [32]). IP rights change the *status quo* by redistributing property from individuals of one class (material-property owners) to individuals of another (authors and inventors). *Prima facie*, therefore, IP law trespasses against or “takes” the property of material-property owners, by transferring partial ownership to authors and inventors. It is this invasion and redistribution of property that must be justified in order for IP rights to be valid. We see, then, that utilitarian defenses do not do the trick. Further problems with natural-rights defenses are explored below.

Creation Versus Scarcity

Some inconsistencies and problems with natural-rights theories of IP were pointed out above. This section discusses further problems with such arguments, in light of the preceding discussion of the significance of scarcity.

As noted before, some libertarian IP advocates, such as Rand, hold that *creation* is the source of property rights (See [29, 39, 42, 43]). This confuses the nature and reasons for property rights, which lie in the undeniable fact of scarcity. *Given* scarcity and the correspondent possibility of conflict in the use of resources, conflicts are avoided and peace and cooperation are achieved by allocating property rights to such resources. And the purpose of property rights dictates the nature of such rules. For if the rules allocating property rights are to serve as objective rules that all can agree upon so as to avoid conflict, they cannot be biased or arbitrary (See [93], Chap. 7, esp. p. 138). For this reason, unowned resources come to be owned – homesteaded or appropriated – by the *first* possessor ([93], p. 142; [76], pp. 172–79; and [97], p. 105).

The general rule, then, is that ownership of a given scarce resource can be identified by determining who first occupied it. There are various ways to possess or occupy resources, and different ways to demonstrate or prove such occupation, depending upon the nature of the resource and the use to which it is put. Thus, I can pluck an apple from the wild and thereby homestead it, or I can fence in a plot of land for a farm. It is sometimes said that one form of occupation is “forming” or “creating” the thing.⁴³ For example, I can sculpt a statue from a block of marble, or forge a sword from raw metal, or even “create” a farm on a plot of land.

We can see from these examples that creation is relevant to the question of ownership of a given “created” scarce resource, such as a statue, sword, or farm, only to the extent that the act of creation is an act of occupation, or is otherwise evidence of first occupation. However, “creation” itself does not justify ownership in things; it is neither necessary nor sufficient. One cannot *create* some possibly disputed scarce resource without first using the raw materials used to create the item. But these raw materials are scarce, and either I own them or I do not. If not, then I do not own the resulting product. If I own the inputs, then, by virtue of such ownership, I own the resulting thing into which I transform them.

Consider the forging of a sword. If I own some raw metal (because I mined it from ground I owned), then I own the same metal after I have shaped it into a sword. I do not need to rely on the fact of creation to own the sword, but only on my ownership of the factors used to make the sword.⁴⁴ And I do not need creation to come to own the factors, since I can homestead them by simply mining them from the ground and thereby becoming the first possessor. On the other hand, if I fashion a sword using your metal, I do not own the resulting sword. In fact, I may owe you damages for trespass or conversion.

Creation, therefore, is neither necessary nor sufficient to establish ownership. The focus on creation distracts from the crucial role of first occupation as a property

rule for addressing the fundamental fact of scarcity. First occupation, not creation or labor, is both necessary and sufficient for the homesteading of unowned scarce resources.

One reason for the undue stress placed on creation as the source of property rights may be the focus by some on *labor* as the means to homestead unowned resources. This is manifest in the argument that one homesteads unowned property with which one mixes one's labor *because* one "owns" one's labor. However, as Palmer correctly points out, "*occupancy, not labor*, is the act by which external things become property."⁴⁵ By focusing on first occupancy, rather than on labor, as the key to homesteading, there is no need to place creation as the fount of property rights, as Objectivists and others do. Instead, property rights must be recognized in first-comers (or their contractual transferees) in order to avoid the omnipresent problem of conflict over scarce resources. Creation itself is neither necessary nor sufficient to gain rights in unowned resources. Further, there is no need to maintain the strange view that one "owns" one's labor in order to own things one first occupies. Labor is a type of action, and action is not ownable; rather, it is the way that some material things (e.g., bodies) act in the world.

The problem with the natural-rights defense of IP, then, lies in the argument that because an author-inventor "creates" some "thing," he is "thus" entitled to own it. The argument begs the question by assuming that the ideal object is ownable in the first place; once this is granted, it seems natural that the "creator" of this piece of property is the natural and proper owner of it. However, ideal objects are not ownable.

Under the libertarian approach, *when* there is a scarce (ownable) resource, we identify its owner by determining who its first occupier is. In the case of "created" goods (i.e., sculptures, farms, etc.), it can sometimes be assumed that the creator is also the first occupier by virtue of the gathering of raw materials and the very act of creation (imposing a pattern on the matter, fashioning it into an artifact, and the like). But it is not creation per se that gives rise to ownership, as pointed out above.⁴⁶ For similar reasons, the Lockean idea of "mixing labor" with a scarce resource is relevant only because it *indicates* that the user has possessed the property (for property must be *possessed* in order to be labored upon). It is not because the labor must be rewarded, nor because we "own" labor and "therefore" its fruits. In other words, creation and labor-mixing *indicate* when one has occupied – and, thus, homesteaded – unowned scarce resources.⁴⁷

By focusing on creation and labor, rather than on first occupancy of scarce resources, as the touchstone of property rights, IP advocates are led to place undue stress on the importance of "rewarding" the labor of the creator, much as Adam Smith's flawed labor theory of value led to Marx's even more deeply flawed communist views on exploitation.⁴⁸ As noted above, for Rand, IP rights are, in a sense, the reward for productive work, i.e., *labor*. Rand and other natural-rights IP proponents seem to adopt a mixed natural rights – utilitarian rationale in holding that the person who invests time and effort must be rewarded or benefit from this effort (e.g., Rand opposed perpetual patent and copyright on the grounds that because distant descendants did not create their ancestors' works, they deserve no reward) (See also [38], pp. 388–89).

In addition, in a strange admixture of natural-rights and utilitarian thinking, the natural-rights IP approach implies that something is property if it can hold *value*. But as Hoppe has trenchantly shown, one cannot have a property right in the *value* of one's property, but only in its physical integrity ([93] pp. 139–41, 237 n. 17). Moreover, many arbitrarily defined “things” can acquire economic value if government grants a monopoly over the thing's use, even if the thing is not otherwise a scarce resource (e.g., the Postal Service's monopoly power to deliver first-class letters).

Thus, because ideas are not scarce resources in the sense that physical conflict over their use is possible, they are not the proper subject of property rights designed to avoid such conflicts.

Two Types of Homesteading

What, though, is really wrong with recognizing “new” property rights? After all, since new ideas, artistic creations, and innovations continually enrich us, what is the harm in moving with the times by recognizing new forms of property? The problem is that if property rights are recognized in non-scarce resources, this necessarily means that property rights in material resources are correspondingly diminished. This is because the only way to recognize ideal rights, in our real, scarce world, is to allocate rights in material goods. For me to have an effective patent right – a right in an idea or pattern, not in a scarce resource – means that I have some control over everyone else's scarce resources.

In fact, we can see that IP rights imply a new rule for acquiring rights in scarce resources, which undercuts the libertarian homesteading principle. For, according to Lockean-libertarian homesteading, it is the *first occupier* of a previously unowned scarce resource who homesteads it, i.e., becomes its owner. A late-comer who seizes control of all or part of such owned property is simply a thief, because the property is already owned. The thief effectively proposes a new and arbitrary homesteading rule to replace the first-occupier rule, namely, the particularistic rule “I become the owner of property when I forcibly take it from you.” Of course, such a rule is no rule at all, and is clearly inferior to the first-possessor rule. The thief's rule is particular, not universal; it is not just, and it certainly is not designed to avoid conflicts.

Proponents of IP must also advocate a new homesteading rule to supplement, if not replace, the first-possessor homesteading rule. They must maintain that there is a *second* way for an individual to come to own material property. To wit, the IP advocate must propose some homesteading rule along the following lines: “A person who comes up with some useful or creative idea which can guide or direct an actor in the use of his own material property thereby instantly gains a right to control all other material property in the world, with respect to that property's similar use.” This new-fangled homesteading technique is so powerful that it gives the creator rights in third parties' *already owned* material property.

For example, by inventing a new technique for digging a well, the inventor can prevent *all others* in the world from digging wells in this manner, *even on their own*

property. To take another example, imagine the time when men lived in caves. One bright guy – let us call him Galt-Magnon – decides to build a log cabin on an open field, near his crops. To be sure, this is a good idea, and others notice it. They naturally imitate Galt-Magnon, and they start building their own cabins. But the first man to invent a house, according to IP advocates, would have a right to prevent others from building houses on their own land, with their own logs, or to charge them a fee if they do build houses. It is plain that the innovator in these examples becomes a *partial owner* of the material property (e.g., land and logs) of others, due *not* to first occupation and use of that property (for it is already owned), but due to his *coming up with an idea*. Clearly, this rule flies in the face of the first-user homesteading rule, arbitrarily and groundlessly overriding the very homesteading rule that is at the foundation of all property rights.

There is, in fact, no reason why merely innovating gives the innovator partial ownership of property that others already own. Just because a rule can be proposed does not mean that it is workable or just. There are many arbitrary rules one could dream up by which property rights could be allocated. For example, a racist could propose that any white person can homestead any property already first homesteaded by a black person. Or, the *third* occupier of a scarce resource becomes its owner. Or, the state can homestead all capital goods, even if already first acquired by individuals. Or, by legislative decree, the state can homestead, in the form of taxes, part of the estates that are already owned by private individuals. All such arbitrary homesteading rules, including the IP rule that innovators homestead partial control of all others' material resources, are unjustifiable. They all conflict with the only justifiable homesteading rule, *first occupation*. None of them establish fair, objective rules that avoid interpersonal conflict over scarce resources. Discussions of protecting rights in "ideas," "creations," or "things of value" only serve to obscure the fact that the proponent of IP opposes the unadulterated right to homestead and own private property.

IP as Contract

The Limits of Contract

The law, then, should protect individual rights to one's body, and to legitimately acquired scarce resources (property). There is not a natural right to ideal objects – to one's intellectual innovations or creations – but only to scarce resources. Many opponents of IP rights typically support only *contractual* arrangements to protect ideas and innovations – private contracts between property owners.⁴⁹ Suppose, for example, that *A* writes a book and sells physical copies of it to numerous purchasers $B_1, B_2 \dots B_N$, with a contractual condition that each buyer *B* is obligated not to make or sell a copy of the text. Under all theories of contract, any of the buyers *B* becomes liable to *A*, at least for damages, if he violates these provisions.⁵⁰

But the advocates of the contractual approach to IP are mistaken if they believe that private contract can be used to recreate the same type of protection afforded by

modern IP rights. Patent and copyright are good against *all* third parties, regardless of their consent to a contract. They are *real* rights that bind *everyone*, in the same way that my title to a parcel of land binds everyone to respect my property – even if they do not have a contract with me. A contract, by contrast, binds *only* parties to the contract. It is like private law between the parties.⁵¹ It does not bind third parties, i.e., those not in “privity” with the original parties.⁵²

Thus, if the book purchaser *B* relates to third parties *T* the plot of the purchased novel, these third parties *T* are not bound, in general, by the original contractual obligation between *A* and *B*. If I learn how to adjust my car’s carburetor to double its efficiency, or if I learn of a poem or movie plot someone else has written, why should I have to pretend that I am ignorant of these things, and refrain from acting on this knowledge? I have not obligated myself by contract to the creator. I do not deny that contractual obligations can be implicit or tacit, but there is not even an implicit contract in such situations.

Nor can it be said as a general matter that I have stolen or fraudulently acquired the information, as there are many legitimate ways for individuals to acquire information. Artistic works, by their very nature, typically are made public. Scientific discoveries and innovations likewise can become known beyond the parties to confidentiality agreements. And it certainly cannot be said that my use of my carburetor, or writing a novel using the same plot, physically interferes with the creator’s use of his own material property. It does not even prevent the creator from using his own carburetor idea to improve his own car or others’, or from using that plot.

So, my adjusting my carburetor is not a breach of contract; it is not theft; and it is not physical trespass on the inventor’s material property. Twiddling my carburetor does not violate the inventor’s rights. At most, my use of this idea will diminish its *value* to the inventor by hampering his ability to monopolistically exploit it. As we have seen, however, one cannot have a right to the value of one’s property, but only in its physical integrity ([93], pp. 139–41, 237 n. 17).

Thus, the use of contract only gets us so far. A book publisher may be able to contractually obligate his purchasers to not copy his book, but he cannot prevent third parties from publishing and selling it, unless some contract prohibits this action.

Contract Versus Reserved Rights

Third parties, then, who are not parties to the contract and are not in privity with the contractual obligor and obligee, are not bound by the contractual relationship. For this reason, although an innovator can use contract to stop specified individuals from freely using his ideas, it is difficult to use standard contract law to prevent third parties from using ideas they glean from others. Perhaps sensing this problem, some quasi-IP advocates shift from a purely contractual approach to a “reservation-of-rights” approach in which property rights in material resources are seen as a divisible bundle of rights.

For example, under the standard bundle-of-rights view, a landowner can sell the mineral estate to an oil company while retaining all rights to the surface, except for an easement (servitude) granting passage to a neighbor and a life estate (usufruct) granting use of the surface estate to his mother. Drawing on the bundle-of-rights notion, the “reservation-of-rights” approach holds that a type of “private” IP can be privately generated by creatively “reserving rights” to *reproduce* material items sold to purchasers.

Rothbard, for example, argues that one can grant conditional “ownership” (of “knowledge”) to another, while “retaining the ownership power to disseminate the knowledge of the invention.” Or, Brown, the inventor of an improved mousetrap, can stamp it “copyright” and thereby sell the right to each mousetrap *except for* the right to reproduce it. Like the real rights accompanying statutory IP, such “reservations” allegedly bind everyone, not just those who have contracted with the original seller. Thus, third parties who become aware of, purchase, or otherwise come into possession of the restricted item also cannot reproduce it – *not* because they have entered into a contract with Brown, but because “no one can acquire a *greater* property title in something that has already been given away or sold.” In other words, the third party acquires a material thing – a book or a mousetrap, say – but it is somehow “missing” the “right-to-copy” part of the bundle of rights that “normally” constitutes all rights to the thing. Or, the third party acquires “ownership” of information, from a person who did not own the information and, thus, was not entitled to transmit it to others ([11], p. 123).

But surely something is amiss here. Suppose that A writes a novel and sells a first copy, BOOK₁, without restriction (i.e., without a reservation of rights) to B₁; and a second copy, BOOK₂, to B₂ – but “reserving” the book’s inherent “right to copy.” The two books, BOOK₁ and BOOK₂, appear to third parties to be otherwise identical. Yet they are not: One is incomplete; the other somehow contains more mystical “rights-essence” within its covers. Suppose B₁ and B₂ leave these books on a park bench, where they are discovered by third party T. According to Rothbard, BOOK₂ is “missing” the “right to copy,” much like an electronic toy that is sold “batteries not included.” It is as if there is an invisible, mystical tendril of “reproduction-ownership” stretching from BOOK₂ back to its true owner A, wherever he may be. Thus, even if T finds and homesteads the abandoned BOOK₂, this book simply does not contain “within itself” the right to permit the owner to copy it. It is being continually siphoned away by a rights wormhole which connects the item to owner A. Thus, if T homesteads the book, he still homesteads no more than he acquires. T homesteads only a book without a right to copy “built in,” and, thus, does not have the right to copy BOOK₂. The same is true for subsequent third parties who come to possess the book.

Is such a view really tenable? Can we conceive of property rights working this way? Even if we can, would it really achieve the desired result here – preventing third parties from using the protected ideas? It is difficult to maintain that rights can be reserved in this manner. One function of property rights, after all, is to prevent conflict and to put third parties *on notice* as to the property’s boundaries. The borders of property must necessarily be objective and intersubjectively

ascertainable; they *must be* visible. Only if borders are visible can they be respected and property rights serve their function of permitting conflict-avoidance. Only if these borders are both visible and objectively just (justifiable in discourse) *can* they be expected to be adopted and followed. But think of the two books, BOOK₁ and BOOK₂. How could one tell the difference between them? How could one see the rights-tendrils connected to the latter but not to the former? How can third parties be expected to respect an amorphous, invisible, mystical, spooky, possibly unknown and unknowable property border?

The implications of such a view are troubling. Palmer Writes:

The separation and retention of the right to copy from the bundle of rights that we call property is problematic. Could one reserve the right, for example, to remember something? Suppose that I wrote a book and offered it to you to read, but I had retained one right: the right to remember it. Would I be justified in taking you to court if I could prove that you had remembered the name of the lead character in the book? ([50], p. 853).⁵³

But third parties still pose a problem for this theory. Even if a seller of an object could somehow “reserve” certain use-rights with respect to the sold object, how does this prevent third parties from using *information* apparent from or conveyed in that object? Reserved rights proponents say more than that the immediate buyer B_1 is bound not to reproduce the book; for this result could be obtained by pointing to the implicit *contract* between seller A and buyer B_1 . Let us consider a third party, T_1 , who finds and reads the abandoned book, thus *learning* the information in it. Alternatively, consider third party T_2 , who never has possession of or even sees the book; he merely learns of the information in the book from gossip, graffiti, unsolicited e-mail, and so forth. Neither T_1 nor T_2 has a contract with A , but both now possess certain knowledge. Even if the book somehow does not contain within it a “right to reproduce,” how can this prevent T_1 and T_2 from using their own knowledge? And even if we say that T_1 is somehow “bound” by a contractual copyright notice printed on the book (an untenable view of contract), how is T_2 bound by any contract or reserved right?

Rothbard attempts to address this point as follows:

A common objection runs as follows: all right, it would be criminal for *Green* [the buyer] to produce and sell the Brown mousetrap; but suppose that someone else, Black, who had not made a contract with Brown, happens to see Green’s mousetrap and then goes ahead and produces and sells the replica? Why should *he* be prosecuted? The answer is that . . . no one can acquire a *greater* property title in something than has already been given away or sold. Green did not own the total property right in his mousetrap, in accordance with his contract with Brown – but only all rights *except* to sell . . . a replica. But therefore Black’s title in the mousetrap, the ownership of the ideas in Black’s head, can be no greater than Green’s, and therefore he too would be a violator of Brown’s property even though he himself had not made the actual contract ([11], p. 123).

There are several problems with this reasoning. First of all, Black merely *sees* Green’s mousetrap. He does not see or have access to ideas in Green’s head. Nor does he need to have such access in order to duplicate evident features of the mousetrap.

Further, ideas in one’s head are not “owned” any more than labor is owned. Only scarce resources are owned. By losing sight of scarcity as a necessary aspect of

a homesteadable thing, and of the first occupancy homesteading rule as the way to own such things, Rothbard and others are sidetracked into the mistaken notion that ideas and labor can be owned. If we recognize that ideas cannot be owned (they are not scarce resources), that creation is neither necessary nor sufficient for ownership (first occupancy is), and that labor need not be “owned” in order to be a homesteader, then the trouble caused by these confused notions disappears.

If Black *somehow* comes into possession of the ideas implicit in an item which Brown invented (in Rothbard’s example, he “happens to see” it), it is *irrelevant* that the mousetrap may not have had a “right to copy” built into it. For Black does not need such permission to use his own property as he sees fit. How does “happening to see” the mousetrap make Black a trespasser or violator of Brown’s rights?

All actions, including action which employs owned scarce means (property), involve the use of technical knowledge [114–116]. Some of this knowledge may be gained from things we see, including the property of others. We do not have to have a “right to copy” as part of a bundle of rights to have a right to impose a known pattern or form on an object we own. Rather, we have a right to do *anything at all* with and on our own property, provided *only* that we do not invade others’ property borders. We must not lose sight of this crucial libertarian point. If I own a 100-acres of land, I can prance around naked on it, *not* because the land is imbued with some “right-to-prance-naked,” but because I *own* the land and it does not (necessarily) violate the property rights of others for me to use my property in this fashion.

Similarly, I am entitled to do what I want with my own property – my car, my paper, my word processor – including improving my car’s carburetor or using my ink to print words on my paper. That is, *unless* I have contractually obligated myself to someone else to restrict my actions with respect to my use of this knowledge. I do not have to first find in my property a right-to-use-in-a-certain-way, for all ways of using it, *except* those that cause invasions of others’ property borders, are already encompassed within the general *right to use* my property. In libertarianism, we live by right, not permission. We do not need to find permission to take actions with our own property. Contrary to practice in totalitarian societies, all things that are not forbidden are permitted. The reservation-of-rights view would reverse this by assuming that every use of property is valid only if that particular use-right can be somehow found or located in the property.

Consider the following analogy. Farmer Jed discovers oil under his land. No one for miles around knows about the black gold. Jed plans to buy his neighbors’ property for a song; they will sell it cheap, too, since they do not know about the oil. In the middle of the night, his nosy neighbor Cooter, suspicious over Jed’s recent good spirits, sneaks onto Jed’s land and discovers the truth. The next morning, at Floyd’s barbershop, Cooter spills his guts to Clem and the boys. One of them promptly runs to a pay phone and gives a tip to a reporter at the *Wall Street Journal* (who happens to be his nephew). Soon, it is common knowledge that there is oil in the vicinity. The neighbors now demand exorbitant prices for their land, thus spoiling Jed’s plans.

Let us grant that Cooter can be prosecuted for trespass and harms flowing therefrom. The question is, can Jed’s neighbors be prevented from acting on their knowledge? That is, may they be forced to somehow *pretend* that they do not know

about the oil, and sell their land to Jed for what they “would have” sold it when in ignorance? Of course they may not be forced so. They own their land, and are entitled to use it as they see fit. Unlike material property, information is not ownable; it is not property. The possessor of a stolen watch may have to return it, but so long as the acquirer of knowledge does not obtain that knowledge illicitly or in violation of a contract, he is free to act upon it.

Note, however, that according to the reservation-of-rights view, the neighbors would not be permitted to act upon their knowledge because they obtained it ultimately from Cooter, a trespasser who had no “title” to that knowledge. Thus, they could not have obtained “greater title” to it than Cooter himself had. Note also that others, such as geological surveyors mapping oil deposits, cannot include this information in their maps. They must feign ignorance until given permission by Jed. This imposed ignorance correlates with the unnatural scarcity imposed by IP. There is clearly no warrant for the view that reserved rights can somehow prohibit third parties from using knowledge they acquire.

It is simply not legitimate to restrict the use to which an owner of property can put it unless that owner has contractually obligated himself or has otherwise acquired the information by a violation of the information-holder’s rights. Talk of reserving the right to copy is merely a way to avoid the contractual notion that only parties to a contract are bound by it.⁵⁴

Therefore, as a general matter, purchasers can be bound by contracts with sellers to not copy or even resell the thing. However, once third parties become aware of the ideas underlying the invention or literary work, their use of that knowledge does not, in general, violate any recognizable property rights of the seller.

Given this view of scarcity, property, and contract, let us examine the legitimacy of common forms of IP.

Copyright and Patent

As should be apparent, copyright and patent seek to prevent the owners of material property – scarce resources – from using their own property as they see fit. For example, they are prohibited, under patent law, from practicing patented methods, using their own property, or from shaping their own property into patented devices, even if they independently invent the method or device. Under copyright law, third parties who have not contracted with the author are prevented from copying or profiting from the author’s original work. Clearly, sellers of novel devices or literary works can contract with buyers to prevent these buyers from reproducing, or even reselling, the item. These contractual webs can be elaborate; a novel writer can license his story to a movie studio on the condition that the studio require all movie theaters to require customers to agree not to reproduce the plot of the movie, and so on.

Yet, once third parties not bound by a contract acquire this information, they are free to use it as they see fit. The reserved rights approach does not change this. Thus, it would probably be difficult to maintain anything similar to our present patent and copyright laws using contract alone.

Trade Secrets

Trade secrets are easier to justify than patent or copyright. Palmer argues that they “emerge” from common law-type rights, and are, thus, legitimate ([50] pp. 854–55; [61], pp. 280, 292–93). Trade secret law allows damages to be obtained for, or an injunction to be issued to prevent, acts of “misappropriation” of a trade secret. This can be applied against the person who has improperly acquired the trade secret or who divulges the secret contrary to a contractual obligation, and also against others who know that they are obtaining the secret from such a person.⁵⁵

Suppose employee *A* of company *X* has access to *X*'s trade secrets, such as its secret formula for a soft drink. He is subject to an employment agreement obligating him to keep this formula secret. He then jumps to *X*'s competitor, *Y*. *Y* wants to use the formula it learns from *A* to compete with *X*. Under current law, so long as the secret formula has not been made public, *X* can get a court order to stop *A* from revealing the secret to *Y*. If *A* has already revealed the secret to *Y*, *X* can also get an injunction to stop *Y* from using or publicizing the formula.

Clearly, the injunction and damages against *A* are proper because *A* is in violation of his contract with *X*. More questionable is the injunction against *Y*, because *Y* had no contract with *X*. In the context in which such situations usually arise, however, where the competitor *Y* wants the trade secret and knows the defecting employee is in breach of contract, it could be argued that the competitor *Y* is acting in conspiracy with or as an accomplice of employee *A* to violate the (contractual) rights of trade secret holder *X*. This is because *A* has not actually breached his trade secrecy agreement until he reveals trade secrets to *Y*. If *Y* actively solicits *A* to do this, then *Y* is an accomplice or co-conspirator in the violation of *X*'s rights. Thus, just as the driver of the getaway car in a bank robbery, or the mafia boss who orders an assassination, are properly held liable for acts of aggression committed by others with whom they conspire, third parties can, in narrowly defined cases, be prevented from using a trade secret obtained from the trade secret thief.⁵⁶

Trademarks

Palmer also argues that trademark law is legitimate ([61], p. 280). Suppose some Lachmannian changes the name on his failing hamburger chain from Lachmann Burgers to Rothbard Burgers, which is already the name of another hamburger chain. I, as a consumer, am hungry for a Rothbard Burger. I see one of the fake Rothbard Burger joints run by the stealthy Lachmannian, and I buy a burger. Under current law, Rothbard, the “owner” of the Rothbard Burgers trademark, can prevent the Lachmannian from using the mark Rothbard Burgers to sell burgers because it is “confusingly similar” to his own trademark. That is, it is likely to mislead consumers as to the true source of the goods purchased. The law, then, gives a right to the trademark holder against the trademark infringer.

In my view, it is the *consumers* whose rights are violated, not the trademark holder's. In the foregoing example, I (the consumer) thought I was buying a Rothbard Burger, but instead got a crummy Lachmann Burger with its weird kaleidoscopic sauce. I should have a right to sue the Lachmannian for fraud and breach of contract (not to mention intentional infliction of emotional distress and misrepresentation of praxeological truths). However, it is difficult to see how this act of fraud, perpetrated by the Lachmannian on *me*, violates *Rothbard's* rights. The Lachmannian's actions do not physically invade Rothbard's property. He does not even convince others to do this; at most, he may be said to convince third parties to take an action within their rights, namely, to buy a burger from the Lachmannian instead of Rothbard. Thus, it would appear that, under libertarianism, trademark law should give *consumers*, not trademark *users*, the right to sue trademark pirates.

Moreover, more novel extensions of trademark, such as rights against trademark dilution or against certain forms of cybersquatting, cannot be justified. Just as a trademark holder does not have a right to his mark, neither does he have a right against his mark's dilution. The law against cybersquatting is simply based on an economically ignorant opposition to "scalping" and arbitrage. There is, of course, nothing wrong with being the first to acquire a domain name and thereafter selling it to the highest bidder.

Conclusion

We see, then, that a system of property rights in "ideal objects" necessarily requires violation of other individual property rights, for example, to use one's own material property as one sees fit (See [50], pp. 831, 862, 864–65; [61], p. 281). Such a system requires a new homesteading rule which subverts the first-occupier rule. IP, at least in the form of patent and copyright, cannot be justified.

It is not surprising that IP attorneys, artists, and inventors often seem to take for granted the legitimacy of IP. However, those more concerned with liberty, truth, and rights should not take for granted the institutionalized use of force used to enforce IP rights. Instead, we should reassert the primacy of individual rights over our bodies and homesteaded scarce resources.

Cross-References

- ▶ [Business and Liberty: An Ethical Union](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)

Notes

1. Terms like "realty," "personality," and "tangible" are common-law terms; analogous civil-law terms are "immovables," "movables," and "corporeals," respectively. See [1] for further differences between civil-law and common-law terminology. The term "things" is a broad civil-law concept that refers to all types of items, whether corporeal or incorporeal, movable or immovable. A note about terminology: as argued by Hardy Bouillon [2], it is more precise

- to focus on the differences between material and nonmaterial goods rather than between tangible and non-tangible goods, as the touchstone of things subject to property rights. For more on the distinction, see [3].
2. Debate over this issue manifests itself in differences over the issue of inalienability and with respect to the law of contract, i.e., can we “sell” or alienate our bodies in the same manner that we can alienate title to homesteaded property? For arguments against body inalienability, see [4, 5]. For arguments favoring such alienability, see [6]. For further discussion of self-ownership, see [7].
 3. For views in opposition to blackmail laws, see [8, 9]; [10], pp. 53–54; [11], pp. 124–126; [12]. For libertarian views in favor of blackmail laws, see [13, 14]. For libertarian arguments against defamation (libel and slander) laws, see [10], pp. 50–53; and [11], pp.126–128; [15].
 4. In some European countries, the term “industrial property” is used instead of “intellectual property.”
 5. *De La Vergne Refrigerating Mach. Co. v Featherstone*, 147 U.S. 209, 222, 13 S.Ct. 283, 285 (1893).
 6. As one commentator has noted, “intellectual property may be defined as embracing rights to novel ideas as contained in tangible products of cognitive effort.” See [16, 17].
 7. A useful introduction to IP can be found in Arthur R. Miller and Michael H. Davis [18]; see also [19]. For a good introduction to patent law, see [20]. More in-depth treatises with further information on IP law include Donald S. Chisum [21–25]. Useful information, brochures, and pamphlets are available from the United States Copyright Office, <http://lcweb.loc.gov/copyright>, and from the Patent and Trademark Office of the Department of Commerce, <http://www.uspto.gov>. See also [26].
 8. Modern copyright law has superseded and largely preempted “common law copyright,” which attached automatically from the moment of a work’s creation, and which essentially conferred only a right of *first* publication. Goldstein, Copyright, §§ 15.4 et seq.
 9. 17 USC § 302. Due to recent legislation, these terms are 20 years longer than under previous law. See HR 2589, the *Sonny Bono Copyright Term Extension Act/Fairness in Music Licensing Act of 1998*.
 10. Suppose *A* invents and patents a better mousetrap, which has a Nitinol (memory metal) spring for better snapping ability. Now suppose *B* invents and patents a mousetrap with a Nitinol spring covered with nonstick coating, to improve the ability to remove mouse remains while still providing the Nitinol-driven snapping action. *B* has to have a mousetrap with a Nitinol spring in order to use his invention, but this would infringe upon *A*’s patent. Similarly, *A* cannot add the nonstick coating to his own invention without infringing upon *B*’s improvement patent. In such situations, the two patentees may cross-license, so that *A* can practice *B*’s improvement to the mousetrap, and so *B* can use his own invention.
 11. *In re Alappat*, 33 F3d 1526, 1544, 31 USPQ2d 1545, 1557 (Fed Cir 1994) (in banc). See also *State Street Bank & Trust Co. v Signature Financial Group*, 149 F3d 1368 (Fed Cir 1998).
 12. See, e.g., R. Mark Halligan, esq., “Restatement of the third law—unfair competition: a brief summary,” §§ 39–45, <http://execpc.com/~mhalign/unfair.html>; also see the *Uniform Trade Secrets Act* (UTSA), <http://nsi.org/Library/Espionage/usta.htm>.
 13. See, e.g., HR 354 (introduced 1/19/1999), *Collections of Information Antipiracy Act*. See also [27].
 14. U.S. Constitution., Art I, § 8; *Kewanee Oil Co. v. Bicron Corp.*, 415 US 470, 479, 94 S.Ct. 1879, 1885 (1974).
 15. U.S. Constitution, Art. 1, sec. 8, clause 3; *Wickard v Filburn*, 317 US 111, 63 S. Ct. 82 (1942).
 16. But see the federal *Economic Espionage Act of 1996*, 18 USC §§ 1831–39.
 17. Ayn Rand mistakenly assumes that the first to file has priority (and then she is at pains to defend such a system). See [29], p.133. She also confusingly attacks the strict antitrust scrutiny given to patent holders. However, since patents are government-granted monopolies, it is not unjust to use an antimonopoly law to limit the ability of a patent owner to extend this

monopoly beyond the bounds intended by the patent statute. The problem with antitrust laws is in their application to normal, peaceful business dealings, not to limit real—i.e., government-granted—monopolies. A similar point might be made with regard to Bill Gates, whose fortune has largely been built based on the government-granted monopoly inherent in copyright. Moreover, as Bill Gates is no libertarian, and doubtlessly does not oppose the legitimacy of antitrust laws, one can hardly wring one's hands in pity over his having to lie in the very bed he helped make. See also [30].

18. See Leahy-Smith America Invents Act (AIA), Pub.L. 112-29 (September 16, 2011); 35 U.S.C. § 102; [31].
19. For conventional theories of intellectual property, see “Bibliography of general theories of intellectual property,” *Encyclopedia of Law and Economics*, <http://encyclo.findlaw.com/biblio/1600.htm>; and Edmund Kitch [33]. See also [34, 35].
20. See [29, 36, 37]. Other Objectivists (Randians) who support IP include George Reisman [38, 39]; in response to Stephan Kinsella [40], [41–43], in response to Kinsella [40]. It is difficult to find published discussions of Galambos's idea, apparently because his own theories bizarrely restrict the ability of his supporters to disseminate them. See, e.g., [44]. Scattered references to, and discussions of, Galambos's theories may be found, however, in David Friedman [45, 46].
21. [47]; [48], part IV, Chap. 13, p. 121. See also [49, 50].
22. [52, 53], Chap. 11. Ejan Mackaay also advocates IP on utilitarian grounds, in [54]. Earlier utilitarian advocates of IP include John Stuart Mill and Jeremy Bentham. See [55, 56].
23. See [50], pp. 820–21; [57].
24. See [11], pp. 123–24; [50]; [58–61]; on Lepage, see [40]; [62–65].
F.A. Hayek also appears to be opposed to patents. See [66, 67]. Cole challenges the utilitarian justification for patents and copyright in “Patents and Copyrights: Do the Benefits Exceed the Costs?” See also Fritz Machlup, U.S. Senate Subcommittee On Patents, Trademarks & Copyrights, *An Economic Review of the Patent System*, 85th Cong., 2nd Session, 1958, Study No. 15; [68–72].
25. [49]. Also strongly opposed to IP was the nineteenth-century Jacksonian editorialist William Leggett. See [50], pp. 818, 828–29. Ludwig von Mises expressed no opinion on the issue, merely drawing the economic implications from the presence or absence of such laws. See [73], Chap. 23, section 6, pp. 661–662.
26. According to Justinian, “Justice is the constant and perpetual wish to render everyone his due. . . . The maxims of law are these: to live honestly, to hurt no one, to give everyone his due.” *The Institutes of Justinian: Text, Translation, and Commentary*, trans. J.A.C. Thomas (Amsterdam: North-Holland, 1975).
27. On the defects of utilitarianism and interpersonal utility comparisons, see [74, 75]; [76], pp. 81–82, 92, 98, 144, 149–51.
On scientism and empiricism, see [77, 78].
On epistemological dualism, see [78–81].
28. Mises states: “Although it is usual to speak of money as a measure of value and prices, the notion is entirely fallacious. So long as the subjective theory of value is accepted, this question of measurement cannot arise” [82]. Also: “Money is neither a yardstick of value nor of prices. Money does not measure value. Nor are prices measured in money: they are amounts of money” [83]; see also [73], pp. 96, 122, 204, 210, 217, and 289.
29. For an excellent survey and critique of the cost-benefit justification for patent and copyright, see [57]. For useful discussions of evidence in this regard, see [61]; [50], pp. 820–821, 850–851; [63], pp. 812–13; [84, 85].
30. [88], p. 43. See also [58], pp. 658–59:

It is by no means self-evident that patents encourage an increased absolute quantity of research expenditures. But certainly patents distort the type of research expenditure being conducted. . . . Research expenditures are therefore overstimulated in the early stages before anyone has a patent, and they are unduly restricted in the period after the

patent is received. In addition, some inventions are considered patentable, while others are not. The patent system then has the further effect of artificially stimulating research expenditures in the patentable areas, while artificially restricting research in the nonpatentable areas. See also [89].

31. Plant is correct in stating that “[t]he task of distinguishing a scientific discovery from its practical application, which may be patentable . . . is often baffling to the most subtle lawyer.” “The Economic Theory Concerning Patents for Inventions,” pp. 49–50. On a related note, the US Supreme Court has noted that “[t]he specification and claims of a patent . . . constitute one of the most difficult legal instruments to draw with accuracy.” *Topliff v Topliff*, 145 US 156, 171, 12 S.Ct. 825 (1892). Perhaps this is because patent law has no moorings to objective borders of actual, material property, and thus is inherently vague, amorphous, ambiguous, and subjective. For the latter reason alone, one would think that Objectivists—ardent, self-proclaimed defenders of objectivity and opponents of subjectivism—would oppose patent and copyright.
32. *In re Trovato*, 33 USPQ2d 1194 (Fed Cir 1994). Recent case law has expanded the types of mathematical and computer algorithms and business methods that can be protected by patent. See, e.g., *State Street Bank & Trust Co. v Signature Financial Group*, 149 F3d 1368 (Fed Cir 1998). However, no matter where the line is drawn between unpatentable “laws of nature” and “abstract ideas” and patentable “practical applications,” patent law still necessarily makes a distinction between the two.
33. See Galambos, *The Theory of Volition*, vol. 1. Evan R. Soulé, Jr., “What Is Volitional Science?” http://web.archive.org/web/20000603162445/http://www.tuspc.com/html/what_is_v-50_.html; Stephan Kinsella, “Galambos and Other Nuts,” *Mises Economics Blog* (Aug. 8, 2006), blog.mises.org/5442; Alvin Lowi, Jr., “On Andrew Galambos and His Primary Property Ideas,” http://www.above-the-garage.com/rblts/primary_property_lowi_1.htm (Mar. 31, 1998).
34. Tuccille, *It Usually Begins with Ayn Rand*, p. 70. Of course, I suppose that any Galambosian other than Galambos himself, having the same type of dilemma, would be unable to change his name as a solution to the problem, because this solution was Galambos’s inalienable, “absolute” idea.
35. The fundamental economic, or catallactic, role for private property rights, along with money prices arising from exchanges of property, is to permit *economic calculation*. See Stephan Kinsella, “Knowledge, Calculation, Conflict, and Law: Review Essay of Randy E. Barnett [92].
36. [88], pp. 35–36; [94]; [61], pp. 261–66 and n. 50 (distinguishing between “static” and “dynamic” scarcity), also pp. 279–80; [50], pp. 860–61, 864–65; and [95]; on Tucker, see [60].
37. [93], pp. 140–41.
38. See, on the proper approach to homesteading and the first-user rule (the prior-later distinction), [93], pp. 141–44; [96, 97]. “Once the item is owned by the first-user, others no longer have the option of being its first-user; thus, their preferences at that point in time have no bearing on the Pareto-superior nature of the acquisition by the first-user”; and [76], pp. 172–79. On the ethical justifications of such a property rights scheme, see [93], Chap. 7; [11, 95, 96–99].
39. Thomas Jefferson to Isaac McPherson, Monticello, August 13, 1813, letter, in *The Writings of Thomas Jefferson*, vol. 13, ed. A.A. Lipscomb and A.E. Bergh (Washington, D.C.: Thomas Jefferson Memorial Association, 1904), pp. 326–38. Jefferson recognized that because ideas are not scarce, patent and copyright are not natural rights, and can be justified only, if at all, on the utilitarian grounds of promoting useful inventions and literary works (and, even then, they must be created by statute, since they are not natural rights). See [61], p. 278 n. 53. Yet this does not mean that Jefferson supported patents, even on utilitarian grounds. Patent historian Edward C. Walterscheid explains that “throughout his life, [Jefferson] retained a healthy skepticism about the value of the patents system.” “Thomas Jefferson and the Patent Act of 1793,” *Essays in History* 40 (1998).

40. Rand, “Patents and Copyrights,” p. 131. Mises, in *Human Action*, p. 661, recognizes that there is no need to economize in the employment of “formulas,” “because their serviceableness cannot be exhausted.” On p. 128, he points out:

A thing rendering such unlimited services is, for instance, the knowledge of the causal relation implied. The formula, the recipe that teaches us how to prepare coffee, provided it is known, renders unlimited services. It does not lose anything from its capacity to produce however often it is used; its productive power is inexhaustible; it is therefore not an economic good. Acting man is never faced with a situation in which he must choose between the use-value of a known formula and any other useful thing.

See also p. 364.

41. Plant, “The Economic Theory Concerning Patents for Inventions,” p. 36. Also Mises, *Human Action*, p. 364: “Such recipes are, as a rule, free goods as their ability to produce definite effects is unlimited. They can become economic goods only if they are monopolized and their use is restricted. Any price paid for the services rendered by a recipe is always a monopoly price. It is immaterial whether the restriction of a recipe’s use is made possible by institutional conditions—such as patents and copyright laws—or by the fact that a formula is kept secret and other people fail to guess it.” See also [3].
42. It could also be argued that ideal objects deserve legal protection as property because they are “public goods,” i.e., because of negative externalities which arise if IP is not legally protected. However, the concept of public goods is neither coherent nor justifiable. See [61], pp. 279–80, 283–87; [100]; [96], Chap. 1. As Palmer points out:

the cost of producing any service or good includes not only labor, capital marketing, and other cost components, but also fencing (or exclusion) costs as well. Movie theaters, for example, invest in exclusion devices like ticket windows, walls, and ushers, all designed to exclude non-contributors from enjoyment of service. Alternatively, of course, movie owners could set up projectors and screens in public parks and then attempt to prevent passers-by from watching, or they could ask government to force all non-contributors to wear special glasses which prevent them from enjoying the movie. ‘Drive-ins,’ faced with the prospect of free riders peering over the walls, installed—at considerable expense—individual speakers for each car, thus rendering the publicly available visual part of the movie of little interest. . . . The costs of exclusion are involved in the production of virtually every good imaginable. There is no compelling justification for singling out some goods and insisting that the state underwrite their production costs through some sort of state-sanctioned collective action, simply because of a decision to make the good available on a nonexclusive basis.

Palmer [61], pp. 284–285. There is no way to show that ideas are clearly public goods. Moreover, even if ideas were public goods, this does not justify treating them as property rights, for the same reasons that even wealth-increasing measures are not necessarily justified, as discussed above.

43. Occupancy or taking possession “can take three forms: (1) by directly grasping it physically, (2) by forming it, and (3) by merely marking it as ours.” Palmer [50], p. 838.
44. I also do not need to rely on “ownership” of my labor; strictly speaking, labor cannot be owned, and labor ownership need not be relied on to show that I maintain ownership of my property as I transform it. See also [101].
45. Palmer [50], p. 838 (emphasis added), citing Georg W.F. Hegel [102]. See also [101, 103].
46. Even such advocates of IP as Rand do not maintain that creation per se is sufficient to give rise to rights, or that creation is even necessary. It is not necessary because unowned property can be homesteaded by simply occupying it, which involves no “creation” unless one stretches the concept without limit. It is also not sufficient, because Rand would certainly not hold that creating an item using raw material owned by *others* gives the thief-creator ownership of the

- item. Rand's view even implies that rights, including property rights, only arise when there is a possibility of conflict. Rand, for example, views rights as a social concept arising only when there is more than one person. See [104], p. 321: "A 'right' is a moral principle defining and sanctioning a man's freedom of action in a social context." Indeed, as Rand argues, "Man's rights can be violated only by the use of physical force," i.e., some conflict over a scarce resource. "The Nature of Government," in *Capitalism: The Unknown Ideal*, p. 330. On p. 334, Rand attempts (unsuccessfully) to justify government, the agent that enforces rights, based on the fact that there can be "honest disagreements"—i.e., conflict—even among "fully rational and faultlessly moral" men. So, in Rand's theory, creation per se is neither necessary nor sufficient, just as in the theory of property advocated herein. See also [103].
47. It is for these reasons that I disagree with the creation-centered approach of Objectivists David Kelley and Murray Franck. According to Franck, "Intellectual and Personality Property," p. 7, "although property rights help 'ration' scarcity, scarcity is not the basis of property rights. The view that it is . . . appears to reverse cause and effect in that it sees rights as a function of society's needs rather than as inherent in the individual who in turn must live in society." See also [101].
 48. See, e.g., [105]: "It was, indeed, Adam Smith who was almost solely responsible for the injection into economics of the labour theory of value. And hence it was Smith who may plausibly be held responsible for the emergence and the momentous consequences of Marx." Even otherwise sound thinkers sometimes place undue stress on the importance of labor to the homesteading process and its ability to be "owned." Rothbard himself, for instance, implies that an individual "owns his own person and therefore *his own labor*." Rothbard [95], p. 284, emphasis added; see also Rothbard, *The Ethics of Liberty*, p. 49. It is a misleading metaphor to speak of "owning one's labor" (or one's life or ideas). The right to use or profit from one's labor is only a *consequence* of being in control of one's body, just as the right to "free speech" is only a consequence, or a derivative, of the right to private property, as Rothbard recognized in *The Ethics of Liberty*, esp. [11], Chap. 15. See also [101].
 49. See [50], pp. 821 n. 8, 851–55, 864; [60]; [61], pp. 280, 291–295; [63], pp. 804–805; [106, 107].
 50. See, e.g., [11], Chap. 19; [108–110].
 51. Under the international law meta-rule *pacta sunt servanda* (contracts are to be observed), contracts between sovereigns (states, in the international law context) create a "law of the agreement" between the parties. See [111], Chaps. 2, 5.
 52. For a definition of "privity of contract," see [112], p. 1199. See also, in the IP context, Bouckaert [63], pp. 795, 805.
 53. Palmer also quotes the following illuminating passages.
Hegel argued:
The substance of an author's or an inventor's right cannot in the first instance be found in the supposition that when he disposes of a single copy of his work, he arbitrarily makes it a condition that the power to produce facsimiles as things, a power which thereupon passes into another's possession, should not become the property of the other but should remain his own. The first question is whether such a separation between ownership of the thing and the power to produce facsimiles which is given with the thing is compatible with the concept of property, or whether it does not cancel the complete and free ownership on which there originally depends the option of the single producer of intellectual work to reserve to himself the power to reproduce, or to part with this power as a thing of value, or to attach no value to it at all and surrender it together with the single exemplar of his work. (*Hegel's Philosophy of Right*, p. 55, quoted in Palmer, "Are Patents and Copyrights Morally Justified?" p. 853 n. 138)
- And, as Kant noted:
- Those who regard the publication of a book as the exercise of the rights of property in respect of a single copy—it may have come to the possessor as a [manuscript] of the

author, or as a work printed by some prior publisher—and who yet would, by the reservation of certain rights, . . . go on to restrict the exercise of property rights, maintaining the illegality of reproduction—will never attain their end. For the rights of an author regarding his own thoughts remain to him notwithstanding the reprint; and as there cannot be a distinct permission given to the purchaser of a book for, and a limitation of, its use as property, how much less is a mere presumption sufficient for such a weight of obligation? (Immanuel Kant, “Was ist ein Buch?” in *Die Metaphysic die Sitten*, ed. W. Weischedel [Frankfurt a.M.: Suhrkamp Verlag, 1977], p. 581, translated and quoted in Palmer, “Are Patents and Copyrights Morally Justified?” p. 853 n. 138)

For an alternative translation, see [113].

54. Of course, in anarcho-capitalism, it is difficult to predict what extensive contractual regimes, networks, and institutions will arise. Various enclaves or communities may well require their customers, patrons, or “citizens” to abide by certain IP-like rules. On anarcho-capitalism, see, e.g., [117].
55. UTSA, § 1; Halligan, “Restatement of the Third Law—Unfair Competition: A Brief Summary,” § 40, comment d.
56. On responsibility for conduct of another or for conspiracy, see, e.g., Texas Penal Code, §§ 7.02 (Criminal Responsibility for Conduct of Another), and 15.02 (criminal conspiracy). For definitions of “abet,” “accessory,” “accomplice,” “aid and abet,” “concert,” and “conspiracy,” see *Black’s Law Dictionary*.

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Part 19

**Philosophical Issues of Management and
Corporations**

Jacob Dahl Rendtorff

Abstract

This chapter presents some fundamental concepts of the philosophy of management and corporations by addressing the problem of corporate legitimacy and Immanuel Kant's distinction between theoretical, practical, and aesthetic reason and judgment. This chapter begins with a general definition of philosophy of management and corporations and continues by presenting its ontological and epistemological underpinnings. This approach is used to address the relation between economics, business ethics, and philosophy of management. Finally, ethical and aesthetic judgment is presented as the mediator between theoretical, aesthetic, and practical reason in philosophy of management.

Introduction

The philosophical foundations for business ethics in philosophy of management are built on epistemological and ontological concerns that also support corporate social responsibility and corporate citizenship and manifest in institutional and organizational theory [1]. Fundamental issues in philosophy of management concern how to explain questions like the following: What are the philosophical issues in the ontology and epistemology of management and organizations? What are the challenges of business ethics for corporations confronted with increasing complexity and new social expectations in an age of globalization? What are the philosophical foundations of values-driven management and corporate social responsibility (CSR) that should be used by firms to respond to these challenges? How can

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corporate legitimacy be theorized and how should we define the relations between good corporate citizenship and business ethics? [2].

Keeping these questions in mind, this chapter has the following sections: (1) General definition of philosophy of management and corporations, (2) presentation of the ontology and epistemology of philosophy of management, (3) economics and philosophy of management, (4) business ethics and philosophy of management, and (5) judgment as mediator between theoretical and practical reason in philosophy of management.

General Definition of Philosophy of Management and Corporations

General problems of corporate epistemology, ontology, and social legitimacy constitute the fundamental issues of philosophy of management. Philosophy of management reflects the foundation of corporate legitimacy. Following Max Weber's classical perspective on the relation between legitimacy and economic rationality, different theories of management and economics in philosophy of management are impacted by different views of the firm and economic life. Philosophy of management analyzes the implications of the most influential theories of economics and management on the concept of legitimacy. This focus on the philosophical foundations of business ethics can be distinguished from other possible views on the legitimacy of the firm in modern society. Legitimacy is founded on the social community and the human life world, based on views on justice as fairness, protecting rights, and the promoting the common good for society [3]. Thus, according to this concept, responsibility, integrity, and accountability emerge out of the idea of republican business ethics where the license of the firm to operate is predicated on being a good servant of society.

Mark C. Suchman defines legitimacy as an effort to adapt to the internal and external environment of the organization. The discussion of legitimacy has been marked by a tension between a strategic and an institutional definition with very little dialogue between the two theoretical traditions. Legitimacy can be conceived as a "process where the organization justifies to a peer or subordinate system its right to exist" [2]; as a "congruence between the social values associated with or implied by (organizational) activities and the norms of acceptable behavior in the larger social system"; or as a "generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" [2]. What is important in this definition of legitimacy is that corporate legitimacy cannot only be conceived strategically, but must be considered in relation to the social and ethical values that exist in the environment of the organization [4]. Moreover, it is important that strategic action in order to succeed takes into account these preexisting conditions for legitimate social action of the corporation.

Among the many questions of concern to philosophy of management, this issue of legitimacy is an important focus for understanding the philosophical foundations

of business ethics. It is the task of philosophy of management to contribute to the foundation of comprehensive theories of responsibility, ethics, and corporate legitimacy in a globalized society [5]. Today, an important focus of philosophy of management is to clarify the foundations of the idea of corporate citizenship. Philosophy of management may, for example, help to justify a specific approach to values-driven management based on the concept of republican business ethics, including the four ethical principles of protection of the human person: autonomy, dignity, integrity, and vulnerability [6]. It is the task of philosophy of management to help analyze the foundation of normative theorization of business ethics and corporate citizenship, which implies an approach to ethics at different levels (societal, individual, organizational, and market institutions). In order to scrutinize the old saying that “good ethics is good business,” philosophy of management should not only be applied at the level of human personal choice. It is necessary to construct concepts of philosophy of management that analyze organizations and institutions in relation to the opportunistic challenge of economic theories of individualist utility maximization.

A fundamental methodology of philosophy of management can be conceived as critical hermeneutics, which combines an interdisciplinary institutionalist and social science approach to economics. Critical hermeneutics mediates between structural and intentionalist explanations of causality in institutional theory and philosophy of management; however, philosophy of management goes beyond mere institutional analysis and proposes a normative perspective on applied ethics – guiding decision-making and corporate social responsibility in business and economics – and an analysis of ethical argument as the basis for an approach to the foundations of business ethics. At the same time, philosophy of management, epistemology and ontology apply simultaneously at the micro- and macrolevels of organizational behavior, business systems, and market structures and influence the political economy of different societies or states. In addition, philosophy of management and business ethics may be said to imply a critical evaluation of formulations of guidelines and codes of conduct for companies operating in national and international markets.

Philosophy of management may imply a critical evaluation of neoclassical economics of efficiency and utility, leading to a broader interdisciplinary, institutional, and historical perspective on the norms and values of corporations [7]. Although it recognizes the explanatory potential of this tradition, critical hermeneutics in philosophy of management does not posit that descriptive positivist economics is sufficient. We need a discussion about goals and values in philosophy of management, which again raises the question of how normative economics can accomplish the insights of business economics. Philosophy of management therefore agrees in considering normative economics as a “science of conversation” [8] based on theoretical arguments about ethical principles, values, and good business practice.

Integrative business ethics is a concept in philosophy of management that further mediates between ethics, political, and economic rationality [9]. This integrative approach can be considered as the application of republican business ethics and critical hermeneutics as the basis for ethical reflection on the foundations of

economics as a truly value-creating science [10]. From this perspective, philosophy of management integrates the rationalities of law, economics, and politics in order to promote sustainability and the good life of humanity. Integrative business ethics in philosophy of management is not only about external limitations on business activity, but it also implies internal guidance for economic value creation. It implies a deontology of correct business rules, but also an argument for the morality of just institutions in free economic markets ([9], p. 32). Thus, integrative business ethics aims at formulating principles for corporate social responsibility of the good citizen corporation. Philosophy of management is defined as a critical practical rationality integrating ethics in economics and the broader social sciences.

This discussion of economics and ethics from the perspective of philosophy of management involves examining the rationality of values-driven management in business institutions. Since ethics is the foundation of economics, an ethical dimension of economic notions of utility and efficiency should be taken into account. In the new strategies of corporate social responsibility and values-driven management, there is an explicit, yet tense, acknowledgement of this link between ethics and economics. This dialectical relationship, where economics and ethics mutually shape one another, requires external political and legal constraints [11].

The philosophical foundations of business ethics involve many different themes revolving around corporate citizenship, including problems of the relation between philosophy and the social sciences in the study of corporations; issues of interdisciplinary approaches to business ethics that integrate theory and practice; studies of the integrative and multidisciplinary approaches to business ethics; analysis of the foundations of CSR, business ethics, and corporate citizenship in terms of different theoretical approaches and movements; clarification of the relationship between the different disciplines of economics, business ethics, and values in business; clarification of the foundations of corporate citizenship; analysis of the different concept of business ethics and ethical principles in business; and examination of the relationship between business ethics, law, and other social and human sciences.

Ontology and Epistemology of Organizations

There are a number of important questions for investigating the ontology and epistemology of organizations, such as the following: How does organizational metaphysics relate to ontology? How does epistemology relate to theory of science? What are the foundations of empirical science (different concepts, theoretical and factual claims) in management science? Metaphysics refers to the problems in management science that go beyond mere scientific and empirical approaches.¹ The metaphysics and ontology of organizations address basic definitions of specific concepts of organization and scientific approaches within different concepts and theories of management science. Ontological and metaphysical problems of management include questions like: What is organization? How do we define organizational identity or personhood? What are the foundations of different organizational systems?

In contrast to ontology, epistemology relates to the discussion of the status of relevant knowledge in business ethics and philosophy of management. According to Kant's critique of pure reason, epistemology concerns the evaluation of the foundation of knowledge within philosophy of management and business ethics. Epistemology concerns the foundations of a specific scientific approach within management science and conceptions of corporations. In this sense, epistemology of management also functions as the foundation of a specific concept of methodology in business ethics. Epistemology is the analysis of the truth conditions of a specific methodological approach within a specific field of inquiry [12]. This field of inquiry may include dimensions of business ethics within the different social sciences, such as sociology, economics, management and leadership, and so forth. Methodology is important in philosophy of management because some applications of economic considerations within business ethics require strict discussions of the truth conditions and theoretical presuppositions of these specific concepts.

Empirical approaches to business ethics are based on such theories of ontology and metaphysics and corresponding epistemological and methodological considerations. The relation between individuals and collectives (i.e., the problem of personhood and the responsibility of collective action in relation to corporations, known as the problem of methodological individualism) may be mentioned as an example where empirical issues in business ethics relate to the theoretical ontological and metaphysical presuppositions behind a specific concept of the corporation [12].

From the Kantian point of view, epistemology is about the conditions for knowledge, what frames our knowledge, and how we should define "things in themselves" behind the approach to reality as we perceive it. Kant insisted on the fact that we have knowledge of the world through the categories of understanding that are limited to the senses and location in time and space. It is only because human beings have access to the world of ideas beyond the world of categories and senses that we can have metaphysical ideas of moral law, God, or infinity. This means some ideas of organizing, of causality, and of the imaginary of organization are at the limits of our experience and understanding. Such ideas may be defined as important metaphysical presuppositions, but we cannot explain them as empirical categories of organizations. In the Kantian framework, our epistemology can be said to search for analytic and synthetic statements about the world. This means that we need to formulate nontautological conceptualizations of social reality, organizations, and social groups. Analytic statements are logical statements that can be proven, whereas synthetic statements are based on empirical truth conditions in relation to the real world. Synthetic a priori statements are based on the conditions of knowledge of our understanding in categories in time and space and at the same time are able to give us definitive knowledge about the world [12].

In fact, we can say that this analytic synthetic or synthetic a priori approach to the world is the mesolevel foundation for concepts of philosophy of management that we find in institutional theory and in theoretical approaches to organizational analysis. Much institutional and organizational analysis, as well as transaction cost economics in business ethics, is based on presuppositions that combine deductive and inductive approaches [13, 14].² In this sense, the knowledge produced by the

theories of philosophy of management blends theoretical knowledge with empirical observation. Indeed, many approaches in philosophy of management are today based more or less strongly on Kantian paradigms ranging from strict Kantianism (e.g., contract theory inspired by John Rawls) to the social constructivism inspired by Peter L. Berger and Thomas Luckmann. Very few approaches go beyond the concept of constructive institutionalism as the foundation of epistemology in philosophy of management.

A number of specific important concepts in philosophy of management are based on these metaphysical, ontological, and epistemological considerations. In particular, it is important for ontology and epistemology to explain basic concepts like organization, property, social and object relations, concepts of organizational events, causality, and human agency and intentionality in organizations [12].

In organizational theory, there can be definitions of objects or entities as elements and parts of organizations. Philosophy of management clarifies the existence of observation, description, measurement, and evaluation in relation to human behavior in organizations. Accordingly, organizational theory deals with human relations in organizations and institutions and the interactions between organizations and institutions. In a broader sense, the concept of event includes the concept of social movement in organizational theory. We can say that philosophy of management deals with the explanation of specific human action in the organizational context. This includes the formulation of hypotheses about organizational behavior and corresponding falsification or verification of this behavior in empirical terms [12]. Indeed, in terms of metaphysics and in relation to organizational analysis, we can mention the relation between appearance and essence following the Marxist tradition, where the fundamental laws of society (i.e., profit maximization and capital accumulation) lie beneath the appearance of organizations (i.e., the idea that capitalists are offering workers just working conditions, while in reality, they exploit them).

In philosophy of management, an important question is where we can formulate universal laws, as in the natural sciences, about the behavior of organizations or institutions [15].³ Some argue that formulating a universal law of organizations, leadership, management, markets, and human interactions in organizations would contribute to progress in philosophy of management. Unfortunately, it is difficult to formulate social laws for the objects of business and management: individuals, groups, institutions, societies, social customs, and other basic concepts of management philosophy. These objects of philosophy of management cannot be explained solely in terms of natural science; however, in order to deal with this problem, Karl Raimund Popper and Carl Gustav Hempel have developed the deductive-nomological model [15, 16]. This model for the social and human sciences provides a basis for explaining social phenomena and institutions resembling a universal law – though embedded in historical and social conditions – that may be deduced to possess some synthetic a priori validity (i.e., cannot be universally verified, only falsified, if it is formulated sufficiently clearly according to precise truth conditions).

Accordingly, the principles of causality are not the same as in the natural sciences because organizations are human and historical creations and social

phenomena are dependent on human history. In contrast to the natural sciences, management philosophy deals with historical reality, and the knowledge produced by philosophy of management and corporations is also ideographic (i.e., dependent on singular cases) and not only nomothetic (i.e., dependent on universal laws). This is, indeed, an important distinction between the natural and social sciences [12]. While natural science explains universal laws of nature, in the social sciences, we understand the meaning of social phenomena according to fundamental social reality. Indeed, we can say that the starting point of philosophy of management is phenomenological and hermeneutical because philosophy of management is about understanding organizations and human beings in organizations. Although there are elements of explanation by universal laws in management sciences and although we should not forget the great importance of these universal laws for our scientific explanations, we should not forget that in organizational theory, understanding is beneath explanation where universal laws need to be understood in the perspective of a hermeneutics search for meaning in their concrete historical and situational context. On the other hand, as the philosopher Paul Ricœur says, to “explain better is to understand better.” Accordingly, in philosophy of management, we refer to universal laws to clarify our fundamental hermeneutical understanding of social phenomena and organizations and corporations.

Philosophy of Management and Economics

An important aspect of philosophy of management is the relation between ethics and economics and how to define the implied ethics in economics. In fact, looking closely on the concept of welfare economics, we can criticize the focus on a purely economic concept of rationality as the foundation of political economy articulated by neoclassical and neoliberal thought. In contrast to the neoclassical liberal model, which focuses on individual maximization, welfare economics works with macro-economic choices in relation to society as a whole. Welfare economics works with the concept of personal preferences as foundational for economic theories and models. This concept of rationality emerged out of the separation of ethics and economics, which developed with the emergence of modern economic sciences. There is a difference between the concept of economic rationality and the concept of ethics, although we may argue that economic rationality cannot do without ethical scrutiny. Welfare economics constitutes a rational normative theory of maximizing personal preferences in conditions of risk and uncertainty rather than a descriptive theory of factual economic conditions [17]. Economic rationality is a normative concept because it is presupposed that individuals should be rational, but this economic theory does not operate with a substantial theory of rationality. We cannot determine the content of each individual preference, and there may even be irrational preferences that influence individual preference maximization, making them less rational from the point of view of formal economics; therefore, economic theory is based on a formal theory of individual actions as the basis for determining the outcome of economic action.

Daniel Hausman and Michael McPherson argue that an absolute separation between economics and ethics is unnecessary. This is a good example of reflections on economics from the perspective of philosophy of management. In fact, in the end, rational decisions according to preferences are tested according to moral concepts. When economic actors like the World Bank develop economic plans, such as the proposal to dump the garbage from the Western world in developing countries, this is evaluated not only according to economic rationality but also from the point of view of minimal goodness or ethical value. We may argue from the perspective of philosophical reflection on the relation between ethics and economics that it is a presupposition of economic theory that it should be a good thing to satisfy individual preferences. This concept of goodness behind the economic rationality of welfare economics can be illustrated by the concept of Pareto-optimality. An economic situation has achieved Pareto-optimality when it is impossible to improve the condition of one individual with making others worse off. Dumping garbage in developing countries may improve the situation in the Western world, but it does not lead to any improvement of the living conditions in the developing world, and it therefore does not fulfill the conditions of minimal goodness of ethical actions.

However, welfare economics shares the presuppositions of liberal economics by emphasizing that free competition is an important condition of free economic choice by individual actors. The ideal of free competition as the basis of efficient economic action is shared by most welfare economists. Moreover, welfare economics also shares with liberal economics the idea that satisfaction of rational preferences is the foundation of economic decision-making. Indeed, this is also based on the idea of minimal goodness or ethical evaluation of the economic choices as the basis for decisions in macroeconomics. This concept of preferences in national economics may be said to imply that individuals are supposed to be rational and well informed, and their preferences are also supposed to not be odd and totally unethical ([17], p. 64). In this sense, the idea of minimal goodness or ethical acceptability may be conceived to be a condition and a minimal presupposition in the welfare economic conception of individual preferences ([17], p. 66).

We may say that welfare economics must presuppose ethical awareness among economists in order to be theoretically acceptable. The counterargument from neoliberal or neoclassical points of view is that economists are sometimes restrained from acting ethically when such actions would undermine free competition. It is falsely supposed that there is a close relationship between free competition and immorality. On the contrary, it may even be better for a company or public authority to act morally in order to ensure long-term institutional sustainability and limit costs ([17], p. 96). So welfare economists cannot have their theory of rationality without looking at the possible moral limits and consequences of their actions. In this sense, we can argue that ethical evaluation has to be an internal aspect of economic theory in welfare economics.

This does, however, not mean that there is a clear relation between economic rationality and ethics. Rational action may in some cases be moral, but unacceptable in others from an ethical point of view. Complicating the picture further, rational preferences in welfare economics may not always be individual

preferences. The concept of rationality in welfare economics can be based on altruistic concerns. Indeed, it is not necessary to exclude altruism a priori from economic models in welfare economics. Welfare economists have argued that moral norms and virtues have had positive impacts on economic development, for example, a code of ethics in business makes economic action more reliable and contributes to increased economic welfare.⁴ Having said this, there may still be moral norms that are inefficient from an economic point of view. Such as in cases where moral norms are not even justified from an ethical point of view, for example, when we perceive discrimination or suppression of employees, it may be justifiable not to accept these norms within economic theory. From the point of view of welfare economics, moral norms of economic factors may have an impact on economics even though there may be no direct link between conceptions of moral deontology or moral duty and economic efficiency or rationality. This means that although individuals may have metapreferences, which outlaw actual supposed preferences, there is no direct link between economic rationality and ethics ([17], p. 87).

A commonality of neoclassical theory and welfare economics is the idea of a close connection between ethical and economic rationality. Some philosophers of management even argue that there is an internal ethical dimension to economics and that it is possible to define valid ethical behavior out of economic reason [18].⁵ The issue is what economics can help to say about the good life and how economics as a moral science contributes to a better society. According to the Austrian economists, like Karl Menger, Ludwig von Mises, and to some degree Friedrich August von Hayek, economics as a part of philosophy of management may be considered as a kind of praxeology: a normative science of practical reason, based on universal categories of human action helping to realize the human good ([19], p. 120). They proposed a rationalistic and interpretative paradigm of economics in which it was argued that economics could be based on synthetic a priori principles. Since this paradigm views economics as the science of calculation of efficiency, profit, and maximization of personal and common human preferences, there is a strong convergence between utilitarian ethics and traditional views of normative economics.

Still, this is utilitarianism with strong emphasis on personal and egoistic interests, as is the case with neoclassical economics. We have seen how the concept of human beings as self-interested and potentially opportunistic actors has been taken over by theories of economic organization like transaction costs economics and agency theory. Transaction cost economics considers firms as contractual relationships among individuals who seek to maximize self-interest, and the fight against opportunism on the basis of lawful behavior within contracts can be considered as a defense of an ethics of good governance and high performance in efficient economizing market institutions ([20], p. 129). Agency theory focuses on economic property rights as the basis for economic behavior [21]. When we propose an ethics of welfare economics, we are not only looking at the firm in the light of microeconomics but also considering the organization as integrated into larger social and political systems [22]. From this perspective, individual instrumental economic reason only has significance in the framework of ethics subordinating individual goals to the common interest of community.

In opposition to this view, there may be many important aspects of economic principles of self-interest and rational action that can help to shape ethics. Orthodox economists argue that efficient allocation of scarce resources is based on minimal governmental and legal intervention and that free actors know best how to respect the norms of the market and ethical custom of society ([23], p. 210). Major economists like Adam Smith and Milton Friedman, but also John Stuart Mill, believed that the economic rationality of seeking self-interest and profit maximization on economic markets contains an important form of rationality where everyone, by seeking to fulfill their own interest, will contribute to the common good. Philosophy of management cannot ignore this ethics of the market, which can contribute to an economic shape of ethics within the rules of the market economy.

According to what may be called the cost-benefit efficiency view of philosophy of management, free economic action on economic markets is the best way to deal with scarce resources ([23], p. 211). This view has two formulations. One stresses the role of the state in giving dynamics to economics, and the other stresses that the autonomy of the private sector is the most efficient way to allocate scarce resources since economic actors are characterized by responsible and conscious use of said resources. Moreover, organizational action should be profitable. According to economic rationality, we cannot ignore the bottom line of income and expenditures for the success of corporate action. Economics is about creating value and maximization of profits in terms of individual or social wealth and utility. Economics is the science of efficiency and utility for society, and economic action is about ensuring the most efficient way to deal with scarce resources.

Philosophy of management can also consider economics from the perspective of social development, again referring to Pareto-optimality [24]. Welfare economists stress the role of the state in such situations, while libertarians consider that the free market gives the best optimality ([25], p. 145). Economics is thus considered as the science of how to compare and weigh different social goods and allocate scarce resources most efficiently. Economic action is about how to contribute to creating wealth on markets and thereby create wealth in society. It is advisable to contribute to economic goods within the basic rules and ethical principles of society. And it would be unjust to disrespect the laws and principles of economics when acting on economic markets. Economic action based on utility contributes to maximization of efficiency within limits of respect for basic rights.

An important aspect of such a concept of economic ethics is the idea of the invisible hand, coined by Adam Smith, which states that if everyone acts according to his or her own interest respecting the rules of fair competition on economic markets, society will flourish and individual self-interested action will be a contribution to the common good. We also find this idea of the ethical consequences of individual self-interested action in Hayek's philosophy of the spontaneous order of economic and social development. Spontaneous order represents an evolution, based on interaction among self-interested individuals, of those practices that are based on individual freedom and rational choice of the most efficient alternative. These will, in the long run, contribute to social betterment as well as improved legal and moral systems.⁶ In short, an economic system based on

fair competition and healthy economic institutions will contribute to a better society. From this perspective, the idea of competition includes an ethical dimension of fairness and transparency that contributes to the spontaneous order of society.

Conceiving economics as implying a particular ethical rationality, we may therefore consider how economic institutions contribute to ethics. The ethics of economics in institutional arrangements is the promotion of rational self-interest and fair competition as an instrument for economic progress. As John Dienhart acknowledges, the institutional view of economic markets is that they are “ethical engines” ([25], p. 146). The aspect of economizing that we have discussed may very well support this idea; however, the concept of economic rationality is broader and more pluralistic than the view of fair economic markets exclusively based on the pursuit of self-interest.

We can distinguish between an internal and an external approach to ethics and economics in philosophy of management. According to the external approach, economic rationality is based on self-interest, and ethics and economics are completely separated. This is important in the institutional approach ([26], p. 293ff). Economic engines can help us to attain ethical values, but economics as such is neutral; however, as we have seen, there seems to be an ethics implied in economic rationality. We can argue for an internal approach where ethics is considered not only as an external limitation to economics but rather as a part of it. The internal approach does not necessarily rely on a utilitarian and neoclassical concept of economic ethics; rather, it is a pluralistic approach to ethical values that has an impact on economic action. There is an ethical dimension to economic concepts like property, risk-reward structures, information, and competition.

This implies that we should have an institutional approach to economics emphasizing that institutions determine economic action [27]. The constitutive rules and principles of economic markets based on property, risk-reward structures, information, and competition include certain ethical ideas, which are the conditions for development of economic systems. Douglass North has, for example, shown how the act of promising is a condition for good contracts, which in turn condition predictions for future economic action ([25], p. 149).

When we deal with the institutional aspects of property rights, risk-reward structures, information, and competitive relationships, the internal ethics of the economics of fair markets is about how to organize scarce resources in economic systems in a fair way. The foundation of the economic system and a part of fair competition is respect for property rights. Adam Smith and most of the libertarian economists who succeeded him have claimed that property rights should be considered as the foundation of the economic order [25]. We may say that centralizing property rights in our understanding of corporations is based not only on self-interest but rather on a combination of consequentialist and teleological considerations. External intervention is necessary when basic rights are not respected in market transactions. This is the case when we encounter widespread corruption with regard to property rights in economic systems.

Some implicit ethical values are the basis for economic interactions concerning contracts, such as when transaction cost theorists state, for example, that

governance structures should avoid opportunism as well as the fact that confidence and promise keeping matter very much in economic exchange ([20], p. 63). Correct and reliable information is also a condition for trustful relations of economic action on different economic markets. Good contracts are based on reliable information. The principles of fair and healthy competition may indeed also be an important aspect of the ethical principles of competitive markets [28]. It is a widespread belief that monopolistic action is at the limits of economic systems and possible economic behavior on liberal economic markets.

If we analyze the ethics of transaction cost economics from the perspective of philosophy of management, a contract view of the firm is not sufficient to conceptualize the ethical dimensions of organizations. Organizations not only are universes of microcontracts but are based on values that function as organizational goals for corporate behavior. Transaction cost economics addresses ethical problems in organizations by discussing problems of opportunistic behavior with regard to information, agency, and individual liability, but it cannot explain loyal and altruistic behavior in organizations. It may be true that organizations try to control organizational behavior and ensure efficiency in competition by setting up institutional infrastructures based on contracts ([25], p. 177). But the following question remains: Is this really sufficient to understand cases of lack of opportunistic behavior in organizations?

With Herbert Simon, we can argue that transaction cost economics cannot explain why people identify with organizations and feel much more committed that can be explained by self-interest alone [29]. Authority-employee relationships and motivation cannot be understood as incomplete contracts, but are rather based on the goals and values of the organization, which are implicit premises for decision-making. Employee motivation is therefore based not only on economic incentives but also on loyalty to the goals of the organization. Moreover, organizations should be understood not only as micromarkets of competitive contracts but rather as instruments for coordinating and facilitating action on economic markets ([25], p. 180). In such a goal-based view, the rationality of utility based on "economic man" cannot be the only explanation of the function of organizations on economic markets. Goal-oriented and community-based behaviors are much more important aspects of organizational action. Within new institutional theory, we can perceive an orientation towards integration of different aspects of rationality when dealing with economic institutions [26]. It may therefore be possible to find a convergence between a goal-based and a contract-based view of organizations.

From this initiative to deduce ethics out of economics, we may conclude that ethics is not always external but also sometimes implicit in economic rationality. We can say that ethical aspects of economics are based on the values of the basic concepts of economic systems. We can point to organization of market structures and the most important concepts of economic markets: property, risk-reward relationships, information, and competition ([25], p. 182). The systematic organization of these concepts in economic theory is not neutral, but implies ethical values that not only are based on economic efficiency but include a plurality of ethical rationality, reflecting individual goals, and organizational and community values.

Moreover, while the ethical values of economic organizations are not driven solely by self-interested and utility-maximizing individuals, the personal values of individual members are important for determining organizational behavior ([9], p. 28). However, the plurality of values also implies great tension between traditional economic values of utility and self-interest with community values based on an ethical view on the economy.

Business Ethics and Practical Philosophy of Management

Consequently, business ethics argues for critical reflection on economics that is not restricted to the paradigms of efficiency, egoism, and rational utility maximization, but discusses the foundations of economics as a value-creating (moral) science ([9], p. 28); [30]). We should, therefore, not separate economics from ethics, but rather see them as serving the purpose of the good life and justice in social institutions. We can say that the aim of business ethics in institutional analysis is to contribute to evaluating requirements for just institutions in economic life. The problem of moral agency and the responsibility of institutions as a collection of individuals are very important. Institutional actors may be said to reflect a dialectics of what Max Weber calls an “ethics of conviction” (of personal beliefs) on the one hand and an “ethics of responsibility” (consequences of actions) on the other [31]. From this perspective, economic action is based on the vision or aim of the “good life with and for the other person in just institutions” [32]. This vision can be evaluated according to Kant’s ethics of the universal rules of the categorical imperative. Utilitarian welfare analysis is only possible within this framework of deontologically limited action. This is the basis for conceiving rational values-driven management as an outgrowth of “republican business ethics” based on Kant’s philosophy. Business ethics is not only about internal market behavior but also about finding external principles of political governance to regulate economic markets. Accordingly, John Rawls’s concept of “justice as fairness” is important as a proposal for defining the ultimate horizon of business ethics [33].

The analysis of epistemological and ontological foundations of corporate responsibility is an important aspect of philosophy of management. Here we can distinguish between (1) economic responsibilities, (2) legal responsibility, and (3) ethical responsibilities [34–37]; 35], p. 505. We can point to the fact that the relation between the different kinds of responsibilities should be conceived not only as different elements of the same concept of business ethics responsibility [34] but indeed as an integrated concept [35] where the different aspects of corporate responsibility are not isolated to from each other in one single domain. The different responsibilities should be integrated in a common strategy for organizational leadership and governance [35]. With the three-dimensional perspective on business performance, including economic, legal, and ethical (philanthropic) responsibilities, corporate citizenship emerges as a possible reflective administration of the tensions and requirements of the different kind of responsibilities ([35], p. 518).

In relation to business ethics, philosophy of management questions the relationship between different theoretical justifications of corporate ethics. An important topic for analysis is the relation between general business ethics paradigms like rational choice, communitarian, universalistic, integrated contract, and republican theories. Philosophy of management may also deal with other philosophical approaches and their consequences for corporations (i.e., phenomenology and hermeneutics, existentialism, structuralism, post-structuralism, postmodernism, constructivism, Marxism and neo-Marxism, liberalism and neoliberalism, etc.). These different approaches conceptualize business ethics differently and help to clarify corporate social responsibility. This is important because social responsibility and responsiveness is at the forefront of contemporary understandings of the basic function of the firm [38]. This type of analysis helps to explain the relation of the corporation to different stakeholders, where the corporation is involved in public reasoning and deliberative public communication as a part of its interaction with the environment [3, 39]. Here, philosophy of management also deals with the philosophical foundations of the idea of corporate social responsibility considered within a framework of corporate identity and personhood.

In this context, an important debate of philosophy of management is the collectivist and constructivist concept of corporate identity as the foundation of the organizational integrity of the good citizen corporation. At the institutional level, organizational integrity can be considered as a result of efforts to establish successful strategies of values-driven management. This is also the basis for trust and accountability of corporations, and it makes it possible to formulate an institutional and communicative concept of corporate social legitimacy.

The work of the philosopher Peter French started this debate with a proposal to develop an institutional argument for CSR from the perspective of ethical theory ([40], p. 133). His argument rests on the presupposition that it is possible to ascribe intentions and purposeful actions to corporations. The concept of intentionality (see the work of Donald Davidson) is promoted as the foundation for understanding the moralization of the firm. According to this position, intentionality is not a notion of human consciousness, but is rather redefined as planned intentionality. In order to understand action in organizations, the concept of agency is not restricted to human persons, but is extended to institutions, rendering them liable and responsible for their actions [41]. The basis of this argument is that corporations as organizational unities of individuals can be morally dangerous agents that are able to do much more harm than solitary individuals.

Planned intentionality as the foundation for corporate citizenship can be defined by the concept of corporate internal decision-making structure (CID-structure) [40]. This structure may be understood as the unity of value codes, formulated policy statements, and strategies, as well as formal and informal understandings of corporate traditions and cultures. Corporations make many decisions, which are based on routines and habits, but though they sometimes seem arbitrary, this does not mean that they do not originate in the CID-structure. The CID-structure is the totality of meanings and intentions that make up the corporate ethos, and culture constructs the collective identity of a company. The CID-structure defines

the goal of the organization and its level of liability and integrity. It is constituted by the identity and history of the organization.

Against this position, institutional individualism is presented as the idea that it is only individuals, not groups and organizations that can be socially responsible. Only in cases where it is possible to find a direct relation to agents – conceived as flesh-and-blood human beings with freedom and conscience – that we can talk about moral responsibility [42, 43]. Responsibility originates directly in the intentions of an individual human agent, which are executed in a bodily movement. There need not be specific corporate intentionality, which is qualitatively different from the aggregates of individual intentions. When we attribute intentions to groups, we do it in a metaphorical or analogous sense, signifying that corporate intentionality may be determined as an “as if intentionality”: a kind of prescriptive intentionality, where intentions are ascribed to groups, (e.g., their policies and procedures, that is their CID-structures) which are dependent on actions and intentions of individual actors.

In this sense, the moral responsibility of the firm is considered as a kind of group responsibility based on the fact that people work together in corporations with common purpose. Together, they can do much more harm and/or good than solitary individuals. This is the basis for ascribing legal and moral responsibility to groups ([41], p. 146). Concrete practices of purposeful action are the basis for corporate responsibility because we can observe group responsibility for particular corporate actions; however, it is not possible to reduce collective intentionality to individual intentionality.

To ascribe responsibility to the corporation means that in addition to economic and legal duties, it has the capacity to take a moral point of view, making rational and respectful decisions with honesty, integrity, trustworthiness, reliability, and accountability [44]. From the constructivist and institutional sociological and philosophical point of view, it makes perfect sense to evaluate the responsibility of corporations in terms of ethical behavior. Some corporations have been establishing systematic features of ethics and compliance programs and internal monitoring systems, which help them to build their reputation as reliable institutions and to distinguish themselves from other corporations who are behaving in a much less trustworthy manner [44]. In summary, the analysis of business ethics from the perspective of philosophy of management proposes to clarify the foundations of basic concepts of business ethics and corporate social responsibility.

It is, however, important not to delimit philosophy of management and corporations to theoretical and practical reason. Following Kant's philosophy, there is also a study of aesthetics as a critique of aesthetic reason that is important. We can argue that management and aesthetics, art and leadership, and the arts and organizations and corporations are important topics for philosophy of management. In particular, we can deal with creativity and creative action as a field of imagination that contributes to innovation and mediates between theoretical and practical reason and judgment. When we look at the history of creativity, we can see that creativity in Classical Greece and Middle Ages was defined as an imitation of the divine,

where human beings imitate the divine within the order of the universe [45]. In this perspective, organizational aesthetics should search for harmony with nature and the divine. However, with modern times, this changes, and creativity is now defined as a kind of transcendental imagination following the philosophy of Immanuel Kant where creativity is linked to teleology and autopoietic development in the world. Then with existentialism, creativity is transformed into a kind of ironic negativity, implying a search for deep meaning in life and in organizations, and with postmodernity, a whole new field of creativity and aesthetics is opened for the study of philosophy of management. This is, for example, the case with the postmodern experience economy where new conditions of aesthetic legitimacy of the corporation are in question. We can observe the rise of the creative class and of the creative consumer, as proposed by Richard Florida [46]. The sociologist and philosopher Gilles Lipovetsky argues that in the *époque* of emptiness, morality has changed from duty to virtue, and this is particular characteristics of the experience economy where morality is a part of personal self-realization and where we can say that we need morality because we want to “brand” ourselves as a part of the aesthetic economy [47]. This aesthetic condition of the economy is in particular present in the service and experience economy that is about buying and selling experiences, and it tries to make intimate experiences and search for customer satisfaction the driving motor of capitalist economies. Accordingly, philosophy of management needs to address aesthetics because society in postmodernity combines aesthetics and ethics in new social forms.

Business Ethics in the Framework of Reflective Judgment

With these reflections about the foundations of philosophy of management and corporations, we have formulated the general framework for business ethics and corporate citizenship in modern society based on the aim of the good life with and for the other in just institutions. The starting point is the pluralism of ethical values within economic systems, which includes utility and efficiency as predominant values. From this, we can conceive the ethical foundation of economics using the principles of democratic values as the external limits of economic action. Ethics may be conceived as a kind of political theory of market economics, which means we cannot ignore the perspective of the state [48]. Business ethics is not only about the relation between ethics and economics, but it is also about finding the right balance between political governance of market economies with legislation and legal incentives for economic behavior.

Placing the firm in the context of the political economy of society as well as the market means that business ethics and corporate citizenship is about the right values at the microlevel of individual behavior in organizations, but also about the macrolevel. From an ethical perspective, the issue not only is a descriptive and positivist one about the factual values of organizations, individuals, and market systems but also concerns the normative question of which values should be promoted in a broader social and political context.

Thus, business ethics can be conceived as an interdisciplinary approach to the social sciences, integrating views from economics, sociology, political science, law, organizational theory, and ethics in order to discuss the right values and ethical principles to be promoted in business life. From our discussion of the relation between ethics and economics, we have learned that the moderate communitarian approach of Ricœur proposes a concept of “social man” as the foundation for economic anthropology, which is much broader than the limited idea of “economic man.” Utility-maximizing individuals are not guided by absolute principles of utility, but find meaning within the context of a vision (aim) of the good life with and for the others in just institutions [32].

This vision of the good life and universalistic restrictions on acceptable moral action, which should be based on the Kantian categorical imperative, implies a tension between the economic principles of maximizing self-interest and the ethical principles of community and respect for the moral law. Business ethics always has to deal with this tension between narrow economic perspectives of efficiency and utility and broader concepts of social justice in the interests of community and society. We cannot dissolve this tension between ethics and economics, but we can try to search for decision-making and action, which can promote a convergence between ethics and economics.

When we analyze the notion of rational choice and decision-making of the firm, we can perceive how organizational behavior and decision-making is characterized by what we may call impure economic reason. Decision-making does not only follow the ideals of economic man, but it is based on bounded and procedural rationality, which does not exclude ethical and political dimensions of decision-making. These aspects of organizational decision-making represent a documentation of the fact that firms are not isolated economic entities, but should be conceived as social units implying pluralistic concepts of rationality.

Within this view of economic action, rationality in economic theory is based not on rational economic man (*homo economicus*) but on individuals who are integrated in social relations of reciprocity and exchange. This social notion of rationality places the economic actor within ethical community of values, and the firm must therefore be conceived from the perspective of broader institutional and social dimensions ([19], p. 314). It is reciprocity and exchange of social man in community that constitutes the basis for understanding economic action.

From this starting point, philosophy of management posits the aim (vision) of the good life with others in community as the outer determination of economic action. This vision of the good life can be explained as the license of the firm to operate; however, we cannot have the vision of the good life without testing it according to the categorical imperative so that a license to operate should require universalistic foundations. On these foundations, we can then look at economic action from the perspectives of utility and self-interest, and this economic action may contribute to shaping our perception of ethical dilemmas and opportunities for economic action. On this basis, we may take into account the practical reality of economic action as conditioned by time pressures, competition, and resources, which shape the terms of the values of business ethics.

We may say that it is the task of judgment in business ethics to find good and right decisions concerning action in economic affairs. Here, business ethics can learn a lot from the concept of legal and political judgment in philosophy of law [49].

In this analysis of judgment, following Ricœur, we can turn out consideration to Aristotle and Kant [50]. Practical reason assures respect for moral norms and the basic procedural rules in a society, but because of the possible exceptions to the rules and the particularity of situations, practical wisdom and judgment are required to supplement practical reason. Practical wisdom is left alone in exceptional situations of difficult tragic dilemmas where universal norms are difficult to apply. In many cases, concrete judgment is, however, required to intervene in the application of general rules and values. Both faculties of human deliberation contribute to the work of the unfinished mediation between the ideal of the good life, universal principles in relation to concrete situations, and social traditions. Ricœur uses the concept of judgment in Kant's *Kritik der Urteilskraft* (1790), inspired by Hannah Arendt in *Lectures on Kant's Political Philosophy* (1982) [51]. The Kantian understanding of judgment is an effort to consider the formalistic concept of practical reason to the situation and tradition of political community. Ricœur defines legal judgment as a peaceful way of solving social conflict [52]. Here, general understandings and principles of justice are applied to concrete situations. The legal system – autonomous, different from and yet mediated through public debate and political legislation – implies a rational discourse about justice, where minimum mutual respect, human punishment, and the recognition of basic rights (even of those to be punished) replace pure violence.

Accordingly, from the perspective of philosophy of management, judgment is an important faculty to promote in the application of ethical principles to concrete situations of mediating economic decision-making and action [53]. The Kantian concept of judgment extends the Aristotelian idea of practical reason (*phronesis*), which is the capacity of deliberation and reasoning for the good life in community according to the moral sense and habitus of the experienced moral actor. In this context, judgment measures the right place of action, the mean of virtue, and the consistency between extremes. Kant not only considers the importance of the mean for finding the good life but also points to the moral sentiments and common morality of human beings (*sensus communis*) [54]. Moral judgments find universal validity in the appeal to common sense and shared values of human beings.

Determinate judgment is the capacity to apply already established general rules to concrete cases. Reflective judgment is the ability to find rules for new cases where there are no pre-established rules or principles that are intuitively given or self-evident. Judgment in business ethics is only the application of ethical principles to factual cases, but it should also be responsible for mediating between ethics and economics in relation to other social science disciplines, which are important for decision-making and research. Moral imagination and the ability to integrate and weigh judgments from different disciplines and viewpoints in regard to

concrete decision-making are required in reflective judgment. The faculty of judgment – applied to decision-makers in the good citizen corporation – can be said to have two major goals: one is economic efficiency and the other helping society integrate and develop towards the ideal of community.

Although the reflective judgment in Kant's *Kritik der Urteilskraft* primarily concerns aesthetics and natural teleology, one should not forget its significance for the concepts of political rationality and jurisprudence [51, 52]. There is a logical and structural analogy between aesthetic, political, and judicial judgment. The characteristics of judgment are mediation between particularity and universality in a space of intersubjective public deliberation and communication concerning opinion and taste related to particular cases founded on the common understanding of validity and shared values. Judgment as formation of political opinion, legislative act, and concrete legal process can be conceived as an interaction between understanding, imagination, reason, and common sense.

Ricœur emphasizes the distributive character of judgment as a peaceful way to solve conflicts of ownership in a discursive rather than a violent way. It distributes things and goods among individuals and decides conflicts of ownership among individuals taking part in society as a system of exchange of goods, contributing to the delimitation between spheres in society. As a contributor to social peace, judgment presupposes a vision of society as fundamentally cooperative so that the communitarian vision of community as a fragile and vulnerable context of “wanting to live together” (*vouloir vivre ensemble*) is behind the very exercise of judgment to maintain social peace. But conflicts about repartition of the good in different spheres of justice often also transcend shared understandings. Common visions of the good are often realized to be inadequate and must be confronted with universal standards, individual autonomy, and disagreement with state policy that can lead to civil disobedience in the name of divine law. According to Ronald Dworkin's analysis in *Taking Rights Seriously* (1977), an appeal to rights and principles must be seen as the foundation for innovation and reform ensuring legal coherence.⁷

This conception of judgment focuses on the concrete conflicts in society, assuring the right proportion between shared understandings and juridical universality in opposition to ideology and contingent power interests. In *Laws Empire* (1986), Ricœur also adopts Dworkin's hermeneutical-narrative understanding of law as integrity, conceiving political morality and progressive innovation according to the principles of equality, fairness, and impartiality, based on a permanent reinterpretation of constitutionality and emergent legal practice. In describing this movement of universalization, Ricœur comes close to Jürgen Habermas's idea, articulated in *Theorie des kommunikativen Handelns* (1981) and *Faktizität und Geltung* (1992), of founding legal norms in domination-free communication and the interplay between facticity and validity. Although Habermas wants to integrate concrete moral convictions and experiences as basic for the formulation of new moral principles in his philosophy of law, it is difficult to give moral principles any substantial and contextual strength on a purely formalistic and procedural basis. When he proposes the mutual interaction between facts and norms, Habermas also

seems to be aware that an abstract foundation of legal rules is impossible and that universal ideals must be related to contexts of community, where *sensus communis* and shared values determines the concrete processes of legislation between life worlds and reflective ethical justification.

In this case, reflective judgment also constitutes the mediating bridge between microeconomic rationality of free market economics, based on individual economic actors on the one hand and macroeconomic rationality of welfare and rights in political community on the other. Republican business ethics uses the faculty of judgment in order to celebrate the internal ethical dynamics of microeconomics, but also to set external ethical limits on economic actions in order to contribute to social justice in community. This means that business ethics not only operates on the level of ethical behavior of individual rights and ethics in firms but also operates at the level of organizational behavior and more broadly at the level of market institutions. But business ethics goes further and takes the point of view of state regulation and macroeconomic ethics concerning the significance of the organization of market economies for the general development of society.

It is the task of reflective judgment to mediate between these different ethical fields. It is very important to have an integrated perspective on the relations between micro- and macrolevels of ethical reflection [55].⁸ One cannot, therefore, exclusively opt for an ethics of the lonely “moral manager” that is solely for an ethics of the economic market or of the business system as a structural totality nor for an ethics of political welfare economics based on the allocation of goods and services by democratic political authorities. To focus on one of these fields exclusively may lead to negligence of important knowledge; however, even though reflections on basic ethical principles and values of business should integrate these fields, the main focus of the present discussion will be situated at the level of the firm. From this viewpoint, we will discuss problems of tension between economic efficiency and ethics at the other levels of applying reflective judgment [1].

Indeed, the concern for justice as the ultimate horizon for analysis of ethics and values deserves mention. A concern for human realization and freedom may be based on such a concern for ethical aspects of justice. John Rawls’ concept of justice as fairness is an important basis for evaluating values-driven management, which is based in a neoclassical approach to efficiency and utility in economics. This ethical horizon of social justice as optimum equality of the marketplace not only is based on economic concerns for just repartition of marginal utility but also takes the basic social needs of citizens in account by providing an institutional framework for enabling human freedom and the rights of citizens to satisfy their needs for self-respect and dignity.

It is, from the perspective of philosophy of management and corporations, the aim of business institutions to contribute to the realization of the aim and vision of the good life within just institutions and to help to improve fair coexistence in the framework of human community, conceived as a kingdom of ends in themselves respecting human freedom and autonomy.

Conclusion

In this chapter, we have discussed the foundations and basic concepts of philosophy of management and corporations. We have emphasized that the most fundamental question of philosophy of management and corporation is the issue of legitimacy of the corporation in society. In this context, we proposed a preliminary definition of the concept of corporate legitimacy. On such a basis, it is possible to propose a framework of analysis of basic concepts in philosophy of management and corporations in the perspective of the Kantian distinction between theoretical, practical, and aesthetic reason and judgment. With regard to theoretical issues, basic concepts of philosophy and management and corporations include analysis of the ontology and epistemology of organizations and corporations. This also includes issues of different concepts of theory of sciences from different methodological perspectives, i.e., positivism, falsification, critical realism, social constructivism, and other approaches to the philosophy of sciences. An important debate in the tension between theoretical and practical reason is the discussion of the relation between ethics and economics. In this context, an important topic of philosophy of management is to examine the ethical implications of particular conceptions of economics, for example, in neoclassical economics, transaction costs economics, or institutional economics. From this discussion, we can move the problems related to the foundations of practical issues in philosophy of management and corporations. These questions include topics about the foundations of business ethics and corporate social responsibility and issues concerning topics with regard to problems of the foundations of collective action and corporate personhood and intentionality. These topics also include topics of the legitimacy of collective actions in corporations and organizations. With regard to aesthetics, the problem of aesthetic reason must be considered as important for understanding corporations. Here we briefly mentioned issues of art, creativity, and leadership. However, this section also dealt with the topic of judgment and practical wisdom as the foundation of good leadership in organizations. Here we can mention the importance of reflective judgment for good leadership and management in favor of “the good life with and for the other in just institutions” in a society where corporations act as good citizens and contribute to the common good.

Cross-References

- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [Recent Debates in Philosophy of Management](#)
- ▶ [The History of the Philosophy of Management and Corporations](#)

Notes

1. This section about the epistemology and ontology of organizations is written in collaboration with Associate professor, Dr. Ocoen Carsten Koch, Roskilde University, Denmark. Carsten Koch provided the basis for the section with his research in the

philosophy on the philosophy and ontology of the firm. The distinctions between ontology and epistemology and falsification and explanation and understanding have been developed on the basis of Carsten Koch's paper, and therefore this section is the result of a joint collaboration even though final editing and rewriting of the section by Jacob Dahl Rendtorff.

2. Carsten Koch emphasizes the importance of transaction cost economics as an approach to philosophy of management. This sort of analysis combines the falsification approach with institutional theory. Also, in recent discussions, the falsification approach by Popper has been criticized by the philosophy of science approach called critical realism, as proposed by Lawson. Critical realism is today an important methodological approach in philosophy of management. Roughly speaking, this position is a statement that recognizes the concept of theory dependence of all other concepts of philosophy of management while at the same time insisting that we can have knowledge of a real from us independent reality through our theories about economics and management.
3. Carsten Koch emphasizes the importance of the covering law model in scientific explanation and in management science. This model focuses on scientific explanation as based on the proposal of universal laws of management. This is the deductive-nomological model that uses universal laws to explain particular behavior in management. With Carsten Koch, we can stress the importance of Anglo-Saxon theory of science to understand the ontology and epistemology of management. In the beginning of the twentieth century, management philosophy was characterized by a positivist-instrumentalist approach where good management science was considered as an empirical investigation of the laws of management. Here, the positivism of the Oxford philosopher Ayer was very important. Later, this point of view was criticized by the theory of falsification stating that a hypothesis cannot really be verified due to the logic of induction, but only falsified in the perspective of deduction from the point of view of a specific theoretical framework. This theory of falsification was proposed by Karl Popper.
4. Daniel M. Hausman and Michael S. McPherson: refer to Kenneth Arrow (1974) for this point of view.
5. John Broom who is one of the strongest proponents of ethics out of economics even thinks that ethics and politics have much to learn from economics; however, he seems to work within the utilitarian tradition of welfare economics, and it is not clear whether he would apt for the neoclassical view of the necessity of a market without legal and political restrictions. Brooms' views seem to impose rather strict limitations on economic markets in comparison with the radical libertarianism of Robert Nozick and Milton Friedman, who both argue for an ethics implicit in economic markets.
6. In fact, there are many arguments for corporate social responsibility and corporate citizenship that rely on economic concepts of self-interest. These arguments are based on the idea of the invisible hand and strategic action of self-interest as leading to the common good. This approach argues that it is possible to use concepts from game theory in order to justify action for corporate citizenship from a strategic perspective. Accordingly, altruistic action for the common good may be justified in terms of satisfaction of egoistic preferences.
7. This is the concept of judgment as formulated by Paul Ricœur with the use of Ronald Dworkin's concept of principles that is proposed as the foundation of decision-making in business ethics. We find it also in our presentation of case examples that can be considered as invitations to exercise practical judgment in business ethics.
8. We can emphasize the importance of moral imagination for ethical judgment in management and business ethics. Moral imagination is the place where judgment confronts ethical dilemmas and is capable of conceiving the possible scenarios of action and decision-making. In business ethics, Patricia Werhane and Johanna B. Ciulla have produced analysis of the function of moral imagination as important for good decision-making.

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Abstract

In this chapter, the history of philosophy of management is discussed with a focus on the search for legitimacy in the Judeo-Christian tradition. This is the basis for evaluating modern concepts of the economics of the philosophy of management and corporations. The chapter also presents the neoliberal paradigm of the philosophy of management and the attempt to search for another economy beyond rational individual utility maximization. Here we move toward business ethics, CSR, and corporate citizenship.

Introduction

We can conceive of Protestant ethics as the religious justification for human actions in rational markets, where the aim is to accumulate wealth and profit. The values of Protestantism (e.g., one's "calling," integrity, trust, hard work, and modesty) have traditionally dominated the philosophy of management that emerged out of the historical analysis of the philosophical origins of the norms of the capitalist system. It is the task of analyzing the history of the philosophy of management and corporations to discuss some of the religious presuppositions of Protestant ethics that characterize the values of the modern, secularized, and liberalistic market economy. In particular, it is important to focus on some of the weaknesses of Protestant ethics that have resulted in a legitimacy crisis of this work morality, which first and foremost implies lack of reasons for explaining why human beings work and why work is organized in a liberal free market system. Economic science contributes to this discussion by determining the conditions for performing as

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a rational actor in a market while the sociology of religion and theory of legitimacy of corporations in society reveal the conditions for this understanding of the market economy. The contemporary debate about business ethics is deepened when we look at some of the justifications of the firm in the Judeo-Christian tradition, which are continuously criticized by secularists.

Origins in the Judeo-Christian Tradition in American and European History

The success of Protestant ethics as the basis for the free market economy can be explained by the fact that Protestant values were so easy to transmit to a secular society, which detached the economy as a separate system in society. The Puritans, who founded American capitalism as settlers in New England, have been mentioned as striking examples of Protestant ethics [1]. Their “infamous” ideologue Benjamin Franklin emphasized that “time is money” and that work should be used rationally to create welfare. The Puritans stated in their philosophy of management and corporations that one’s personal calling and self-interest are important for obtaining a sign of salvation and a foundation of the common good. The morals of the Puritans were based on this idea of a religious calling, which demands discipline, hard work, moderation, integrity, personal responsibility, trust, accountability, and honesty. The Puritans adopted the idea of the calling from Calvinist theology. The Puritans thought that the calling could be realized through hard work in the economic arena. Moreover, the religious calling was confirmed through this engagement in practical life. The Puritan idea of self-interest as the basis for the common good is one aspect of our secularized conception of utilitarian economic reason as the basis for the market economy [2].

Within the Protestant tradition, the calling of the manager, the employee, or the corporate director is conceived as a contribution to creating value and meaning in the world. Even though it happens on the basis of hard bottom-line reflections and rational calculations of utility and self-interest, Protestantism makes sense of the work of employees, managers, and corporate directors as service to the divine, as long as one follows the virtues of Protestant ethics. Following John Locke’s philosophy, proponents of this liberal current in Protestantism argue that the individual contributes to the enrichment of God’s creation by harvesting the fruits of his or her own work. This religious justification of legitimate work and economics maintains that it is the task of human beings to actively engage with, to contribute to, increase, strengthen, and take care of divine splendor and magnificence on earth [3].

A profound strain of current analysis of the role of self-interest in Puritan ethics argues that in order to really understand self-interest, it cannot be reduced to pure egoism or Darwinist search for survival, but rather, self-interest should be considered as linked to the search for the common good [4]. We must emphasize that Puritan ethics always views the human calling from the perspective of work for community and the common good. Therefore, from a religious perspective,

the economic ethics of the individual should transcend itself and be directed toward community. The Puritans could only justify the rights of the individual from the perspective of the common good. Moreover, notions like property rights and the concern for the common contract were justified from this concern for community.

Adam Smith's liberal philosophy and theory about the invisible hand can be interpreted in the same fashion [5]. Following one's own interest will lead to the common good. As we have already emphasized, the theory of the invisible hand concerns how an economic system functions, but this does not exclude a moral and community-oriented foundation for liberal thought. There does not have to be a contradiction between Adam Smith's two major works: *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) and his *Theory of our Moral Sentiments* (1759). We can minimize the tension between individual and community if we read Smith's political economy in the light of his moral theory [6]. As suggested by Patricia Werhane, Smith's moral psychology suggests that human beings do not have mere self-directed interest; moral judgment, prudence, and self-command are also important virtues. Adam Smith's conception of moral sentiments represents a moral evaluation of economic action from which Smith argues that human beings have feelings of sympathy and compassion for others that should be considered as primordial and genuine moral feelings [7, 8].¹ From this point of view, the theory of the invisible hand should be conceived from the perspective of the ideal of the justice of the impartial spectator. It implies the economic idea that it is reasonable and rational to follow self-interest in order to promote the common good.

Indeed, Adam Smith is not strongly aware of the significance of collective groups. He only mentions the firm as an institutional unit once in *The Wealth of Nations*. Smith did not think about the relation between workers and managers in large organizations but only isolated capitalists who employ workers to produce as the fundamental premise for understanding work organization. Smith was not really aware that there was a development toward establishing independent and collective units to systematically maximize welfare and reduce costs on the market. This is a weakness of trying to apply Smith to understanding the contemporary implications of Protestant ethics, because most economic units today are large companies and organizations appearing as independent institutions with their own goals, values, and cultures [7, 8].

If we want to understand the role of Protestant ethics for legitimizing the values of modern capitalism, we ought to look not only at the isolated capitalistic individual but also the correlation between workers and management in the broader organizational setting of the firm. Protestant theologians have tried to analyze the firm from a theological viewpoint [3, 9, 10]. In this light, we can consider the corporation as a dimension of the history of salvation of humanity. It is not only a legitimate part of human life on earth, but as a vehicle for achieving wealth and power, it is an important instrument devoted to humanity's submission to God. The effort of the firm to obtain wealth expresses the creative activities of humanity in the worship of God. Moreover, the liberty of private capitalism witnesses human free will and responsibility for ethical action. At the same time, we can conceive the

firm as a part of a circle of creation between life and death, because the firm – in all its vulnerability – strives for survival on the economic market. From the Christian viewpoint, the firm represents a human community, not unlike a congregation: communities of people whose destiny depends on one another and who live together with a common horizon of meaning in historical existence. As in the community of the congregation, the firm operates in a world without safe foundations. The firm must take the risk of belief and conviction when it acts on the economic market [3, 11].

In the light of Protestant theology, the firm appears as an organization that is not only an economic actor but also a moral and cultural institution that cannot avoid acting politically and ethically in society. This is also implied in the idea of a business as a mediating institution contributing to the legitimacy of social systems and values [12]. As representative of the values of Protestant ethics or, indeed, societal values, the corporation contributes to the creation and maintenance of civil society. There is a true entrepreneurial vocation and creativity in business [13]. The values of trust, collaboration, creativity, originality, and so forth are – according to the theological conception – conceived as a manifestation of the conception of human beings as created in the image of God.

As a radical reply to the despair and arrogance of many humanists and theologians toward ordinary materialistic economics, the American theologian Michael Novak argues in his book *Business as Calling* (1996) that businesses can, in close cooperation with others, contribute to community by creating values and goods and earning money, which he considers to be part of the creative display and self-realization of human beings. In his argument, there is no opposition between social engagement and profit maximization ([11], p. 119). This vision of capitalism is in sharp opposition to those capitalists who think that capitalism is only about personal gain, and at the same time this conception reckons with the self-righteous moralists or devoted religious believers, who think that economics and ethics are totally separated and have nothing to do with one another. Critics on the other side maintain that the idea of a religiously, ethically, and value-oriented capitalist is an unbelievable plaster saint, introduced solely as a mask to cover up the economic exploitation in the capitalist economic system.

The famous American billionaire, Andrew Carnegie, embodies the ambiguity of capitalism. Carnegie started life as a poor boy in the steel industry and by the beginning of the twentieth century had become one of the richest men in the world ([11], p. 58). Through hard work, inventiveness, and organizational talent, he developed new methods to manufacture and produce steel. Carnegie writes in his memories that as a young man, he was very egotistical and greedy. A midlife crisis made him revise his calling in life, after which he chose to live according to the principle that a capitalist should not only live to accumulate capital. Indeed, it would be an enormous disgrace for a rich man to die without having given all of his money away for philanthropic purposes ([11], p. 58). In this light, the life of Carnegie is marked not only by egotistical motives but also the search for religious meaning. This meaning led him to a life as a philanthropic contributor to social purposes, funding initiatives in the arts and culture, sciences, etc.

This is very astonishing as an expression of the human striving for meaning in life beyond material self-satisfaction, but the philanthropic attitude is also important because it witnesses an idea of business as much more than a battle place for economic profits. In this value-based conception of capitalism, economic creativity is not necessarily limited to personal gain. It is a well-known triviality for many religious people that money does not make human beings happy. But capitalism is not always a hindrance for morality. The growth and wealth of corporations by necessity leads to philanthropic actions on behalf of the common good of society, which can, for instance, give the poor reason to hope for escape from their misery.

The high esteem and reputation of the firm in public is of great importance for the accountability of the firm. In fact, the economic freedom of corporations is today really only justified from the perspective of their effort to solve the social problems of community. We can say that modern corporations are, like never before, in a search for a calling that unites economic gain with concern for society, where social inequality and difference in income can only be legitimized when it is in favor of the weakest in society so that they all other things being equal will have better conditions with this inequality than without it. From the point of view of this calling, the consciousness of business life is its capacity to overcome poverty, distress, and disease, as long as it serves community through economic creativity. For example, in Francis Fukuyama's conceptualization of good and trustful relations in an economy based on strong social relations, which contribute to the creation of economic growth and help the weakest in society to avoid social exclusion [14].

In *Durable Goods: a Covenantal Ethic for Management and Employees* (1997), the theologian Stewart W. Herman describes the relation between workers and employers in the firm in light of the theological conception of the relation between God and human beings as a "covenantal relation." From this point of view, work is realized as a calling in a historical development in common conflict and necessary collaboration between managers and employees in an organization. A covenantal relation is defined as a way to relate to necessity and to define the conditions of a common life and continued obligations between management and employees ([9], p. 4). The corporation is therefore conceived as a secular version of the Ark of the Covenant between God and human beings as described in the New Testament and Hebrew Bible. We are confronted with a community of destiny constituted by the organization and its internal and external environment, which involves engaging with different stakeholders, including the environment and nature. This communal relationship can be described as one of responsibility between management and employees, which is founded on this mutual covenant.

It is important to emphasize the double relation between conflict and dependence, in the sense that the manager cannot really act without his or her employees because he is fundamentally dependent on the employees. At the same time, the employees are fundamentally dependent on management and they cannot surpass these ties to the firm. The relation between management and employees is based on mutual promises and obligations that create the community in the firm. Protestant ethics

stands here for a realistic position between too excessive beliefs in Christian charity, solidarity, and respect without conflict on the one hand and a continuous labor conflict on the other. This is marked by the hope and aspiration that it should be possible to create a collective moral identity in the firm. This position is critical toward a radical prophetic concept of the firm, for example, Marxist critiques of liberalism as an economic ideology where the owners of production facilities use and oppress employees and other stakeholders.

Instead, when conceived as a covenantal ark, the organizational work relation is carried out by an inner coherence, based on the continuous dependence and mutual understanding of the external and internal vulnerability of the firm ([9], p. 34). This tension between conflict and cooperation is based on the mutual vulnerability that contributes to the feeling of mutual connectedness between employees and managers in the firm. The idea of the covenantal relation expresses the idea that cooperation in the firm, and in relation to stakeholders, not only is an issue of profits but also implies economic value that is wider than concern for the bottom line or for economic necessity.

Accordingly, Protestant work ethics can be conceived as a combination of continued accumulation of wealth in a relation of cooperation. This can, however, also imply a potential conflict between management and employees in a common organization with a common community and history. When one has obtained luxurious wealth, it should not be wasted for personal excess but rather reinvested and used for charity and philanthropy in favor of improving the general wealth of society.

However, not all theologians accept this conception of the firm and its legitimacy in Christian community. There has also been strong criticism of Protestant ethics [15, 16]. Even though it has not been the major purpose of their theological reflections, many theologians in the twentieth century, for example, Karl Barth, Rudolf Bultmann, and Paul Tillich, have been very critical toward reifying aspects of work life and of the lack of Christian love in the greedy search for profits. Capitalists are conceived as self-righteous and money-grasping Pharisees. Many theologians are patronizing toward business life and its material reality. Paul Tillich even went so far as to argue for a Christian socialism, implying that “every true Christian has to be a socialist” [17].

Furthermore, the liberation theology that emerged in the middle of the 1960s, and has had great influence in Latin America and elsewhere, emphasized that capitalist economics is in total opposition to the demands of the Bible to take care of the poor. The result of these opposite points of view is that we have great difficulty in maintaining that the Bible can contribute to the justification of a particular economic system, especially a market economy based on profit maximization. The argument against the unification of capitalism and Protestantism is that the notions of work and profit in capitalism will always be in tension with the golden rule and the command in the Bible “to love one’s neighbor as one’s self.”

Thus, skeptics argue that the theory of Adam Smith about the invisible hand cannot be combined with the Christian conception of solidarity as the foundation of

community. Capitalist profit maximization leads to economic inequality and social injustice that cannot be justified from the perspective of Christian faith. This theology conceives Protestant ethics and its command to accumulate wealth as a great misconception of Christianity. A lived example of this approach can be found in the Franciscan friars – the mendicant monks who live meagerly and ascetically and who refuse worldly wealth as totally un-Christian. Moreover, according to this view, capitalism should be criticized for leading to unacceptable economic prioritization and excessive use of resources.

Even though Protestant ethics has had great influence on the economic system in the Western world, it can still be questioned as the correct interpretation of Christianity. It is very difficult to find a simple and clear justification of a capitalist economic system in the Bible. The Hebrew Bible and the New Testament both contain a passage, which turns everything upside down by defending the poor and demanding economic and political justice. Viewed in light of how liberation theologians read the Bible, Jesus emerges as a Marxist revolutionary who will fight for social revolution against economic profits and against the reduction of workers to productive machines.

Evidence for this thinking can be found among many scriptures in the Hebrew Bible, such as exhortations to help the poor and starving: “Is it not to share your food with the hungry and to provide the poor wanderer with shelter – when you see the naked, to clothe him, and not turn away from your own flesh and blood” (Isaiah 58: 7). Another example is the duty to give everything away, as when Jesus answered a young man who wanted to join him: “If you want to be perfect, go, sell your possessions and give to the poor, and you will have treasure in heaven. Then come, follow me” (Matthew: 19) and later in reply to the surprised disciples: “I tell you the truth, it is hard for a rich man to enter the kingdom of heaven. Again I tell you, it is easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of God” (Matthew: 19). We can say that God demands identification with the poor and not with the rich. This implies a criticism of Protestant ethics, where we, as human beings, are not called to selfishly gain more financial wealth for ourselves but rather to sacrifice for the weak and contribute to helping the poor, giving to the hungry, and providing food and shelter to the homeless.

Philosophy of Management in Modernity

How do these conflicting interpretations of the Judeo-Christian tradition and its relation to market economics appear in the light of an economic theory of modernity? On the basis of Max Weber’s views, we may argue that there are two classical economic traditions in Western society. The American economist Robert H. Nelson distinguishes between an *optimistic* Catholic tradition and a more *pessimistic* Protestant tradition [18]. The optimistic view on economic values harkens to thinkers like Aristotle, Aquinas, Claude Saint Simon, and John Maynard

Keynes. The pessimistic perspective is based on a sometimes very apocalyptic view, arguing for the alienation of mankind by citing, among others, Plato, Luther, Calvin, and invoking the Puritans and social Darwinism. Nelson argues that these two views have been shaping Western culture and that we still find them in modern economics. The important question is how the values of the different philosophical and religious traditions determine modern economic theories.

Even though many modern economists argue that they are doing value-free research, Nelson's interesting work shows that a deeper sociological and philosophical examination will reveal how values are built into their theories. According to Nelson, even though economists think of themselves as scientists, they cannot avoid being predetermined by certain value systems. They are, therefore, more like priests or theologians, in the sense that they are preaching certain value conceptions about markets and how to organize society [18]. The idea of economic efficiency as one of the most important ideas for modern capitalist societies is not value neutral but dependent on a deeper religious vision and concept of the world. It is possible to show that values cannot be considered as external to modern economic theories and, consequently, in the work of some of the most important representatives of modern economic science. By analyzing these different views beneath the surface, we can see the dimensions of these values. The influences of the two classical economic traditions can also be found in modern economics.

This relation between economic and other values can therefore be described as the "market paradox." Economic action is not situated in mathematically imperfect markets, but rather in real situations, where cultural and social aspects influence economic behavior. This is a restatement of the insight of Max Weber when he analyzed the cultural and social conditions of Protestant ethics, which were necessary for the development of capitalism. But it is also very contemporary when we look at society today, where certain institutional arrangements are necessary in order to provide the basis for well-functioning economic markets, such as the imperative to avoid corruption and bribery. The market paradox concerns the possibilities and limits of emphasizing efficiency and self-interest as the basis for market behavior in economic rationality when confronted with the requirements of society to serve the common good and the interests of community. The problem is to find the right place of the economic work ethic with regard to other religious and cultural values of community. Keeping with Nelson, we can argue that the problem of the market paradox is emphasized by the fact that many economists argue for opportunistic market behavior while they reject similar behavior in politics or in other areas of society ([18], p. 9).

Nelson's approach usefully contrasts economic theory and theology, and this is an important contribution to the philosophy of management and corporations understood as a fundamental metaphysics of organization. By reading economics with the theoretical tools and language of religion and theology, we can manage to clarify the hidden presuppositions of economic theory. Moreover, this analysis gives us a much clearer picture of the implied concepts of social legitimacy within different economic theories. This theological approach to values of economics should, however, not be understood in a purely literal sense, because it is the

metaphorical play of difference and resemblance between economics and theology that constitutes the important basis for conceptual gain and reflective thought [19].² By seeing “economics as theology,” we can be much more clearly aware of the values and visions of legitimacy hidden within economic theories of corporations and society. This provides a metaphysical basis for a philosophy of management and organization that remains faithful to the Weberian perspective.

Historically, the goal of economics has been to assure the best possible distribution of material resources in society. To achieve this goal, economists have offered a specific conception of economic rationality – one that is value neutral – as the foundation of society. Despite this, rationality is not neutral but can be considered as an ethical and religious view of how to realize happiness and freedom on earth. These views cannot be separated from other conceptions of economics and society, and they are in principle as valuable as Weber’s conception of the Puritanical or Calvinist ethos of capitalism. In accord with Nelson, the metaphysics of philosophy of management and corporations may indeed be said to be about “how to reach heaven on earth,” that is, how to structure economic action in a way that will most efficiently increase human welfare and happiness on earth. It is not wrong to describe economists and managerial thinkers as “worldly philosophers” [20].

Given this, modernist economic philosophy and management philosophy in the twentieth century might be viewed as a response to the problems of Protestant ethics. Two of the major schools of modern economics, the Chicago school and the Cambridge school, promote two different responses to the problems posed by the Protestant ethics. Paul A. Samuelson, Nobel Prize winner and author of the most important textbook in modern economics, represents the Cambridge school [21]. His book, *Foundations of Economic Analysis*, has sold more than 5 million copies in more than 15 editions ([21], p. 5).³ The values of Samuelson’s economic project can be considered as progressive in the optimistic tradition from Aquinas and Keynes. This was the project of postwar welfare economics.

The Chicago school of economics can be described as a reaction to the progressive economic project of the Cambridge school. They protested against individual rationality, the state, and of the market of Samuelson and his followers. They promoted a radical libertarian criticism of the welfare state. Moreover, they argued for a very cynical economic view of human nature. The Chicago school includes figures like Richard Knight, Gary Becker, and Milton Friedman.

It is important, from the perspective of the philosophy of management and corporations, to consider Samuelson’s economics of the Cambridge school as a revival and secularization of a Catholic economic project, where the investments in market developments are based on concerns for community and the common good. Accordingly, Samuelson formulated the progressive message of economics as the science of the welfare state. This was based on a combined belief in Keynesian ideas with a belief in market economics and the principles of scientific management. Samuelson argued that the market was very important for good economic development. Although he was critical of a very strong interventionist government, Samuelson still believed that government should keep many of the social functions that were promoted by the Keynesians. Still,

the market was the central focus for the new scientific economics, which was based on mathematical analysis.

In this context, there is a close relationship between the Keynesians and the Marxist message of economic values ([18], p. 30). Marxism is based on a historical vision of social and economic development toward a just and good society. Marx argued that economic laws are replacing natural and divine laws in the development of society toward overcoming material scarcity at the end of history. The Marxist conception of the dialectics between basis and superstructure may be considered as an important inspirational idea for Weber's thesis of the close relationship between economic values and religious values. The values of Keynes can indeed be considered as a more modest vision of the Marxist idea of the possibility of the realization of the good society on earth. Optimistic Keynesians believed in the idea of the realization of a good society with the methods of the strong state and scientific management of society. In this way, the Keynesian economics in the beginning of the twentieth century may be considered as an optimistic reaction to the pessimism of Protestant ethics.

It is important to emphasize – echoing Nelson – that Samuelson took over the progressive message of Keynes. By promoting economics for the common good while arguing for an efficient and free market, Samuelson was open to the Puritan message of Protestant ethics. But at the same time, this message was forgotten in his efforts to develop a scientific and objective basis for economics in mathematics. Samuelson thought it was possible to develop a scientific understanding of modern business organizations while arguing for the importance of democratic institutions. Economic rationality and scientific management should contribute to the construction of a rich and good society; however, this vision was not conceived as based on ideology but rather on the concept of scientific rationality as an objective way to construct a good society with economic tools.

Samuelson argues that economics is based on a fact and value distinction and that ethical values are subjective conceptions [22]. We need to provide the scientific basis for economic development and the management of economic institutions. This approach defends the importance of economic markets but excludes self-interest from other social institutions like government ([18], p. 51). The principal value is the defense of market competition combined with the idea that the creation of monopolies is fundamentally wrong. The market mechanism is essential for determining prices and what should be produced. This is regarded as the most effective way of regulating needs and wants in society. Such welfare economics defends a supply and demand conception of the economic system. The basic goal of society is full employment, and government should act in order to protect and facilitate the free market exchange. Samuelson works with the ideal of the perfect market with zero transaction costs as the basis for his analysis. Moreover, the calculation of economic efficiency is based on the equilibrium of Pareto optimality, according to which an unregulated free market economy is viewed as a learning system moving toward stability ([21], p. 621).

We might say that this view of economics is an attempt to present a secular version of the progressive belief in the invisible hand as modern scientific

economics. The utopia of the free market is, however, based on pure economic analysis. For Samuelson, the only acceptable rationality is economic reason; therefore, he is critical toward religious influences on economics, such as Aquinas's argument that taking interest is unethical. What we need, he argues, is economic enlightenment and scientific measurement of the risks and benefits of economic action. Moreover, Samuelson violently rejects the inefficient use of resources. What is needed is scientific management in a society based on a mixed system between government and private enterprise.

These ideas emphasize that welfare economics could only account for economic development and benefits in economic terms. It is not possible to measure the social, environmental, or psychic dimensions of economic development within this conception of the market, because the only valid costs are those that contribute to economic progress. In this way, Samuelson's message differs significantly from Puritan ethics, which did not have the same materialistic and utilitarian view on life, because they viewed economic activity and work as a means of salvation in another world. For Samuelson, on the contrary, the function of the market is to realize utopia in the present world ([21], p. 622).

The modernist philosophy of management is characterized by this secular dream of realizing paradise for humanity on earth using the instruments of science. The theological interpretation of Samuelson's economics puts emphasis on his political appeal to community and common welfare, which is not present in the same way in the Protestant tradition. Samuelson's political arguments utilize scientific economics to improve public administration for the common good. It was indeed the central task of economics as a science of the market and public administration. Economics could help to calculate the "logic of collective action" and describe the dangers of "free rider problems." With the use of good economic methods in order to create economic growth, poverty and social problems would be eliminated and a higher standard of living would be created for the benefit of the worst off ([18], p. 70). From this perspective, the corporation would have an important mission of being loyal to the common goals of community, even though it would have to behave strictly in accordance with scientific economic rationality.

In addition to the values of integrity, honesty, and accountability from traditional Protestant ethics, we can say that Samuelson lays the foundation of the "good citizen corporation," which has become a central concept of legitimacy in the philosophy of management and corporations, because he emphasizes the social function of economics and the utilitarian aspects of economic development. From the point of view of this welfare economics, corporate social responsibility and values-driven management are important tools for avoiding social exclusion and assuring social integration and coherence as foundations for economic progress.

There is, however, really no agreement about this within the theological interpretation of economic legitimacy. Following Nelson, we can also situate the Chicago school in this context of Protestant ethics. The Chicago school of economics represents an individualistic and libertarian criticism of such a welfare state project ([18], p. 110). And this is also the basis for the skepticism toward collective conceptions of corporate social responsibility. While Samuelson may

have had some technical economic insight, his arguments for a mixed economic system and progressive politics were considered as unscientific with no economic justification ([18], p. 20). The Chicago school draws on arguments for the superiority of the market, which have, since Adam Smith, been important in economics. Combined with a defense of the virtues of *laissez-faire* in social Darwinism, or Herbert Spencer and the natural law theorist's defense of property rights, Chicago economists promote a strong criticism of Samuelson's ideas of the relation between state and market.

According to Nelson, the early twentieth-century economist Frank Knight can be considered as an important founder of the Chicago school. Contrary to the optimistic progressive views of Samuelson, Knight had a much more negative conception of human beings. He saw economics as based on self-interest and human freedom ([18], p. 96; [23]). We might say that he was close to expressing "a classical Christian view of fallen human beings beset by original sin" ([18], p. 121). Knight was a pessimist and realist in the sense that he argued that the existence of the economic market and private property was unfortunate results of the "presence of evil in the world." In this way, Knight represented a Protestant reaction to the communitarian visions of Samuelson and Keynes. From this critical perspective of the Chicago School, mainstream economics could be considered as a continuation of natural law beliefs in community and in the virtues of human nature. Instead of believing in enlightenment and progress, Knight was marked by the pessimistic view of the nature of human beings in Puritanism and Lutheranism ([18], p. 132).

Unlike proponents of the optimistic approach, Knight conceived the market as necessary for social cooperation, not because of the virtues of humanity but because of the evil nature of human beings. The market has a social function of bringing people together, even though they have very different values and conceptions of life. The idea is that the market is without power relations, and it is therefore possible to interact in a situation of radical pluralism ([18], p. 136). On the market, Christians can exchange goods with people of other religious beliefs without compromising with their ethical and religious values, because the exchange is a matter of self-interest and profit. Knight was the teacher of such important second generation Chicago economists as Milton Friedman and George Stigler. They were profoundly marked by the Calvinist thought of sinful humanity, but at the same time they adopted the scientific outlook of modern economics. Milton Friedman presented himself as an economic technician, although he was also very engaged in political debates [24]. Moreover, Friedman seemed to have adopted the belief in the economic progress of modernity. Still, Protestant ethics are present in the writings of Friedman in the sense that he emphasizes the importance of self-interest and the freedom of economic markets. His criticisms of corporate social responsibility further show how committed he is to combining the Puritan ideal with market efficiency. The firm should not promote values other than economic ones, because this would transcend the economic sphere and impose ethics on stakeholders and shareholders. Friedman is very skeptical toward the possibility

of democratic government, because he views strong government as a threat to individual liberty. The market is central for economic activity; the state is only there to regulate the availability of the free market and ensure antitrust regulation. Friedman advocates heavy privatization and he is skeptical toward high taxes, although government might contribute to some redistribution of resources among the poor ([18], p. 149).

This generalization of economic method was followed by the third generation of the Chicago school. Gary Becker and Richard Posner applied economic methods to other social sciences, for example, law and economics (Posner) [25],⁴ or analyzed traditional sociological and anthropological problems from an economic perspective (Gary Becker) [26, 27]. They argued that human action in these fields could be understood from the point of economic utility maximization. These approaches were characterized by a provocative treatment of noneconomic values. Posner and Becker presented a secular version of the Christian concept of sinful human nature. They argued that social agents were determined by self-interest and utility maximization ([18], p. 167). Like Marx, Nietzsche, and Freud, they thought that economic motives, driven by self-interest, were the real basis of human behavior individually and in social interaction.

Individuals act in order to maximize their personal welfare, and Becker thought that this economic behavior affected all dimensions of social life. On this basis, he presented a cynical economic analysis of the family as an economic unity, of discrimination, and of stealing and argued that all these themes could be considered as economic relations, where individuals were maximizing utility in order to increase welfare. Becker, who received the Nobel Prize in 1992, wrote that polygamy in certain conditions would have a rational justification, because the value of women would increase on the market when men could have more wives. Moreover, he thought that marriage was based on implicit calculations of personal gain and that love was just a romantic sentimentalism. Becker also said that even the Nazi killing of the Jews could have an economic justification by increasing the economic gain of Germans. Becker believed so much in the selfish dimensions of human nature that he wanted to explain altruism on the basis of opportunism, which led him to develop his “Rotten kid Theorem.” This theorem postulates that there are situations where individuals help others to be better off because this action will make the other more likely to “transfer parts of the improved welfare” and give back to you ([18], p. 179).

Nelson argues that the Chicago school in this way represents a new secular kind of religion ([18], p. 185). We can say that Becker and Posner helped to articulate the secular value of autonomy, which became fashionable in the USA and Europe. The Chicago school was suspicious of collective unities of any kind. The religion of libertarian values argued that “everything was determined by economic forces and self-interest” ([18], p. 185). One interpretation of the Chicago school is that it did nothing other than promote the libertarian values that emerged as a criticism of the modernist economic project. In the 1970s, the culture of marriage changed into a single lifestyle, and self-determination became the most prominent ideal in a pluralistic secular society.

The Chicago school can be said to continue the Protestant project of rational economics, while abandoning the religious values of faith and belief in the Christian calling. The Chicago school is in conflict with Protestant ethics, because it makes utility and personal wealth maximization into the absolute value. Efficiency and economic progress replace the Christian values of respect for the divine commands with self-regulative prophecies of the market. In this perspective, Nelson argues the Chicago school has secularized Knight's ideas of a fallen humanity ([18], p. 199). It sticks to the Calvinist view of human nature without adapting the religious presupposition of revelation and devotion to the divine cause.

What is interesting about this theological reading of the Chicago school is that this approach to values and economics may be read as an existentialist radicalization of traditional Protestantism. For Becker and Posner, human beings are conceived as projects that are in bad faith if they do not accept the economic reality behind every visible phenomenon [2, 28, 29]. These economists are existentialists in the sense that they detach every meaning from visible reality and reduce it to the material law of economics, based on radical individual choice confronted with the fact of human finitude and the shortage of resources. For these existentialist economists, only the strict laws of supply and demand are real for the lonely and isolated human individual. In this sense, the only things that exist are the economic laws of being in material reality. The goal of life of the isolated individual is to make sense in this life of economic necessity.

In order to understand better the philosophical foundations of this neoliberal economic paradigm that has been so influential, we have to look closer at the foundations of the neoclassical political economics of the neoliberal view of economic rationality and its possible ethical implications. The neoclassical concept of rationality implies an unlimited conception of rationality according to which economic agents have unlimited competencies of decision-making in order to maximize personal self-interest within an exogenous space of possibilities.

According to a liberal like Hayek, free competition among individuals in the market, within ethical custom, is the best condition for human happiness and luck [30, 31]. It may be argued that this perspective diminishes the importance of achieving economic equality. Neoclassical economic thought based on the pursuit of self-interest implies the view of human beings as inherently competitive. Property rights liberalism does not imply any principles of equality as the basis for economic markets because economic freedom is essential to property rights. From this perspective, justice in economic markets appears paternalistic by limiting human freedom. Radical libertarians and some liberals are indeed somewhat critical to the deontological perspective, because it implies moral restrictions on personal liberty.

Hayek links this argument for the unlimited economic rationality of the market with a criticism of the proposal to use the state actively to establish social justice in modern society. Such justice would be somewhat the same as socialism, and Hayek thinks that there is no meaning in the idea of planned social justice [32]. Human beings do not have the perspective of the invisible hand; we are always situated in a culture and history where we learn by trial and error and imitation. Hayek

criticizes the idea of a planned social justice from an epistemological point of view. We cannot rationally construct social rules but are only able to use our faculty of imitation. We can only follow specific patterns by intuitive, tacit, and bodily recognition of meaning in action and by imitating others. Freedom is what the individual does with what society has done with him or her ([33], p. 247). It is the freedom of the situated individual to act in a social condition. Hayek approaches economics and ethics from the point of view of a methodological individualism. Human beings are responsible for their society, but they cannot fully know what the result of their actions will be, and they have no control over the collective level of society, which is much more complex than the level of individual action. Society can, in this context, be conceived as a complex cybernetic system that human beings cannot control. Though created by individuals, it is too complex and contradictory to be conceived of in its entirety.

Hayek views the social order as a spontaneous order that no one really wants. It is a kind of reinterpretation of the idea of the invisible hand. Social order, which is established in balance between natural and artificial forces, is the result of a long evolutionary process similar to that of the natural world, as described by Darwin. There are no general laws of evolution, whether in the natural world or in social systems. In an open society, the society of individual freedom as proposed by Adam Smith – where utility and calculation determine the rules – the market is the essence of the evolution of this spontaneous order. During evolution based on interaction among self-interested individuals, those practices that are based on individual freedom and rational choice of the most efficient alternative will, in the long run, contribute to social betterment. Indeed, better legal and moral systems will be a result of this spontaneous order. In an economic system based on fair competition, healthy economic institutions contribute to a better society. From this perspective, the idea of competition includes an ethical dimension of fairness and transparency contributing to the spontaneous order of society. Hayek seems to want to establish the good and just society on the contingency of social spontaneity and social affairs [31, 33].

In essence, one must leave oneself to the forces of the market and to forget social justice, because society cannot be controlled. This “liberating alienation” is core to the utilitarian justification of liberty and justice in Hayek’s economic theory [31]. The individual is requested to act in conformity with the rules of the spontaneous social order in which he or she is a part. Justice cannot be planned but is a concept that is generated by the spontaneous social order. Because the market is the essence of spontaneous order, markets are effectively rendered morally blind and without ethics. From this view, property rights are personal rights and imitation is the basis for the personal development of individuals and for their social and economic self-regulation. Even though selection out of path dependence plays an enormous role in social evolution, Hayek’s approach to social politics breaks the connection or responsibility between individuals and the market ([31], [33], p. 284).

This is really an argument against any attempt to formulate a rational foundation for the political constraints of actions of individuals and corporations. According to the invisible hand and the idea of the spontaneous order, the market should exist

as a free human institution, because it guarantees the social development of society. Thus, economic action should be based on the supremacy of free individual decision-making and on open economic markets with as little government intervention as possible. The idea that economic rationality should be liberated from ethics and only introduced as an external limitation when it goes beyond the acceptable requirements of economic rationality (e.g., not respecting the rules of fair competition on free and open markets) is the result of the liberal approach.

The ideal of perfect competition in Hayek's thought and neoclassical economics presupposes the right of individuals to make their own rational choices on economic markets. This view of economics is arguable based on the presuppositions of perfect competition, rational independent decision-making, a perfect market, a homogenous product, many competing sellers, and free entry/exit into the market. It is presupposed that the firm consists of one rational individual rather than a group or coalition of individuals. The firm is a category of the individual and a production unit in order to provide goods to be exchanged on economic markets ([30], p. 66, [34]).

Since ethics is regarded as an external limitation to economic rationality, it is not integrated in economic decision-making. The ethics present in this doctrine is, therefore, the one of competition, which is to maximize self-interest and personal preference maximization. A promise of total opportunistic and selfish action is a handshake, as some have characterized this ethics of competition. In this way, ethics seems to be an exogenous element of social action at the limits of economic rationality; however, a presupposition is that the conditions of fair competition and perfect markets should be accepted by all participants in economic competition, which is restricted by the rules of the game, for example, in property rights and contract law. A generous interpretation of the thought of Smith and Hayek may be that the ideas of invisible hand and spontaneous order are attempts to integrate a concept of the common good in liberalism. From this optimistic perspective, liberalism always goes beyond pure egoism because self-interest is supposed to somehow serve the general interest. Although such an interpretation may be closer to the original moral intent of liberal philosophy, it is a point of view that seems to have been more or less forgotten in the economic self-understanding of neoclassical economics, which isolates the concern for the good from the concept of economic analysis.

Recent Developments in the Philosophy of Management

The movement in the direction of corporate citizenship, business ethics, and corporate social responsibility goes to the roots of the problems with the neoliberal approach by showing that the economic subject is not exclusively to be conceived as an atomistic preference maximizer. Importantly, this approach argues for altruistic preferences at the fundamental level of economic anthropology. When we deal with issues of the integrity of managers, the social responsibility of corporations as institutions, and ethical leadership, we are far beyond the neoliberal paradigm and are closer to the social market economy proposed by Samuelsson.

We may say that “economic man” should be replaced by “social man” or rather that individuals are characterized by a structure of double preferences whereby individual preferences are related to other people.

The German philosopher Peter Koslowski has tried to address the difficulties of the concept of economic man in his approach to ethics and economics and philosophy of management. In the book *Principles of Ethical Economy*, he develops an ethical economy that goes beyond the confrontation between the Chicago and the Cambridge schools. According to Koslowski, a comprehensive theory of the economy cannot rely on self-interest alone ([35], p. 1). Ethics and economics must try to unite in a comprehensive theory of rational action. The ethical economy is a development of political action that develops responsible and ethical economic activity at the marketplace. Ethical economy is a more comprehensive term than the concept of business ethics and it is also more than just ethics and economics since it approaches the institutional structures of society and corporations and organizations in order to base economic action on practical rationality beyond economic man ([35], p. 3). In order to develop a new vision of philosophy of management, we need a practical philosophy that integrates economic activity with nature and is built on the respect for and rediscovery of the human person ([35], p. 9). It is important that we work for a “rehumanization” of our postindustrial economy. Ethics aims at installing norms and values in the economy that respect fundamental ethical principles and human beings in the culture and actions of society [36].

The Belgian economic philosopher Christian Arnsperger gives support for this argument by considering the French anthropological tradition of Marcel Mauss and the concept of responsibility in the phenomenology of Emmanuel Lévinas as possible criticisms of the liberal and neoliberal restriction of economic subjects to “atomist monads” of individualist profit maximization ([37], p. 99).

Marcel Mauss’s anthropological concept of exchange helps us to question the liberal concept of economic maximization. This economic concept of exchange must be considered from the perspective of our social life and is limited when we want to understand all the aspects of human motivation. Mauss helps us to formulate a more complex concept of economic exchange, linking economics to altruistic motives and concepts of giving and receiving that tie economic markets to social life. From an ethical point of view, human subjects are always linked to the logic of social integration, which is also an important aspect of economic interaction.

The central insight of Mauss is that economic anthropology cannot solely be based on the concept of individual preference but that economic interactions presuppose a social concern of mutual social interdependence of economic actors. Moreover, this concept of society presupposes a broader conception of the human self than is proposed by neoclassical economics. In fact, the mutual relations of giving-receiving-returning are not external to the market, but rather the real truth of the market, because the market presupposes the interdependence of economic actors [37]. Following Christian Arnsperger, we have learned that it is possible to accomplish methodological *individualism* with a methodological

altruism, which accounts for possible altruistic preferences in the economic subject and furthermore acknowledges the importance of ethical evaluating economic preferences and motives ([37], p. 104). Altruism is based on the essentially social character of the market, involving basic conditions of the exchange relation as described by Marcel Mauss. Instead of being founding by the monadic subject of mathematical, axiomatic economics, we have to acknowledge the relation between economic theories and the moral sciences. Economic theory cannot abstract from the morality of exchange, because exchange is after all a social event.

By focusing on anthropology, Emmanuel Lévinas helps to enlarge the ethical foundation for this altruistic approach to economic anthropology. Lévinas proposes a phenomenology of the intimate encounter of the other human being as the basis for our view of human motivation ([38], [39], p. 159). The encounter of the other human being is an infinite demand of responsibility and self-sacrifice. This concern for the other is the basis for social relations, and the reciprocity with the other should not be defined as a relation of “alter ego,” but rather the other is someone fundamentally different. From the perspective, Lévinas’s respect for the other as other is the foundation and condition of possibility for economic exchange [40]. Therefore, Lévinas says that ethics precedes reciprocity as mutual recognition and altruism as enlarged self-interest.

The criticism of the atomistic economic subject that is revealed by the analysis of Mauss is supported by Lévinas’s ethical anthropology, which situates economic action as secondary to the fundamental human responsibility for the otherness of the other as the innermost purpose of human action [40]. This implies that economic action is embedded in larger social structures and that economic rationality cannot be separated from ethical and political rationality. Christian Arnsperger suggests that Lévinas’s phenomenological description of individual subjectivity shows that the logic of the gift is a possibility of individual choice that precedes “every constitution of subjectivity as purely autonomous” ([37], p. 113). This ethics of otherness could be seen to constitute the fundamental openness and generosity that precedes the economic account for particular preferences. Lévinas emphasizes that responsibility is the most fundamental constitution of subjectivity, which we might extend by arguing that ethical subjectivity is more fundamental than the economic subject of neoclassical and neoliberal economic theory.⁵

This view on the relation between economics and ethics in the philosophy of management helps us to understand that individual rational maximization can never be fully isolated from the idea of ethical subjectivity as fundamentally responsible for other human beings. The ontology of economics and the reach of an economic method based on individual maximization cannot be conceived as all-encompassing and absolute, but economic rationality is in fact secondary to political and ethical reciprocity. From such a point of view, economic decision-making should have external restrictions in the laws of political justice and ethical prescriptions based on fundamental principles of human existence. Economic reason is submitted to responsible subjectivity; when evaluating economic preferences, one cannot avoid asking questions about the ethical

ideas of universal moral rules, the search for justice in political community, and considerations of community welfare.

Following the philosophy of Lévinas, responsibility for the other human being can be viewed as a condition for the legitimacy of economic action. Moreover, political community necessitates that responsibility is not only an intimate relation with the other but should be extended in time and space to society as a whole. This is the argument of the German philosophy Hans Jonas, who thinks that responsibility does not only concern present human activities but should be extended globally in time and space and include the future of humanity [41].

Such an integration of reciprocal ethics and politics is, however, not without a price, because basic economic considerations are considered as relative to ethical principles ([39], p. 168). The values of efficiency, utility, production, demand, consumption, and accumulation are not considered as intrinsic but are only valid insofar as they do not violate basic ethical principles or contradict our moral values. An appreciation of the ethical and political limitations of economic action supposes an ethics of responsibility as the basis for social regulation.

In this context as an extension of the responsible approach to business ethics based on the philosophy of Emmanuel Lévinas, we could propose basic ethical principles as the framework of business ethics. In fact, the four ethical principles of autonomy, dignity, integrity, and vulnerability can have significance as basic ethical principles that are guiding ideas of business ethics [42, 43]. The principles have originally been proposed as principles for bioethics, but these four principles can also be proposed as fundamental principles in business ethics that are very important ethical ideas in order to propose an ethical framework for ethics in organizations. When we apply the principles in business ethics, we are clarifying the meaning of ethical ideas that have an importance for our lives. In doing so, we come to understand the institutional context of the principles been based on the framework of justice, responsibility, and solidarity (equality). Autonomy refers to the freedom of the individual but also to moral self-legislation and responsible behavior at economic markets. Dignity is essential in the respect for human rights and indeed also for the concern and respect for the human dignity of all stakeholders. Integrity means personal integrity, but it can also be defined as organizational integrity as the foundation of good corporate citizenship. Vulnerability signifies the human condition that we are all vulnerable and mortal and it leaves us with the difficult question of how to respect human beings in a competitive market economy [43]. The meaning of vulnerability in business ethics therefore leads to a principle of respect for vulnerability where it seems to be responsibility of business to give the vulnerable a fair treatment, not exploiting their vulnerability but rather in caring and being aware of their dispositions. Responsible managers and salesmen would not exploit vulnerable people but rather support them in a responsible business relation built on dignity, integrity, and trust. The principles function as a concrete application of the ideas of phenomenology of responsibility and republican business ethics, and in this sense they represent a new approach to business ethics moving beyond the confrontation between the Chicago and the

Cambridge schools. They are not limited to individual action, but they should be applied to institutions. The principles should not only create individuals with virtue but also moral markets. The principles are not only theoretical ideas but practical guidelines for business.

Conclusion

What are the consequences for philosophy of management and corporations of this development of the search for legitimacy, moving from Weber to the modernist economic traditions of the Cambridge and Chicago schools and beyond, toward another kind of economy? It becomes clear how the philosophy of management and corporations focuses on the search for legitimacy as conceived as creating a good and perfect firm that aims at realizing the good of humanity through value creation and through perfect interactions between management and employees. The different perspectives on economic legitimacy in society constitute different views of the role of the good citizen corporation in society and of the contribution of the corporation to the good life of its different stakeholders [43].

Cross-References

- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [Recent Debates in Philosophy of Management](#)

Notes

1. According to the predominant interpretation of Adam Smith's liberalism, Smith takes over Mandeville's idea that private vices lead to public benefits. A famous remark by Adam Smith from the *Wealth of Nations* has been interpreted in this light: "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages" as Smith says in the *Wealth of Nations*. However, it is important to think carefully about what self-interest really means in this context. It does not mean that Smith wants to base his whole philosophy on egoistic self-interest and private vices. Rather, these self-interests do not have to be selfish, but they can also be said to serve community in the sense that individual work is good for everybody. In this sense, the liberal concepts of utility maximization, individualism, and the market as moral regulator do not capture the concepts of sympathy and justice and equality of treatment that also play a role in Smith's philosophy. Patricia Werhane's reading examines the *Wealth of Nations* in the light of Smith's moral psychology developed in *Theory of Moral Sentiments*. This reading emphasizes the importance of concepts such as sympathy, justice, and equality, as well as the impartial spectator and the importance of legal institutions in Smith's moral and political philosophy in contrast to an emphasis of the atomism and egoism in Smith's economic theory. This reading is very important although there remains a great tension

- between individual and community and that liberal theories do not really avoid this tension. Still, it opens the way toward conceiving the good life as a part of Smith's moral theory.
2. For more about the concept of metaphor as reflective model, one can refer to Paul Ricœur's discussion of the relation between models and metaphors in relation to the sciences. This relation also applies to the relation between economic models and managerial models that also can be considered as metaphors. The cognitive function of metaphor as "seeing as" is profoundly important.
 3. Samuelson defines economics as "the study of how men and society choose, with or without the use of money, to employ scarce productive resources to produce various commodities over time and distribute them for consumption, now and in the future, among various people and groups in society."
 4. Richard A. Posner has become very famous for his economic reading of the law and for his combination of pragmatism, legal theory, and economics.
 5. The critical reader may insist that Lévinas cannot be used in such a way to argue for the primacy of ethics over economics. Such an approach would state that the phenomenology of the other implies a negative reaction to the instrumentalism of economic exchange and an ethics of situational demand on the individual that goes beyond economic exchange. I agree with that, but this is indeed also a good argument for the primacy of ethics in the reciprocal relation of social exchange between human beings. Accordingly, ethical responsibility is a primary constitutive element of human existence.

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Abstract

This chapter presents the problem of legitimacy as the central question of the philosophy of management and corporations. This problem is then presented with the economic theory of Adam Smith and with the concept of legitimacy from Max Weber. Further on, the contributions of recent theories to the question of legitimacy of the corporation in the modern world are presented, in particular, a number of American approaches that are related to institutional theory and recent efforts to determine the legitimacy of management and corporations. Finally, we briefly discuss Habermas's concept of legitimacy as the foundation of corporate citizenship.

Introduction

In this chapter, we address the philosophy of management and corporations in relation to the problem of legitimacy of the corporation in modern society.¹ This problem is not solely an economic issue about the efficiency of business organizations to achieve profit maximization or a material question about the economic determination of social development. Rather, the issue of legitimacy is a deeper issue about the relation between economics and politics, which is the foundation of the democratic legitimacy of the economic actions of corporations in society.

When dealing with issues of legitimacy, it is necessary that corporations are aware of their fundamental beliefs and values. This challenge can, in many cases, be confronted on a rational basis with the use of existing theories of philosophy of management, but sometimes, there are also limits to this approach. Still, the

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ideological foundations of a corporation's mission statement and fundamental aims are often based on classical ethical and religious visions that affect contemporary strategies and decisions. If we want to approach the issue of the legitimacy of corporations in society, we cannot ignore this religious and cultural dimension of business values [1]. It may even be necessary to draw upon the sociology of religion and theology in order to understand the aims, values, and ethics of business corporations, which also touch upon the meaning, personal ideals, and crises of consciousness of working life.

The Hermeneutics of Normative Foundations

Max Weber helps us to understand these deep normative foundations of capitalist economics and develop the foundations of philosophy of management in his classical investigations in *The Protestant Ethics and the Spirit of Capitalism*, where he looks at the philosophical and sociological foundations of the values and work ethics of modern capitalism [2]. Weber is aware of the necessity to regard the basis of present conceptions of the firm from the perspective of the history of religion. He analyzes the relationship between deep spiritual and religious values and economic organization in the emergence of capitalism in relation to different Protestant communities (e.g., Pietism, Calvinism, Puritanism, etc.). Weber is able to show how the legitimacy of basic notions in the modern market economy – profit, property, work, and organization – have religious and cultural presuppositions based on general aspects of Christianity and the Western cultural tradition.

Weber begins his analysis of Protestant ethics and the spirit of capitalism by distinguishing the particularity of capitalist organization and economic rationality ([2], p. 35). Accumulation of material wealth has existed independently of capitalism. What is unique to capitalist action is the rational organization of work and labor. This is the background of profit-oriented economic exchange on economic markets. Even though we find aspects of capitalist economies in many other historical civilizations, it is only in modern Western society that this mode of production has become fully developed. Contrary to some of his contemporary liberal economic thinkers, Weber was aware of the significance of the corporation in rational economic organization. He emphasizes the importance of economic routines, rational bureaucracies, and calculated administration for the formation of efficient enterprises ([2], p. 24). Weber says that disciplined labor forces and regular investment of capital characterize the modern rational firm. Economic efficiency in terms of increased profits and accumulation of wealth are the ultimate goal of this rational economic organization, but could even further be said to constitute the ultimate purpose of human life on earth.

In contrast to strict determinist and materialist conceptions of economic change, Weber gives a historical and hermeneutic explanation of the origins of the capitalist system. He puts emphasis on the fact that rational economic organization implies a specific moral attitude, or a social and religious legitimacy of the economic system. In this context, capitalism is based on a willingness

to postpone joy. The new Protestant ethics is to earn more and more money without “any eudemonistic or hedonistic admixture” ([2], p. 53). Weber argues that capitalism requires strong moral self-discipline because the entrepreneur is supposed to accumulate and reinvest money rather than use it for pleasure.

Such moral and religious values are found in many of the Protestant sects that emerged after the reformation in Europe. The Lutheran, Calvinist, and Puritan sects emphasized worldly asceticism through the concept of the “calling,” which was central to their religious beliefs ([2], p. 79). According to Weber, the concept of calling signified that it was the moral and religious task of the individual to be a good person and fulfill his or her duty in daily work. In the philosophy of management and corporations, the religious calling and motivation of work in the capitalist system constitute the central core of the function of the economic system. This was a rather new form of legitimization and stands in contrast to Catholic theology, where the calling of the individual had been less significant due to an emphasis on community and the continuous possibility of receiving forgiveness by God. And it implied a stronger sense of duty because only the individual was responsible to the divine for his or her actions in the world.

Weber emphasizes that Calvinism, among the many Protestant sects, contained the dynamism necessary for justifying the rational capitalist organization of the economy. The Calvinist doctrine of predestination posits that some human beings are chosen by God. During life, it may be possible to receive a sign of being selected ([2], p. 98). Weber argues that this had to put pressure on the calling of individuals, giving each of us a deep feeling of “inner loneliness,” implying insecurity regarding salvation. This was the legitimacy of the Protestant spirit of hard work and an ascetic lifestyle, where the self-interested accumulation of wealth was considered as a sign of being selected by God. Even though Weber puts emphasis on Calvinism and did not find that the other Puritan sects sufficiently emphasize the duty of the calling, Protestants share similar moral values that justify rational organization of labor and the accumulation of capital for profit and investment.

Weber’s analysis of Protestant ethics may be viewed as a multidisciplinary approach to economic organization [3]. His views on capitalism are supported by his other studies of history and the sociology of economics and of religion. Protestant ethics was part of a process of rationalization, which is unique to Western societies. In Hinduism, for example, the notion of the calling could not be justified in the same manner, because religious activity is turned inward to establish harmony with the cosmos rather than focusing on worldly activity. Protestantism was based on human instrumental and rational interaction with the world. But, even if the Protestant idea of the calling was a necessary condition for capitalism, many other cultural and economic factors were also important. Weber mentions the professionalization of the firm with modern bookkeeping, the development of the city, the existence of unified legal systems, and the establishment of nation-states with rational bureaucracies as other conditions of modern economic systems ([2], p. 18).

Weber seems to stress that we should, however, not underestimate the power of the concept of the calling to build modern civilization. We should not forget that

rationalization as well as secularization might be intrinsic dimensions of Protestantism because mysticism and immanent religion are replaced by the belief in the inward relation to a transcendent God and the calling of human engagement in the world. If this is the case, we can understand why Weber's views were combined with pessimistic skepticism toward Protestant modernity. Weber thought that the Puritan calling created a worldly asceticism around each human being in which the new work ethics made it impossible to enjoy life. The price of modernity was "specialists without spirit, sensualists without heart," ([2], p. 182) because efficient capitalist economies are not possible without self-discipline in the "iron cage" ([2], p. 181).

Weber's economic sociology is central to understanding the legitimacy of corporations in modern societies, and it therefore provides the conceptual core of the philosophy of management and organization that focuses on legitimacy. Central concepts of this philosophy of management, including the normative and cognitive elements of corporations, find their origins in the cultural values that organize the relations between individuals and organizations and the degrees of motivation, devotion, loyalty, and responsibility of individuals in relation to organizations and their environments. Although today we live in a much more secular society, we cannot deny cultural and historical influences on corporations and their values. Also, the multidisciplinary historical reconstruction of complex processes of development is important for considering the emergence of economic systems as a result of the intersection of many different events and causal chains. However, Weber's interpretations of Protestantism and Calvinism are also controversial, and it has been argued that some versions of Catholicism may be included in the concept of the calling.

Because Weber analyzes the values and work ethics of capitalist economics, this approach to the origins and meaning of capitalism as the central elements of the philosophy of management and corporations helps us understand the close relationship between economics and religion [4]. It is necessary to conceive business and corporate organization from the perspective of the history of religion as the basis for contemporary decisions and conceptions. Weber's description of the origins of capitalist work ethics in the different kinds of Protestant communities shows how the fundamental notions of business economics, like profit, property, work, and organization, have deeper religious and cultural foundations [5].²

The conceptions of legitimacy in the contemporary economic system are based on general cultural relations in the Christian cultural tradition. This is what we learn from Weber's historical perspective on values and work ethics. Looking back on history, we can analyze how the relation of work and culture has changed [6]. In the Greco-Roman world, work was not understood in the same sense as today. For the Greeks, work was not dignified and they emphasized the free and independent life of aristocrats in the public political space. Slaves and women in the private sphere of the home, understood as the real sphere of the economy, did the hard work. In the Hebrew Bible, work is also to some extent conceived as something negative because Adam and Eve are excluded from paradise and forced to work in the "sweat of their face" because they have sinned before God.

Despite this reluctance to work, we can find the basis for modern Protestant work ethics in Christianity [2]. Even though work in antiquity was conceived as a means to gain a result – in itself something meaningless – during the Middle Ages, work became more and more a good in itself. Although work is described negatively in the New Testament, the first Christians did not conceive sweat on their forehead as something negative. They were oriented toward earthly life, and in contrast with the rich Romans, the poor Christians found power in work.

The Danish theologian Jan Lindhardt, together with the economist Lars Uhrskov, has argued that work became integral to the life of Catholic monks in the monasteries in the Middle Ages of Christianity [7]. It is in this context that the origins of the philosophy of management of modern corporations can be located. Work began at that time to be legitimated as an expression of a pious life. The monks wanted to live a life devoted to their belief and in respect of God, so they isolated themselves in monasteries to be as pious as possible. The monks divided their everyday life in exact temporal intervals, and they used work as a way to give meaning to time ([7], p. 32). To keep one's self busy with work was an instrument to avoid sin. The monk had to work in order not to lose himself, and this implied that there was no limit on the duration and amount of work. Work became a kind of therapy to fill the empty time ([7], p. 35). The culture of the monasteries can be considered as an important historical precedent for the work culture of modern corporations.

However, it was only with the Reformation that the work ethics of modern times really began to appear. In the Middle Ages, many secular circles still did not view work as the meaning of life. The great Protestant reformer Martin Luther was certainly critical of the emerging bourgeoisie, and he did not like the idea that people should earn money from their work. Nevertheless, he considered work important for human identity because he argued that work was a calling and that one had a duty to work to help one's neighbor [8].

The Protestant work ethics was not initially based on the idea that one should qualify oneself to deserve eternal life in heaven. Contrary to the Catholics, Luther based his doctrine on the idea that it was faith alone and not one's actions that determined the destiny of each person. It is debatable whether Luther thought that human salvation was predestinated. His idea of the enslaved suggests that this is the case, even though the emphasis of the significance of belief seems to leave more room for the individual's own influence on his or her destiny through good and heroic actions. In any case, a devoted work ethic was common in Lutheran Protestantism because one could live as a pious human being by working and helping one's neighbor and society [9].

The Lutheran idea of the calling was not as dynamic as the Calvinist. Unlike Calvinists, who did not possess the same skepticism toward the emerging market economy, Lutherans conceived of "filthy lucre" as religiously problematic. Weber emphasizes how Calvinism, Puritanism, and pietistic Christianity writ large, apart from being strongly inspired by the strict laws of the Hebrew Bible, were based on the idea that true Christians had to work hard in order to earn salvation, and by becoming rich from the fruit of their work, they could get a sign from God showing

that they were among the selected chosen few destined to reach heaven ([7], p. 40). For those religious groups, it was not a question about spending the earned money, but rather to live as economically as possible and reinvest the money so that their wealth would increase and the sign of salvation would be even stronger.

In this sense, the strong Calvinist and Puritan morals, as described by Weber, are the original basis for the capitalist system. The conceptual foundations of the philosophy of management and corporations emerged from this perspective. Even though the religious argument is hidden behind the modern work ethics and values of capitalism, the close link between work, time, and money is maintained in the capitalist conception of the world. Capitalist work ethics is about working hard, increasing wealth, and living relatively thriftily so that money is not wasted. It is a characteristic aspect of Protestant ethics that work has a value in itself. In the context of secularization, the religious foundation for the strong capitalist work ethics is detached and forgotten. Capitalism, with its particular values, is isolated as an independent system of action and normative behavior, based on mutual expectations and trust of reciprocity and dutiful behavior between trading partners and business colleagues.

How can the capitalist economy continue to exist without explicitly acknowledging its religious foundation? To answer this question, it is important to refer to Weber's analysis of different forms of legitimacy in his major work *Wirtschaft und Gesellschaft* (1903–1917), which can be considered as an explanation of economic behavior. According to Weber, the aim of the study of forms of legitimacy is to determine the relation between economic organization and the implementation of values in society [10]. The explicit religious foundation of economic action can be defined as a traditional way of legitimating economic behavior because it is founded in inherited religious convictions that explain economic organization of society. The detachment of work life and work ethics from Protestant religion signifies, however, that this traditional legitimacy is put to the test.

At the same time, it is difficult to say that the modern economic system is legitimized through the charisma of the personal appearance and capacities of the manager or the personal abilities of the manager to motivate employees to participate in work. The ascetic work ethic is much more down to earth and rational compared to the traditional models of legitimacy. In this sense, Weber's sociology of religion and thinking about economic values is primarily a theory of the rationalization and modernization of economy and work life. Contrary to other religions, for example, Buddhism and Catholicism, Protestantism was not characterized as an escape from the world, but rather it was an appeal to human action in the material world. It is a significant aspect of the current economic system that it is not legitimized by society's cultural tradition or the belief of economic actors in certain inviolable values. The foundation of market economics and of the philosophy of management and corporations is first and foremost rational, and this is an important consequence of the Protestant work ethics. From this perspective of Puritan morals, capitalist economics is best explained as the rational interest of individual actors within the limits of ethics and morality of society and the rational interest of corporations to maximize utility with the aim of earning profits from their economic activities.

Weber shows the important relation between ethics and economics in the sense that he illustrated how rational economic values were dependent on Protestant religious values. What is dangerous is how these ethical foundations for business actions seem to have been forgotten in many modern concepts of economics. When this is the case, economic systems find themselves in a legitimacy crisis. Current reflections about business ethics are an effort to reformulate the values of the capitalistic system in a time when the foundations of economic actions have been hidden and detached from the self-understanding of economic actors. Business ethics is an effort to redefine corporations and business life as “mediating institutions,” places where values and ethics are generated as important foundations for the morality of society [11]. Inquiries into business ethics constitute therefore an effort to restore and reestablish legitimate values of business in situations of legitimacy crisis.

From Protestant Ethics to Classical Theories of Management

Historically, there have been different interpretations of the legitimacy of economics from the perspective of philosophy of management and corporations: traditional Protestant ethics closely links morality and economics; Catholicism corrects Protestantism by emphasizing community in economic progress and welfare economics and the crude existentialist and modernist conception of economic life [12]. In modern society, we can, however, also see that the values of the Judeo-Christian tradition are increasingly facing a general legitimacy crisis in society. In connection with secularization and globalization, society is marked by an increasing fragmentation of work life. This is one of the reasons for the emergence of the crude economic existentialism where the only sense of meaning in life is derived from the laws of the market economy. In technological society, many work functions have become automatic and machines have taken over the work of human beings. Durkheim was aware of this when he argued that a strong division of labor would imply dissolution of the sense of meaning and solidarity with fellow workers and other human beings [13]. The result of this dissemination and fragmentation is the increasing difficulty of making sense of the idea of the calling and the traditional Protestant virtues of devotion, duty, integrity, honesty, and accountability. Human beings have increasing difficulty fashioning their identities through work.

The existential radicalization of the Protestant work ethics sets the stage for different modern theories of management, from Taylor’s theory of scientific management [14]; Weber’s concept of rational bureaucracies; Fayol’s concept of business administration [15]; Barnard’s concept of administrative leadership, the “human relations” school, and human resource management; Selnick’s theory of institutional leadership; to the concepts of open versus closed management theory and concepts of leadership. Moreover, with the theories of cultural management, the learning organization, and cultural management in the 1990s, we can perceive different attempts to respond to the problem of legitimacy in organizations. Different theories of philosophy of management and corporations imply different

attempts to deal with this loss of meaning and try to maintain the calling and the virtues of the Protestant ethics in crisis situations.

Employee motivation is a fundamental problem in the discussion of legitimacy in the philosophy of management and corporations. Secularization and the detachment of economics from spiritual values have left an empty space without meaning. At the same time, Protestant ethics is not sufficient to keep modern firms together. The ongoing debate about business ethics, values, integrity, honesty, and accountability can be considered as an indication of the crisis of Protestant ethics. It is much more difficult for management and employees to consider work as a calling. The mergers of corporations in larger units due to increasing requirements of economic efficiency also imply that it has become more difficult to believe in the Protestant or Catholic version of the firm as a covenant or a community between management and employees. Moreover, due to the existentialist and secularist criticism of secular economics, corporations are not seen as possessing common values or feelings of community that can contribute to creating common identity.

Such feeling of loss of meaning and life without a calling implies several very different efforts to reinstall legitimacy and common values in the firm. Philosophy of management and corporations can be viewed as an effort to find values and meaning in production and economic life. Different theories of management are divided between positive and negative, optimistic and pessimistic views of human nature. If we go back to the classical scientific and bureaucratic concepts of management, we can say that these theories agree with the concepts of Protestant ethics, combining a rational and scientific worldview with the ethical ideals of discipline, integrity, accountability, and trust.

The classical theories of philosophy of management and of corporations formulated at the beginning of the twentieth century represent an effort to make management scientific and to rationalize processes of administration. In this sense, they continued the focus of Protestant ethics on rationality and efficient economic processes, but they also tended to forget the ethical origins of their search for efficiency and rationality. Consequently, Protestant spirituality was soon replaced by a behavioral focus on “economic man.” The engineer Frederick Taylor focused on the possibility of making work more efficient by using rational and functional principles of organization, where management was based on a functional division into particular tasks [10]. As indicated in his theory of bureaucracy, Max Weber described how goal orientation became dominant in rational organization [29]. Another example that will be discussed at length below is Henri Fayol, the originator of the administrative school in organization science. With many years of experience as a manager, Fayol astutely described the rational principles of business administration.

Taylor’s scientific management was an attempt to develop a detached material concept of human motivation at work [15]. This kind of philosophy of management and corporations was conceived as rationalizing production so that workers could produce more efficiently and management could reduce costs and save time. Scientific management recommendations included workforce specialization and better training, but Taylor further argued that a worker could be motivated to work more

effectively if he or she was paid more for higher production. Taylor's argument is based on an appeal to self-interest. A worker who will see rewards for working harder will raise productivity and not question the conditions of work [16]. This material view of production posits that legitimacy is conditioned by the workers' search for wealth. Even though Taylor was criticized for reducing human beings to machines based on a very functional and production-based conception of corporations, he was aware of the importance of management as a science that deals with creating sufficient material living standards, well-being, and increases productivity. Scientific management could be considered as a secularization of the Protestant work; instead of one's religious and moral calling obliging fairness and the desire to do one's best for community, work is seen from a more utilitarian perspective as a self-interested instrument to ensure material wealth.

Some of the same aspects of the rationalization of production can be found in Weber's theory of bureaucracy. Rationalized bureaucracies are important aspects of the kind of organizations that followed the emergence of modern capitalism. In contrast to earlier forms of organizations, these rationalized organizations are based on work discipline, hierarchy, lifetime employment in the same job, and career advancement within the organizations [10]. The legitimacy of authority is no longer charismatic or traditional, but based on rational decision-making from the point of view of formal and functional goal rationality of the bureaucratic system. This bureaucratic concept of organization resembles the application of military forms of organization to public and, to some extent, private organizations. From this point of view, corporate organizations were developed as imitations of military organizations following similar structures of hierarchies, commands, and strategies. Private capitalist organization may contain some part of the same principles of formal and rational organization insofar as they grow into formal bureaucracies. From the point of view of Protestant ethics, it is a characteristic of these kinds of organizations that they have a tendency to slowly emancipate themselves from traditional Protestant values of calling, duty, and devotion to work, while at the same time being somewhat dependent on an unconditional work discipline from their employees.

As a representative of the rational paradigm of organizational studies and philosophy of management, Fayol's major concepts are administration and planning. In his book, *General and Industrial Management* (1949), he defined such concepts as the division of labor, the responsibility of authority, discipline, rational planning of goal orientation, concern for the general interest of the organization, concern for appropriate employee salaries, centralization, hierarchy, order, fairness, stability in the workforce, initiative, and concern for the community (*esprit de corps*). Together with scientific management and rational bureaucracy, this approach to rational administration can be said to represent a concept of management that is supported by the values of the Protestant ethics of responsibility, integrity, and accountability. Moreover, in all cases, management processes are built on concepts of work as a calling and based on dutiful devotion. In this sense, scientific management and rational administration presuppose some of the values of the Protestant ethics while at the same time transcending these concepts by being based on a purely rational paradigm of management and managerial reason.

In contrast to the focus on rationality, the human relations school in the 1920s and 1930s raised awareness of the importance of the worker's quality of life for productivity and motivation. Thinkers in this school did not abandon rational motives, but stressed the combination of rational and normative motives for worker motivation [17, 18]. Accordingly, this approach discovered the importance of normative ethical issues for understanding work life. The human relations school focused on group work, workers' collectivity, and organizational culture as important for increasing productivity. This school of management tried to combine the view of the self as utilitarian and self-maximizing with a broader perspective of motivational psychology regarding management as a method to increase productivity [16]. The famous Hawthorne experiments from 1920 to 1927 may be interpreted in this sense. In these experiments, researchers investigated the performance of workers at the Hawthorne Works of the Western Electric Company. In the beginning, the researchers wanted to investigate the impact of lighting in the workplace; so they changed the light in the room of an experimental group and let the light be constant in the room of a control group [17–19].

To their astonishment, the researchers observed that productivity increased in both groups. After other experiments with a group of female workers, the researchers concluded that changing a worker's interest in their working conditions had an impact on improved productivity. This became known as the Hawthorne effect [16]. Such interpretation was proposed by the social psychologist George Mayo, who analyzed the reaction of the women using Freudian concepts of transference and excitement to understand the reaction of the workers. He concluded that the reason for the growth in productivity could be found in the emotions and feelings of the women who felt that they were part of a team and had a higher mission to accomplish. In this way, the Hawthorne studies represent a combination between values and economics because they show that social values and employee feelings have a great impact on productivity.³

The lesson of the Hawthorne experiments for human relations management and for the philosophy of management and corporations is that productivity increases when people are treated as human beings with autonomy and dignity.⁴ We can argue that the research showed the importance for management of engaging emotion. Following Joanne B. Ciulla, this possibility of community feeling in the corporation, which so inspired Mayo, led Peter Drucker to propose the corporation as a central force in building social relations ([16], p. 100). Later, the social psychologist Kurt Lewin investigated the possibilities of workplace democracy as a kind of response to the search for employee engagement and employee motivation, which was an essential element in the program of the human relations school. Lewin argued that democratic management may be as powerful and efficient as autocratic management. It depends on the ability of the manager to understand and exercise the dynamics of democratic leadership, which, if successful, may lead to greater employee motivation and engagement than autocratic leadership [20].

In his classic work, *The Concept of the Corporation* (1946), Drucker proposed the corporation with motivated and engaged workers as a central force for a socially responsible community ([16], p. 105). Drucker appears to join with those who argue

for the necessity of integrating economic activity in a common social community. He was undoubtedly inspired by the common efforts of American corporations during the war. Nevertheless, his pivotal contribution was not the need to overcome boring work but rather recognizing social interaction as the major force in inspiring worker productivity [21]. People become good citizens when they feel that they really contribute to the welfare of society. According to Drucker, there is a strong correlation between the corporation as a “good industrial citizen” and motivated employees in the firm as “good citizens of society” ([16], p. 107). This is an important affirmation of the importance of corporate citizenship [22].

Chester Barnard, who can be read as a representative of the administrative school of management, was also partly inspired of the human relation school in the sense that he was aware of the importance of formulating a broader theory of organization than the one proposed by the rational and administrative schools. In *Functions of the Executive* (1938), he combines structural and dynamic concepts of organization while reaffirming the importance of collaboration, communication, and work for a common aim or project of organizational development. Barnard combines the search for internal equilibrium with the harmonization of the organizational environment. Organizational systems are systems of collaboration that aim to survive by following a common aim and a common function. Concepts of values and convictions become important elements for developing such organizations, for example, Barnard was well aware of the importance of responsibility and ethics for good corporate leadership and management. Barnard was aware of the importance of personal ideals and values for the motivation and activities of the manager [23]. Real leadership is marked by a sense of personal responsibility of the manager who is able to appear with integrity and inspire respect in the organization for his or her decisions.

Institutional organizational theory, developed by Herbert Simon in collaboration with James March (with later administrative theories of management refined by March and Simon), can be considered in the lineage from Weber to Chester Barnard [24]. As we have already discussed, this approach is characterized as a critical reply to the neoclassical concept of economic rationality. “Economic man” could be said to be replaced by “administrative man,” who is not a perfect utility and preference maximizer, but operates in the context of the possibilities and limits of leadership in informal and formal organizations [24]. Administrative decision-making in organizations is determined by logic of satisfaction of requirements rather than optimal maximization. The manager operates according to the principle of the logic of consequence and according to the appropriate measures of rationality. Simon emphasizes that decisions have both factual and ethical content, but that it is impossible for individuals to act rationally in any ideal sense. Rationality is limited and decision-making can never rationally evaluate all possible outcomes [24]. With this concept of organizational decision-making, we move beyond the closed economic conception of decision-making toward an open concept of decision-making, which may also include values.

In their behavioral theory of the firm, Richard Cyert and James March continue this opening of organizations toward a broader conceptualization of values by

arguing that organizations do not follow any particular goal. *A Behavioral Theory of the Firm* (1963) indicates how goals and aims of organizations are changing and open for reinterpretation [25]. Organizations are considered as political systems constituted by many different interests and individual preferences. Organizational behavior is shaped by the interactions of individuals with each other and with the environment, where goals are shaped in negotiation, formation of coalitions, and confrontations between different roles, values, and other conceptions. This concept of the organization represents a challenge to Protestant ethics because there is no a priori evidence that there is a common goal belonging to all the participants of the organization. We are confronted with a situation where organizational values and ethics are shaped in negotiations and coalitions and in interaction with the values of the institutions of the environment and surroundings of the organization.

The early institutional sociology of organizations, represented by Philip Selznick, focused on the national history of organizations as natural systems in institutional environments. In this context, the analysis of organizations extends to encompass the relation with the environment. Organizational history in interaction with environments contributes to the formation of the values and norms of organizations. This is also the basis for the search of legitimacy of organizations and their formulation of values as the basis for adaptation to the environment. Selznick centralizes the integration of values-driven management in corporate leadership because it is necessary to operate with values in order to conform to the norms of the environment as the basis for adaptation. Moreover, Selznick is aware of the importance of addressing organizational development at the institutional level in the sense that organizations function as institutional systems with their own features of development [26]. With his later interest in organizations as communities, Selznick confirms the implicit criticism of the strict concept of rationality because he argues for the importance of common values, character, and integrity in organizations. This is the case, for example, when Selznick defends the importance of institutional integrity [27, 28]. He belongs to those who argue that the firm should be considered as a community that should be integrated in the larger framework of society.

Institutional theory represents a theoretical approach to the philosophy of management and corporations that analyzes the institutional aspect of social action and the exchange between actors and institutions. With the use of this institutional approach, we aim to apply the concept of critical hermeneutics as the foundation of an interdisciplinary combination of institutional theory and business ethics. We can understand institutional theory as an important theoretical approach for conceiving the role of business corporations in society. Different theoretical approaches are distinguishable within institutional theory that can all be applied to understanding organizations and the interchange between values, ethics, and social responsibility within institutions and organizations. Institutional theory provides the necessary social theory that is necessary in order to analyze the foundations for business ethics in modern corporations. In order to make use of this analysis, we have to present the different conception of values and ethics within different approaches to institutional theory.

The historical and economic institutionalism, sometimes called old institutionalism, goes back to the nineteenth century and was developed by German economists who were inspired by German philosophy [29]. This theory relates to Thorstein Veblen, who analyzed the role of culture in relation to economic development. The theory of historical economic institutionalism emphasizes the historical and cultural factors that determine economic norms. Those factors are also dependent on ethics and values, so it is easy to combine historical economic institutionalism with business ethics theory because of the mutual focus on ethics and on the importance of social relations for economic development.

James March and the political scientist Johan Olsen are typical representatives of political science institutionalism that can also be applied to the philosophy of management and corporations [29]. Institutional political science may be conceived as an extension of the previous historical school of management and economics that was important in the nineteenth century and focused on the cultural and historical dependence of economics and managerial forms. Political science institutionalism is a continuation of the historical school because it emphasizes the importance of institutions for social action [30]. Institutional political science contains theoretical positions that represent a criticism of the historical school because they emphasize that action in institutions is based on individual rationality and the attempt to maximize one's own interests, though another approach within institutional political science criticizes the maximization of utility on a hermeneutic basis and understands institutions as horizons of meaning that should be used to understand the limitations of actions in political institutions. Business ethics may use this approach to conceive the importance of ethical background mentality of sound social norms and ethical horizons of meaning in organizations for understanding ethical choice.

New institutional economics is also an important approach to the philosophy of management and corporations. By analyzing the importance of institutions for economic action, new institutional economics uses the insights from institutional political science to understand economic action. In this context, we can refer to economists like Oliver Williamson and Douglass North [31]. New institutional economics disagrees with the historical school in economic science about the kind of rationality that determines economic development in organizations and in society. New institutional economics is founded on an economic concept of rationality based on utility maximization, and its proponents have a tendency to conceive institutions as a framework for limiting economic action that makes rationally ideal economic action impossible. Ethics is, from this perspective, a kind of transaction cost that limits rational economic action.

Further, we can mention institutional sociology as a method of analysis. This approach begins with the investigation of how the cognition and values of different actors are formed by institutions. Sociologists like Paul DiMaggio and Walter Powell are representatives of this tradition [32]. Institutional sociology represents different approach from institutional economics because it recognizes the importance of institutions for the formation of interpretations and understanding values without being directly based on the economic notion of rationality. Social reality is

rather conceived as a construction based on the implicit expectations and demands of actors. This approach can very well be combined with an emphasis on the importance of history and culture for the development of understanding organizational legitimacy and relationship to the environment. The actions of companies are determined by symbols and contexts of meaning that also frame the point of view of particular actors.

Institutional theory in law and political philosophy should also be mentioned. In fact, this concept of institutions is behind my approach to the good citizen corporation in the sense that we can understand it as the foundation of the other approaches to institutional theory. When political philosophy refers to political institutions in the tradition from Cicero to Hegel, the concept of institution refers to just legal constructions of political order in society. It is somewhat the same concept of the institution that we use when we refer to the idea of the good life with and for the other in just institutions. This is a normative and political concept that sees a close connection between the concept of institutions and ideas of ethics and justice. This is also the approach to institutions that we find in the theories of contemporary philosophers like Habermas and Ricœur. Moreover, this is not exclusively a descriptive and anthropological concept of institution as hidden conditions of action, but rather a constructivist concept of institutions based on conscious and collective human intentional action.

Having briefly sketched some of the leading concepts of institutional theory, it becomes clear that the philosophy of management and corporations is situated between the closed iron cage of the rational concepts of economic efficiency in the early scientific, bureaucratic, and administrative concepts of management on the one hand and conceptualizations of organizations as open systems of interaction with the environment on the other. In modern institutional theory, concepts of organizational complexity and the open perspective on organizations are important supplements to the bureaucratic and administrative concepts of organizations as closed systems [33]. The restricted economic view of organizations is combined with the sociological point of view of organizations as open systems. The institutional concept of organizational theory posits that the legitimacy of organizations is not restricted to its ideal international rationality of efficiency.

In fact, the tension between the open and closed conception of organizations was already present in the confrontation between the human relation school and the administrative and bureaucratic concepts of organizations. It is doubtful whether the great ambitions of the human relations school and dynamic management thinkers had really spread to all companies. Rather, during the 1950s and 1960s, organizations had become more rationalized and bureaucratic and workers felt even lonelier with increasing alienation, fragmentation, and loss of spiritual meaning in their work. The result was stagnation and inflexibility in bureaucratic institutions. With Joanne Ciulla, we can interpret the search for excellence movement in the 1980s as a reaction to this alienation, followed by the emancipation movements of the 1960s and the 1970s. The new management philosophy took up the search for excellence as the start of the movement of values-driven management. This approach adopted elements from Drucker's view of the corporation as an important

innovator for civil society [34]. Moreover, Drucker's concept of "management by objectives" and formulation of goals was viewed as essential for organizational development [35]. In fact, management by objectives is very close to an integration of ethics and values in business because objectives are formulated through mission and vision statements. In this sense, it represents an open system of management integrating broader concepts of values from stakeholders and the organizational environment. Moreover, in Drucker's theory of management, we can also perceive a focus on the importance of change as a driver of management [36].

The management movement of the search for excellence, led by Tom Peters, can be conceived as a new enactment of the importance of values, culture, and motivation for management [37]. These values contribute to the definition of the firm as a community in order to revitalize the motivation and engagement of the workers in the firm, a corporation in search of a soul. The result of this management movement was the emergence of the all-inclusive organization, which integrates everyone in the firm in a team spirit while leaving fundamental power relations between management and employees intact ([16], p. 133). Events like team building, personality development, empowerment, and so forth contributed to the development of the kind of management that relied heavily on all kinds of consultants. Fostering teamwork and uniting workers and management in a common unity became the ideal. The search for excellence can therefore be said to represent a strong expression of a move from bureaucratic organizational concepts toward values-driven organizations.

Johanne Ciulla interprets the instruments of total quality management (TQM) as a culmination of this unification of economics and personal development in the workplace. TQM originated in the 1950s but really came in management fashion in the 1980s and 1990s [38]. TQM centers on quality in all parts of the organization, and it aims at long-term customer satisfaction and seeks to benefit other stakeholders and society. It implies quality considerations in relation to shareholders, customers, and quality of life in general. TQM programs can be considered as the way to motivate workers for total excellence in a customer-oriented system of high productivity. TQM is about increasing satisfaction at lower costs ([16], p. 143), as an integrated strategy integrates ethical values of corporate social responsibility and good corporate citizenship. As in the search for excellence, TQM is about motivating the worker to understand the value of the work and to make him or her strongly committed to the values of the corporation; however, it may be argued that the use of values still depends on the power structures of the firm, implying that ethical relationships between management and employees last as long as employees are motivated contributors to the value creation process of the corporation ([16], p. 146). Furthermore, all the talk of ethics can easily change into a distrustful atmosphere of management by fear if, for example, the firm has to downsize and employees are fired without any other reason than economic problems ([16], p. 162).

A parallel and somewhat different criticism is also to be found in the project of Henry Mintzberg. His management theory can also be considered as a criticism of the bureaucratic, rational, and administrative paradigms of management. In the

1980s, Mintzberg analyzed the possibilities of democratizing business organizations as an alternative to top-down management [39]. In his book, *Rise and Fall of Strategic Planning*, Mintzberg also strongly criticized the application of the concept of planning with management and leadership [40]. The problem is that rationality is never ideal and planning is therefore always without certainty. Reality fits better with an open than with a closed concept of management. In fact, Mintzberg remains very critical to the closed practice of management with a limited concept of rationality. In *Managers Not MBAs: A Hard Look on the Soft Practice of Management and Management Development*, Mintzberg argues for the importance of having a broader view on management education. Strategy and leadership cannot be reduced to “operations management” based on “planning, budgeting, and programming,” that is, based on a concept of the technical production system of the corporation as a closed system without any understanding of management in practice. Instead, management must include broader concepts of ethics and responsibility in order to deal with stakeholders and give more value to shareholders [41]. Management should focus on real problems and deal with the education of leaders as responsible people who take care and listen carefully to employees and stakeholders. Management is not only by economic objectives, but administration must include the social consequences of economic relations in decision-making. Technical know-how should be accomplished by human capacities of management with responsibility and care.

From Institutional Theory to Communicative Action and Stakeholder Management

Accordingly, we can read the developments of management theory and philosophy of management through most of the twentieth century as a movement from closed rational systems, supported by strong external values of the capitalist Protestant work ethic, to a concept of organizations as opens systems that communicate with the environment and integrate values in decision-making. Management science has moved from a very strict definition of management and organization to a broader and more open concept of the relation between organization and legitimate values. From the point of view of religious legitimacy, the process of legitimation has become more open and indicates the efforts of organizations to cope with the requirements and expectations of society. Concepts such as integrity, responsibility, and the ethics of organization are becoming more important as elements constituting the relation of organizational systems to the environment. In particular, integrity is important for good corporate citizenship [42]. This can be read as a movement from the libertarian concept of pursuit of self-interest toward a community- and welfare-oriented economy of the common good.

Today, the main problem of legitimacy is to determine how the values of the firm relate to society, in particular, in terms of dilemmas and conflicts. What philosophy of management and corporations has learned from Max Weber is the need to acquire legitimacy in society. But today, it is another kind of legitimacy that has

replaced the norms that Weber suggested. At all levels of the firm, the perspective of democratic communicative rationality implies critical evaluations of processes and products. Moreover, these values are related to internal and external stakeholders of the firm. From the perspective of communicative and deliberative reason, the firm is an institution that cannot be isolated from a democratic public sphere. As a good citizen corporation, the firm should accept this role and go into dialogue with the public in order to show its democratic concerns for the common good. Codes of ethics and values of different industries and professions are good manifestations of this concern [43].

As Habermas has convincingly argued, Weber's concept of rationality – between convictional, duty-oriented rationality on the one hand and instrumental goal-oriented rationality on the other – is too simple. Looking deeper into the concept of rationality, we may redefine Weber's distinction in terms of *communicative* rationality versus *instrumental* rationality. In the chapter "Was Heisst Universalpragmatik," Habermas replaces the traditional subject-object distinction with a theory of intersubjective meaning [44]. Rationality is based on communicative reason and criteria for validity [44]. This is the basis for Habermas's theory of communicative action: in domination-free dialogue, participants come to agreement about the social and natural world on the basis of mutual recognition and understanding. From this perspective, rationality is based on communicative interaction rather than individual convictions.

This concept of communicative action may be mobilized to contradict Weber's idea of secularization as merely instrumental rationalization. Habermas argues that history implies a development of communicative competency in society [45]. Because of social differentiation and the development of individuality, modernity not only leads to better technology and economic rationality but also an increase in communicative rationality. Accordingly, we have a different theory of rationalization, which allows us to escape Weber's iron cage. Modern society is characterized by different spheres of validity. We may distinguish between system rationality and the communicative rationality of the lifeworld. Due to rationalization of traditional and charismatic ways of legitimacy, modernity implies not only instrumental reason but also a possibility of a postconventional and argumentative foundation of morality. This means that rationalization is a condition for developing critical and reflective reason. Habermas argues that the project of modernity is unaccomplished because postconventional morality implies the need for a noninstrumental legitimacy of social life [45]. Moreover, communicative rationality is prior to instrumental rationality because it is a condition for social interaction. In a postconventional culture, communicative rationality represents a critical evaluation of instrumental reason and strategic interactions. Applying this view of rationality to economic interactions, we may say that Habermas's theory of communicative action provides us with a new foundation for economic rationality. Systemic interactions on markets require a broader social basis. They receive legitimacy as a social institution based on culture and the human lifeworld.

To define philosophy of management as communicative stakeholder dialogue in search for legitimacy is another important dimension of corporate legitimacy as

a good citizen corporation. Deliberative stakeholder dialogue of the firm as participant in a critical public sphere is a basis condition of communicative legitimacy. Stakeholder dialogue is more than strategic calculation of power and profit maximization. It is the basis for relation between the firm and society. In this regard, the work of Edward Freeman and his colleagues is an important development in management philosophy [46]. We need a broad concept of stakeholder dialogue including concerns for the autonomy, dignity, integrity, and vulnerability of stakeholders from the perspective of responsibility, solidarity, and trust [47].

Accordingly, stakeholder relations are defensible as a “normative critical concept.” Stakeholders are critically evaluated according to communicative reason and the norms of civil society [45]. Stakeholder legitimacy is an important outcome of philosophy of management. R.E. Freeman, a pragmatic stakeholder theorist, joins the idea of a communicative foundation of stakeholder theory with his normative-pragmatic approach to stakeholder management where multiple foundations matter for development of the approach [48]. Stakeholders engage in dialogue with normative and narrative visions about the common good and the future of the firm as embedded in society and social relations. Stakeholders care about legitimacy of their corporation, but they also focus on the economic outcome of the activity of the corporation. In this sense, according to Freeman, stakeholder theory is first of all a theory about business where management goes beyond shareholder focus toward stakeholders in order to improve value creation of the business in society by concern for stakeholders.

In this sense, stakeholders are people with “names and faces” who strive to fulfill their dreams [49]. The communicatively justified concerns of stakeholders are recognized as legitimate, even if they have views opposing the values of the firm. The firm evaluates critically different suggestions for strategy and decisions according to the principles of democracy and communicative dialogue and takes into account all involved parties for stakeholder relevant decisions that can be justified as acceptable from the point of view of justice and fairness to stakeholders. It implies recognition of the place of the firm as a participant in a process of public deliberation toward the common good of society. The deliberative stakeholder concept does not reduce stakeholders to objects for instrumentally improving profits; rather, stakeholders are viewed as having legitimate rights. This republican approach may include institutionalization of stakeholder claims as a part of values-driven management and of the formal structures of the firm. Indeed, this kind of business ethics contributes to developing the function of business as a mediating institution in society, where we perceive a tense integration of economics and politics. In this way, values-driven management is not a new strategy of instrumental reason, but represents an institutionalization of corporate responsibility and integrity based on the idea of the good citizen corporation.

An example of an approach to the philosophy of management and corporations from this vantage is Peter Ulrich’s idea of an integrative economic ethics as a way to overcome the challenge of the Weberian concept of modernity. Ulrich argues that we cannot work with purely instrumental reason and we need normative conditions for legitimacy. Business ethics is based on critical reflections on corporate values in

relation to the place of the firm in a democratic society. This is indeed the case of the good citizen corporation. It not only relates to a personal calling or instrumental rationality, but considers corporate activities as a contribution to the common good.

The philosophy of management and organizations deals with the epistemology and metaphysics of management and corporations. Epistemology deals with the basis of true knowledge about and legitimacy of management and corporations, and metaphysics deals with the transcendental conditions for the legitimacy of management and corporations. As proposed by Weber, such analysis integrates the epistemological and metaphysical analysis with the ethics and norms situating business ethics within the research of economics and social sciences.

The object of analysis of the combination of philosophy of management and business ethics is first of all the concept of the firm and how ethical reflections can be applied to corporations. Ethics is about values, and values-driven management is about the ethical norms that should govern corporate decision-making. The object of study is business organizations and firms. It includes both their internal relations and ethics in organizational behavior and the interaction of the organization with different environments, people, and other organizations. Business ethics and philosophy of management and corporations does, however, not stop with the study of international external organizational behavior. It also concerns the level of individual choices and actions in organizations and can be extended from microlevel (e.g., studies of firms and individuals) to macrolevel analysis (e.g., of the role of the corporation in the political economy of a given society or state). Moreover, it includes the study of ethics and the philosophy of business systems and markets structures, which cannot be understood exclusively at the level of the study of individual corporations. Similarly, global efforts to regulate the behavior of international corporations are a macrolevel enterprise.

It is important to stress that the philosophy of management and corporations can be based on a broad array of foundations. Philosophy of management, together with business ethics, can be conceived as a critical reflection versus prevailing technical and economic “conceptual schemes” [50]. It focuses on the impure nature of economic rationality and considers the support of human needs and self-actualization as the basic significance and importance of economics. The philosophy of management looks for a holistic conception of the relationship between human beings and society and considers this as the basis for investigation in economics and ethics. It does not exclude the neoclassical vision of economics based on efficiency and utility, but it includes this perspective in a broad and interdisciplinary social scientific perspective. This view implies an institutional and historical perspective on ethical issues, norms, and values. In this sense, the philosophy of management and corporations includes reflections on the concept of the firm in organizational theory in close relation with the debate about the foundations of economic institutions. From a broader perspective, we can talk about an integrative philosophy of management, drawing together business ethics, economics, and other social sciences in the study of business ethics in practice in organizations. It is in this context that the problem of legitimacy may be defined as the core of the reflections about the philosophy of management and corporations.

Conclusion

So we have now proposed the idea of the good citizen corporation as a way to legitimize the economic behavior of corporations in modern society. How should we conceive this discussion from the perspective of institutional theory? In this context, institutional economics remains on the descriptive level, where a firm should be understood as a more or less formal nexus of contracts among its members. These contracts are based on cultural and historical norms in order to avoid opportunism and to keep society and the market from falling apart; however, institutional economics does not give a definite answer to the question of what values will be most appropriate in this context. Moreover, given the crisis of traditional models of legitimacy, for example, the Protestant and Catholic conceptions, as well the inability of their modern economic followers and many other conceptions of legitimacy, we are confronted with the problem of how to justify the new values for corporations on today's economic markets.

It is in this context that we have argued for the idea of the good citizen corporation, which is based on the ideals of integrity and corporate social responsibility. Although we believe it is the right one, this model could also be criticized as being nothing but a new kind of corporate religion. The argument is that the republican conception of business ethics is not able to overcome the arguments against the progressive secular view (e.g., Samuelson) or the libertarian Puritan view (e.g., the Chicago school), because it represents a version of a religious and spiritualist conception of good values-driven management [51]. In order to address these criticisms, we need to distinguish the reflective-rational conception of corporate citizenship from traditional views of legitimacy.

Cross-References

- ▶ [Aristotle and the Corporation](#)
- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Discourse and Normative Business Ethics](#)
- ▶ [On Yijing as Basis of Chinese Business Ethics and Management](#)
- ▶ [Recent Debates in Philosophy of Management](#)
- ▶ [The History of the Philosophy of Management and Corporations](#)

Notes

1. We may distinguish between different paradigms of legitimacy of the corporation in modernity: (1) Weber's paradigm of Protestant ethics; (2) the Keynes/Samuelson paradigm of the mixed economy; (3) the Friedman/Knight paradigm of libertarian and existentialist capitalism; (4) the paradigm of the closed economic organization; (5) the paradigm of open organization theory based on the legitimacy of the corporation in its environment; (6) the paradigm of spiritual foundations for corporation values; (7) the critical paradigm of corporations as alienators of humanity, where religion is reduced to a strategic instrument of profit

maximization; (8) the paradigm of republican business ethics based on stakeholder management and the idea of the good life with and for the other in just institutions. These different paradigms represent ways to approach the issue of good corporate citizenship. From this, we will argue that the framework of republican business ethics is the most appropriate: (9) the paradigm of the criticism and deconstruction of the metaphysics of the firm in Western philosophy.

2. Deidre N. McCloskey helps to understand the role of the virtues in capitalism in her work on the origins and history of capitalism. Although she goes further back toward Aristotelian and Catholic virtues, there is a similarity with Weber's argument in the emphasis that ethics and virtues are essential for good and well-functioning markets.
3. Although the Hawthorne experiments represented a breakthrough for the theory of humanistic management, they can be criticized from the viewpoint of the ethics of science. The experiment was the background for the so-called Hawthorne effect, which denotes the phenomenon of behavior changes among people when they are subject to research observation. The experiments showed that it is difficult to measure performance objectively. We can mention a number of methodological issues regarding the reliability of the results of the experiments. Maybe the only thing we can learn from the Hawthorne experiments, aside from the Hawthorne effect, is that there was no other lesson to be learned from the experiment. The workers did not have the opportunity to know what the real aim of the experiments was. Facts were concealed from them. Moreover, it can be argued that it is unethical to use people as objects for productivity in experiments. In addition, we can mention a number of methodological issues regarding the reliability of the results of the experiments. It may, for example, be argued that the workers in the experiments faked their productivity because they were watched by the researchers and had a strategic approach to their participation in the experiments. Moreover, there are many similarities between the Hawthorne experiments and the Milgram experiments on disobedience where participants of the research also did not have total access to the results and premises of the experiments. In the Milgram experiments, much of the reason for the strong obedience to obsolete experiments was the respect for the authority of the researcher. A similar research effect may be the case of the Hawthorne experiments.
4. The Hawthorne experiments were important for developing another attitude to the relation between employees and management. It can be said to have spurred one of the first movements toward a conception of corporate citizenship involving concern for improving the life of employees. The different problems with the research and the unforeseen results made researchers realize, however, that it is very difficult to determine how to make work relations better. Despite these difficulties, efforts to democratize corporate culture and to make employees more responsible for production and work organization found good support in the experiments.

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Abstract

In this chapter, we examine legitimacy in relation to recent debates on the philosophy of management and corporations that have emerged to deal with the decline of Protestant ethics. On this basis, we discuss the concepts of corporate citizenship and the good citizen corporations as recent efforts to respond to the problem of corporate legitimacy. Finally, we discuss the recent use of the philosophy of Martin Heidegger to propose a critical reading of the search for legitimacy in the Western philosophy of management.

Introduction

In this section, we will review some recent models presented in debates in the philosophy of management to solve the problem of corporate legitimacy [1].¹ With the decline of Protestant ethics, the empty space for a values discussion has created an opening for new conceptualizations of the role of spiritual values in the corporation. In fact, the new management methods of the 1980s, the 1990s, and the 2000s that focus on individual self-realization have also created a move toward a new spiritualization of the corporation. Searching for more freedom and self-realization in the workplace has led to a search for new meaning in work life. Many management consultants and management thinkers have been inspired by the New Age movements to establish this spiritualization as an alternative to the Catholic and Protestant approaches to the ethics of the firm. This spiritualization represents a tradition of management that is heavily inspired by Eastern religions and, as such, represents a severe criticism of the rational worldview of Protestant

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ethics as analyzed by Max Weber. This newer emphasis on individual self-realization and spiritualization implies a search for a new meaning of life in the corporation, where the individual can be integrated in the firm at the basis of personal self-realization. In this sense, there has been a perceptible convergence between mystical movements of spiritualization of relations in the firm, inspired by Eastern mysticism, and religions more sympathetic to the neoliberal paradigm of self-management and self-government [2].² At the same time, we can perceive increase focus on concepts of corporate citizenship and corporate social responsibility that are based on the concept of the political firm or a recognition of the political role of corporations in society where modern democracies no longer view the market as neutral but as something that is embedded in interactions between civil society and the state [3].³ Therefore, a shared responsibility between state, civil society, and corporations is required, and the political firm can be seen as response to this tendency. Finally, there has also been strong criticism of the metaphysics of philosophy of management, based on a general criticism of the metaphysics of the West [4].⁴

Emergence of Corporate Religion and the Search for Spirituality

We can describe this phenomenon as an application of New Age spirituality in management theory. Spirituality inspired by Eastern thought and religion has been proposed as a way to achieve good and thoughtful leadership in opposition to technical management. Spirituality and leadership education is viewed as a humanistic response to a technical and rationalistic approach to management [5]. The approach is based on the holism of Gestalt therapy and New Age spirituality, which, after originating as a critical alternative social movement after 1968, has been transformed into instrumental management tools that serve to make companies more efficient. Some kinds of values-driven management are inspired by this search for a new spirituality that has become powerful as a consultancy tool. This approach to management constitutes a new spiritual approach to management where management is inspired by transcendental psychology, depth psychology, and mystical theology. The aim of such a mystical paradigm of corporate religion is to use spiritual and religious values to promote the company.

We can observe that many new forms of management consultancy and coaching use spiritual rhetoric as an instrument of management. Management discourse uses spiritual vocabulary to fill in the empty space of values now that Protestant ethics is no longer acceptable. The spiritual vision of management can be considered as a new ethics for the company that uses religious language and mythical, as well as symbolic figures, to create a meaning for the company. Sometimes, this is also combined with elements from traditional Christianity, such as when the concept of leadership in the Bible, or the consequences for management of the biblical stories, is investigated [6, 7]. Many companies use explicit religious metaphors when they describe their basic values. Values statements can, for example, be referred to as the “ten commandments of the company” [8].

In this sense, the new spiritual management can be considered as a management tool like total quality management or business process reengineering, which have as their aim to give the organization new meaning in response to problems of social legitimacy and employee motivation.

Although few organizations are totally spiritual in the orthodox religious sense, we find many management change projects that integrate new spirituality. This new focus on spirituality can arguably render corporations and their managers more conscious of values. Corporate vision and mission statements are easier to create through the language of collective spiritual values in New Age mythology. In fact, we may argue that this corporate spiritualization is not a return to Weber's traditional mode of legitimation but is rather an integrated part of a modern project of aesthetization and spiritualization of the discourse of management, including a strong focus on personal subjectivity and development of the inner spirituality of the subject. Management is spiritualized in order to be open to the need to make room for personal development and individual self-realization in corporations, in the sense that human beings are not reduced to work machines but taken seriously as spiritually complex beings. From the New Age perspective of Eastern mythology, business ethics and corporate social responsibility should come from within the soul, and each individual should demonstrate the capacity to take responsibility for himself or herself, for their community and for their society.

Karen Lisa Salamon argues that this can easily be integrated into a neoliberal conception of the economy because the starting point is the feelings and emotions of individuals and their spiritual understandings of themselves and their responsibility. Moreover, it is a dogma of the New Age movement in management that personal success is based on the holistic integration of spiritual, private, and professional life. This is why management has become "whole-life management" [9]. Spiritual management is based on a kind of law of karma, where the journey into the self contributes to the enrichment of organizational life. Whole-life management helps to integrate the individual in the cosmos by ensuring a closer relationship between self and the outside world. Whole-life management attempts to integrate personal desire with a sense of community so that the journey into the self will, in the end, be better for the common good ([10], p. 66). In this sense, whole-life management represents an attempt to achieve harmony and balance of self.

Danish marketing writer, Jesper Kunde, provides an example of this kind of whole-life management in his book *Corporate Religion* (1997). Kunde's New Age approach exemplifies an attitude of dissatisfaction with the secularization of business and with the demotivation of workers in bureaucratized environments ([9], p. 122). This work can be conceived as an effort to reckon with the dissolution of Protestant ethics in modern business. Kunde argues that clearly focused strategies based on strong values are essential for corporate survival in a society of value fragmentation. Both employees and customers have to be bonded emotionally to the corporation if the corporation is going to have a chance for survival and growth in a competitive world economy ([10], p. 66).⁵

Kunde argues for a return to a religiously based corporation and a strategy of corporate religion that not only bases its values on rational and economic bottom-line considerations but also grounds strategy and management holistically in the qualitative and emotional values of the corporation. According to this conception, religion is conceived as common vision, ideals, and ideology and is necessary for creating a well-functioning modern corporation. In a number of case studies of corporations such as Microsoft, Coca-Cola, Walt Disney, and Body Shop, Kunde shows how these corporations can be said to operate according to a concept of corporate religion or brand religion, where the corporation is organized around strong common values and the consumer is strongly emotionally related to the its products.

This religious management strategy can be considered as a response to the lack of spirituality in modern technical and rational management strategies, from scientific management to total quality management. It is also a reaction toward the growing fragmentation and dissolution of work life in times where Protestant ethics have been weakened. Without corporate religion, it is not possible to tie together a corporation that encounters many secular and multicultural challenges to the values system of the corporation. In order to cope with the loss of meaning in modern society, Kunde presents strong and very well-formulated values and values-driven management in response to the problems of leadership in corporations. The firm should work with immaterial values in values-driven management by formulating its vision and mission in order to ensure the commitment and action of employees. The conscious religious strategy of values-driven management is about belief, community, strong managers, and commitment and engagement in work. The product of the firm should be branded as something very special so that it is not just another thing to buy but is instead endorsed by consumers as something vital for their identities and existence.

A very classic example is the US motorbike corporation Harley-Davidson, which can be characterized as a corporation with a strong brand that understands the necessity to cultivate the immaterial values of the corporation ([10], p. 66).⁶ Even though it does not necessarily produce superior motorbike products, a Harley-Davidson motorcycle is considered as much more than a simple motorbike. It rather signifies a lifestyle, an identity, the key to freedom, and the American dream. At a time when the corporation was about to go bankrupt, Harley-Davidson invented a new strategy where the firm focused on brand value, or what we may call the religious and emotional image of the corporation. The firm worked actively to link customers and employees emotionally to the firm as a part of the Harley-Davidson community – or perhaps disciples of its congregation.

Kunde draws our attention to the branding and strategy of the cosmetics company Body Shop. Body Shop is a company that has been able to combine a political message with religious content in the image of its products. The Body Shop brand not only represents a company selling cosmetics; it is a knowledge-based enterprise that uses its products to spur environmental consciousness and market a lifestyle among its customers ([10], p. 66). With the concept of “caring cosmetics,” Body Shop has given cosmetic products a specific brand value for

customers, and the firm uses its products as a signal of political values and ideals with a strong emotional content. In this sense, Body Shop turns its green profile into a religion.

We can mention many other examples of companies that have worked to articulate immaterial values in order to increase the emotional significance of their firms and their products for customers and, consequently, have also intensified employee motivation. According to the strategy of corporate religion, it is the task of the firm to link the customers to the corporation religiously by emphasizing that the products of the firm are expressions of attitudes and values. In this context, corporations are organizing events that are also other initiatives to ensure the loyalty and emotional binding of individuals to the firm (e.g., by making slogans that promote an image of the firm that contributes to a lifestyle).

This ideological and strategic concept of corporate religion is based on a number of simple values and mission messages that imbue the organization at all levels. Kunde compares this message with the Bible in order to show how the mission statement of the organization can be understood in analogy with a religious message and mission ([9], p. 122). In the fight to emotionally engage employees and customers in the firm, it is important to work with simple and strong formulations of clear values in order to give the vision and mission of the firm strategic power and weight. Moreover, it is important to emphasize that corporate religion, based on a powerful style of leadership with charisma, is an important condition for realizing the values of the firm. As a strong leader, the manager or CEO must present himself or herself as incarnation and symbol of the values and personality of the totality of the corporation.

The work of William C. Miller and Peter Pruzan in their article “Spiritual-based Leadership: Initial Observations from a Research Program” is another example of the influence of New Age on management science [11].⁷ Spirituality is considered as a way to ensure greater sensibility in management and a stronger responsibility toward employees and other stakeholders of the corporation [5]. By looking into spiritual texts of different religions, managers can be inspired in their personal consciousness and improve their daily decisions. Spiritual leadership is conceived as an alternative to purely technical and rational economic ways of decision-making. Spiritual-based leadership involves both the development of leaders but also employees who are interested in adding a spiritual dimension to their lives. Spiritual-based leadership intends to overcome the conflict between religious people who view business skeptically (where wealth is “filthy lucre”) and business people who argue that it is a solely rational enterprise. As a reaction to Protestant ethics, spiritual leadership has been inspired by Eastern religions, but other religious traditions increasingly play a role in this paradigm of management [12].⁸

This kind of new mysticism corresponds very well to the need for new spiritualization of life, which characterizes many business managers. In the search for meaning in management, business people want to go beyond the extreme rational organization of work life and the workplace. As a reaction to increased instrumentalization of work, they are looking for symbols and holy places in their daily work. They have abandoned Puritan morality and the Protestant work ethic and are

searching for irrational and unnatural spaces in their lives. They invite different types of consultants to help them fill their daily lives with religious and spiritual content. Spiritualization of the workplace is considered a relief in confrontation with the extreme rationality of the Protestant values in the work environment. This new mysticism is by many people understood to function as a dynamic means to reestablish the lost meaning in a boring and uniform life in organizational bureaucracy.

Paradoxically, an existentialist approach to management can be considered as continuing the search for a deeper meaning in business life while at the same time functioning as a very critical attack against the presuppositions of spiritual-based leadership. An origin of existentialism may be found by the French philosopher Henri Bergson who turned to the inner experience of the mind as a reaction to the empiricism and technological instrumentalism of science and industrial society of his time. Bergson combined this with a personalist philosophy that focused on the personal development of the subject and influenced later French existentialists as Mounier and Sartre [13].⁹

As a movement of search for respect for the inner life of the person, existentialism in management is different from corporate religion because it refuses to reestablish a new spirituality as mysticism, but rather the aim is to make the individual existentialist search for meaning the basis for the social legitimacy of the firm. The existentialist approach to business ethics has been proposed recently by a number of authors who are trying to apply existentialist thinking to the relations of management and work life [14–19].¹⁰ From a critical perspective on capitalism, we can ask whether such a thing as an existentialist philosophy of management can exist. Critical authors would state that existentialism and management cannot be combined and that this approach is an indication of an ideological use of existentialism to justify management. They would say that there is no room for singular existence and the search for meaning in the large economic organizations and social systems of our time. It looks very difficult to reestablish the individual meaning of life within modern organizations, and it seems impossible to unite the private search for existential and religious meaning with the requirements of having a specific work function in large organizations. We can, however, identify this existentialist approach as a response to Protestant ethics as the basis for establishing meaning in organizations that recognizes the conditions of economic life in modernity. The existentialist approach refuses spiritualization of the workplace while being critical to the extreme rationalism of the Protestant approach. The existentialist approach asks the question of the meaning of work and of life in broader terms than the focus on efficiency and productivity that characterizes the Protestant ethics.

The work of philosopher Søren Kierkegaard can help illuminate how existentialist thought can form the basis for corporate legitimacy [19]. Kirstine Andersen argues that Kierkegaard contributes a poetic language to our understanding of management and governance ([18], p. 7). Kierkegaard's categories of aesthetics, ethics, and the religious can be used to understand the way managers relate to their work and see their life in relation to their work. Also Kierkegaard's existentialism

can help to analyze relations between personal existential life and the professional role as a manager. In existentialist philosophy, there is a search for dialogue and communication that implies confidence in and engagement with other human beings. Existentialism takes seriously the original signification of being a director as the person in the organization who points toward a direction that has concrete and existential ramifications for lived experience. Managers are confronted with something larger than themselves when they have to make important decisions. Since it is impossible to abstract from personal existence in professional life, professional legitimacy is dependent on the harmony between the personal and private convictions of individuals [18]. Moreover, existential management is about recognizing the importance of human dignity and respect for employees and other stakeholders as human beings with infinite value.

Managers have to come to terms with the fact that their role is an inescapable condition not only of their own lives, but for the people whom depend on them as well. This might be called the existentialist challenge of management. Given this condition of his or her existence, the manager cannot avoid being forced to become someone imbued with character, values, and conceptions of life. Indeed, it is an existentialist requirement not to forget to respect other human beings as “goals in themselves” with dignity and humanity. This fundamental responsibility expresses the fact that the ethical challenge is greater than the individual. The ethics of existentialist management require the manager to take personal responsibility for moral choices. As such, the strategy of legitimacy in existentialism implies a return to the personal conscience and engagement of the individual behind the mask of professional life as the basis for real professional commitment and responsibility. Indeed, existentialism must be in search for an ethics of basic ethical principles like respect for autonomy, dignity, integrity, and vulnerability of the human person [20].

Toward the Political Corporation

The centrality of personal responsibility in existentialism resembles a modern version of Protestant ethics. But at the same time, the kind of existentialism that is proposed is in danger of losing its roots in the critical attitude toward corporate life and becoming a new philosophy of meaning in the corporation, which is based on New Age thinking. Can we really build professional life on personal values? What is personal self-realization in business life? Is it not better to work with strictly separated spheres of values, ethics, law, economics, and religion? [21] In this sense, an existentialist turn in business ethics is dangerous because it moves from formal rules of professional life toward individual emotions and conceptions that are outside the objectivity of professionalism. The counterargument is that you cannot separate personal responsibility from public functions and that government and management are a kind of decision-making that implies great personal responsibility, accountability, and integrity.

These different attempts to deal with secularization and with the crisis of Protestant work ethics cannot be considered independently of the global challenges

on the labor market and the changing role of corporations in society. Although work is still conceived by many people as foundational to their identities and for finding meaning in life, we should not overlook of the displacement of workers by technology, which allows fewer workers to produce more. Society is changed continuously by inventions like biotechnology or information technologies that have fundamentally altered the character and significance of work. Unlike industrial society, there are few routine jobs left. It is the knowledge producer and the knowledge worker, human beings who create their work out of their own professional capacities, who will become the elites of the future global society ([22], p. 123).

The economic organization of this future society will be characterized by the emergence of large economic organizations, multinational companies, and network companies with many knowledge-producing employees who are organized in temporary project groups or who work together over short periods of time with many different colleagues ([22], p. 146). Institutional changes occur alongside changes in the character of capitalism [23]. For example, institutional investors or governments and other stakeholders have emerged to put greater pressure on companies to have policies of ethics and corporate social responsibility in order to improve their social legitimacy. Moreover, our earning potential does not rise with increased production, as in industrial days, but rather through applying knowledge and developing sophisticated technological innovations.

The concept of the political firm is a much better alternative to New Age spirituality and corporate religion. In a globalized knowledge economy, the emergence of the political firm can be described as a way to absorb some of the previously mentioned perspectives on strategies of management. Thus, the political firm is one that works deliberately and explicitly with ethics and values-driven management in order to respond to the search for legitimacy in a postindustrial and postmodern knowledge economy. This search for the political firm can be considered as a response to the new spirit of capitalism in network society [24]. As a kind of political organization, the firm represents an attempt to overcome the lack of morality with the decline of Protestant ethics. In this sense, the political firm, or the expressive organization based on values branding, represents a conscious attempt to respond proactively to societal requirements for corporate legitimacy. The political firm is, therefore, a response to the changed social conditions of corporate activities in global society [20].

When companies are working naively and unreflectively with values and political ideals as part of a mission, strategy, and values statement, they may have a tendency to use values and ethics in a purely emotional sense rather than in a reflective and reasonable sense. The political firm, on the other hand, is often at the moral frontline of social development. With its attention to social issues, this company captures important trends in society and contributes to the change and social betterment of society. What is fascinating is that this does not have to be in opposition to Protestant ethics but can be conceived from the viewpoint of Max Weber's thought. Weber defined legitimacy beyond Protestant ethics to include economic and cultural considerations of the role a corporation plays in social

development. Accordingly, the political corporation is a very good indication of the basic trends of social development [25]. For example, when companies emphasize “soft values,” “love for your fellow employee,” and personal relations as important in the workplace, this reflects the predominant morality of society. It further affects company managers who realize that articulating a morality of soft values is necessary to survive on the global market. It may, however, be a problem of when alternative forms of legitimacy, where firms present themselves as political firms and an alternative to Protestant ethics, that they presuppose old conceptions of organic corporate unity that precede rational economic organization. It is important to be aware of values, ethics, poetics, aesthetics, and irrational dimensions of life in business corporations, but these aspects of economic life should not lead to a return to a naive mythological and ideological conception of the world, ignoring all the complexity in a modern society.

Niels Åkerstrøm Andersen characterizes political firms as an indication of private policy networks [26, 27]. Here, corporations act as political organizations that in addition to their economic activities seek to influence public policy in order to promote their interests in society. As private political actors, corporations use different strategies to obtain legitimacy in society. Therefore, the political firm can be conceived as a means of reconciling “the particular with the universal” ([26], p. 235). Andersen names the political and socially responsible firm as the dream of civil society, where all conflicts between state, market, and society are mediated and solved. In this sense, Andersen can be said to emphasize an organic dimension of the idea of the political firm because he argues that it is a romantic dream dating back to a holistic vision of society from the nineteenth century. Instead, we should be aware of the functional reality of postmodern network society. According to this point of view – inspired by Niklas Luhmann – postindustrial society implies functional differentiation of closed autopoietic subsystems of society. This approach to philosophy of management can be called a system-theoretical analysis of the search for legitimacy in modern corporations ([27], Introduction, [28]).¹¹ In a functionally differentiated society, the firm is reflexive and strategic and aware of the importance of legitimacy in relation to its environment. This firm is characterized by polymorphic organization with many spheres and codes with particular forms and requirements of legitimacy. Andersen mentions spiritualization, pedagogization, aesthetization, intimization (personalization), mediatization, and moralization as expressions of this multitude of codes and forms of legitimacy in modern corporations ([26], pp. 247–248). Corporations are situated in different networks with different strategies of legitimacy. The role of the state is not primarily to ensure law and order and protect rights and welfare but rather to facilitate the possibility of these private firms to have reflective self-regulation with regard to ethical and social issues in these private policy networks.

Andersen’s description of the intimization and moralization of the firm as an actor in private policy network following the dream of harmony between state, market, and society explains how it is possible to conceive the political firm as a kind of reaction to the lack of values after the decline of Protestant ethics. This is unusual because it is normally presupposed that the political firm is not primarily

religious, but a necessary response to the complexity of modern social problems, which require that the firm take social responsibility and includes different stakeholders in the formulation of a corporation's strategy, mission, and values. When dealing with the dream of harmony between state, market, and society, these efforts nearly seem to imply a new value dimension, as when social responsibility, values, and business ethics are promoted as branding and image with a strong emotional content ([26], p. 254).

With regard to political firms, it is therefore important not to conceive values and business ethics as ideological concepts that lead to a mythological and simple understanding of the world, where ethics and values are reduced to propaganda to ensure the image and branding of the firm. The vision of the political firm should *not* be based on corporate religion, but rather we should try to work for the republican concept of the good citizen corporation, which implies a reflective, rational, and democratic conception of management and corporate governance. In fact, we can point to the importance of the global approach to corporate citizenship where corporate social responsibility and corporate governance in a global perspective are emphasized as the most important way to approach the problem of corporate legitimacy in society. Güler Aras and David Crowther from the international corporate social responsibility network propose this point of view, and they see the movement toward global and cosmopolitan business ethics as central to establish a new role of corporations in modern society [29]. This globalization of the corporate citizenship agenda as the most important challenge for modern corporations is also emphasized by the global focus on the UN Global Compact Principles that many corporations subscribe in order to show that they are good citizens [30]. Legitimacy is established by the search for universal ethical norms for corporate citizenship in international society [20, 31].¹²

As a model of legitimacy for the political firm, the idea of the reflective rational model of the corporation may be said to transcend the opposition between Protestant ethics on the one hand and alternative religious and political models of the firm on the other. In *The Human Condition*, Hannah Arendt proposed a sharp criticism of Protestant work ethics. Arendt opposed the ideal of work in Renaissance humanism against the thought of Luther and Calvin. She emphasized that what is important is the creativity of human creativity in opposition to work, utility, and consumption [32]. Creative transformation of human nature lifts humanity beyond biological necessity. In her concept of work, Arendt criticized industrial production and reducing human beings to "animal laborans" or rational engineers like "homo faber" who no longer create cultural works but rely only on work and consumption. True human creations ought to express enduring human conditions of life, going beyond necessity and into the realm of art and freedom, creating the conditions for culture and civilization. In this sense, working creativity expresses what is most noble in human beings and becomes the essence of the active life of humanity [32].

In addition to focusing on the creative dimension of work, the problem is how to replace Protestant ethics. We cannot deny that work ethics are very important in modern society. It is also an important aspect of Protestant ethics that egoism goes beyond the self and is concerned with the common good. The acquirement of

wealth is directed toward social community. Likewise, the idea of the firm as a covenant and a community of destiny based on a common vulnerability in relation to external and internal relations between employees and management seems to capture an essential element of the culture of modern corporations, which is often overlooked in the conflict model of worker management relations. Moreover, it is a characteristic feature of Protestant ethics that it works with a strong distinction between knowledge and belief, reason and mysticism, but this also limits the religious field to an autonomous sphere of belief, which we cannot genuinely know. This is the main reason why Protestant work ethics have been so easy to secularize. This has led to the emancipation of utility – based on profit-maximizing goal rationality in work life – with nihilism as the ultimate consequence. Still, it is not clear that the proposals for other kinds of legitimacy and re-mythologization of work life are correct responses to the crisis of Protestant work ethics.

It is true that there is a need to dissolve rigid rule-based and instrumental bureaucratic reason to the extent that it rules in work life and in other organizational contexts. But this must be possible to realize in another way than returning to an organic religion or to a mystical irrationalism. We need to recognize the value-based aspect of our economic action, but this does not have to imply that we need to give up our critical rationality, capacity of judgment, and reflective attitudes to values and ethics in corporations. A concept of the political firm is needed that, while founded on ethics and values, has nothing to do with the idea of corporate religion.

This is possible by considering business ethics from the perspective of the republican tradition of political theory ([33], p. 289ff).¹³ This approach represents a community-based foundation of legitimacy, respecting the expectations of society and representing a clear alternative to Protestant and traditional models of legitimacy and mythological approaches on the one hand and charismatic models of legitimacy on the other. In republican business ethics, ethical motivation is not deduced by personal self-interest in salvation, but in the duty toward community and the common good, based on respect for individual autonomy and freedom. This model of legitimacy emphasizes rights as an important part of ethics, but these are not exclusively founded on a strategic brand value but rather on concern for the interests of society and respect for the position of singular human beings as legal subjects in a state based on the rule of law, including the legal principles of legality and legitimacy.

According to this concept of corporate legitimacy, the activities of the firm on the market are limited by such a relation to the political community where the firm seeks to be a virtuous participant in society. From this perspective, the task is to ensure that the firm is a good corporate citizen, which takes social responsibility at the individual and institutional levels. As a good citizen corporation, the firm acts consciously to respond to the social demands of political and social justice. This includes values that actively contribute to the betterment of the social and political conditions in society. Legitimate economic activity is conceived as a contribution to a just society ([20], Conclusion). We can mention the strategic focus on economic sustainability, finance ethics, corporate governance, ethical investment, social responsibility for customers and employees, and respect for employee rights,

to creative development and self-realization in the corporation as examples of these values. What is important in this genuine political corporation aiming at corporate citizenship – in opposition to the concept of corporate religion – is that these values are founded reflectively and rationally from the perspective of the self-understanding of the corporation as an active corporate citizen, who takes part in the ethical and political process of discussion in society, based on a critical public opinion in democratic modernity.

Such a model of legitimacy does not exclude religious elements but is open to the significance of religion in light of republicanism. Recognition of the right of individual to privacy and freedom of religion is an essential element in the republican conception, and it includes respect for the individual's right to present his or her own conception of the good life. The firm does not have a right to limit the religious freedom of its employees unless it represents a direct threat to the political community. In this sense, there is room for religious spaces in the firm, but these should not replace a critical reasonable dialogue, based on fundamental ethical rationality ([20], Introduction). At the same time, the employee's rights and duty to independent and critical ethical self-reflection about the actions and norms of the organization, based on critical loyalty, personal consciousness, and responsibility, can have religious elements of justification. Social responsibility of the good citizen corporation is firstly based on its dependence on a democratic political public, where all participants make an effort to respect community and common principles of rights. The ethical principles of respect for the autonomy, dignity, integrity, and vulnerability of stakeholders are an important feature of the values and professional ethics of corporations ([20], Discussion). The democratic approach is therefore becoming an integrated part of the contemporary foundation of the corporation ([33], p. 304). This republican idea of political democracy as a social ideal, with democratic communicative reason, implies the effort to work for democratic public virtues of citizenship and concern for the common good in business life as a regulative ideal for business economics ([33], pp. 27–28).

However, according to skeptics, this quest for values and values-driven management is nothing but a new form of religion. Someone may try to describe business ethics as a kind of psychosocial religious ideal type, using Weber's terms, to indicate a form of religious legitimacy consisting of individuals realizing themselves as good people in the workplace. This is a new modern form of iron cage. Critical voices maintain that we consider modernity as the period of ultimate secularization, and business ethics and values-driven management should rather be analyzed as new ways of justifying the old ideal of the calling of individuals to their work. This is the case when firms emphasize ethics, values, and culture and when they are trying to be socially responsible and self-reflexive in order to reach a harmonious relation with their fellow employees and the stakeholders of the firm.

As previously mentioned, there is the danger that ethics and values-driven management can change the firm into a kind of church where real oppositions and contradictions are falsely concealed. Critical sociology and philosophy are not very open to this conception of good management. Foucault, Gauchet, and Bourdieu would argue that corporate citizenship and business ethics based on

a “covenantal relation” rather than the relation of a contract between workers and employees, emphasizing virtues instead of rights and focused on the spiritual realization of individuals at the workplace, represent a new kind of disciplinary mechanism [34–39].¹⁴ All this talk of business ethics is argued to be nothing but a new method to increase employee productivity in a modern age. Similar to other methods of management, like scientific management, human relations management, total quality management, or the personality-oriented and existentialist visions management, management based on values rather than rules does not represent any kind of rupture with an economics based on maximizing utility efficiency ([40], p. 168).

We can indeed analyze many of the new kinds of management methods in this way. Management approaches that search for perfection and worker autonomy are based on an “ethics of sensibility” in order to cope with change and complexity in the workplace ([40], p. 256ff). Applying Richard Sennett’s concept of flexibility and the new work ethos in the workplace, it is possible to argue that we are in a situation where modern methods of management do not represent a liberation of individuals but represent nothing more than an assimilation of individuals to the new cultural conditions of the West after the legitimacy crisis of modernist values. Focus on personality development and values-driven management are, from this perspective, nothing more than the basis for a new Protestant concept of the calling, where the individual internalizes duties to the corporation through values rather than through orders. This internalization of values as a part of the personality is even more efficient than economic arguments for ensuring individual adaptability to the ideals of the corporation [41]. If we look at the present strategies for other kinds of management, we can even perceive different kinds of spiritual and religious arguments for personal improvement and value development ([40], p. 7).

The different new strategies of searching for legitimacy do not have to be conceived in opposition to the Protestant ethos of modern capitalism. The popularity of all these new kinds of strategies for empowerment, values improvement, and corporate identity and mission formulation may rather be viewed as methods to harmonize and normalize individuals in corporations. Accordingly, new methods of human resource management have understood the necessity to focus on individual morals and values in order to be sure that individuals act in congruence with the ideals of their organizations. The concept of the good citizen corporation that consequently emphasizes personal and organizational integrity is nothing other than a new way of promoting the discipline and power of organizations. The emphasis of the ethical worker, the need for excellence, and the virtues of the stakeholder corporation are, according to this harsh criticism, simply a new kind of ideological justification of basic economic structures and underlying power relations in the firm and community.

This challenge to the philosophy of management regarding corporate citizenship as a new kind of power instrument, a modern iron cage, is very serious; however, it is necessary to differentiate between different theories of values-driven management, corporate social responsibility (CSR), and business ethics. Some approaches to the field may seem fair game for such criticism, for example, theories based on

holistic views on human nature, including very idealistic conceptions of the possible conventional harmony between employees and employers in the firm. Indeed, when such theories are used as quasi-religious legitimacy for corporate power relations, we may say that an ethics of sensibility has replaced the Protestant ethos. This may be the case, but not all efforts to conceive business ethics and values-driven management are similarly vulnerable. Indeed, when we are working with republican business ethics, based on the democratic autonomy of stakeholders, we are very far from a new corporate religion. According to this view, CSR and business ethics are not methods for neutralizing conflict. Rather, they should promote awareness of possible moral dilemmas in the firm [20]. Moreover, personal realization or the quest for employee freedom and autonomy cannot be reduced to a justification for a given economic order but rather defend a pluralistic and polycentric conception of rationality.

Indeed, there is a peculiar common presupposition between modernist and postmodernist critical sociology and Weber's economic sociology. This is a very limited conception of rationality that is shared by the modernist project of economics of the Cambridge and Chicago schools that have been so influential in modern economics. All these theoretical approaches regard economic rationality based on utility maximizing self-interested individuals as dominant in the market system. They see no alternative rationality that can liberate capitalism from the iron cage. The system of market economics is considered as governed by one-dimensional instrumental rationality, and it seems impossible to overcome these limitations of economic markets [42].¹⁵

However, such a presupposition is not shared by the theory of integrative business ethics. This is an approach that integrates ethics and the market. It is recognized that there are institutional conditions for economic markets and that economic action is determined by these conditions. This rationality does not have to be conceived in terms of subjective calling.

It is, therefore, important to be critical of the effort of economic schools like Chicago and Cambridge in addition to different approaches to the philosophy of management that generalizes economic rationality. Moreover, we have to emphasize the openness of organizations to their surroundings as proposed by many recent theories of management. Rules of profit maximization and self-interested behavior on markets need broader social legitimacy. We might say that the justification of profit maximization in modernity is morally conditioned and limited by community-based views on justice and the common good ([33], p. 416).

Consequently, we can propose an alternative view of the legitimacy of business ethics and corporate citizenship that is neither purely instrumental nor purely strategic. The legitimacy of values-driven management cannot be limited to the idea that "good business is good ethics." Business ethics imply something more than marketing or use of human resources in order to improve employee productivity and flexibility. An indication of this is our instinctively critical reaction to the use of values-driven management for the sole purpose of improving the bottom line, but there is no easily harmonious relation between ethics and purely instrumental economic reason ([33], p. 417).

In addition, we can reject a surplus-based conception of business ethics according to which the legitimacy of corporate activities is dependent on the capacity to give away substantial parts of corporate profits and turnovers for good purposes. You cannot justify your instrumental actions ethically by giving the money away. The idea that social responsibility is something luxurious that comes when the firm is rich and famous is not sufficient to justify the activities of the firm from the perspective of community.

Indeed, we cannot propose an external theory of corporate legitimacy by saying that it is enough for firms to be morally legitimate when they practice ethics as practical corrections to specific situations of conflict. Rather, due to the challenge of postconventional morality in modernity, we need a general democratic and republican theory of the legitimacy of corporations ([33], pp. 299–300, [43]).¹⁶

Criticism of the Metaphysics of Management

A recent critical approach to the theory of philosophy of management is based on the philosophy of Martin Heidegger. This approach attempts to go deeper than the preceding concepts by posing fundamental ontological questions about philosophy of management. The problem is that most theories of philosophy and management risk being instrumental, because it is really not possible to combine management and philosophy. It is a problem for the political philosophy of the corporation that there is no democracy in a corporation and therefore a political philosophy of management based on legitimacy risks being purely functional. The critical Heideggerian position argues that attempts to deal with the problems of the search for legitimacy as corporate religion, corporate existentialism, values-driven management, values-based leadership, CSR, and corporate citizenship are based on a kind of metaphysics of the present in Western philosophy that needs to be critically examined and eventually deconstructed. This approach argues that it is impossible for the approach to business ethics and ethics of organization, conceived in the republican approach to business ethics, to not imply an instrumental and technological approach.

It is therefore a task for a Heideggerian to move beyond purely instrumental management. With regard to the meaning of management, legitimacy has to not only be functional but also to be ethical and political. Those who want to criticize the different concepts of philosophy for managers represented this approach. The Danish philosopher and theoretician of leadership, Pia Lauritzen, has argued that mainstream philosophy of management usually consists of four dominant instrumental concepts that address leadership on the ontic and technical level rather than on a more fundamental ontological level of fundamental questions. These positions are (1) the aristocratic concept of leadership based on ancient ethical virtues; (2) related to values-driven management, CSR, and corporate citizenship as efforts to deal with the legitimacy of the corporation; (3) a philosophy of leadership that remains based on a charismatic concept of leadership; and (4) a critical philosophy of management based on post-structuralist and constructivist approaches.

The position of fundamental ontology inspired by Heidegger asks the question whether it is really true that managers are like feudal lords that need virtue, prudence, ethics, and wisdom. This approach seems to include a kind of metaphysical subjectivation of the manager or the leader. Moreover, this approach to philosophy of management seems to ignore the ontology and epistemology of organizations. Indeed, it relates to the virtues and morality of the organization, but philosophy of management could also be extended to include cultural practice and organizational aesthetics. When we deal with philosophy of management as virtue ethics, the ethics of management is about the fiduciary duty of the manager toward the good of the firm. In this context, care prudence and practical wisdom are important in order to understand the function of the firm. When we deal with the aesthetics of an organization, the philosophy of management is about management and cultural philosophy. Here, philosophy of management deals with the institutionalization of values and the human lifeworld in organizations.

Other recent issues in the philosophy of management that may be submitted to criticism by the ontological approach are the concern for CSR and business ethics and also theories that focus on the ethical legitimacy of corporations. According to the ontological approach, we have to focus on the ontology of organizations rather than on ethics and morality.

This approach is also critical toward a philosophy of leadership that focuses on individual leaders and their relations to the cultural environment. This kind of approach becomes a subjectivist philosophy because it focuses on the thoughts and reflections of the individual subjectivities of managers. In this sense, the Heideggerian criticism of the movement of philosophy of management is that it belongs to a kind of metaphysics of the present. Discussions of various kinds of leadership dominate the debate about the philosophical foundations of management [44].¹⁷ In contrast to this focus on the dimensions of metaphysical subjectivity, the Heideggerian philosophy of management tries to move beyond and behind these issues by asking fundamental questions such as: “What is management and leadership?” “What is management and leadership for me?” “What is the culture and meaning of organizations?” This kind of engagement overcomes functionalistic manipulation of employees.

We can also apply this approach of metaphysical questioning to the relation between leadership, management, and employees. According to criticisms of the traditional concept of leadership, leaders tend to create an artificial distinction between the cosmos of the leader versus the chaos of employees ([44], Introduction). Here, the leader or manager sees himself or herself representing reason and rationality in opposition to the irrationality and the nature of the demands of the employees. Different constructions of leadership as based on oppositions between totality and partiality, vertical versus horizontal theories, soft versus hard values, and also propositions of values-driven management as the answer to problems of management can be considered as a part of this kind of metaphysics.

This fundamental questioning may also be considered necessary with regard to our concepts of leadership. Metaphysical readings of contemporary leadership tend to argue that the concept involves hidden metaphysical dimensions. We face, for example, the belief that there is a close connection between leadership and

truth (absolute), leadership and self-realization (circular), leadership and decisions (immediacy), and leadership and complexity (linear). With these presuppositions, it is possible to argue that the philosophy of leadership is not without metaphysical presuppositions but is rather a kind of philosophy that has become a technological and instrumental manipulation of the foundations of management ([4], Introduction).

In order to overcome these presuppositions, it is important that philosophy of management does not end by instrumentalizing philosophy. Instead, according to a Heideggerian approach, new concepts of philosophy of management should be based on the experience of a philosophy of thinking. With this credo, the Heideggerian approach to the philosophy of management provides us with a criticism of the old positions of management theory. The so-called radical leadership philosophy, represented by, among others, Ole Fogh Kirkeby, is indeed marked by this metaphysics of leadership where the subjectivism of a charismatic leader is rendered a fundamental normative truth. This is also the case for approaches for spiritual leadership, as they are dependent on a kind subjectivism of the spirit of the leader as important for management [45]. This is the case even with critical movements of philosophy of management, including post-structuralism and social constructivism, which were supposed to criticize the manipulative dimensions of the value-based, spiritualist, and other approaches to leadership. Theories about power relationships and decision-making and theories about culture, change management, and also values-driven management are characterized by the metaphysical presuppositions that are criticized by the approach of Heideggerian philosophy of management ([4], Conclusion).

With this fundamental criticism of the metaphysics of theories of management, we are faced with the fundamental question whether philosophy really can inspire management. What kind of inspiration can philosophers like Kant and Kierkegaard give us for leadership? On the basis of the criticism of the metaphysics of leadership, we can say that we have to search for the deeper truth in the philosophical theories. We might say that there is a basis for understanding the legitimacy of corporations present in the philosophical theories of leadership. Here, we can refer to the organizational theorist Karl Weick attempt to develop a hermeneutical philosophy of organizations by asking about the meaning of organizational activities. From this perspective, the philosophy of management considers the question of organizational legitimacy as a question of the meaning of organizational behavior [46]. The question of meaning involves asking: "How did I know?" "Why didn't I ask?" "Why didn't I say what I knew?" These questions refer to the fundamental meaning of individual behavior in organizations. Moreover, the philosophy of management as fundamental questioning is characterized by one overarching question: "What is management and leadership?" From this perspective – according to the philosophy of Heidegger – the philosophy of management asks the question of meaning of practices of management. We can draw an analogy to Plato, who asks the question about what is the good, the beautiful, and the just. The philosophy of management asks the question "What is?" which can be conceived as the foundation of the concept of legitimate

leadership, or “What is management?” “What is motivation?” “What is justice?” “What is responsibility?” “What are my foundational values?” “What is meaning?” or “What is good leadership?” We can call this a Socratic approach to leadership where the philosophy of management asks the radical questions.

Important topics for such a philosophy of management include the relations between managers and employees, drawing upon the insights of the great philosophical tradition from Aristotle to Kant and Hegel. Moreover, in this context, we can also elaborate on the problems of institutions and how economic issues relate to social values as discussed by Weber. With the Socratic and Heideggerian approach, ethical, social, institutional, and economic issues are integrated into the fundamental debate about the meaning of management as proposed by Heidegger. When we deal with this approach to philosophy of management, we move beyond the Platonic conception of the philosopher as king. Philosophers should no longer make unrealistic assumptions about the power and virtues of the managers [47]. The philosophy of management must go beyond managerial self-understanding where the manager views himself or herself as a kind of cosmos confronted with chaos. There is no abstract total power, but it is the ability to understand situated meaning and culture that helps good management. Indeed, we must remember that the power relations between leaders, managers, and employees cannot be changed. Instead, we must hope that the leader can be open to the plurality of the organization. It is destructive that today’s philosophy of management makes us forget that management is a question of employee relations.

So this approach to philosophy of management argues that Western philosophy is focused on what is universal and general as opposed to what is concrete and particular. With the new philosophy of management, the idea of what is flexible and values-based has been proposed as a new kind of truth; however, this is marked by a kind of paradox because it will make the singular general and universal. What is conceived as flexible and values-based leadership is experienced as a new kind of truth, but it is important that individuals are involved in the process of defining these new values. They will also have to be a part of the process of defining how to structure this process. With this philosophy of management, managerial practice is analyzed in concrete situations. It focuses on the experience of meaning in practice, which cannot really be captured by post-structuralism or social constructivism, but is still analyzed from the perspective of continental philosophy as an approach to philosophy of management which has recently be developed in details [48].

In this context, we can say that leadership from the Heideggerian approach involves storytelling, but in a deeper hermeneutical sense than is the case with discursive and post-structuralist approaches. In this context, one approach could be to introduce a kind of historical thinking or storytelling that captures the externalization and internalization of the experience of meaning. The basis of this approach could be the hermeneutical philosophy of the Italian thinker Gianni Vattimo. Hermeneutics, in this context, is a kind of analysis of the presuppositions of managers in their daily search for meaning. Here, the presuppositions of good management should be placed in the open. Good management implies loyalty, authenticity, and reason, but this is not only good management. It is the

presupposition of good management. The presupposition of this kind of thinking is that managers can realize themselves and the potentiality of their organizations by looking at themselves and their values as human beings. Still, according to the hermeneutic critique, this is not good management, but rather an example of the metaphysics of “homo economicus,” as suggested by the Italian philosopher Gianni Vattimo ([44], pp. 32–35). Instead, it is our task to wonder about how we could create new modes of thinking and go behind existing dogmas of philosophy of management. Thinking in philosophy of management and of corporations means asking deep reflective questions about the foundations of management and leadership ([44], p. 165). It involves reflection about the foundations of judgment and business ethics, and in this sense, we can say that there is a close relation between fundamental reflections in philosophy of management and reflections according to critical reflective judgment in business ethics.

Conclusion

This critique of the metaphysics of subjectivity and homo economicus within the philosophy of management argues that we need to overcome the implicit metaphysics of many theories and approaches to the philosophy of management. Instead, philosophy of management should be conceived as radical questioning that addresses the social engagement and sense-making within management ([4], discussion on Heidegger). Philosophy of management needs to ask fundamental questions, addressing and focusing on tensions and dilemmas of management, for example, by following the Heideggerian approach of questioning the being and meaning of management ([4], [10], p. 86).

What are the consequences for the problem of legitimacy when we are confronted with this Socratic and Heideggerian critique of the dominant conceptions of legitimacy that have been recently proposed? The answer from the point of view of the philosophy of management that asks fundamental questions about the meaning of management is that the strive for legitimacy remains an open question where it is always possible to go deeper behind any vision of legitimacy and ask more fundamental and critical questions about the accomplishment of corporate legitimacy in society [49].

Cross-References

- ▶ [Aristotle and the Corporation](#)
- ▶ [Basic Concepts of Philosophy of Management and of Corporations](#)
- ▶ [Philosophical Theories of Management and Corporations](#)
- ▶ [The History of the Philosophy of Management and Corporations](#)

Notes

1. M.C. Suchmann has given the most important definition of the concept of corporate legitimacy. He defines legitimacy as an effort to adapt to the internal and external environment of

- the organization. In general, we can say that the problem of legitimacy or “why corporations exist and why they are accepted or allowed to exist?” is one of the most foundational issues in philosophy of management. In this section, I deal with some of the recent development in philosophy of management from this perspective. In particular, I draw on some of the recent developments in Denmark where philosophers and social scientists have contributed to the development of the field. A reason for this has been the establishment of the Department of Management, Politics, and Philosophy in the 1990s at Copenhagen, Business School, Denmark.
2. It is difficult to determine the scope of the movement of spirituality in business. It comprises many different concepts of management, and popular management culture with management gurus like R. Stephen Covey may indeed be conceived as an expression of this new spirituality in management. Indeed, the role of spirituality in management is to make room for feelings and deep reflection in management, but in many cases, it remains nothing more than an ideological instrument to link employees to corporations.
 3. Wim Dubbink contributes with an analysis of these new relations between State, civil society, and the economic market where shared responsibility is needed and new partnerships emerge.
 4. Dominik Heil has developed this important point. He proposes to analyze business ethics and philosophy of management and corporations from the point of view of Heidegger’s philosophy. Indeed, Heidegger’s philosophy can be proposed as a critical approach to the metaphysical presuppositions of contemporary philosophy of management that may be viewed as a kind of metaphysics of the subject and of the intersubjectivity of the organization and corporation.
 5. Jesper Kunde argues that corporate religion is nothing but a metaphor for the idea that the company should have a meaning, a direction, and an idea. Employees should learn about this idea through communication from the leader, and this idea sets limits for those who do not want to be a part of the corporation. Companies with strong cultures are characterized by a relation to common values as though they were a religion. Kunde argues that those companies are sometimes regarded by their environments as religious sects and that this should be viewed as a good thing because it shows that it is a company that has a clear idea and that this brand has been communicated efficiently in its environment. Kunde also argues for a concept of corporate religion that is not a cynical or nihilistic concept of religion but rather a loose concept meaning to have values and believe them. We can argue, however, that this concept of corporate religion is still problematic because the metaphor changes the corporation into a kind of religious sect with all the relations of manipulation, domination, and ideology that this implies.
 6. The books about corporate religion, following the ideas proposed by Jesper Kunde, are first of all about marketing and branding of corporations by establishing a strong value-based culture with the creation of a company with a religious soul or spirit. The internal personality of the corporation is conceived as important to create a good image from the outside, as Tom Peters, who uses the work of Jesper Kunde, has said. From the marketing perspective, corporate religion is first of all about creating the illusion that the company has a soul so that the company can appear as a good corporate citizen to the public. The issue of corporate responsibility is important, but this concept of corporate religion seems to address emotions and appearance rather than focus on the real ethical and political issues of the reputation and appearance of corporations in society. Looking at this creation of the soul of the company as a branding instrument, it is tempting to agree with the French philosopher Gilles Deleuze that “si l’entreprise a une âme, ce serait la plus pire des choses,” meaning that it would be an impossible situation if we were to have corporate consciousness without corporate morality. However, as we shall see later, there is a close link between collective action and ethical responsibility.
 7. The essay is a revised version of the paper new models of leadership – spiritual-based leadership: a matter of faith and confidence. Presented at the conference: leading and managing human resources from a strategic perspective: focus on the service sector in India, Sri Sathya Sai Institute of Higher Learning.

8. A further example of such a spiritual turn in business economics is the search for irrational spaces in the daily work activities in the firm. We can call it a new attempt to mystify the relation of work in a criticism of the goal-oriented and utility-based thought that characterizes Protestant ethics. This approach can be found in the work of Danish business economist Martin Fuglsang. In his work which was considered very controversial in Denmark, we find an analysis of the self-understanding of a young biotechnological entrepreneur and of his activities as researcher and innovator. This analysis is characterized by a deep need to reinvent the poetics and passion of the human work life. It is a search for a calling of work after the decline of Protestant ethics, but it is also a search for a calling with a new focus on mysticism and an enchanted world. The book is full of citations of different poets, and it is methodologically based on Martin Heidegger's phenomenology and fundamental ontology combined with the use of insights from social constructivism and research in network analysis. This approach searches for mythical, poetic, and religious elements of work and can therefore be considered as a radical critique of the dry rationalism of traditional Protestant ethics.
9. In this context, we can refer to Luc Bouckaert's work where he shows how the personalism and existentialism in French philosophy can be used to develop a humanistic spiritual approach to philosophy of management.
10. In this context, we can mention the Danish philosopher, phenomenologist, and hermeneutic philosopher Ole Fogh Kirkeby who has published three books that can loosely be characterized as an existentialist approach to management. We can also mention the psychologist Karen Schultz who also in Denmark contributed to develop this existentialist approach to management. And, finally, we can mention some different and very controversial attempts to apply the philosophy of Søren Kierkegaard to philosophy of management.
11. This application of systems theory within philosophy of management as a bridge between philosophy of management and the social sciences represents a very good indication of the recent developments in the Danish context which are quite unique in an international context. In particular, the Danish scholars of systems theory Ole Thyssen, Niels Åkerstrøm Andersen, and Susanne Holmström have contributed to the development of this approach. They show how a corporation can be conceived as a social system that interacts with society and tries to survive in turbulent conditions with CSR and business ethics as possible strategies for this survival in a complex world.
12. Many people have developed the concept of corporate citizenship as essential to the recent developments in philosophy of management. Scherer and Palazzo show that the corporate citizenship agenda at the global level is proposed as a new approach to corporate citizenship. Jacob Dahl Rendtorff proposes a philosophy of corporate legitimacy based on corporate citizenship in his work on responsibility, ethics, and legitimacy of corporations.
13. The Swiss scholar Peter Ulrich was probably one of the first philosophers of management who developed the theory of corporate citizenship and the good citizen corporation in a comprehensive framework with the concept of republican business ethics. However, this work has only been published in English recently, and therefore, it has had limited impact. Jacob Dahl Rendtorff has further developed the concept of the good citizen corporation as essential to determine the citizen responsibilities of the firm.
14. In his theory of organization, Michel Foucault has implicitly emphasized these disciplinary elements of modern organizations. The ideas of self-discipline, self-management, and self-governance are an integrated part of the rationality in modern governmental systems. The rationality of governance of values and ethics can, according to this criticism, be said to represent an internalization of norms that contribute to the self-governance of the individual. Accordingly, for the managerial perspective, management with a focus on ethics and values is much more efficient for control and manipulation than traditional concepts of hierarchical management based on orders and sanctions.
15. In his analysis of Max Weber's theory of rationalization, Jürgen Habermas addresses this problem of the conception of rational modernity. The emergence of positivistic scientific rationality emerged with the secularization of traditional religious worldviews. According to

Habermas, this is the kind of rationality that authors like Weber, Horkheimer, and Adorno agree to call instrumental, and we may also suggest that it is this rationality that locks people in the iron cage. Alternatively, the project of a theory of communicative action tries to overcome this limited concept of rationality by developing the theory of communicative rationality. In fact, this project is also very important for our description of the foundations of business ethics because this other kind of rationality opens for democratic and communicative dialogue within the systems of modern society.

16. We can say that the firm has to work as a good citizen that respects the republican constitution and contributes to the spirit of community. The republican ethics combines this respect for community with the idea of the integrity and autonomy of citizens. We can argue that this idea refers to what Habermas calls “Verfassungspatriotismus” – constitutional patriotism.
17. In this sense, we can propose a critique of dominating positions of philosophy of management as being marked by Western metaphysics of subjectivity and technology. We can mention (1) the Protestant ethics, (2) corporate religion, (3) corporate spirituality, (4) corporate existentialism, (5) systems theory, (6) theories of corporate citizenship and the political corporation, (7) theories of charismatic leadership philosophy as proposed by the Danish philosophy Ole Fogh Kirkeby, and (8) post-structuralist and social constructivist approaches to philosophy of management. All these approaches are according to Lauritzen marked by blindness to the real issues of management because the concern for instrumentalization and technological success of the organization remain hidden presuppositions of these theories that never get to ask radical questions of the fundamental meaning of management and organization.

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Part 20

Methodology and Business Ethics

John N. Hooker

Abstract

Rational choice theories assert that human beings behave rationally, either in the narrow sense of rational self-interest, or in the broader sense that decisions are rationally based on preferences. These empirical theories make no direct ethical claims, but they may have relevance to ethics. Social contract theorists have maintained that rational individuals can assent to a social arrangement that promotes general welfare in some sense. A possible consequence is that self-interested business owners can, under the right conditions, rationally consent to regulation. Social choice theorists have argued in a mathematical mode that if we rationally derive social policy from individual preferences, we will adhere to certain ethical norms, perhaps a utilitarian or Rawlsian maximin principle. However, these arguments are based on strong assumptions, particularly with respect to interpersonal incomparability of utilities. Certain rational bargaining procedures, such as Nash bargaining or Raiffa-Kalai-Smorodinsky bargaining, have been shown to lead to outcomes that likewise have ethical content. The former has seen practical application in industry, and the latter results in a minimax relative concession principle similar to that derived by some social contract theorists.

Introduction

Rational choice theories attempt to explain human behavior as resulting from rational choices, particularly in an economic context. They have been a major part of the Western intellectual landscape since the market system replaced

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a medieval economy. This historical shift is seen as giving rise to *Homo economicus* – economic man – who is driven by self-interested economic calculation rather than a value system of loyalty and honor. Rational choice theories provide the central explanatory principle of much neoclassical economic theory and have generated a vast academic literature.

Rational choice theories are empirical theories of human behavior and, as such, make no ethical claims. However, they are often seen as having implications for ethics. In particular, they may address the question, “Why should I be moral?” If it can be shown that rational behavior results in ethical behavior, then the question has an answer: I should act morally because it is rational to do so. Moreover, if people are already disposed to make rational choices, as rational choice theories assert, then there is reason for optimism that people will tend to be moral by following their proclivity to make rational choices.

A key question for linking rational choice theory with ethics is, therefore, whether rational choices at the individual level are ethical, due to the nature or consequences of rational decision making. This chapter addresses this question, while making no attempt to evaluate the truth of rational choice theories as empirical claims.

“Rational choice” can actually be interpreted in two ways. One identifies rationality with rational self-interest, the traditional motivator for *Homo economicus*. On this definition, rational choice theories subscribe to some form of *psychological egoism* (at least in economic matters), which is the view that humans act solely out of self-interest. Despite the widespread popularity of psychological egoism, the evidence for it is unclear. Again, however, the aim here is not to determine the truth of psychological egoism, but to ask whether self-interested rational choice is ethical. Many argue that it is, on the ground that self-interested choices make everyone better off in the long run. If so, the question “Why should I be moral?” has a more compelling answer: Not only is it rational to be moral, but it serves my interest. Some take this a step further by deducing *ethical egoism*, which asserts that self-interested behavior is ethical not only because of its consequences, but as a matter of principle.

A second interpretation of rational choice does not presuppose self-interest. It assumes only that choices reflect the agent’s preferences in a rational fashion, preferences that could be altruistic as well as self-interested. A great deal of research in economics and social choice theory has examined the logical consequences of supposing that people make rational choices in this sense. Social choice theory is particularly relevant to ethics, because it derives consequences from the assumption that people arrive at social policy in a rational way, and some of the consequences have the flavor of ethical principles – such as a utilitarian or Rawlsian maximin principle (see [1] for a survey). Related research has shown that bargaining in a fashion that might be seen as rational from an individual’s point of view, such as Nash bargaining or Raiffa-Kalai-Smorodinsky bargaining, results in agreements that are fair in some sense. Because of the rigor of this research, much of which rests on mathematical proof, it deserves close examination for its moral implications.

Rational Choice and Deontology

Before examining the above arguments in detail, it is important to distinguish psychological rational choice theory from rational choice theory as it appears in deontological (duty-oriented) ethics. A line of argument characteristic of Kantian ethics, the dominant tradition in deontology, begins with the proposition that choices must be rational because agency itself is rational. The formal properties of rational agency then logically imply that choices must conform to certain moral principles, such as generalizability.

To expand on this argument a bit, agency must be rational in the sense that there must be some way to explain the agent's choices as based on a rationale. This is important because it distinguishes free action of a human from the behavior of, say, a bumblebee, even though both can be explained as the result of physical and chemical causes. Free choices are distinguished by the fact that one can plausibly attribute to the agent a line of reasoning that the agent sees as justifying the choice. But a rationale can be coherent only if it satisfies certain formal properties. In particular, it can justify an action only if it justifies the action for any agent to whom the rationale applies. This means that the reasons for an action must be consistent with the assumption that everyone to whom the reasons apply performs the action. This is the famous *generalization principle* of Kantian ethics. For example, lying merely because it is convenient for listeners to believe the lie violates the principle. If everyone with this reason for lying lied, no one would believe the lie, which is inconsistent with the reason for lying.

Kantian rational choice theory, therefore, differs from empirical rational choice theories in that it makes no claim that people in fact act rationally, but only asserts that if they do not, they are not moral agents. It also expects agents to have a conscious rationale for their choices, while most empirical theories have no such expectation; only the choices themselves matter. Yet there is a point of commonality, in that it may be possible to show that rational choices are ethical choices, whether rationality is as defined by Kantian ethics or by empirical rational choice theories.

Psychological Egoism

As noted earlier, one variety of rational choice theory asserts that human choices are based on self-interest. This is often seen as ethically relevant on the ground that self-interested choices benefit everyone in the long run. Adam Smith is routinely quoted as saying that the butcher, brewer, and baker provide our dinner out of self-interest rather than benevolence. There is also Smith's famous remark that one who acts out of self-interest is "led by an invisible hand to promote an end which was no part of his intention," namely, the welfare of society as a whole [18]. But if self-interested behavior makes everyone better off, then it must be ethical. This gives us a reason to be ethical: ethics coincides with self-interest.

To be fair to Smith, one should note that he explicitly rejected psychological egoism. Following his mentor Thomas Hutchinson, he believed that empathy is an important factor in human motivation and wrote an entire book, *Theory of Moral Sentiments* [17], to elaborate this idea. While he refers to the invisible hand in his book *The Wealth of Nations*, the book views self-interest as a destructive as well as a constructive force in economics and advocates government regulation to tame its excesses.

Nonetheless, if one supposes that individual self-interested actions really do maximize general welfare, one might conclude on utilitarian grounds that self-interest is ethical (even obligatory). People can, therefore, be ethical by following their inclination toward self-interest. A difficulty with this argument is that the connection between self-interest and general welfare is a question of fact that cannot be resolved by ethical or logical analysis. There is by no means agreement on whether the evidence supports such a connection. Even if the connection exists, it does not establish that self-interested behavior is ethical as a matter of principle. That is, it does not imply ethical egoism. Rather, it simply appeals to another ethical principle, utilitarianism, according to which ethical action must maximize total net utility. At best, the argument shows that self-interested behavior happens to be ethical because it happens to maximize utility.

A second argument for ethical egoism might begin with the principle that “ought implies can,” that is, people cannot be obligated to perform acts of which they are incapable. But if people can act only out of self-interest, then they cannot be obligated to act in any other fashion. Self-interested action is, therefore, always ethical.

This argument, like the previous one, fails to establish egoism as an ethical principle, because it rests on a contingent fact of nature that, even if true, could change with time. If self-interested action is ethical as a matter of principle, then it is ethical whether or not people act out of self-interest at any particular time. Ethical principles *judge* how people act, rather than *reflect* how they act.

Social Contract Arguments

One way to connect individual rational action with moral principle is through a social contract argument. The basic idea, which goes back to Thomas Hobbes [11], is that rational individuals will subscribe to a social agreement to behave morally. They will do so because the alternative is anarchy, in which life is “solitary, poore, nasty, brutish, and short.” More importantly, they will continue to comply with the agreement, because (according to Hobbes) they will voluntarily install an authoritarian government that gives them strong incentive to do so.

In a modern economic context, a Hobbesian perspective might see commercial firms as lobbying on behalf of business regulation to avoid the chaos of an unregulated environment. Being aware that business often has an incentive to flout regulations, they advocate substantial penalties and strong enforcement to make sure it is in their interest to comply. This sometimes occurs, but many would deny that it is required by a firm’s rational self-interest.

A social contract argument need not appeal to self-interest. John Rawls, for example, argued in a Kantian vein that it is rational for individuals to agree on a social order that maximizes the welfare of the least advantaged [15]. The argument may be roughly put as follows: If I agree to a particular social order, then I must have reasons for doing so. These reasons must be equally convincing to any rational person who agrees, including those on the bottom of society. But rational individuals can agree with a social order that puts them on the bottom only if no other social order would make them better off. It follows that a rational individual must endorse a *maximin* solution: one that maximizes the welfare of the worst-off. Rawls, unlike Hobbes, makes no claim that it is in an individual's self-interest to comply with the social contract. The only claim is that rationality requires compliance. It is, therefore, rational to be ethical, or at least to conform to a Rawlsian conception of distributive justice. In recent terminology, Rawls is a "contractualist," while Hobbes is a "contractarian."

The contractarian David Gauthier [8] argues that a social contract can be based on self-interest if individuals are "constrained maximizers." This means that, in a social contract setting, they choose dispositions to act rather than individual actions. Individuals enter into a social agreement because everyone gains from cooperation, as in the Hobbesian case, but the agreement entails adopting a "disposition" to comply with it. The problem with social agreements, of course, is that one can often do better for oneself by breaking the rules when others are following them. As a result, everyone breaks the rules, and everyone loses. This is known as a *prisoner's dilemma* situation, due to a famous example of it offered by mathematician Albert Tucker. Gauthier argues, however, that if an individual adopts a disposition to comply with a social contract, and makes the contract only with individuals who seem willing to adopt a similar disposition, then it is in the individual's rational self-interest to honor the contract even in a prisoner's dilemma situation.

One might interpret Gauthier's "disposition" as a mild form of Hobbesian government. Having adopted a disposition to comply does not psychologically compel one to comply, but it somehow provides a rational incentive to do so, much as a government provides an incentive to obey the law. In a business context, adopting a disposition might translate to building a corporate culture that favors compliance with industry self-regulation. This may incentivize compliance if the organizational cost of disrupting corporate culture is higher than the gain of breaking the rules.

The success of Gauthier's argument is a matter of dispute (e.g., [13]), but even if sound it does not serve the cause of morality unless rational individuals (or firms) negotiate a social contract with some kind of moral content. Gauthier maintains that rational individuals will strive to minimize the *relative* concession they must make to obtain an agreement. That is, each individual's concession is measured relative to that individual's sacrifice that would result from no agreement. Bargaining leads to a *minimax relative concession*, an agreement that minimizes the maximum relative concession of the players. This is essentially the Raiffa-Kalai-Smorodinsky bargaining solution which is discussed below. The solution can be viewed as

incorporating a fairness norm, perhaps due to its resemblance to the Rawlsian maximin principle. It will be seen, however, that the solution can be counterintuitive when there are three or more players.

The normative implications of self-interested rational choice continue to be a subject of interest, particularly for political philosophers. Geoffrey Brennan and Alan Hamlin [4], for example, follow Gauthier's example of analyzing the rationality of dispositional choices, while Russell Hardin [9] takes the more traditional approach of analyzing individual choices. A review of recent work along these lines can be found in [5].

Social Choice Theory

Rational choices have been intensively examined in the social choice theory literature, which generally assumes no particular connection between individual self-interest and social welfare. Rather, it carries out a logical analysis of what it means to agree rationally on social policy when individual preferences differ. It then derives structural characteristics that the resulting social policy must have, some of which may resemble ethical principles (see [7] for a survey of these results). One might therefore conclude, on the basis of purely logical analysis, that it is rational to be ethical, or at least to assent to an ethical social policy.

A perennial issue with this employment of social choice theory is how much normative content is already built into the formal properties of rational agreements. If the negotiators are required to be ethical, then there is little surprise if their agreements are ethical. It is impossible to assess this type of objection without examining the actual derivations in some detail, even if this requires a bit of mathematics. Informal derivations of utilitarian and Rawlsian maximin principle are, therefore, given below, followed by derivations of two bargaining rules that seem to have ethical content.

Deriving the Utilitarian Principle

Social choice theory begins with individual preferences, which are defined over a set of possible states that society might assume. Each state x provides utility $u_i(x)$ to individual i , who prefers state x to state y when $u_i(x) > u_i(y)$. Individuals may rank the states differently, which raises the question of how to rank states in a way that takes into account everyone's preferences. This is the problem of designing a *social welfare function* which ranks the states socially by assigning them social utilities. More precisely, if $u = (u_1, \dots, u_n)$ is a tuple of utility functions, one for each individual, then a social welfare function f_u for u assigns a social utility $f_u(x)$ to each state x . Then x is socially preferable to y if the social utility of x is higher, that is, if $f_u(x) > f_u(y)$.

For example, a utilitarian social welfare function sets $f_u(x) = \sum_i u_i(x)$. That is, state x is preferable to y when x generates more utility across the population.

This kind of calculation obviously assumes that the utilities $u_i(x)$ are comparable across persons, at least to the extent necessary to add them up in a meaningful way.

The issue of interpersonal comparability is in fact a central theme of social choice theory [16], and it is analyzed as follows: The key is to ask how the individual utility functions could be altered without changing the social ranking. Suppose, for example, that each individual's utility is multiplied by the same factor $\beta > 0$. One would not expect this to change the social ranking of states, because it simply rescales the units in which utility is measured. Suppose, however, that the units are rescaled and a different constant α_i is added to each person's utility. That is, each individual's utility u_i is changed to $\beta u_i + \alpha_i$. Should this change the ranking of states? It would not alter a utilitarian ranking, because a state x that is socially preferable to y remains preferable after the utilities are altered. That is, $\sum_i u_i(x) > \sum_i u_i(y)$ if and only if $\sum_i (\beta u_i(x) + \alpha_i) > \sum_i (\beta u_i(y) + \alpha_i)$. Thus, a utilitarian ranking is *invariant* under a utility transformation $\varphi = (\varphi_1, \dots, \varphi_n)$ given by $\varphi_i(u_i) = \beta u_i + \alpha_i$ for each i . It is convenient to call this transformation a *translated rescaling*.

This means that full comparability across persons is unnecessary for a utilitarian calculation to be meaningful. In particular, *level comparability* is not required: It need not be possible to compare the absolute level of person i 's utility with that of person j , because a translated rescaling can make either utility larger, depending on the size of the translations α_i and α_j . However, it must be possible to compare utility *differences* across individuals, because these are unaffected by φ . That is, $u_i(y) - u_i(x) > u_j(y) - u_j(x)$ if and only if $\varphi_i(u_i(y)) - \varphi_i(u_i(x)) > \varphi_j(u_j(y)) - \varphi_j(u_j(x))$. This is called *unit comparability*.

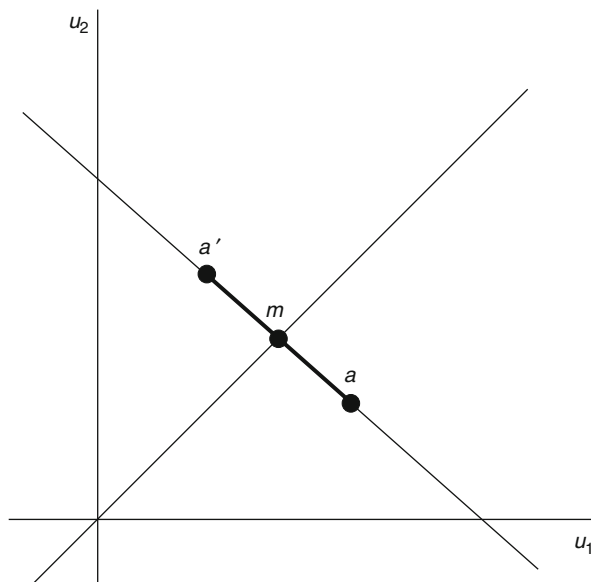
Unit comparability makes a utilitarian social welfare function meaningful, but one can ask if there are further conditions under which the social welfare function *must* be utilitarian. There are. If social choice obeys two formal properties that might be associated with rationality, the social welfare function must be of the form $f_u(x) = \sum_i u_i(x)$.

One property is *anonymity*, which says that it makes no difference which utility function belongs to which individual. Thus, suppose that tuple $v = (v_1, \dots, v_n)$ of individual utility functions is obtained from $u = (u_1, \dots, u_n)$ by renaming the individuals. That is, there is a permutation $\pi(1), \dots, \pi(n)$ for which $(v_1, \dots, v_n) = (u_{\pi(1)}, \dots, u_{\pi(n)})$. Then f_u and f_v must define the same social ranking, that is, $f_u(x) > f_u(y)$ if and only if $f_v(x) > f_v(y)$ for all pairs of states x and y .

There is also a *strict Pareto* condition which requires that the states preferred by all individuals be preferred socially. Formally, if $u_i(x) \geq u_i(y)$ for all i , then $f_u(x) \geq f_u(y)$, and if in addition $u_j(x) > u_j(y)$ for some j , then $f_u(x) > f_u(y)$.¹

Given these conditions and unit comparability, the social welfare function must be utilitarian. The essence of the argument may be seen in the two-person case [3], which is graphed in Fig. 73.1. Each state x generates a utility vector $u(x) = (u_1(x), u_2(x))$ that can be plotted as a point on the graph. All states whose utility vectors appear on the same 45° line running from upper left to lower right have the same total utility. It, therefore, suffices to show that all such states are

Fig. 73.1 Derivation of a utilitarian social welfare function for the two-person case



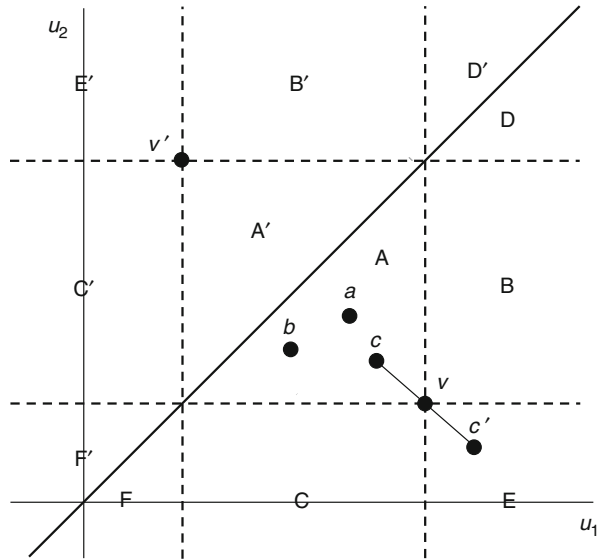
ranked equally, because the strict Pareto condition then implies that x is ranked higher than y if and only if $u(x)$ appears on a higher 45° line, which is precisely the utilitarian ranking. To show this, consider any utility vector $a = (a_1, a_2)$ on a given 45° line as shown in the figure. Let $a' = (a_2, a_1)$, and let m be the midpoint of the line segment from a to a' . Due to anonymity, a and a' must receive the same ranking. Now suppose, contrary to the claim, that m is preferred to a . The transformation $\varphi(u) = u + b - a$ maps a into m and m into a' . Due to unit comparability, this transformation does not change rankings, and a' is preferred to m . By transitivity, this implies that a' is preferred to a , which is a contradiction. Because a is an arbitrary point on the 45° line, all points on the line must be ranked equally with m and therefore, with each other.

Deriving the Maximin Principle

The maximin principle ranks the states according to the utility of the worst-off individual. The social welfare function is, therefore, $f_u(x) = \min_i \{u_i(x)\}$. The ranking is unchanged when the same monotone increasing transformation is applied to each individual utility. That is, it is invariant under a transformation $\varphi = (\varphi_0, \dots, \varphi_0)$ for which $\varphi_0(u_i) > \varphi_0(v_i)$ whenever $u_i > v_i$. This means that the maximin principle requires level comparability, because the monotonicity of φ_0 implies that $u_i(x) > u_j(x)$ if and only if $\varphi_0(u_i(x)) > \varphi_0(u_j(x))$.

To derive the maximin principle, one additional property called *separability* is required, which states that individuals to whom all states look the same play no role

Fig. 73.2 Derivation of a maximin social welfare function for the two-person case



in the social ranking. More precisely, let S be a subset of individuals i such that for any tuple u of utility functions, $u_i(x)$ is the same for every state x . Then f_u and f_v give the same ranking if for any individual i not in S , $u_i(x) = v_i(x)$ for all states x .

The claim is that given level comparability and the above axioms, the social welfare function must be the maximin function. Curiously, however, these premises imply only that the welfare function is maximin or maximax [6]. The latter maximizes the utility of the *best-off* individual, that is, $f_u(x) = \max_i \{u_i(x)\}$. In order to infer a minimax principle, one must rule out the maximax principle on some other ground.

Again the idea of the argument can be conveyed in the two-person case [3], where separability does not play a role. Let $v = (v_1, v_2)$ as shown in Fig. 73.2 be an arbitrary utility vector, and let $v' = (v_2, v_1)$. Divide the plane into regions about the 45° diagonal line as shown in the figure. Then it suffices to demonstrate that one of two situations must obtain: (a) all the points in regions A, B, C and their reflections A', B', C' (shaded area in Fig. 73.3a) are preferable (or indifferent) to v , and all other points are worse than v , or (b) all the points in regions B, C, E and their reflections (shaded area in Fig. 73.3b) are preferable (or indifferent) to v , and all other points are worse. Case (a) ranks points relative to v by a maximin criterion, and case (b) ranks them by a maximax criterion. Because v is arbitrary, the social welfare function must be maximin or maximax.

Consider any point a in the interior of region A in Fig. 73.2. It can be shown as follows that if a is preferable to v , then case (a) obtains. A similar argument derives case (b) if a is worse than v . Point a cannot be indifferent to v , because if it were the argument to be followed then it would imply that all points in A are indifferent to v , which is impossible because some dominate others due to strict Pareto.

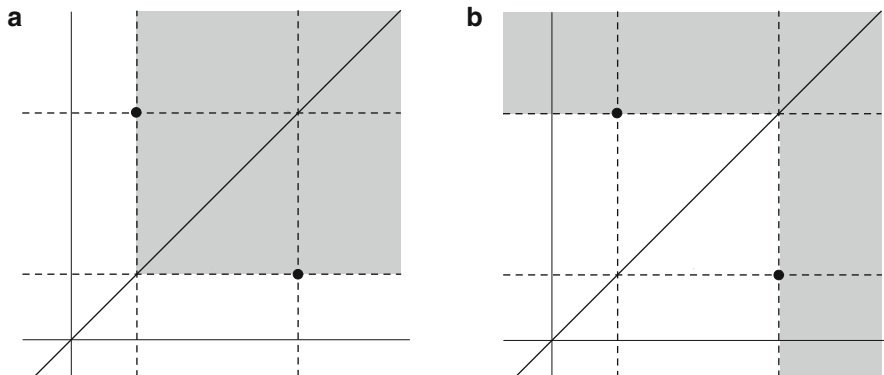


Fig. 73.3 Cases (a) and (b) of the derivation of a maximin social welfare function

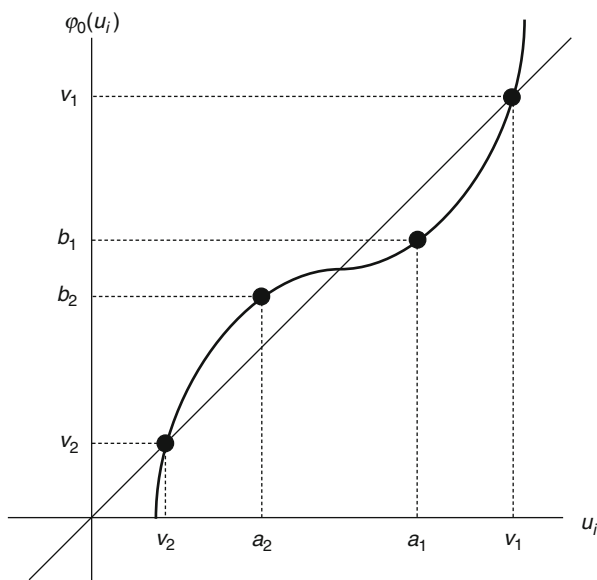


Fig. 73.4 A monotone increasing invariance transformation that maps v_1 , a_1 , a_2 , and v_2 to v_1 , b_1 , b_2 , and v_2 , respectively

First, show that all points in the interior of A are preferable to v by considering any other point b in the interior of A . Note that $v_1 > a_1 > a_2 > v_2$ and $v_1 > b_1 > b_2 > v_2$. This means that it is possible to design a monotone increasing transformation φ_0 that maps v to itself and a to b (Fig. 73.4). This implies, by level comparability, that a and b have the same ranking relative to v . Thus, all points in A have the same rank relative to v and are, therefore, preferable to v , as claimed. By anonymity, all points in A' have the same ranking relative to v' , and therefore relative to v because v and v' are symmetric. A similar argument shows that all points in E and E' have the same ranking relative to v . To show that v is preferable to

these points, select any point c in A on the 45° line shown. Then the monotone increasing transformation $\varphi_0(u_i) = u_i + v_i - c_i$ (which is the same for $i = 1, 2$) maps c to v and v to c' . By level comparability, v must be preferable to c' and therefore all points in E . Finally, points in B and C are preferable to v by strict Pareto, as are points in B' and C' by anonymity. Similarly, points in D and F and their reflections are worse than v . Points on the boundaries of the regions are dealt with in a similar fashion, and case (a) follows.

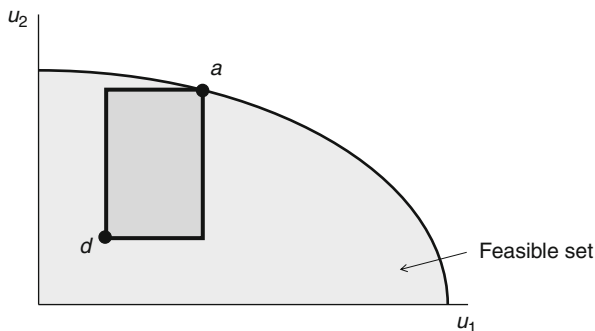
Assessment of the Social Choice Arguments

One can now examine the normative assumptions implicit in the rational choice axioms and their role in making the proofs go through. The strong Pareto condition is rather innocuous and probably begs no interesting ethical issues. The anonymity condition, however, clearly has normative content because it implies impartiality toward individuals. Yet Kantian arguments rest on a similar condition by supposing that a rationale justifying one person's action must justify the same action for anyone to whom the rationale applies. It seems to be a basic trait of rational action that it should depend only on reasons, not who has the reasons. Rationality might similarly dictate that rational choice should depend only on the utilities that result, not on who has the utilities. Anonymity, therefore, seems a reasonable starting point.

Yet anonymity is not central to the proofs. One can derive social welfare criteria with a strong utilitarian or Rawlsian flavor without it. For example, unit comparability without anonymity implies a utilitarian criterion with weights: $f_u(x) = \sum_i w_i u_i(x)$. This is basically because all points on the line connecting any two indifferent points can be shown to have equal rank, using the invariance transformation much as before, and $\sum_i w_i u_i$ is constant along the line for appropriate weights w_i . Also, level comparability without anonymity implies a minimax (or maximax) criterion for all states in which a given individual is worse off, using the same invariance arguments as above. In both proofs, the interpersonal comparability assumption is performing most of the work.

It may seem reasonable to assume unit comparability when deriving a utilitarian function, on the ground that unit comparable makes a utilitarian calculation meaningful. However, unit comparability remains if the ranking is invariant only under a proper subset of translated rescalings, while the proof assumes invariance under *any* translated rescaling. In other words, the proof assumes that utilities have unit comparability and *no more* than unit comparability. This strong assumption is already very close to utilitarianism. A Rawlsian, for example, would immediately object to it because it makes the comparison of worst-off individuals meaningless from the start. If the utility vectors are $(u_1(x), u_2(x)) = (1, 1)$ in state x and $(u_1(y), u_2(y)) = (2, 0)$ in state y , the Rawlsian prefers x because of the higher utility of the worse-off individual. However, a translated rescaling maps these vectors to $(0, 2)$ and $(1, 1)$, respectively, in which the Rawlsian preference is reversed. A similar point applies to the derivation of a maximin welfare function from level comparability.

Fig. 73.5 Nash bargaining solution for two persons



Nash Bargaining

Bargaining theories might be regarded as undertaking a rigorous and mathematical analysis of social contract negotiation. They show that under certain rationality assumptions, bargaining among rational individuals results in agreements that have interesting structural characteristics. These characteristics may also result from a certain kind of bargaining procedure. When the characteristics have an ethical flavor, one might say that there is a reason to be ethical: An ethical arrangement is the result of rational bargaining.

The best-known bargaining theory is due to John Nash [14] and yields the *Nash bargaining solution* (which should not be confused with the Nash equilibrium of noncooperative game theory). Figure 73.5 illustrates the Nash bargaining solution for two persons. The point d represents the utility vector $(u_1(x), u_2(x))$ of a *default* position x . This is the state of affairs before bargaining starts, and the state that remains if bargaining fails. The region under the curve represents the *feasible set*, which is the set of possible agreements consistent with available resources. The point a represents the utility vector $(u_1(y), u_2(y))$ after the players arrive at a deal y . The Nash bargaining solution selects a deal y that maximizes the area of the rectangle shown in Fig. 73.5. In other words, it maximizes the product $(a_1 - d_1)(a_2 - d_2)$. If there are n players, the solution selects $a = (a_1, \dots, a_n)$ to maximize $\prod_i (a_i - d_i)$.

The product formula tends to result in near-maximum utility without overly depriving any one player and can, therefore, be seen as enforcing some kind of fairness. It has enjoyed a degree of acceptance in practical application and is, for example, widely used to allocate bandwidth to information packets in telecommunications networks. The motivation is to obtain near-maximum throughput while not excessively discriminating against packets from any one source.

The Nash bargaining solution has been defended on both axiomatic and procedural grounds. One axiomatic argument assumes *cardinal noncomparability*, which requires that the ranking of utility vectors be invariant under the transformation $\varphi(u) = (\varphi_1(u_1), \dots, \varphi_n(u_n))$, where $\varphi_i(u_i) = \beta_i u_i + \alpha_i$. Note that the scaling

factor β_i can be different for each individual, whereas in unit comparability it is the same. The argument also assumes anonymity and a Pareto condition, as well as *independence of irrelevant alternatives*,² which is necessary if the product criterion is to make sense. It requires that if a is the Nash bargaining solution for a given feasible set, it remains the solution if the set is reduced without excluding a .

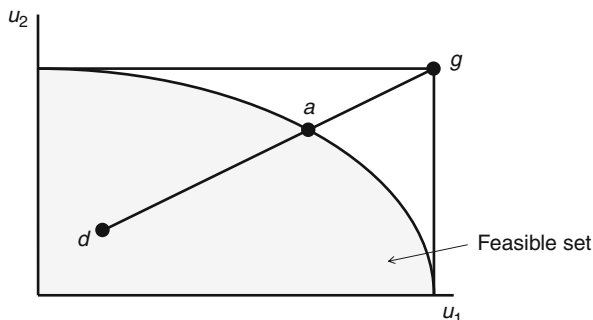
It is impressive that a product criterion could be derived from these axioms, and the proof is quite interesting. However, the premises are again strong. While much attention is focused on the independence axiom, it is rather innocuous in this context. The strongest premise, and the one that does most of the work in the proof, is the assumption of cardinal noncomparability. It leaves room for very little interpersonal comparability, because the ranking must be invariant under transformations that can destroy any conception of quantity in the utilities. One can ask how a theory can account for distributive justice if it denies the possibility of comparing individual outcomes to this extent.

There are results showing that certain negotiating procedures terminate in a Nash bargaining solution, although none of the results are straightforward or easy to state. John Harsanyi, for example, showed that the following bargaining procedure converges to a Nash solution [10]. Suppose again that d is the default position. Player 1 makes offer a , and player 2 makes offer b . If p_2 is the probability that player 2 will reject a , then player 1 will stick with offer a (rather than make a counteroffer) if his expected utility $(1 - p_2)a_1 + p_2d_1$ of doing so is greater than the utility b_1 of accepting b , that is, if his estimated value of p_2 is less than $(a_1 - b_1)/(a_1 - d_1) = r_1$. Player 2 makes a similar calculation, and she will stick with offer b if her estimated value of p_1 , the probability that player 1 will reject b , is less than $(b_2 - a_2)/(b_2 - d_2) = r_2$. The key assumption is that it is rational for player 1 to make a counteroffer, rather than player 2, if $r_1 < r_2$. That is, player 1 should counteroffer if the conditions under which he would stick with his offer are stricter than the conditions under which player 2 would stick with her offer. Given this, some elementary algebra shows that each step of the negotiation process improves the product criterion. If there is a minimum distance between offers, bargaining converges to a Nash solution. One must, of course, decide whether the key assumption is reasonable.

Binmore, Rubinstein, and Wolinsky [2] derived that under rather complicated conditions, a somewhat different negotiation strategy converges to a Nash solution. An important element of their framework is the time value of utility: a player is willing to accept somewhat less in order to get an agreement sooner. The equilibrium outcome approaches the Nash solution as the time lapse between offers goes to zero.

Results of this kind are difficult to assess but suggest that a Nash solution is not unrelated to a reasonable bargaining procedure. The Nash solution itself, however, has received criticism. The outcome depends heavily on the default or starting position, a subject of much discussion in the literature. If the starting position is already unfair, then the Nash solution is likely to be unfair as well. To this extent, the Nash solution begs the question of rational allocation. However, this is a problem shared to some degree by most bargaining and social contract theories. The Nash solution can also be counterintuitive even when the default position is

Fig. 73.6 Raiffa-Kalai-Smorodinsky bargaining solution



reasonable. One would expect, for example, that if the feasible set is enlarged, then no player's share should decrease in a rational allocation. There are examples in which a Nash solution violates this expectation, which served as a motivation for the development of Raiffa-Kalai-Smorodinsky bargaining.

Raiffa-Kalai-Smorodinsky Bargaining

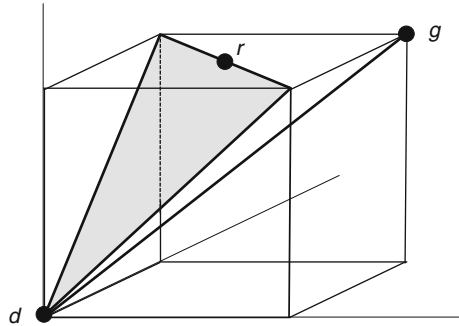
The Raiffa-Kalai-Smorodinsky (RKS) bargaining solution is defined with respect to an "ideal" outcome in which each player's utility is maximized [12]. Figure 73.6 illustrates the two-person situation. There is again a default position d and a feasible set. The point g represents an ideal outcome in which each player's share is the maximum possible within the feasible set, regardless of the consequences for the other players. The RKS solution is the best feasible point on the line segment from d to g .

The RKS solution can be seen as the result of making proportional allocations to the players. Each player i has a maximum gain $g_i - d_i$. First, allot each player 10% of his or her maximum gain, then 20%, and so on until further allocations are infeasible. It is clear that enlarging the feasible set can never cause a player's allocation to decrease (*monotonicity*).

The axiomatic derivation of the RKS solution again assumes cardinal noncomparability, anonymity, and a Pareto condition. However, it replaces the independence of irrelevant alternatives with the monotonicity property just mentioned [19]. The derivation is problematic for the same reason as the derivation of the Nash solution: Cardinal noncomparability is a very strong assumption that rules out meaningful comparison of utilities as quantities.

A possible bargaining justification is that the RKS solution achieves the mini-max relative concession mentioned earlier. If player i accepts offer a , the player's concession (with respect to the ideal) is $g_i - a_i$. The concession if negotiation fails is $g_i - d_i$, which means that the *relative* concession is $(g_i - a_i)/(g_i - d_i)$. It might be argued that the players will try to minimize their relative concessions and will reach equilibrium when they minimize the maximum relative concession among

Fig. 73.7 Anomalous example for the RKS bargaining solution, which in this case is the default position d . The feasible set is the shaded triangular area, and the Rawlsian minimax solution is r



them. But minimizing the maximum relative concession is algebraically the same as maximizing the minimum relative gain $(a_i - d_i)/(g_i - d_i)$, which is what the RKS point accomplishes.

In the two-player case, the RKS solution resembles the Rawlsian maximin solution, except that it maximizes the minimum relative gain rather than the minimum utility. It might be seen as having ethical content on that basis. However, it leads to some anomalies when there are three or more players (Fig. 73.7). The line segment from d to g leaves the feasible set at d , which means that d is the RKS solution – scarcely a rational outcome. The Rawlsian maximin solution is r .

Conclusion

Although empirical rational choice theories make no ethical claims, they can have ethical relevance. The rational behavior they attribute to humans may lead to ethical choices. If so, rational choice theory suggests that we not only have a “reason” to be ethical – it is rational to be so – but that we will in fact be ethical much of the time.

Some rational choice theories equate “rational” with “self-interested” and assert that people invariably act out of self-interest. If self-interested action contributes to the general welfare, then presumably one can be ethical simply by yielding to one’s inclination to act out of self-interest, although this popular view is difficult to defend empirically. Recent refinements of Hobbesian social contract arguments take a revisionist approach, suggesting that it may be in one’s self-interest to negotiate agreements that are fair in some sense, and to adopt a disposition to comply with them. The agreements themselves may resemble a Raiffa-Kalai-Smorodinsky (RKS) bargaining solution.

If rational choices are not assumed to be self-interested, they may nonetheless be ethical simply by virtue of their formal properties. The logical implications of rational choices have been extensively explored in social choice theory, with some interesting conclusions. If people aggregate their preferences in a manner that satisfies certain axioms, then the resulting social policy will, for example, be utilitarian or Rawlsian, depending on the degree to which it is meaningful to compare utilities across persons. The interpersonal

comparability assumptions, however, are quite strong because they actually limit the degree of comparability. As a result, they already embody more normative content than, say, the rationalistic premises of Kantian arguments.

A rational bargaining framework may also lead to an agreement that seems ethical in some sense, such as the Nash or RKS bargaining solution. The interpersonal noncomparability assumptions are even stronger in this case, but they perhaps can be circumvented by showing that these bargaining solutions are the outcome of a reasonable bargaining strategy. This may provide a “reason” to make agreements that are ethical in some sense: the agreements would result from rational bargaining in any case. Nash and RKS solutions do not necessarily satisfy standard ethical criteria, however, and they can be quite counterintuitive. Also there is no consensus on how to specify or justify a reasonable default position from which to start bargaining.

One might conclude from all this that the ethical implications of rational choice theory are far from straightforward, but very suggestive. They are much too suggestive to abandon the research program, which might even be profitably expanded. For example, the classical rationalistic assumptions of deontological ethics may describe actual human behavior more than is normally supposed. These assumptions are also minimal, requiring only an anonymity axiom: Reasons justify an action for one agent only if they justify it for any agent to whom the reasons apply.

An extremely popular economics game, the ultimatum game, illustrates this point. Half the players receive, say, 100 euros and are given the option of donating any portion of the gift to an anonymous recipient in the other half of the group. If the recipient rejects the donation, both the donor and recipient lose their money. The rationally self-interested choices seem obvious: The donor should give one euro, and the recipient should accept it. However, the average donor gives away about one third of the money, and many give away half. The game is frequently interpreted as showing how irrational human beings can be. However, giving away half the money, and accepting the gift, is the Rawlsian maximin solution. An alternative interpretation of the game is that people are entirely rational but in a different sense: They are rational Kantian agents, and a maximin solution, therefore, seems reasonable.

Homo economicus has invested heavily in the self-interest motive. We train ourselves to respond to it. Our belief in it approaches irrational ideology, as witnessed by the enormous popularity of psychological egoism despite much evidence of its falsehood, and our insistence on quoting such figures as Adam Smith out of context. The business world, in particular, relies on self-interest instinctively. When a manager wants to induce people to work together toward a common goal, personal incentives are the most obvious and most easily manipulated tool at hand.

At the same time, we rely on the inherent rationality of ethical behavior. In the Western world, at least, we tend to obey laws that seem reasonable to us and break those that do not. Because compliance with the law is largely voluntary in any but a police state, we must construct a rationale that justifies legal and ethical

conduct in our minds, and we have been doing so for centuries. Such classic works as Blackstone's *Commentaries on the Laws of England*, and countless closely reasoned judicial opinions, provide a rational basis for law. Ethical philosophy has rested heavily on rational persuasion, not only in the classical works of antiquity and the rationalistic theories of enlightenment thinkers, but in the Christian and Islamic traditions as well. Even in the business world, some wise managers have discovered that convincing workers of the company's positive contribution to society motivates them as strongly as appeals to self-interest.

An alternative to emphasizing self-interest as a primary motivator, and attempting to show that rational self-interest leads to ethical behavior, is to recognize that we are perfectly capable of acting rationally in a broader sense – a sense that is already ethical because of its anonymity assumptions. More importantly, we can cultivate a disposition to be rational, much as we have cultivated a reliance on self-interest. Empirical rational choice theories can explore this possibility and, in so doing, guide our moral development.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Biological and Experimental Perspectives on Self-Interest: Reciprocal Altruism and Genetic Egoism](#)
- ▶ [The Classic Social Contract Tradition](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)
- ▶ [The Modern Social Contract Tradition](#)

Notes

1. An *independence* property is also presupposed, which requires that the ranking of x and y be independent of the utilities of other states. This is implicit in the assumption that one can rank x and y by comparing the values of some social welfare function on x and y .
2. This is not identical to the axiom of the same name used in the proof of Arrow's famous impossibility theorem.

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Abstract

The scientific study of morals has been subject to a tremendous change throughout the past decades, eliciting various theoretical models, paradigms, and methodologies from disciplines as philosophy, social and developmental psychology, cognitive science, or anthropology. This chapter reviews some of the main approaches to study human moral judgment scientifically in their chronological order. The review will take off at the rational theories of Jean Piaget and Lawrence Kohlberg, who considered moral judgment to be based on a process of explicit cognitive reasoning [1, 2], and move right through to Elliot Turiel's attempt to distinguish conventional from moral (cognitive) domains [3]. This chapter then pays attention to current approaches, which particularly emphasize on the role of emotions on moral judgment (Jonathan Haidt's Social Intuitionist Model and Joshua Greene's Dual-Process Theory, see [4, 5]), and to the discussion on whether or not moral judgment is based on an innate moral grammar instead of being culturally shaped primarily (John Mikhail's Moral Grammar Theory, [6]). Each approach is reviewed and evaluated by its respective research questions, theoretical model, and specific methodological paradigms. This chapter concludes with current directions in developmental psychology and with a brief discussion of the future of a genuinely interdisciplinary field of research that presumably will have to undergo further changes in attempt to integrate

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diverse approaches into one coherent and complex field of research – a field that hopefully will continue evoking novel and exceptional research in both psychology and philosophy.

Introduction

Imagine you agreed to participate in a psychological study. You are therefore calmly sitting in the laboratory waiting for the task you are expected to complete. You then hear that you are asked to judge a story in which a protagonist is confronted with a train that ran out of control and the choice of whether or not it is permissible to turn a switch to prevent killing five people while accepting to kill another person [6]. This – as astonishing as it may seem at a first glance – is one of the typical scenarios scientists make use when attempting to study human moral judgment. The laboratory setting and dilemma may also appear rather artificial to the readers of this chapter. Consider then that you probably use your best endeavor to instruct your children not to harm others, to share resources, or to follow the rules of etiquette at the table – behavior that developmental psychologist may later test in behavioral laboratory studies similar to the one described above. Scenarios such as this one belong to the diverse field of scientific research on morals.

In the past few decades, the attempt to investigate the nature of moral judgment (and of moral behavior), that is, of people's sense of harm, welfare, fairness, altruism, or cooperation, has increased tremendously and has become an area of genuinely multidisciplinary research with insights contributed by disciplines such as philosophy, social and developmental psychology, cognitive science, anthropology, or primatology. The study of morals thus has undertaken a tremendous change, veering away from classical (philosophical) approaches such as thought experiments to systematic experimental research in (psychological) laboratories (see also [7]). This chapter aims at describing this tremendous change in the study of morals, illustrating what merit such a growing and diverse area of research may have to the philosophical study of morals.

Before reviewing the methods and measures attempting to tackle analysis of any human behavior, as a starting point, one certainly first would need a clear definition of the behavior under investigation. Yet, unfortunately so far no clear definition of morality has been unanimously accepted in either psychology or philosophy. By contrast, there is an ongoing debate about what does (and does not) constitute human moral judgment among social psychologists (see [8], for an overview of this process). What at least seems to be modestly agreed upon is that human morality comprises how we evaluate other people or events, and how we treat each other, or care for each other in terms of justice, fairness, and physical and psychological welfare. This thus will serve as – an admittedly sketchy – working definition for the current purpose.

Even though the debate currently shows no sign of emerging consent, it also is an indicator of what an equal opportunity and challenge interdisciplinary research may constitute for an area of research. Besides disagreements about definitions or

terminology, each area also brings along its own methodological approach to the scientific study of morals because research paradigms and measures are depending on the respective definitions of morals and the diverging research questions. The questions, for example, range from whether or not moral judgment is innate and hence universally similar among humans instead of being subject to intense cultural shaping (see, e.g., [5, 9, 10], for overviews on these discussions), whether or not moral judgment is a discrete, domain-specific cognitive ability instead of a subcategory of a more domain-general ability (e.g., [10–12]), to whether or not emotions are a constitutive rather than a modulating part of moral judgment (e.g., [4, 5]). Given these diverging questions and hypotheses, one might easily guess why there are still disagreements and sometimes misunderstandings across the different disciplines (and sometimes even within the same discipline). Yet, every single direction and discipline also contributes to shedding light on an understanding of human morality.

Given the authors' background in cognitive and developmental psychology (and philosophy for one of us), in this chapter, we will attempt to (a) put across an understandable review of the main methodological (i.e., empirical) methods and findings that have been applied in cognitive science and developmental psychology and (b) emphasize on the idea of how these diverse methods and findings may help in understanding human's morality. This chapter, however, cannot provide an exhaustive review of all research agendas that were or currently are investigating this important area. We will therefore constrain our review to the study of human moral judgment, thereby omitting the huge area of research on human moral behavior – and with it especially the area of game theory [13].

This chapter will be structured as follows: Since each approach used its contemporary method and paradigms, we decided to introduce the different approaches in roughly chronological order. That is, we will start by characterizing early attempts to systematically and empirically investigate human moral judgment in developmental psychology, attempts that were highly influenced by the cognitive revolution. We will then turn to research with adults, investigating what role emotions might play in moral judgment (hence called the “emotional revolution” in the study of morals), and will then return to developmental psychology, which recently is recapturing the study of moral judgment to some extent investigating the ontogenetic (and evolutionary) sources of human morality. Where applicable, each approach will be characterized by its initial research question, its theoretical underpinning, its usual main method and paradigm, and its main findings.

Sketching the Scientific Study of Moral Judgment

The Origins of the Scientific Study of Morals: Rational Theories

Piaget's Stage Theory

The scientific study of morals had its beginnings in developmental (and cognitive) psychology when Jean Piaget observed children in free play situations, for

example, when children played marble games together [2]. He found that especially school-aged children actively constructed and defended the rules of their games both, while playing together and when later being interviewed by an adult. Piaget thus considered these play contexts (i.e., “social systems”) as a cradle of human moral judgment. Similarly as postulated for the whole cognitive system and each cognitive domain [14], Piaget then extracted a theory of major conceptual changes that bring about substantial changes in children’s moral judgment from his observations: He claimed that when children begin to reason on moral issues for the first time around the age of 5 years, they take a so-called heteronomous stance and adopt rules from authorities without considering the rules’ justifications or appropriateness. When judging actions, children were understood to merely base their judgments on the outcome and consequences of these actions. After the age of 10 years, however, children achieve what Piaget called an “autonomous” stance that allows them to understand the social constructivist and partly arbitrary nature of rules, which then allows them to consider and question the rules’ qualification and appropriateness. When judging actions, children were then understood to base their judgments more on the initial intention of the actors instead of the mere outcome of these actions. Piaget thus generated his theory of moral judgments from his initial method: observing and interviewing children in their natural play situations, extracting the main consistent characters of children’s interactions and responses in interviews, and integrating them into his general theory of cognitive development [14]. With all the merit he therefore deserves for initiating a systematic and methodological approach to moral judgment, his theory still remained somewhat broad and unspecific.

Kohlberg’s Stage Theory

Method

Piaget’s theory [2] was subsequently refined by one of his own scholars, Lawrence Kohlberg, who extended the rather vague stages of Piaget (including the “pre-moral” stage of children under the age of 5 years) to more consistent and structured stages of cognitive moral judgment. These additionally covered older age groups, that is, adolescents and adults (see [15], for overview, [1]). Similarly to Piaget, Kohlberg attempted to show that moral reasoning is a universal, stage-like developing skill that – based on a general conceptual cognitive change – passed from an egocentric, authority-dependent reasoning in early childhood to a more socially oriented and authority-independent reasoning later on. His method, although inspired by Piaget in that he also relied on subjects’ verbal judgments in interviews, still was more systematic in that participants were presented with hypothetical moral dilemmas they had to judge (as opposed to judging or justifying their own behavior). One of the most famous dilemmas is the “Heinz dilemma” in which a husband desperately seeks to obtain a medication for his seriously ill wife. The dilemma goes as follows (see [1], p. 640ff):

In Europe, a woman was near death from a special kind of cancer. There was one drug that the doctors thought might save her. It was a form of radium that a druggist in the same town had recently discovered. The drug was expensive to make, but the druggist was charging ten times what the drug cost him to make. He paid \$400 for the radium and charged \$4,000 for a small dose of the drug. The sick woman's husband, Heinz, went to everyone he knew to borrow the money and tried every legal means, but he could only get together about \$2,000, which is half of what it cost. He told the druggist that his wife was dying, and asked him to sell it cheaper or let him pay later. But the druggist said, "No, I discovered the drug and I'm going to make money from it." So, having tried every legal means, Heinz gets desperate and considers breaking into the man's store to steal the drug for his wife.

Subjects' task then was to decide whether or not Heinz should steal the medication and to justify their response. The contents of these responses were systematically analyzed according to standardized orientations and concepts such as normative order, utility consequences, (punitive) justice, or fairness.

Theory

From these findings, Kohlberg generated three (by now famous) main moral stages (with two substages, respectively): First is the "preconventional stage" or "concrete individual perspective" ([1], p. 177) in which people (mainly children until the age of 9 years) judge others' and their own actions as orientated on the outcome and consequences of these actions (e.g., impending punishments), on people's personal needs, and on reciprocity (i.e., "tit-for-tat" exchanges). Then follows the so-called conventional stage or member-of-society perspective in which people orient their judgments on the intentions of actions, on social approval, social orders, and on the conventional expectations that together allow for coordinating social systems. This stage was claimed to be reached by most adolescents and adults. The postulated highest stage is the "postconventional stage" or "prior-to-society perspective" in which people reorient from their proximate surrounding to a more distal surrounding of the majority of a whole social system, on human rights, universal ethic principles, or social contracts. According to Kohlberg, this stage is only achieved by some adults after the age of 20 years [16].

Similarly to Piaget [2], Kohlberg generated the core structure of his stage model by empirical data, that is, out of the subjects' responses and justifications of the hypothetical dilemmas. However, the original sample on which Kohlberg based his model was fairly restricted in that male subjects were highly overrepresented. This thus puts his theory on rather shaky grounds. Moreover, findings from longitudinal studies (i.e., studies accompanying and examining the same subjects for a longer period) challenged the originally postulated fixed stage-like hierarchical

development from lower to higher stages with no possibility of regression back to lower stages by a person. In particular, Kohlberg himself found that some adolescents may “regress” from stage 2 back to stage 1 before finally achieving stage 3 [16].

Morals and Conventions: Turiel’s Domain Theory

These findings led some researchers to seriously query Piaget’s [2] and Kohlberg’s [1] also called “rational theories,” particularly their postulated fixed stage-like sequence of development. Among other aspects, these researchers understood human cognitive development not as equating with abrupt changes of the organization of general cognitive concepts but rather as a gradual shift from one concept to a new concept. These changes were conceived as being initiated by new experiences with the environment that challenged already existing concepts. Turiel further attempted to prove that the development of social-cognitive structures is organized by domain-specific areas with moral (and conventional) judgments as special types of “fundamental categories” ([3], p. 20). He and his colleagues dissociated the fixed moral stages (particularly the “postconventional stage”) postulated by Piaget and Kohlberg into differentiated conventional and moral domains (hence the term “domain theory,” see [3, 17–21], for overviews). These domains were considered to develop gradually along specific lines instead of “jumping” qualitatively from one stage to the next; the developmental trajectories were seen as being based on an individual’s reciprocal interaction with the environment. Prescriptions assigned to the moral domain hence are judgments about events that are obligatory, universally applicable, impersonal, and concern the concepts of justice, welfare, or rights. In Turiel and colleagues’ view, these prescriptions are acquired in ontogeny by children interacting with others and are triggered by intrinsic consequences on rights and welfare of others. Prescriptions assigned to the conventional domain, in turn, are similar to Searle’s “constitutive rules” of social organizations [22]. These judgments thus were understood as based on general agreements and rules that are accepted within one social organization by way of knowledge of all members of this organization but that are actually arbitrary and contextual so that they could potentially be different in other social organizations. In Turiel’s view, these conventional rules are acquired by experiencing the specific rules of a given social system in which children are raised [23].

Method and Evidence

For the first time in the scientific study of morals, a theory emerged as a consequence (i.e., as a contraposition) of a previous existing theory (namely, the rational theories).

Turiel’s method, however, resembled those of Piaget [2] and Kohlberg [1] at least to some extent, in that he and his colleagues observed young children’s interactions in their naturalistic surroundings (their schools and playgrounds) and later interviewed the children about previously occurred events. Hence, once the

preschoolers and schoolchildren had witnessed an event (e.g., a transgression against scholar rules), they were briefly interviewed by a trained adult. What the researchers congruently found was that the majority of children judged transgressions of conventional rules as being permissible in different contexts, whereas they judged transgressions of moral rules as barely permissible in any context. For example, children said that if there were no such rule as to be quiet in school yard, it would be admissible to be noisy whereas hitting another student would remain impermissible in all schools because hitting hurts others (e.g., [23, 24]).

Further, in an attempt to assess children's moral and conventional judgment more systematically (i.e., more scientifically), the experimenters presented children with individual standardized and stimulus-driven interviews in which children had to judge pictures or vignettes describing scenarios of supposedly moral or conventional transgressions (e.g., lying toward or hitting someone vs. addressing a teacher with her first name or chewing gum in class). Children's responses were then rated along dimensions such as obligatoriness, universality, relativism, social consensus, or institutional status. Children's justifications of their responses were furthermore classified along categories such as appeal to authority, to custom or tradition, or to others' welfare. They found that even the youngest children tested, 3-year-olds, were susceptible to the assumed difference between the domains (although their comprehension naturally was still rudimentary; [25]). As expected, older age groups were clearer in the conceptual distinction of the two domains [26, 27]. Ensuing this, the findings were replicated in various studies with different age groups and cultures (e.g., [28, 29]), in specific samples such as nontypically developing children with autism [30], children with behavioral misconduct [31, 32], and psychopaths [33, 34].

However, even though the evidence of two domains seems convincing at first glance, recent research challenges the postulated clear distinction between moral and conventional prescriptions and argues that the proposed pattern may have been evoked by a limited set of stimuli that were more or less restricted to Western school yards [5, 35]. Ironically, Turiel's findings and theory now stood on shaky grounds just as Kohlberg's had previously ([1], see above).

Moreover and perhaps more importantly, other areas of psychology and philosophy piped up and claimed that developmental psychology had merely focused on the cognitive aspect of moral judgments. It therewith had undermined the role of emotions and intuitions that may affect moral judgments tremendously (see below). The now called "emotional revolution" had begun.

The Role of Emotions: Haidt's Social Intuitionist Model Theory

Haidt's Social Intuitionist Model (henceforth SIM; [5, 36]) can be illustrated excellently by contrasting it with Kohlberg's rationalist approach. While Kohlberg's [1] research was based on the assumption that subjects reach a moral judgment by applying conscious moral reasoning, Haidt's SIM highlights the role of moral intuitions. Consider the following scenario [36]:

Julie and Mark are brother and sister. They are traveling together in France on summer vacation from college. One night they are staying alone in a cabin near the beach. They decide that it would be interesting and fun if they tried making love. At the very least it would be a new experience for each of them. Julie was already taking birth control pills, but Mark uses a condom too, just to be safe. They both enjoy making love, but they decide not to do it again. They keep that night as a special secret, which makes them feel even closer to each other. What do you think about that?

Was it OK for them to make love?

Most subjects who are presented with this scenario immediately judge the behavior of the siblings as wrong [36]. When asked for the reason of their judgment, they point to the danger of inbreeding or emotional disturbances, for example. Yet, when reminded of the two forms of birth control used and the fact that harm befell neither Mark nor Julie, most subjects eventually arrive at a point where they run out of reasons. However, the majority does not change their moral judgment but rather says something like “I don’t know, I can’t explain it, I just know it’s wrong.” According to Haidt, subjects behavior in this and similar studies can be seen as evidence for the main claim of the SIM, namely, that moral judgments are not caused by moral reasoning but rather by moral intuition.

In order to avoid misunderstandings, it is helpful at this point to spell out how Haidt understands and uses the concepts of moral intuition and moral reasoning. It might stand to reason to equate the difference between moral reasoning and moral intuition with the difference between cognition and affect. However, this is not the difference Haidt has in mind since “affect” often seems to imply that no computation or information processing is involved. Instead, both moral reasoning and moral intuition are considered as forms of cognition. Here are the definitions of these two concepts ([37], p. 998):

Moral intuition refers to fast, automatic, and (usually) affect-laden processes in which an evaluative feeling of good-bad or like-dislike (about the actions or character of a person) appears in consciousness without any awareness of having gone through steps of search, weighing evidence, or inferring a conclusion.

Moral reasoning, in contrast, is a controlled and “cooler” (less affective) process; it is conscious mental activity that consists of transforming information about people and their actions in order to reach a moral judgment or decision.

With these definitions at hand, we are sufficiently prepared to explore the SIM in more detail. As already mentioned, moral intuition plays the crucial role in moral judgment while moral reasoning is subordinated. Compared with rationalist approaches of moral judgment, moral reasoning and moral intuitions have switched roles. According to rationalist approaches, reasoning is, so to say, the master who causes moral judgment. Moral intuition is merely treated as a kind of slave who can sometimes give input in form of evaluative feelings to the reasoning process but who cannot, at least not directly, cause moral judgment (cf. [36], [38], p. 69). Contrary to

that, the SIM considers moral intuition as the master of moral judgment and reasoning as a mere slave whose main task is to support moral intuitions by providing post hoc reasons for the respective judgment (although these reasons have not caused the moral judgment). It is easy to see how this picture can be applied to explain subjects' behavior in the study outlined above. When subjects read about siblings having sex, they immediately had an instant reaction that probably involved a flash of negative affect. This moral intuition caused the moral judgment that the siblings behaved morally wrong. Moral reasoning only comes into play to justify and support the moral intuition with (in this case bad) post hoc reasons. The assistant role of moral reasoning becomes clear at the point when subjects run out of reasons supporting their initial judgment but nevertheless stick to it. According to the SIM, moral judgment has a great deal in common with esthetic judgments (cf. [39]). When making esthetic judgments, we do not really analyze, for example, a painting but rather have an immediate evaluative feeling. Often, we cannot explain why we like or dislike a painting. We just do. We might come up with some reasons, but it is far from clear whether these reasons have caused our esthetic judgment.

As the name of Haidt's Model already suggest, a social component in moral decision making is assumed. The SIM claims that people are highly attuned to the emergence of group norms and, because of this, are often influenced by moral judgments made by their friends, relatives, and so on. This kind of influence is assumed to happen without reasoned persuasion. The mere fact a person A judges an action X as morally wrong might lead person B to believe X to be wrong. In some cases, this social force only elicits outward conformity [40]. However, often, people's moral judgments are directly influenced and shaped by the judgments of others, especially when situations are not unambiguous to interpret [41].

One might wonder at this point whether moral reasoning has any force at all. Haidt would probably answer that reasoning can influence our moral judgment, but that this influence is very limited and only occurs rarely. According to the SIM, moral reasoning causes our moral judgment in only very few cases, primarily when we do not have a strong initial intuition. Moreover, reasoning can indirectly influence our moral judgment. When thinking about an action or situation from another angle, new intuitions, which can in turn override our initial intuition, can be triggered. Of course, by triggering new intuitions, we can change not only our initial judgment but also moral judgments of other people. However, directly influencing a person's moral judgment, that is, without trying to modify an initial intuition or by triggering new intuitions, is virtually impossible according to the SIM.

Kohlberg's rationalist account and Haidt's SIM do not only differ with regard to the question of what determines moral judgment (reason vs. intuition) but also with regard to the purpose of moral reasoning. In order to illustrate the purpose of moral reasoning, Haidt uses the metaphor of an "intuitive lawyer and/or intuitive politician" [5]. This metaphor is, again, very different from the metaphor of the "intuitive scientist" which was often used to describe people during the cognitive revolution (see above). The intuitive scientist analyzes evidence of everyday experience, thereby forming internal representations of the world that become more and more accurate and complete. What the intuitive scientist is searching for is a true picture

of the world. Applied to moral reasoning, the intuitive scientist tries to build a system of moral values, principles, and rules that becomes more and more coherent by thinking hard about moral questions. In contrast to this, the SIM claims that “moral reasoning is like that of a lawyer or politician seeking whatever is useful, whether or not it is true.” Haidt, as a social psychologist, sees a person as a “social agent embedded in a . . . social order, and moral thinking is done in order to help the social agent succeed in the social order” ([5], p. 808).

Method and Evidence

According to the SIM, moral intuitions include an evaluative feeling and play the main role in moral judgment. Hence, it is not surprising that most studies designed to support the SIM deal with (manipulating) participants’ emotions and their effect on moral judgments.

The first study we are discussing was conducted by Wheatley and Haidt [42] and made use of hypnosis in order to manipulate subjects’ emotions. In the first of two experiments, participants took part in small group sessions and were given a posthypnotic suggestion to experience “a brief pang of disgust. . . a sickening feeling in your stomach” whenever they read a certain word. They were then presented with some vignettes about moral transgressions (student selling library books, a congressman taking bribes, etc.). Each vignette was available in two versions: One contained the word supposed to induce disgust, the other one did not. According to the SIM, the transgressions containing the disgust-inducing word will be judged harsher than its “neutral” counterparts. The results were in line with this prediction, that is, subjects actually judged moral transgressions significantly harsher if their descriptions contained the disgust-inducing word.

In the second experiment, a story was added that did not contain a moral transgression. It goes as follows:

Dan is a student council representative at his school. This semester he is in charge of scheduling discussions about academic issues. He tries to take topics that appeal to both professors and students in order to stimulate discussion.

Although this scenario description does not contain any moral transgression, subjects judged Dan’s behavior harsher when the hypnotic word was part of the description. Furthermore, the claimed post hoc nature of moral reasoning was nicely illustrated. For instance, one subject wrote “It just seems like he’s up to something”; another one viewed Dan as a “popularity-seeking snob.”

In the study just described, subjects’ emotions were manipulated by hypnotizing them. Of course there are other, more common, ways to achieve this goal. For instance, sensory stimuli not related to the moral question can cause flashes of affect and were used in several studies.

Further evidence supporting the SIM comes from people with emotional deficits. For instance, research on psychopaths seems to show that their lack of emotional reactions that make nonpathologic people care is the main factor why they do not follow norms and hurt people. It is worth noting that these psychopaths do know most social and moral norms. Moreover, it is not that they do not experience any emotions at all but nonetheless lack the ability to feel the specific set of emotions that normally would make sure that we care about other people (sympathy, shame, guilt, etc.). Schnall, Haidt, Clore, and Jordan [43], for example, showed that subjects who scored high on a scale measuring body consciousness made harsher moral judgments when the moral judgment was made in a bad-smelling environment (implemented by fart spray). Eskine, Kacirik, and Prinz [44] focused on the smell sense and found that bitter-tasting beverages made moral judgments harsher as well. Valdesolo and DeSteno [45] found a way to counteract a harsh moral judgment by letting subjects watch a comedy video immediately before they were asked for their moral judgment.

Discussion

Haidt is to be credited for showing that nonreasoning processes play an important role in moral judgment (cf. [46]). The evidence for this claim is overwhelming. However, there are also some shortcomings in his theory. For instance, the relation between the eliciting situation and the corresponding intuition is rather opaque. This is the reason why the SIM often does not allow inferring on how people will judge a specific action. In order to illustrate this point, consider the following scenario that is one version of the so-called trolley dilemmas, which have their origin in philosophical thought experiments and became also very popular in empirical psychological research ([47, 48], for the philosophical origins; see [49], for this specific version):

On the test ground of a modern railroad property an unmanned speed-train (that normally can be remote-controlled) is out of control due to a technical defect. This speed-train is heading towards three railroad workers that are maintaining the tracks. Since these workers are wearing a novel type of hearing protection, they would not notice the speed-train on time and hence would be run over by it. Carl, an employee of the rail track control center, recognizes the upcoming accident. However, it is not possible to stop the train on time any more.

There is only one possibility to avoid the death of the three workers: Carl could throw the switch and thereby redirect the speed-train from the main track onto a parallel track before it reaches the three workers. On the parallel track the speed-train would collide with a train carrying one worker. The one worker would lose his life in this accident.

Should Carl do the proposed action?

What would the SIM predict with regard to the question of whether Carl should do the proposed action? The answer seems to be nothing because without elaborating the relation between the eliciting situation and the corresponding intuition the theory does not, and cannot, make predictions for such cases.

Furthermore, the claim that intuition is virtually always primary seems to be too radical. Consider, for example, the scenario described at the beginning (siblings having safer sex). Although very strong flashes of disgust are elicited, there were still subjects who judged that the siblings' behavior was okay because they could not find a reason why it should not be okay. It seems plausible to claim that in situations in which weaker flashes of affect are involved, reasoning can often trump initial intuitions [50].

Greene's Dual-Process Theory

Greene's Dual-Process Theory (DPT) of moral judgment can be characterized as steering a middle course between rationalist and intuitionist theories. While both these theories assume that moral judgment is dominated by moral reasoning and moral intuition, respectively, and that the relation of these two processing styles is a dependent one in the sense that the dominated process serves the purpose of the other, Greene's DPT assumes these two kinds of moral processing to be independent of each other and, in some sense, of equal value. According to the DPT, moral judgment is a complex interplay of these two distinct styles of processing, both of which trying to get the upper hand [4, 51, 52]. Although these two styles of processing are called "cognitive" and "emotional," respectively, in the framework of the DPT, they seem to capture the same concepts Haidt had in mind when differentiating between moral reasoning and moral intuition.

Whether emotional or cognitive processes determine moral judgment depends on the properties of the specific scenario. According to the DPT, emotional processing is triggered by scenarios containing a "personal" moral violation while cognitive processes prevail in "impersonal" scenarios. The distinction is made in the following way ([51], p. 2107):

A moral violation is personal if it is: (i) likely to cause serious bodily harm, (ii) regarding a particular person, (iii) of such nature that the harm does not result from the deflection of an existing threat onto a different party.

A moral violation is impersonal if it fails to meet these criteria.

In order to illustrate this difference, we can consider the two most popular trolley dilemmas. The first trolley dilemma is usually called "Bystander" and was already described above (redirecting a train from five persons to one). In this scenario, the third condition is not met because the action is a case of harm resulting from the deflection of an existing threat onto a different party. Hence, the Bystander scenario is an example of an impersonal moral violation. Since an impersonal violation does not trigger emotional processing, cognitive processes entailing comparison of the consequences arise (five persons die vs. one person dies). This, according to the DPT, is the reason why most people find it permissible to act in the Bystander

dilemma (cf. [11]). In the so-called Footbridge dilemma, the only possibility to rescue the five persons is to push a fat man from a bridge in front of the trolley, killing him but rescuing the others. The great majority of subjects judge the proposed action as impermissible (cf. [11]). The reason, according to the DPT, is that the Footbridge scenario entails a personal moral violation that triggers negative emotional responses, causing subjects to judge the action as impermissible.

Greene's research agenda is a good example of how investigating moral judgments can profit from other disciplines as well as it might influence them. For instance, DPT claims that the aforementioned two processing styles have their origin in different brain areas. In two by now well-known studies, Greene and colleagues ([51], see also next paragraph) used functional magnetic resonance imaging (fMRI) to support the DPT. The results of such and other studies also have, as Greene claims, implications for other disciplines than psychology [4]. For instance, Greene argues that the two processing styles and their corresponding brain areas reflect the two dominant moral theories in philosophy: utilitarianism (or consequentialism more general) and deontology. Put in a nutshell, utilitarianism claims that the moral status of an action solely depends on the (expected) consequences, while deontological theories take other considerations (e.g., rights, duties) into account that can make an action wrong although it would lead to the best consequences (cf. [53, 54]). Consider the previously discussed trolley dilemmas. According to utilitarianism, in both scenarios, the action leading to only one death is the right one because one dead person is a better consequence than five dead persons. Deontology, in contrast, might allow redirecting the trolley although this action kills a person. The reason for this is a deontological principle that allows causing harm in cases in which the harm is brought about unintentionally. However, deontological theories would certainly forbid pushing the fat man from the bridge since in this case the killing of the man would be necessary to stop the train, and therefore, it cannot reasonably be claimed that the death was not intended. According to Greene, deontological judgments are based on emotional responses while utilitarian judgments are rather the effect of controlled cognitive processes comparing consequences and inhibiting the impact of emotional responses [4].

Method and Evidence

As already mentioned, Greene and colleagues used functional magnetic resonance imaging (fMRI), a neuroimaging method allowing to measure activities in different parts of the brain. The first study [51] of this kind aimed to explain why subjects find it okay to act in the trolley dilemma but judge the proposed action in footbridge as forbidden, although the numbers of lives at stake do not differ. To prove whether these moral judgments arise due to different degrees in the tendency to engage subjects' emotions, they used a battery of 60 moral dilemmas, divided into moral and nonmoral scenarios. The moral scenarios were then divided into personal and impersonal dilemmas. Subjects had to judge the proposed action in these scenarios while their brain activity was measured. The obtained data revealed that medial portions of Brodmann's Areas (BA) 9 and 10 (medial frontal gyrus), BA 31 (posterior cingulated gyrus), and BA 39 (angular gyrus, bilateral) were significantly

more active in the moral-personal condition than in the moral-impersonal and the nonmoral conditions. These areas have typically been associated with emotions in other functional-imaging studies. In contrast to these areas, BA 46 (middle frontal gyrus, right) and BA 7/40 (parietal lobe, bilateral) were activated less during emotional processing. These brain areas are associated with working memory. No significant differences of activation between the moral-impersonal and the nonmoral condition were found in BA 39 (bilateral), BA 46, and BA 7/40 (bilateral). In summary, the results were in line with the predictions made by the DPT.

DPT claims that brain areas associated with utilitarian judgments normally are responsible for controlled cognitive processes. This claim leads to the hypothesis that cognitive load will selectively interfere with utilitarian judgments. Greene and colleagues [55] therefore used high-conflict dilemmas, that is, dilemmas in which utilitarian principles were in sharp conflict with deontological ones, to test this hypothesis. Here is one dilemma supposed to capture this conflict ([55], p. 1147):

Enemy soldiers have taken over your village. They have orders to kill all remaining civilians. You and some of your townspeople have sought refuge in the cellar of a large house. Outside you hear the voices of soldiers who have come to search the house for valuables. Your baby begins to cry loudly. You cover his mouth to block the sound. If you remove your hand from his mouth his crying will summon the attention of the soldiers who will kill you, your child, and the others hiding out in the cellar. To save yourself and the others you must smother your child to death. Is it appropriate for you to smother your child in order to save yourself and the other townspeople?

Cognitive load was implemented by presenting numbers below the scenario description and giving the subjects the task to push a button every time a “5” appears on the screen. DPT predicts that only utilitarian judgments will be affected by cognitive load. The results of this experiment support this prediction: Only the reaction times for utilitarian judgments under cognitive load increased while there was no such effect for nonutilitarian judgments. Suter and Hertwig [56] found in a related experiment in which the time subjects had to judge a certain action was manipulated that shorter times increased the probability of deontological judgments.

Further evidence comes from studies testing patients with emotional deficits (e.g., [57]). These subjects chose the utilitarian option significantly more often than nonimpaired judgments. Moreover, Moore and colleagues [58] found that subjects with higher working memory capacity were also more likely to approve of utilitarian actions.

Discussion

Greene’s DPT allows both moral reasoning and moral intuition/emotion to play a role in moral judgment. This feature makes the theory pretty flexible and less likely to run into counterexamples. However, the DPT has drawn a number of

critiques. One class of objections claims that there are alternative, sometimes more parsimonious, explanations available that can make sense of the data obtained in the neuroimaging study. Prinz [59] argues that the pattern of brain activation can also be explained by the view that the dilemmas triggered a strong emotional response to harming the innocent bystander and a weaker emotional response to saving the five. Adding the plausible assumption that scenarios differ regarding the salience of harming the innocent bystander versus saving the five, the data is also consistent with Prinz' view. Moll and De Oliveira-Souza [60] also suggest an alternative interpretation of the data. In their view, differential activations of brain areas underlie different prosocial emotions which integrate emotional and cognitive processes rather than putting them in conflict. Furthermore, apart from the more economical explanations just described, there are several other versions of two process theories than Greene's DPT which equally can make sense of the data. Furthermore, the designs and methods of Greene's studies have some flaws that do not allow the inferences Greene's draw. Kahane and Shackl [61], for example, criticize that in many cases Greene's classification of deontological and utilitarian judgments is erroneous. They gave Greene's classification to professional philosophers and found philosophers to agree with Greene's classification in only about half of the dilemmas.

Another point of critique can be made concerning Greene's claims that his research shows that deontological and utilitarian judgments correspond to the emotional and the cognitive area of the brain, respectively. Deontological theories are very diverse and change over time. Therefore, it is not inconceivable that once there might be deontological principles or theories that forbid an emotional judgment but allow a rather cognitive judgment for a selected few instances. Although one might object that normally the deontological judgment is also the emotional judgment, the mere conceptual possibility of deontological judgments being independent from emotional judgments casts doubt on specific brain areas reflecting a normative moral theory.

One point of critique regarding Haidt's SIM was that this theory often does not allow inference on how people will judge a specific action. The same is so far true with regard to the DPT since this theory is not yet elaborated enough as well. Besides Greene seeming to aim to replace ambiguous concepts such as "emotional" with more concrete concepts [62], there is another line of research currently attempting to specify more systematically how and why people judge specific actions, in this case, some (neatly defined) moral dilemmas: The Theory of Moral Grammar.

Mikhail's Universal Moral Grammar Theory

Mikhail's Universal Moral Grammar Theory (UMGT; [6, 63]) does not really fit into the intuition/emotion versus reasoning/cognition classification used so far. His view is inspired by Chomsky's [64] famous syntax theory, according to which we have an innate and universal capacity enabling us to have strong opinions about the grammaticality of sentences (cf. [46]). These intuitions are explained as the output of a complex unconscious system of syntactic rules. Similarly, UMGT claims that

moral judgments about certain actions are the result of an unconsciously working moral grammar that contains moral rules and principles. UMGT holds “that ordinary individuals are intuitive lawyers, who possess tacit or unconscious knowledge of a rich variety of legal rules, concepts, and principles, along with a natural readiness to compute mental representations of human acts and omissions in legally cognizable terms” ([6], p. 29). Following Chomsky, UMGT is assumed to be innate and universal. To characterize Mikhail’s research agenda, one might say that he aims at the development of a moral grammar that is so fine graded that a computer provided with this knowledge would be able to make moral judgments matching the judgments of real people.

Now, how does the UMGT determine the moral status of an action? A first and crucial step is the identification of the underlying causal structure of a moral scenario (e.g., a trolley dilemma). For instance, in the Bystander scenario, the temporally ordered events “throwing a switch,” “turning the train,” and “killing one man” are represented in a causal chain. Analyzing the causal representation allows to acquire knowledge of morally relevant features such as whether the death of a person was a side effect or the means to an end. The causal representation is then converted into a moral representation by assigning evaluations (good vs. bad) to the effects. The moral representation is further converted into a representation of the underlying intentional structure. If an action has both good and bad effects, the default assumption is that the good effect is the intended effect, whereas the (bad) side effect is merely foreseen. If, however, the bad effect is a means to a good outcome, the bad effect is classified as intended since the outcome could not be brought about without it. Finally, the moral status of an action is determined by applying certain deontic rules to the representation of the underlying intentional structure of a moral scenario.

The so-called doctrine of double effect (DDE) is an example of a deontic rule that is assumed to play a major role in moral judgments, especially with regard to trolley cases. Mikhail formulates this principle as follows ([6], p. 68):

The principle holds that an otherwise prohibited action, such as battery or homicide, which has both good and bad effects, may be permissible if the prohibited act itself is not directly intended, the good but not the bad effects are directly intended, the good effects outweigh the bad effects, and no morally preferable alternative is available.

To illustrate the DDE, consider again the Bystander scenario and the Footbridge scenario. According to the DDE, redirecting the train in the Bystander scenario is permissible since the death of the one person is not intended (merely foreseen), the good effects outweigh the bad effects, and there is no morally preferable alternative available. In the Footbridge scenario, however, the act of pushing the fat man from the bridge and killing him is intended since his death is necessary to bring about the good outcome (saving the five persons). Hence, the act of pushing the fat person from the bridge is evaluated as morally forbidden. The DDE can be seen as a principle that specifies the conditions that have to be met in order to be justified to violate another deontic rule, the so-called prohibition of battery and homicide ([6], p. 53) that forbids an agent to purposely cause harm to a nonconsenting victim.

The UMG, however, is still in a developmental stage and so far best suited to explain intuitions in trolley cases. The future will tell whether UMG can be further developed to be applicable for a wide(r) range of moral scenarios.

Method and Evidence

Mikhail designed a battery of trolley cases to test whether moral judgments are universal. He hypothesized, for example, that “Bystander” and “Footbridge” will be judged as permissible and forbidden, respectively, in different nations and cultures. In huge Internet-based studies so far, over 200,000 subjects were presented with different trolley scenarios, and the results indicate that some moral judgments are widely shared as it is the case in Bystander and Footbridge (see, e.g., [65]).

With regard to the claim that moral grammar is innate, Mikhail argues with a version of the so-called poverty of the stimulus argument, according to which the learning input of children cannot explain their impressive moral performance, for example, their ability to differentiate between moral and social transgressions [6].

The claim that an adequate descriptive moral theory must provide an analysis of the underlying causal structure of a scenario is defended by pointing to moral scenarios which are superficial and highly similar but nevertheless judged differently. Consider, for example, the following highly similar scenarios ([6], p. 24–33):

Loop Track: Ned is taking his daily walk near the train tracks when he notices that the train that is approaching is out of control. Ned sees what has happened: the driver of the train saw five men walking across the tracks and slammed on the brakes, but the brakes failed and the driver fainted. The train is now rushing toward the five men. It is moving so fast that they will not be able to get off the track in time. Ned is standing next to a switch, which he can throw, that will temporarily turn the train onto a side track. There is a heavy object on the side track. If the train hits the object, the object will slow the train down, giving the men time to escape. The heavy object is a man, standing on the side track with his back turned. Ned can throw the switch, preventing the train from killing the men, but killing the man. Or he can refrain from doing this, letting the five die.

vs.

Man-In-Front: Oscar is taking his daily walk near the train tracks when he notices that the train that is approaching is out of control. Oscar sees what has happened: the driver of the train saw five men walking across the tracks and slammed on the brakes, but the brakes failed and the driver fainted. The train is now rushing toward the five men. It is moving so fast that they will not be able to get off the track in time. Oscar is standing next to a switch, which he can throw, that will temporarily turn the train onto a side track. There is

a heavy object on the side track. If the train hits the object, the object will slow the train down, giving the men time to escape. There is a man standing on the side track in front of the heavy object with his back turned. Oscar can throw the switch, preventing the train from killing the men, but killing the man; or he can refrain from doing this, letting the five die.

On the surface, these two dilemmas only differ with regard to the heavy object that is present in the second scenario but not in the first. Nevertheless, most subjects find it permissible to throw the switch in the second scenario, whereas the majority judges this action as forbidden in the first scenario. The reason for this is, according to UMG, that the death of the man is a necessary means only in the first but not in the second scenario, and hence, the DDE permits redirecting the train only in the Loop scenario.

Discussion

As mentioned before, the UMG is still in its early stages. However, with regard to its precision and details, it vastly surpasses what Haidt's SIM and Greene's DPT have to offer. At least with regard to trolley cases, the UMG seems to be the only one of the three previously introduced moral theories that would be able to account for different ratings in trolley cases that sometimes only differ with regard to a subtle feature. Consider again the two cases described in the previous section. On a superficial level, they only differ with regard to the heavy object present in one case (Man-In-Front) and absent in the other (Loop Track). We have already seen that it is difficult, if not impossible, to apply Haidt's SIM to trolley cases in general. Thus, it is obvious that this theory cannot explain why people's reactions to these two dilemmas differ. The same is true with regard to the DPT. The personal versus impersonal cannot distinguish between these two cases. For none of the three criteria, the fact that a heavy object is placed behind the potential victim makes a difference. Hence, the DPT in its current version cannot explain people's judgment either.

Although the analysis of structural and causal features of a scenario seems the appropriate way to predict and explain people's moral judgments in trolley cases, it is less clear if the same is true for other domains. Furthermore, it is even questionable whether the DDE really explains people's reactions to trolley cases. There are other plausible theories that seem equally capable to explain people's reactions (e.g., [66]). In addition, it was criticized that some of Mikhail's scenario descriptions contain confounds. For instance, Waldmann and Dieterich [67] claim that the effect of less people affirming the action in "Loop" than in "Bystander" is not caused by the fact that the death of the man in Loop is intended (since it is a necessary means to save the five persons) but due to describing the man in Loop as a heavy object.

There are also some objections to the claims that moral grammar is universal, innate, and comparable with Chomsky's syntax theory. For instance, Rai and Fiske [10]

describe cases that cast doubt on the universality of deontic rules such as the “prohibition of battery and homicide” ([6], p. 53). It is also argued that the fact that people often have no conscious knowledge about moral rules is not sufficient to reasonably claim that these rules are innate (cf. [46]). There is, for example, a large literature on artificial grammar learning which similarly demonstrates judgments in the absence of valid verbal justifications (see [68] for an overview). Dupoux and Jacob [69] claim that the analogy between the UMG and Chomsky’s syntax theory is inaccurate. They argue that it seems questionable to compare grammaticality judgments with permissibility judgments since the former are pretty robust while the latter are extremely context sensitive (see, e.g., [49, 70, 71]).

In summary, it can be said that although many of Mikhail’s claims (e.g., innateness, universalism, DDE) can be doubted, he is nevertheless to be credited for the first attempt to formulate a precise descriptive moral theory which is, at least potentially, capable to account for subtle manipulations regarding certain morally relevant features of a scenario.

Back to the Roots? New Directions in Developmental Psychology

Strangely enough, another currently very active line of research scientifically investigating morals again is Developmental Psychology, which tentatively renews its interest in moral judgment. This time, however, it focuses its research agenda less on the previous debate on whether or not the developmental trajectories are stage-like or gradual or whether or not cognitive or affective elements dominate moral judgment (see above). The current researchers aim at identifying the early indicators of morals and the time in ontogeny in which these indicators emerge. With a whole fan of newly designed methods and particularly nonverbal measures – indispensable when studying young infants and different species – the researchers recently could show that potential precursors of moral judgment such as prosocial behavior, empathy, or deontic reasoning (a) develop early in ontogeny (see below) and (b) may be deeply evolutionarily grounded (e.g., [72–74]), although the genuine ontogenetic path to adult moral judgment (and hence the relation of this area of research to the above-reviewed approaches in adults) is far from being clear yet (see [75] for a thoughtful discussion on this topic). The next section will briefly summarize the main findings of this line of research.

Early Prosocial Behavior

One of the very active lines of research is currently investigating when young infants begin to care for others, be it by selectively preferring social to unsocial characters, by showing empathy with and concern for others, or by instrumentally helping others when necessary. In several series of studies and with the help of ingenious methods and designs, it has now been shown that infants begin to show these types of behaviors surprisingly early in ontogeny. For example, when presenting infants with screen-stories involving characters who act in morally

different ways (i.e., one is helping, the other hindering a protagonist), it was found that infants prefer helping to hindering (and thus morally displeasing) characters even before their first birthday, that is, at an age in which infants barely are able to walk or to talk [76]. Briefly after their first birthday then, infants understand when another person apparently failed to achieve an intended goal and either try to help instrumentally (e.g., by offering objects out of reach, [77]) or show indicators of empathic behavior and try to comfort others (with their own means such as a stuffed animal, [78]). Recent research has even shown that young children are selective in whom to help, helping a victim more often than a transgressor [79]. A tendency to care for others' welfare thus seems to be traceable very early in human ontogeny.

Distributive Justice

Another line of current research investigates when young children begin to adhere to the requirements of altruistic behavior, usually assessed by children's understanding of distributive justice. To investigate this issue, young children are usually presented with paradigms adapted from game theoretical approaches ([13], cross-reference) and then asked to share resources with a (fictive) counterpart or a collaborative partner. As most parents among the readers of this chapter may have guessed, the findings of these studies are rather heterogeneous, especially concerning younger age groups. On the one hand, young children have been shown to orient their sharing behavior on mere self-interest [80]. On the other hand, children have also been shown to rely on heuristics such as 50:50 when asked to distribute resources (e.g., [81]). A very recent study might shed light on these contradicting findings by showing that young children may benefit from assistance in recognizing that and when their counterpart is interested in receiving a share and as a consequence distribute their resources fairly [82]. Older (i.e., preschool and school-aged) children, by contrast, were shown to consistently share fairly and even to take into account the characteristics of the participants when distributing (e.g., the recipient's previous effort on a task, the membership to a same or different social group, or social relationships between distributor and recipient such as friendship or hostility, [80, 83, 84]). By preschool age, children thus seem to have developed an almost adult-like understanding of distributive justice.

Deontic Reasoning

A third line of current research, which is related to the distinction between moral and conventional prescriptions ([20], see above), investigates young children's emerging sense of normativeness and their related developing understanding of deontic rules. Compared to the above-mentioned novel paradigms, these methods are more traditional in that children are asked to judge the permissibility of hypothetical actions or in that young children are expected to react to third-party transgressions of (deontic and/or social) rules, this time, however, not in verbal interviews but in experimental behavioral studies. Similarly to the above-mentioned studies on prosocial behavior or distributive justice, this line of research has shown that even preschool children (i.e., children around the age of 3 years at the latest) are able to understand the bases and consequences of deontic rules and

social conventions [85, 86], allowing them to actively convene to previously established social rules, or even to go as far as trying to rectify third-party transgression of rules [87–89]. Again, the ontogenetic roots – though not understood in the entire extent with all its cognitive and emotional underpinnings – seem to be detectable early in human ontogeny.

Conclusion

In the past decades, the scientific study of morals underwent a tremendous change (if not even revolutions) of scientific approaches, disputes, paradigms, or research questions. All these approaches entailed its specific research methods that varied as tremendously as the original research questions – starting from verbal judgments of (hypothetical) dilemmas that were supposed to reveal people’s rational moral reasoning (Piaget and Kohlberg, [1, 2]), to observing behavior in natural surroundings that had to be evaluated by observers or actors (see Piaget, Smetana, and colleagues, e.g., [2, 90]), over intuitively judging emotionally intense scenarios (after being additionally manipulated by priming or mesmerizing procedures, see, e.g., Haidt, [36]), or assessing brain activity while judging dilemmas (see, e.g., Greene, [52]), to engaging infants in watching scenarios on screens, or to confronting them with needy others (e.g., [76]). In future research, most of these methodologies will certainly still be refined, amplified, or replaced by even more exact and superior methods. In addition to the foreseeable growth of the methodological variety, more factors that supposedly influence human moral judgment probably will be brought up and discussed (as currently is the factor of “social relationships” that are assumed to influence moral intuitions, see [10] for an overview). Yet, where does this go? In what direction does this development take us?

In a recent review, Bryce Huebner [91], himself being familiar with the scientific study of moral judgment by his own research, raised the legitimate question to what extent behavioral methods such as evaluating and judging hypothetical scenarios are suitable for revealing the underlying cognitive processes and mechanisms. He also pointed to the necessity of more specific models simulating the supposedly underlying cognitive procedures and of clearer hypotheses concerning the underlying human brain activity to tackle the cognitive and neural underpinnings of moral judgment. Related to that, when introducing this chapter, we pointed out that so far, there was no consistent definition of what elements human moral judgment contains. In view of the variety of research agendas reviewed above, it seems unlikely that this definition will be found in near future. Characterizing such a rich and complex phenomenon as human morals, which concerns and influences various disciplines (not to speak of human moral behavior), will still be one of the main requirements and challenges to future research. With all the difficulty and challenge it may present to the different disciplines, in the long run, it presumably will be vital to find such a coherent (albeit certainly complex) characterization of moral judgment in order to further elicit ingenious and novel research in such different areas as philosophy and psychology.

Cross-References

- ▶ [Adam Smith on Morality and Self-Interest](#)
- ▶ [Biological and Experimental Perspectives on Self-Interest: Reciprocal Altruism and Genetic Egoism](#)
- ▶ [Moral Implications of Rational Choice Theories](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)
- ▶ [The Ethics of Statistical Testing](#)
- ▶ [Utilitarianism](#)
- ▶ [Value Ladenness and the Value-Free Ideal in Scientific Research](#)

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Abstract

Regarding scientific research, value ladenness and the value-free ideal represent two poles. At the beginning of the twentieth century, the influential view was science as “value-free” (*Wertfrei*), whereas in the first decade of the twenty-first century the dominant perspective is science as “value-laden.” After considering the historical setting on values in science, the analysis here deals with the characteristics and relations between axiology of research and ethics of science. This involves taking into account the option in favor of holism of values and the alternative in terms of fractional orientations, either in “internal” terms or in “external” ones. Thus, the presence of values in basic science and in applied science is considered. After that, economics as a relevant case study is addressed through the distinction between positive economics and normative economics. There is also a coda with final remarks on the topics analyzed.

Introduction

“Value-free” and “value-laden” are notions that characterize two different approaches to scientific research. In the first case, science is a content that is and ought to be neutral from an axiological perspective, whereas in the second position science is a human activity developed under the direct influence of values. These conceptions can be seen in historical terms as well as in thematic ones. From a historical point of view, the first view was explicitly proposed at the beginning of the twentieth century and with the focus of attention on the social sciences, whereas the second option was increasingly assumed in the last decades of that

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century until the present stage, when there is a broad consensus in favor of value-ladenness and within a general perspective (i.e., as a feature that might be, in principle, in any science).¹

From a thematic viewpoint, *value-free* and *value-laden* perspectives summarized two poles of the philosophical analysis on science. They are clearly connected with the possibility, characteristics and limits of axiology of research. But value-free and value-laden outlooks are also linked to ethics of science in a discernible way. Thus, after the historical setting on values in science, the paper deals with the duality “axiology of research”—“ethics of science,” which is followed by the consideration of the main lines of interpretation: holism of values and fractional orientations. Thereafter, the consequences of these observations for basic science and applied science are seen. Then, due to its special interest for this volume, the case of economics is considered through the usual distinction between “positive economics” and “normative economics,” because it involves different kinds of values. A coda adds final remarks in order to complete the analysis made.

Historical Setting of Values in Science

Certainly there is a remarkable difference between the outset of the twentieth century, when Max Weber proposed his philosophical reflections on science as “value-free” (*Wertfrei*), and the recent decades of that century and the first decade of the twenty-first century, when “value-laden” became generally assumed by the philosophers of science.² Thus, nowadays the presence of values is openly accepted in the consideration of the empirical sciences, not only in the social sciences – those of Weber’s concern – but also in the natural sciences and in the sciences of the artificial.³

Max Weber defended that science – in particular, social sciences – was “value-free,” because he understood that the axiological neutrality was a complement needed for objectivity of social sciences (which includes political science) and, therefore, for these disciplines, in order to be “sciences.” Meanwhile, in our contemporary times, the thesis of scientific research as “value-laden” is commonly accepted as compatible with the objectivity in science, including the social science, and so it is generally taken on as a trait of scientific research. This conception is obviously clearer in those thinkers that endorse scientific realism in any of the main kinds (cf. [29] and [39]; an alternative approach is in [54]), but it is also the case of supporters of different versions of pragmatism, including pragmatic idealism.⁴

Weber made it explicit around 1904 that he was in favor of objectivity in social science and social policy (cf. [83]). His view can be seen as a modulation of the famous dichotomy between *Erklären* (explanation) and *Verstehen* (understanding), because he offers his own approach in the historical set of positions on this controversy (cf. [26] pp. 33–50; especially, p. 35). On the one hand, his view adopts a methodological difference between the natural sciences and the social sciences. On the other hand, he moves towards a *Verstehen* that is not linked to a form of methodological relativism (i.e., a *Historismus*),⁵ because he defends the objectivity of social sciences. His position is, then, enlarged with the idea of

the social sciences as an enterprise “value-free” (*Wertfreiheit*) (cf. [84]; on Weber’s approach see [11, 12]).

To be sure, Weber’s approach goes beyond the disciplines that he was interested in (mainly, sociology, political science, and economics) and even the region of social sciences, to get to the general territory of science as a whole. (i) His proposal of objectivity of social sciences (among them, economics) is associated with *Verstehen* as the adequate method, which is different and complementary to the method of *Erklären*. Thus, objectivity in economics could be compatible with a methodological differentiation with respect to natural sciences. (ii) His defense of social sciences as value-free involves a methodological conception in favor of the unity of science: it supposes that economics is “neutral” regarding values in a similar way as is any science which studies nature.

As a matter of fact, during several decades of the last century – from the mid-1920s to the beginning of the 1960s–, the main philosophical tendencies considered science as a content that is or might be objective, impersonal and, in principle, independent of the context. Usually, the logico-methodological approaches – verificationism and falsificationism – assumed this view. They also accepted that the epistemological contents have a special weight in the analysis of the results of scientific achievements. Thus, scientific values, in general, and ethical values, in particular, were not commonly among the contents to be considered philosophically during those decades.

Nevertheless, important thinkers of the “received view” and relevant authors of the critical rationalism made comments on values. Usually, the remarks of logical empiricists were on science as related to human values, such as in the case of Carl Gustav Hempel (cf. [35]), whereas Karl Popper developed his own views on the moral responsibility of the scientist at the end of 1960s (cf. [66]), when he was very much involved in evolutionary epistemology. Later, Popper added some interesting considerations on how the principles of fallibility, rational discussion and approximation to the truth are both epistemological and ethical principles. In this regard, he seems to assume truth as an ethical value.⁶ Other critical rationalists, such as Gerard Radnitzky, explicitly discussed the thesis of the science as “value-free” (cf. [69]; on the analysis of the value-free ideal see [15, 49]).

Nonetheless, the big change in values came with the new emphasis on science as a *human activity* instead of previous insistence on the contents of science. This involves the idea of science as an activity that is oriented to ends, which is context-dependent and so is under social influence. This change happens with the development of the “historical turn” in philosophy of science, which is noticeable after the publication of *The Structure of Scientific Revolutions*.⁷ Thomas Kuhn focuses attention on the scientific communities doing science with the use of wide frameworks (“paradigms”) and within a social milieu.

A few years later, in his *Postscript – 1969*, Kuhn explicitly mentions *values* as an element in the disciplinary matrix: on the one hand, values “are more widely shared among different communities than either symbolic generalizations or models” ([46] p. 184), and, on the other hand, values “do much to provide a sense of community to natural scientists as a whole” ([46], p. 184; Kuhn developed his views on

objectivity, value judgment and theory choice in [47]). Through the analysis of the ideas on values that are shared by scientists and the problems on the application of values, it seems clear that we can think of scientific research as a human activity that can have values regarding ends (the selection of goals is made according to some principles) and values concerning means (there are some criteria that show that some means are more worthy than others).

But it is in the 1980s that the philosophical move in favor of values in science is consolidated. Thus, in 1982 Ernan McMullin presented a paper in the PSA on “Values in Science.”⁸ It was two years before Larry Laudan’s *Science and Values*, a book that stressed the relevance of cognitive values regarding aims of science as well as methodological norms and rules. The volume recognized that “the question of precisely how one distinguishes cognitive values or aims from noncognitive ones is quite complex” ([51], p. xi). At the same time, Laudan accepted the existence of ethical values in science: “Ethical values are always present in scientific decision making and, very occasionally, their influence is of great importance” ([51], p. xii). Since then, the assumption that science is “value-laden” was a common one, although it has not always been understood in the same way.

Axiology of Research and Ethics of Science

Generally, “value” is a term understood with a broad *sense*: as something worthy that should modulate ends and means of scientific research, either internally or externally.⁹ Sometimes value appears as a principle that should regulate scientific activity from the beginning, whereas in other occasions it seems to be one criterion among others that should be taken into account. Thus, value might be used either to orientate scientific research or to reflect something that is going while scientists are doing science. In the first case, value might be understood in terms of “ideal” (i.e., something that should be searched for but will never be actually attained) or in the form of “goal” (i.e., an objective that might be attainable).

Following these positions on the sense of *value*, the distinction between “fact” and “value” is certainly useful,¹⁰ because they are different. Thus, the *reference* of value is not something tangible (i.e., an item of the natural, social, or artificial world) but rather an intellectual content that might be related to a diversity of realms (such as cognitive, methodological, sociological, economic, ethical, esthetical, etc.). The content itself should be worthy, and this worthiness makes it preferable to other possibilities or mere preferences. In this regard, insofar as value connects with human needs, the discussion of the validity of the values can lead us towards objectivity.¹¹

Using these elements of the sense and reference of “value” in science is easier to think of *value-free* and *value-laden* in thematic terms, which is the complementary view to the historical one. In this regard, the study of values in science as a whole has followed thematically two main lines of analysis: (a) the consideration of values in general, or some kind of them with a wide spectrum of possibilities regarding scientific research; and (b) the direction to ethical values, either in science in

general or in a particular science. In this distinction, in the first case the scope is larger than in the second possibility, insofar as it is open to all possible value in science. Nevertheless, the cognitive values commonly have a special role in scientific research, even when the position adopted is a holism of values instead of a fractional orientation on values.

Axiology of research has interest in all kinds of values (cognitive, social, etc.) and embraces the first line of philosophical reflection (see [25, 32, 56]), whereas ethics of science has a more specific range because it is devoted to a kind of values (those connected to moral issues). Thus, it includes the variety of options indicated within the second line of analysis. According to this distinction, axiology of research is a broader area of reflection than ethics of science, insofar as its focus is, in principle, on the whole set of values around scientific research (i.e., internal and external values), even though it might end up working on only a relevant class of them (cognitive, social, economic, ecologic, etc.).

Thus, axiology of research takes care of “internal values” of science (linguistic, structural, epistemological, methodological, ontological, etc.) as human activity and also considers “external values” (sociological, cultural, economic, political, ecological, etc.) related to “scientific progress.” Axiology of research reflects on values regarding ends and means of basic science as well as on goals, means, and outcomes of applied sciences. These values are frequently understood as selection criteria that have a role in the decision-making of the researches and their institutions.

Consequently, axiology of research is the broad study of values in science. It deals with values regarding scientific discoveries as well as with those of scientific justifications. In this regard, it can be accepted that there are values that are “internal” to scientific activity and values that are “external” to that human undertaking. In this analysis, *internal* is those values that belong to the aims, processes and results of scientific research itself, whereas *external* is the values assumed by scientific institutions, private or public organizations related to R + D + i, etc. However, there are values, such as economic ones, that can be internal (e.g., those assumed in scientific designs, such as profitability) and external (e.g., those on the processes seen from the perspective of their social or institutional acceptability in terms of effectiveness, efficiency, etc.) (cf. [31]).

Undoubtedly, the stress might be on internal values, external values, or the attempt for equilibrium between both. Those thinkers of recent decades who are sympathetic to the social concern on science (i.e., the “social turn” in philosophy and methodology of science) have called attention to the external values in science (cf. [28]). At the same time, other philosophers who are aware of the width of this “social turn,” such as Philip Kitcher (cf. [41]), still emphasize the role of “internal values” (such as truth or objectivity) over “external values,” and accord particular weight to contents (semantic, epistemic, methodological, etc.) of science over contextual factors of scientific activity.¹² Even Kuhn, who has had a remarkable influence on the “social turn” in philosophy and methodology of science of recent decades, was also in favor of giving more weight to internal values than to external ones.¹³

When the attention goes directly to ethical values (honesty, carefulness, responsibility, etc.) (cf. [77], Chap. 3, pp. 53–63; see also [6] and [7]), we have “ethics of

science.” From a philosophical viewpoint, its realm of analysis might be diversified in three important directions: (i) ethical values in scientific research as a human activity, when the focus is on the processes involved in discovery and justification of scientific findings; (ii) ethical values in the professional use of scientific findings, insofar as there is a distinction between science (basic and applied) and application of science;¹⁴ and (iii) ethical values in the context of social responsibility of the scientists as citizens (i.e., their contribution to the common good of the society as a whole).¹⁵

Usually, the ethical reflection on science as a human activity includes two different angles to be considered: the *endogenous* perspective and the *exogenous* viewpoint. Thus, the ethical analysis of science can be developed according to these main orientations. In the first case, the presence of values is assumed as an intrinsic part of the scientific activity (aims, processes and results), whereas in the second case a set of contextual ethical values is at stake (social, cultural, historical, etc.), which eventually can end up in the form of legislation (e.g., in biomedical research, particularly in the case of human cloning, or in economic matters with corporate social responsibility) (cf. [58]).

Endogenous ethics is an intellectually feasible task insofar as science is a free human activity. This includes ends and means that might be chosen after deliberation.¹⁶ As with any human undertaking, if science is freely done, then it involves the possibility of an ethical evaluation. Thus, insofar as there is free decision-making in science, ethical categories (good/bad, right/wrong, fair/unfair, responsible/irresponsible, etc.) can be used to evaluate the activities themselves developed by scientists (as individuals or even as a group).¹⁷ So, any scientist – either in basic science or in applied science – is responsible for his or her actions while doing research. When a team makes the research, the team has a collective responsibility for the actions performed in their laboratories or work places.¹⁸

Exogenous ethics is a task that is intellectually clearer than endogenous ethics, due to its components, which are more visible than in the previous case. As a matter of fact, ethical values are more noticeable when they include a social dimension. De facto, the existence of social consequences of scientific research is what commonly matters for citizens as individuals and for society as a whole. This is particularly valid for applied sciences, as can be seen in ethical business¹⁹ or in biomedical ethics,²⁰ and it is even more visible in the case of applications of science (i.e., in the use of science by scientists, where medicine might be the paramount example). Moreover, insofar as the consequences are more manifest for citizens and society as a whole, the legislation (regional, national or international) can show up. This legislation assumes, in principle, some kind of ethical values in order to inspire the norms.

Holism of Values and Fractional Orientations

Both philosophical enterprises on values in science – axiology of research and ethics of science – can be seen from different angles, according to the degree of

generality. In axiology of research the vision might be either from a holistic perspective or from the viewpoint of a particular set of values, those that are considered as the most relevant for scientific research. In ethics of science the focus might be on science, in general, or on a particular science. But again the tendency can be on ethical values as a “system” (a network of relations) or a conception where a value (e.g., responsibility, utility, solidarity, etc.) is central.

Concerning the first option of the axiology of research, the main thread is values understood as a system (i.e., as an interrelation in terms of interdependence), whereas in this second choice, there is a “privilege” kind of values (such as cognitive, social, economic, ecological, . . . values) that offers the key for understanding, interpreting, and applying values to scientific research (mainly in empirical sciences, i.e., in the three branches: natural, social, and of the artificial).

Holism of values is the first option of philosophical analysis, and the orientations upon some values represent the second choice, because fractional accounts work on a part of values conceived as the relevant ones. In the latter, the emphasis can be either on “internal” values (cognitive, methodological, etc.) or on “external” values (social, cultural, etc.). In these perspectives of a fractional orientation, the focus of attention is on some kinds of values instead of the system of values altogether (cf. [68]), and on placing them largely in one of the realms involve (aims, processes or results).

A configuration of values in science from a holistic approach is in Nicholas Rescher, because he thinks that values form a system in science. This view involves values (cognitive, social, economic, etc.) being interrelated within a certain whole and, thus, there are various forms of interdependence of values. Meanwhile, the second choice of fractional orientation, with stress on “internal” values is in Laudan, among others, whereas the prominence on the “external” values is in several conceptions of the “social turn” in philosophy and methodology of science (such as the “strong program,” some views on ethnomethodology, the thesis of finalization in science, etc.) (cf. [29], pp. 9–11).

Rescher has offered a wide framework for the role of values in science, both in terms of the number of values to be considered and in the levels involved. He defends a “holism of values in science,”²¹ where the scientific values could be a matter of distinction (“internal” and “external,” cognitive and social, etc.) but this aspect does not authorize separations. In his view, holism of values follows from the interconnection between scientific goals and other human goals: they can be seen as a “system.” Moreover, he thinks that the distinction between internal and external values of science is a “distinction” but not a separation (cf. [24], p. 22).

For Rescher, there is a set of levels involved in this issue: (1) the structure of human needs and goals is larger than mere human cognition alone. Thus, the aim of controlling reality is only one valid human aim among others. *De facto*, there are many other valid human needs and desiderata. (2) Although knowledge is not an all-sufficient be-all and end-all, it is itself a human need – a situational requisite of ourselves as the sort of creatures that we are – and, certainly, knowledge is particularly relevant in scientific research. (3) The internal values of science (such as consistency, generality, etc.) are what they are because this is necessary to achieve effectively the applicative aims of science (effective prediction and

control), and these aims of science are what they are because they inhere in the large situational requirements of us humans as *homo sapiens*.²²

Hence, Rescher's perspective offers a holism that binds the sphere of values together, and he sees them as a matter of the effective servicing of human needs. *De facto*, he proposes a practical framework for the role of values in science. Within it there is a clear space for different kinds of values (such as economic values), which he conceives that have a role in science as a human project and, consequently, they are values that are related to human needs. Meanwhile, in the fractional orientations, such as that defended by Laudan, there is a dominant class of values for scientific research. Moreover, in his conception, the cognitive values are those that are shaping scientific rationality (cf. [51], p. xii).

Unquestionably, there are values in science, such as cognitive values, which have a singular place within science, in general, and scientific progress, in particular. These values on knowledge, either in themselves or in their methodological consequences, are commonly highlighted both for basic science and applied science. This emphasis on cognitive values can be seen in different authors, such as Laudan, even though he considers them as different from "epistemic values,"²³ and Rescher, who certainly has a broader vision of values, a perspective that is connected to human needs: "the fact that knowledge represents a subordinate (albeit functionally appropriate) need for a creature such as ourselves integrates the values at issue in science (internal and external like) into one cohesive fabric."²⁴

Cognitive values are not alone in scientific research: they are related to other values (social, operative, etc.), because science is a human activity within a complex setting (social, cultural, economic, political, ecological, etc.). This contextual aspect should be present in an articulation of values regarding scientific research. So, the difference in scope in the philosophical approaches – the fractional orientations and the holistic views – is patent when we are discussing scientific research as value-laden.

Laudan insists on cognitive values in science without emphasizing the role of other values (such as economic values or ethical ones), and he places values in the sphere of goals and aims.²⁵ Thus, he proposes an axiology of research with a clear status that it is different from other spheres, such as methodology of science or empirical studies of science, but interconnected with them. Meanwhile Rescher offers an image of values that we can call "transversal," because he explicitly accepts values in several steps: (a) in the case of aims, (b) in the dominion of theory, (c) in the methodological process of constructing science, and (d) in its applications (cf. [72], Sect. 3.6, pp. 93–96).

According to Rescher's holistic line on values in science, it seems that ethical values are a part of the system as a whole. Thus, ethical values are then a set within the total collection of values that have any relevance for science. They accompany the other kind of values within the network of relations of this human activity. In this regard, even though there is a clear connection between both sides involved here – "axiological" and "ethical" –, it seems to me valuable to keep the *philosophical distinction* between axiology of research – the study of values in general – and ethics of science (the analysis of the specific moral values on this human undertaking).

On the one hand, there are practical reasons for this philosophical distinction: ethical values are indeed very important for science as a human activity and as a part of collective life of society. Thus, applied sciences, such as economics and medicine, are taking special care of ethical values in the philosophical analysis.²⁶ On the other hand, there are also theoretical reasons to differentiate the studies, due to the existence of several levels of analysis to be considered: ethical values in scientific research, ethical values in the professional use of scientific findings, and ethical values in the context of social responsibility of the scientists as citizens.²⁷

Even though the distinction between axiology of research and ethics of science is valuable for philosophical reasons, it seems rather obvious that there is an interweaving between ethical values and other kinds of values in science (cognitive, economic, social, ecological, etc.). This can be seen clearly in the philosophical analysis regarding the research made in the field of biomedicine. A good example is given by John Worrall's study of clinical trials and randomization, where ethical values are directly related to epistemological and methodological considerations (cf. [85, 86]).

Values in Basic Science and in Applied Science

Until now it has been emphasized here that values are a *component of scientific activity*. They accompany the other constitutive elements of science, such as language, structure, knowledge, method,....²⁸ In this regard, axiology of research should be considered in the philosophical analysis of science, in addition to other analyses that are more traditional in the field (semantic, logical, epistemological, methodological, ontological, etc.). In this framework, ethics of science is a complementary philosophical subject that deals with the specific values of scientific activity with a moral component (e.g., responsibility, honesty, reliability, respect, etc.).

Scientific activity can follow two main courses: basic science and applied science,²⁹ which might be differentiated in structural terms and in dynamic ones. These differences can be seen from the structural point of view of the models (explanatory and predictive, in the first case, or predictive and prescriptive, in the second one) or from the dynamic perspective of the aims, processes and results.³⁰ Each stage of this sequence is, in principle, under the influence of some kind of values. Initially, these values have a role for the selection of aims or goals of scientific undertakings, which might be crucial (e.g., in the case of cognitive values). But later, the values can go beyond that point, and they can have also a repercussion on the processes as well as on results of scientific activities.

Basic science and applied science, insofar as they involve values in several stages of scientific activity, need an axiology of research. They are under the influence of different kinds of values (cognitive, social, economic, cultural, etc.). In this regard, the whole set of values in science ("internal" and "external," cognitive and social, epistemic and practical, etc.) is studied by *axiology of research*. This is certainly a domain of philosophy of science, and it has been intensively developed in the recent decades. In my judgment, axiology of research is a philosophical domain that accompanies the *main areas* of this field: semantics

of science, logic of science, epistemology, methodology of science, ontology of science, and ethics of science (cf. [31], pp. 85–112; especially, pp. 93–96).

The philosophical analysis of values in basic science and applied science should take into account values in three different stages: aims, processes, and results. (i) In the case of *aims*, values are certainly used to choose the goals of research, either in basic science or in applied science. They could be either descriptive (values related to explanation and prediction, which involve the advancement of knowledge) or prescriptive (values related to solutions of concrete problems, mainly in a practical sphere). (ii) In the realm of *processes*, values play a key role in order to select the adequate means to get scientific progress as well as to choose the adequate undertakings to develop science as a human activity within a social setting and oriented towards the resolution of specific problems. (iii) In the domain of *results*, values are frequently used to assess the outcomes of science as intellectual achievement, as well as a product of the society (cf. [31], p. 93).

These three different stages (aims, processes, and results) should be considered in axiology of research developed from a dynamic angle. This position involves an analysis in three consecutive steps (goals, means, and outcomes), which is larger than previous axiological analyses. Frequently, axiology of research is the philosophical study of science that deals with aims or goals (e.g., in the case of Laudan), whereas the other two kinds of values (those related with processes and results) are usually analyzed through methodology of science and the diverse studies on science, technology, and society, when philosophy is one subject among others.

Yet there is an alternative to axiology of research as devoted primarily to aims or goals, an option that has been proposed by Rescher. He suggests a wider conception of values in science, which is more in tune with my analysis of values of scientific research in terms of aims, processes, and results. He proposes a *broad* axiology of research according to his conviction that sciences are related to values from diverse angles (cognitive, social, etc.). These values in science are related to other human values and rooted in human needs. Furthermore, he sees scientific progress – a central issue of methodology of science – from the viewpoint of “economics of research” (cf. [24], pp. 11–44; especially, pp. 13–27).

This wider conception pays particular attention to the structural role of values in science, both basic and applied. Rescher makes a set of suggestions that can certainly be used as a basis for the new framework of values in science, assuming the idea of value ladenness and the viewpoint of scientific research as a human activity. On the one hand, he offers an overview of scientific values taking into account different aspects of human endeavors (i.e., not only the cognitive one, widely understood); and, on the other hand, he distinguishes diverse kinds of values (mainly, internal and external) of science as a human practice.

There are four main aspects of Rescher’s view of the relation between science and values. (1) Science is a human project devoted to the search for valuable aims, such as *information* and *truth*. (2) Science demands an *economy of means* from the methodological point of view, which involves a set of economic values related to the pattern of cost-benefit.³¹ (3) Science has the characteristics of a *social activity* of science, because it is based on a process of human cooperation. Thus, science includes

attention to human ideals, even though it is a competitive business, because the method and *modus operandi* of any science asks for honesty, veracity, integrity, collaboration, etc. These values are relevant for scientific communities as human groups. (4) Science has *uses and applications* that call for a set of values to evaluate the consequences of every scientific activity (above all, in its technological projection). This task of assessment requires an evaluative rationality which should be able to discern the appropriate and legitimate ends of this human activity (cf. [24], p. 16; in this regard, some aspects might be seen in [5] and [82]).

Obviously, Rescher takes into account basic science as well as applied science, with special interest in natural sciences rather than in social sciences or sciences of the artificial. Thus, in his *broad* axiology of research, he accepts a variety of values around science. They are mainly in four large areas of values: cognitive, economic, social, and operative; implicitly, his approach includes a fifth area: ethical values.³² If this *plurality of values* is seen from the duality internal–external, then it is clear that two of them – cognitive values and economic values – are inserted into a framework basically internal; meanwhile the other two – social values and operative values – are mostly in the external dimension. And, as it has been highlighted here, the ethical values have an endogenous side in addition to an exogenous sphere.

Although basic science and applied science share common values as human activities in a contextual setting (social, historical, cultural, economic, etc.), there might be some differences between the relevance of some values. Basic science seeks the improvement and enlargement of knowledge (mainly in natural, social, and artificial worlds), looking for the possibility of grasping truth (or, at least, truthlikeness). Thus, cognitive values regarding explanation and prediction have an important role. Meanwhile applied science, which seeks the resolution of specific problems in a certain domain, has relevant cognitive values on prediction and prescription. In addition, insofar as it guides social action (e.g., in economics), applied science also gives a more intense role to contextual values than basic science does. This is particularly noticeable in the case of ethical values, when the emphasis on scientific research is not on epistemological contents but rather on practical consequences of research and their repercussion for society as a whole.³³

Positive Economics and Normative Economics

Economics offers a good “case study” for the general remarks on values in basic science and applied science. To some extent, the traditional distinction between “positive economics” and “normative economics” offers an interesting way of considering values in science oriented towards the advancement of science (mainly through explanation and prediction) and values in science conceived as problem-solving procedure in specific domains (including prediction and prescription). This positive economics–normative economics distinction connects with the duality value-free and value-laden.

Positive economics, insofar as it is seen as a “descriptive” task with “factual” contents instead of being a “prescriptive” undertaking with “evaluative” elements,

might be understood as value-free. Thus, it is assumed that positive economics belongs to the sphere of “facts” rather than being connected to “values.” In a relevant sense, this view has links with the tradition in economics in favor of axiological neutrality.³⁴ This conception is, in part, related to the discussion on science and ideology, in order to maintain that economics is “science” in a *sensu stricto*. Besides Weber’s direction of economics as *Wertfrei* or *value-free*, there is a line of economic thought with Joseph Schumpeter’s view of economics as a “technique” (cf. [78], p. 211) and Robert Solow’s interest in ways of doing social sciences as close as possible to the ideal of being value-free (cf. [81]).

Normative economics, insofar as it needs prescription, involves the role of values. They are indispensable in the task of evaluating what is good and bad for microeconomics and macroeconomics, mainly in the sphere of aims, but also in the terrain of processes. This line is followed by Amartya Sen in his criticism of the primacy of prediction in economics: “prediction is not the only exercise with which economics is concerned. Prescription has always been one of the major activities in economics, and it is natural that this should have been the case. Even the origin of the subject of political economy, of which economics is the modern version, was clearly related to the need for advice on what is to be done in economic matters. Any prescriptive activity must, of course, go well beyond pure prediction, because no prescription can be made without evaluation and an assessment of the good and the bad” ([79], p. 3).

These tendencies in favor of positive economics as “value-free,” in one way or another, and normative economics as “value-laden” give us some aspects to be considered. An obvious one is the insistence of economics as being a science that is capable of giving facts without the influence of criteria out-of-science (ideological, political, etc.). In this regard, the autonomy of economics as a science rule by its self-corrective criteria should be assumed. In addition, the responsibility of economists is precisely not to be influenced by values different from those that belong to the actual sphere of scientific activity (i.e., regarding aims, processes and results of scientific undertakings).

Autonomy and responsibility of economists fit with the noble attempt of preserving the scientific character of economics in the domain of basic science. However, this position has sometimes been presented as “value-free,” i.e., avoiding any links between positive economics and values. But positive economics is a human activity developed according to rational procedures (in this case, economic rationality), and there is a constant decision-making by scientists while doing science, either individually or collectively. On the one hand, values might be present in the selection of aims (i.e., evaluative rationality), which is followed by a preference for some procedures (i.e., instrumental rationality). And, on the other hand, it seems clear that “the conduct of inquiry cannot possibly be value-free. Inquiry involves action, and action is driven by values” ([34], p. 296; some aspects connected with these issues can be found in [13, 19, 43]).

If we move from positive economics to normative economics, then there is no doubt that normative economics has deep connections with values. Firstly, it might be said that normative economics shares with positive economics the presence of values regarding aims and processes. Thus, there are values while doing “choices of

what to study” and also values that “influence choices of what methods to employ and consequently of what hypothesis to discard or to pursue” ([34], p. 296). Secondly, normative economics adds something else here: it requires the constant presence of values when dealing with prescriptions after having predictions (cf. [22]). It seems clear that economic policy as a guide on the future possible (in the short, middle or long run) is linked to a set of values.

Indeed, within normative economics there are internal and external values. They are noticeable in the area of prescriptions. “The *internal values* of prescriptions depend, to some extent, on the knowledge provided by economic predictions, because, like any other conception which supposes the direction of human activity, it requires a possible aim that should also be achievable. Thus, some of the components of internal evaluations of economic prescriptions can be the simplicity of the goal, the consistency of means, the adequacy with respect to the agents, the ratio between cost and benefit, . . . Regarding the *external values*, the list is wider: they go from evaluations of ethical and social character (repercussion to social groups, especially the labour dimension – i.e., in terms of employment: social discrimination versus social cohesion; integration in the working place versus emigration; labour dignity versus ‘junk contract,’ etc.–) or of a social and cultural kind (i.e., social settling versus creation of minorities) to components of a different class (political, ecological, etc.)” ([22], p. 336).

Among values in scientific research, ethical values always have a particularly relevant role. They are present in normative economics, as has been pointed out here, but they are also in positive economics. From a general point of view, it seems to me clear that any basic science can be related with ethics if the focus of attention is not directly on the contents themselves (i.e., the scientific knowledge as such) but rather on the human activity of doing science and its consequences (cf. [23]).

Accordingly, it is understandable that, on the one hand, positive economic can have contents regarding “facts” without dependence on ethical concepts (e.g., demand elasticities); and, on the other hand, as Daniel Hausman and Michael McPherson have emphasized, “a good deal of positive economics is unavoidably penetrated with ethical concerns. Ethics has a role within positive economics because ethical commitments affect individual choices and hence economic outcomes, because economic institutions and policies affect ethical commitments, and because the terms in which economists conceptualize and explain individual choices have moral implications” ([33], p. 214; see also [44]).

Conclusion

All things considered, if we look back on the “value-free” ideal and the thesis of “value-ladenness,” the first thing is the recognition of difference between the beginning of the twentieth century and this first decade of twenty-first century, which has been analyzed here both in historical and thematic terms. Even when the preferred option is now the “value-laden” conception, it seems quite reasonable to think of the existence of *limits*, such as Rescher has done. Thus, one of the key values of science as a human cognitive project is “its selflimitation based in a need to recognize that there are limits to the extent to which this project can be realized.”³⁵

Recent decades have shown several fractional orientations on value-ladenness, both on the side of “internal” values (mainly, cognitive ones) and on the side of “external” values (primarily, social ones). But it seems more suitable to think in some form of *holistic view* on values. Thus, scientific goals (mainly, cognitive ones) are related to the rest of our goals (social, cultural, economic, etc.) in a kind of “system.” So, the dynamic character of scientific research should be also considered, with the presence of values in the realms of aims, processes and results. Science is a human undertaking in a contextual setting rather than a purely cognitive project or an isolated doing.³⁶ In other words, science belongs to a human network.

Three are the planes where we can see values in science: (a) in *basic science*, insofar as it is a human activity, which involves values on ends and means; (b) in *applied science*, because scientists take into account values to choose aims, need to select processes and seek results on the specific problems that they are researching; and (c) in the *applications of science*, which are the uses of the results of scientific research in the social and historical context, where we consider values when issues such as risk are at stake. In science, the values are “internal” (cognitive, methodological, etc.) and “external” (social, cultural, etc.). But some values can have a presence in both sides, such as ethical values (endogenous and exogenous) and economic values (cf. [31], pp. 99–106).

Without doubt, economics is a good case study for values in science. The branches of positive economics and normative economics pose the problem of values on the “descriptive” sphere while showing the presence of values on the “prescriptive” area. But economics exemplifies quite well the existence of values in the positive and the normative branches. Thus, although the interest in the “value-free” ideal might be understandable in terms of autonomy of economics and self-correctness instead of extrinsic influence on scientific contents, there are also values in the case of economics when it is focused on doing explanations and predictions.

This presence of values in economics includes ethical ones, insofar as the analysis of economics is made in terms of human activity: (i) the ethical values have a role both in the agents that make the decisions and in the organizations related to economic markets; (ii) economics as a science studies “economic activity” and “economics as activity” (cf. [21]), where there are ethical components concerning ends and means; (iii) the solutions to the specific problems in applied economics involve ethical values on the assessment of prescriptions (i.e., what is going to be implemented); and (iv) the use of the results of applied economics by political institutions commonly involves making choices, and these can also have an ethical component.

Cross-References

- ▶ [Moral Implications of Rational Choice Theories](#)
- ▶ [Virtue as a Model of Business Ethics](#)

Notes

1. This has been pointed out emphatically: [18]. See also [38]. Additional aspects can be found in [4, 16, 48, 53] and [57].
2. In addition to values in science, there is the issue of the value of science itself, cf. [42]. See also [55].
3. The designs in the sciences of the artificial take into account values, as can be seen in the case of the evaluative rationality regarding the ends of the designs, cf. [30].
4. Cf. [72]. See also [70].
5. The characteristics of *Historicismus* can be found in W. Dilthey, cf. [20] pp. 109–137; especially, pp. 110–112 and 115–117.
6. “The idea of truth as the fundamental regulative principle – the principle that guides our search – can be regarded as an ethical principle. The search for truth and the idea of approximation to the truth are also ethical principles; as are the ideas of intellectual integrity and of fallibility, which lead us to a self-critical attitude and to toleration” [67, p. 199]. On the truth as epistemic value and ethical value in Popper, see [59], pp. 282–293.
7. [45]. On the intellectual precedents of Kuhn’s views, cf. [27] pp. 15–103; especially, pp. 23–27.
8. [60]. Before this Presidential address in the PSA, there is a paper on the same topic: [71].
9. On the status of “values” in general, see [75] and [76].
10. This discussion on this issue is in [65].
11. The objectivity of values is explicitly discussed in connection with human needs in [72], Chap. 3, pp. 73–96. See also [67].
12. However, following a pragmatic approach (sites, products, etc.), he does not see a clear distinction between “science” and “technology” (including “basic research” and technology), cf. [41] pp. 85–91, especially, p. 86.
13. This can be seen in the case of scientific prediction: “Probably the most deeply held values concern predictions: they should be accurate; quantitative predictions are preferable to qualitative ones; whatever the margin of permissible error, it should be consistently satisfied in a given field; and so on” [46], p. 185.
14. On the distinction between “applied science” and “application of science,” see [62], p. 9.
15. According to Imre Lakatos, “Scientists, as citizens, have responsibility, like other citizens, to see that science is *applied* to the right social and political ends,” in [50], p. 258.
16. Cf. [24], pp. 11–44; especially, pp. 22–26.
17. This is also the case in the sciences of the artificial, where there are certainly ethical concerns, for example, in the field of computer sciences. Cf. [17] and [36].
18. On this notion, see [73].
19. This thematic realm is receiving an increasing attention. Cf. [8].
20. The social consequences in this field are visible. See, for example, [40].
21. Cf. Rescher, N, Personal Communication, 27 Aug 1998. His conception is developed in [74]. On his philosophical approach, see [87]. On holism about values see [10] and [61].
22. Cf. Rescher, N, Personal Communication, 27 Aug 1998. Cf. [24], p. 22.
23. For Laudan, “epistemic values” (truth, falsity, ...) can be distinguished from “cognitive values” (scope, generality, coherence, consilience, explanatory, ...), cf. [52], p. 20.
24. Rescher, N, Personal Communication, 27 Aug 1998.
25. Cf. [51], pp. xi–xii, n. 2. The subtitle of his book is very clear: *The Aims of Science and their Role in Scientific Debate*. In his reticular model of scientific rationality, Laudan emphasizes that those values are good enough for the task: “Doubtless a wide range of cognitive goals or values can satisfy the demands laid down here” [51], p. 63.
26. See, for example, [34] and [85].
27. There is usually a tension in the scientist between the defense of his or her autonomy and the need for responsibility, cf. [14].
28. The constitutive elements of science are presented in [28], pp. 3–49; especially, pp. 10–11.

29. On this distinction, cf. [62] and [80].
30. The existence of differences between basic science and applied science can be seen on analyzing the latter, cf. [63] and [64].
31. This means that scientific progress is commonly modulated by an “economics of research.”
32. Cf. [72], Chaps. 7, 8, and 9, pp. 151–203.
33. The repercussion is even more noticeable when technology is involved, cf. [2] and [3].
34. The concept of “neutrality” in science has been analyzed in [1], Chap. III.
35. Rescher, N, Personal Communication, 27 Aug 1998.
36. This kind of approach affects the issue of “intrinsic” versus “extrinsic” values. On intrinsic and relational properties, see [37]. See also [9].

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Abstract

Many attempts to study or to modify the democratic governance of science start from the assumption that the relationships between science and society take, at least implicitly, the form of a “social contract.” In the first part of this chapter, we critically examine this idea and put some limits to it. The second part of the chapter is devoted to apply the idea of a “social contract” to an important scientific “institution” in particular: the institution of scientific method.

Introduction

The idea that science is, or should be, regulated by a kind of “social contract” is critically examined. The notion has been more commonly flagged in political proclamations than used in explanatory or descriptive analysis of how science really works or might work. Nevertheless, we defend its value as an analytical tool in the study of science as an institution, both a social and epistemic one. For the main features of this institution can be understood as resulting from an equilibrium in the more or less conflicting interests of different agents (competing or cooperating researchers, industries, citizens, consumers, governments, and so on).

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On the Governance of Science and the Idea of a “Social Contract”

There are many diverse approaches to the study of the relations between science and the society in which scientific knowledge is created and applied. However, very often some of these approaches assume a linear causal-explanatory framework to make sense of the relationship between science and society, and particularly between science, society, and technology, the latter understood as a more or less direct outcome of “applied science.” Sometimes the causal-explanatory direction goes from science to society, and other times go the other way around. This underlying explanatory framework allows to understand why the so-called science-technology-society (STS) studies are often viewed as an alternative, even a opposing alternative, to more “traditional” approaches within philosophy of science, which, in general, have concentrated on the “internal” aspects of science, and only marginally about the connection between these aspects (the structure of theories and models, the logical connections between hypotheses and empirical evidence, the dynamics of scientific progress, and so on) with the “outer” society. One particular subject in which most of the dominant paradigms in the philosophy of science (positivism, naturalism, rationalism, realism, empiricism, constructivism, etc.) have failed to capture some essential elements of the entanglement of science and “the social” is their lack of attention to the (relevant) relationships between the individuals that *make* science, and between these individuals and the other members of society: either these paradigms start with a global view of society and study its influence on the scientific procedures or outputs (e.g., how a capitalist society favors some types of scientific theories and practices), or it is the scientific communities and their outputs what are taken as a whole and their effects on the rest of society are investigated (e.g., how some scientific discoveries influence an epoch’s mentality).

On the contrary, we think that pointing toward the processes of *negotiation* between the individuals involved in scientific activities (broadly understood) allows to denounce the fallacious character of traditional dichotomies between the “internal” and the “external,” the “epistemic” and the “social.” The science that is produced within our societies and that gives form to them can be understood in terms of what we suggest to call a “multifactor collective negotiation.” In the first place, there are negotiations among scientists within a specific discipline or community, negotiations that serve to establish or to change the norms according to which scientific research is carried out, i.e., the norms telling what procedures are appropriate, legitimate, etc., within scientific research. In the second place, there are negotiations between different scientific communities or disciplines that serve to establish the relations of mutual dependence and deference, and also to some extent the distribution of resources within science. In the third place, there are negotiations between scientists, or scientific communities, and other social actors (governmental offices, parliaments, industries, commercial firms, associations of consumers, political parties, etc.), which are decisive in order to establish the resources that the whole of society is devoting to an area of research, including not only economic

resources (money, labor, facilities, and so on), but any other kind of social resources or “social capital,” including the “credibility” that a certain field of science or group of scientists is going to have in a particular social context. So, what we suggest is that, in order to understand the functioning of science within our societies, it is promising to consider the outputs of the social relations (both internal to science processes, and those between science and society at large) as the result of a kind of “social contract,” not necessarily in the sense of an explicit and formal agreement, but as the emergent result of a practical process of continuous negotiation (see ► [The Classic Social Contract Tradition](#); ► [The Modern Social Contract Tradition](#); ► [The Idea of a Contractarian Business Ethics](#)).

It is commonplace that science itself is not autonomous of external governance structures (particularly regarding financial aspects, or ethical concerns), so it makes sense to try to study where both the internal process and the “external” issues actually meet. The “internal” questions are about how the science is built and developed by its direct agents, the scientific researchers, but other related issues are how the external, the society in general and particularly, the funding systems (who, what and how much is paying for science and scientific activities), are also structuring to some extent the scientific products and activities, as well as their paths of development. This is particularly true in a time like ours, when a new kind of science is arising, one that is expanding and refurbishing its traditional methods of research, diffusion, transmission, and justification [7]. Sometime those links are referred to as “the social contract of science,” but usually this expression is just used as a convenient metaphor, without analyzing the “negotiating” aspects of the supposed “contract,” which is the aspect we propose to explore.

The famous Vannevar Bush’s report *Science, the endless frontier* [2] is rightly considered as one of the first defenses of something like a “social contract for science,” though the truth is that it does not explicitly contain this expression. The report contained, however, the conceptual basis to formulate what, under the example of the science-military collaboration of the Manhattan project, would later become known as “big science”: the massive involvement of public administration in the gigantic investments demanded for high-technology, large-scale scientific projects [3]. But, as Judith Ramaley [10] says, “Government laboratories and private industry would translate this work (basic research) into something practical. Bush saw the conversion of basic research into practical use as a linear process. In his model, research was kept relatively separate from teaching. The university was still viewed as an ivory tower whose function was to look out upon society and elevate its taste and values through the generation of basic research.” So, for Bush, “basic research is performed without thought of practical ends... it results in general knowledge and an understanding of nature and its laws” and “scientists may work in an atmosphere (universities and research institutes) which is relatively free from the adverse pressure of convention, prejudice or commercial necessity” [10]. Bush’s report was consequential, not because it explicitly formulated a “social contract for science,” but because it puts the finger on the complex relationship between science and government or politics, trying to strengthen

the autonomy of science and the production of “basic research” in a time when politics seemed to be trying to absorb the control of all the scientific process (or so some seemed to fear). In order to justify the autonomy of basic research, Bush assumed what were later to be known as the “linear model” of science development, according to which the resources that the whole society devotes to fundamental research are better freely left in the hands of scientists themselves, who will more or less spontaneously produce thanks to those resources an output of knowledge that, equally spontaneously, will lead to technical innovations in the hands of private firms, one vision that, as it is well known, was later profoundly challenged. Some of the approaches most critical with Bush’s proposals (e.g., Silvio Functowicz on “post-normal science,” [5]) were, nevertheless, basically as “linear” as his, but in the opposite sense: they tried to show that “external” social processes not only determine the funding aspects of research, but also the content and the epistemic assessment of scientific items of knowledge. Even some processes of “social innovation” are considered in these approaches as the substitute of the “old social contract of science.” In this new “contract,” the independence of researchers (particularly of those in basic science) would be replaced for a direct and more or less complex dependence from governments, parliaments, or representatives of the consumers and users of the products of science. Other authors, like David H. Guston or Carl Mitcham [6], have clearly shown, instead, that there has never been something like an explicit social contract in the “old” mode of science production, nor there is something like a “new” contract now, for the relationships between science and society are more complex than what the notion of a “contract” would reflect. This is in line with the diagnostic about contractarian approaches.

Nevertheless, the idea of the “new social contract of science” has tended to be more frequently employed in political-institutional contexts, like the 1999 “World Conference for Science” organized in Budapest by UNESCO, rather than in academic research. And, as it usually happens in these cases, such types of use of the concept usually lack the intellectual depth and definiteness necessary to articulate a, so to say, “scientific” vision of science, and tend to be mere expressions of goodwill, permeated very often by an essentialist view both of science and of society. Obviously we must lean on science in order to solve many of the big problems faced by the humankind, and we must warrant democratic control of scientific activities when they threaten to hinder human development, but one thing is to say this, and a different thing is to articulate a “social contract” that establishes the rights and commitments of each signing part.

Since the old times of logical positivism, and of its distinction between the context of discovery and the context of justification, we have learned a lot about the practices of scientists, both at the more epistemic level, and at the more social or socio-institutional levels. One of the important things that social studies of science have shown is that at both levels there is a permanent need of mutual control between the agents involved, something that in recent times has tended to be called “governance” (cf. [4]). It is possible, hence, to make a distinction between “governance *in science*” (the negotiations and agreements that take place within the scientific communities), and “governance *of science*” (the processes that try

to warrant that scientific activities are in the benefit of citizens); as we shall show, this distinction is useful to understand the notion of a “social contract of science.” Actually, contemporary discussions on “a new social contract for science” tend to point in some way or another toward the idea of a kind of “democratic governance of science,” particularly since, as many have suspected, the old Bushian “contract” has tended to be more influenciabile in the last decades from the power of the market and of for-profit companies, in which the democratic control in the interests of citizens is much more difficult to implement, due in part to the failure of governments of keeping the increase in public research funding at the pace of the growth of other expenditures. Of course, other problems in which the role of science has been relevant (nuclear power, climate change, pandemia. . .) have also add suspicions to the presumed role of the governments as guarantor of the citizens’ interests in the “contract with science,” and to the presumed “impartiality” of scientists, either when setting research agendas, or when acting as experts for public or private institutions. Under these circumstances, the notion of a generic “social contract” becomes particularly suspect, even when we take for granted its essential counterfactual character. For the idea was based in a linear view of the development and application of scientific and technological knowledge, in which application was seen as the way in which researchers “paid back” for the funds that citizens had put on their hands through general taxes. But the fact is that most “knowledge transfer” does not take place through the traditional avenues of R&D, but through what now tends to be called “open innovation” or “social innovation.” As the NESTA 2010 report states:

While R&D is an important source of innovation, it is focused on only a subset of innovative activity. There is a growing recognition that innovation encompasses a wider range of activities and broader metrics are required to reflect this, including investment in intangible assets ([8], p. 7)

Another important fact that has to be taken into account when we talk about any “contract” is the *asymmetry of information* between the people subscribing it, or affected by it. This has been the inspiring idea of the new area of economic science known as “economics of information.” Traditional economic theories were based on the assumption of “perfect knowledge,” i.e., it was assumed that the economic agents (e.g., demanders and suppliers of an economic good) had all the information that was relevant and needed for the problem situation they were facing, and perhaps more importantly, these theories assumed that the distribution of that information was symmetric, in the sense of equally shared by all the agents. Information economics started its development in the 1970s mainly as an attempt to understand the influence that the nonfulfillment of this latter assumption had on the equilibrium the agents’ interactions led to (e.g., George Akerlof’s 1970 paper on “The market for lemons,” Michael Spence’s 1973 paper on “Job market signalling”; for a useful introduction to the economics of information, see Macho and Pérez, [9]): typically, sellers know much more than buyers about the real quality of the goods or services they sell, and this asymmetry can cause the market mechanisms work very inefficiently, though they also create the opportunity for specific institutions (like “contracts”) to evolve that can harmonize the interests of sellers

and buyers. Information economics has tried to take advantage of the sophisticated mathematical tools of game theory which allow them to model the effects in the interaction between actors characterized by differences in the information they possess. One of the essential instruments with which this has been done is known as the *principal-agent model*. The basic version of this model represents an individual or a group, the “principals,” who is or are unable to perform a certain task as efficiently as other individuals or groups, the “agents,” so that the former “hires” the latter to carry out the job; the agents, however, are assumed to be not directly interested in the fulfillment of the task, i.e., they may put too little effort on it, or at least, less effort than what the principal would consider appropriate. The “principal-agent problem,” consists, then, in determining a contract, or an incentive scheme, that both parts are interested in signing, and that warrants to the principal that the agent will perform her task in a satisfactory way. This line of research has led to the development of a successful branch of game theory, known as “mechanism design,” which can be considered the reverse of classical game theory: whereas in the latter the problem was to predict the choices made by the players of a game whose rules were given, the former can be seen as the attempt to design a game (i.e., a set of formal rules) that leads players to choose the outcome that “we” (which usually personalizes the principal) desire. For example, governments and parliaments establish several models of “science laws,” including ways of organizing and managing the resources given to scientists, but usually those laws fall short of their goals because they cannot enter into most of the intricacies of the self-organizing processes that constitute the research activity. In order to create a “well-designed” social contract for the governance of science, it would be necessary, hence, to study the structures of the negotiation processes internal to science, so that the satisfaction of demands and goals of the political body might to be achieved through steps that are coherent with what the internal goals of science dictate. The “social contract of science” should be, hence, the product of an until now nonexistent discipline, that we might call “political microeconomics of science.” This is exactly in the line of the proposals of one of the authors we have quoted:

The scheme for the automatic management of scientific integrity under the social contract for science has been overthrown and replaced by a more formal system of incentives and monitoring, as the principal-agent framework would suggest” ([6], p. 12).

Following some of Guston ideas we can try to articulate the external and internal processes in scientific system as a dual process from the point of view of the “frontier,” or as Guston says, “boundary organizations” between both, like external ethics committees, sociopolitical committees, new peer review processes, etc. As an example of the study of the emergence and functioning of institutions, we also think that it is interesting to point to the fact that a purely rationalistic model (e.g., one based on rational choice models populated by Bayesian agents) would not be useful to capture the fundamental aspects of the behavior of the people who are subjected to normative contexts, and that has in general cognitive limitations, the institutions are designed in part to remedy; models of bounded rationality should, hence, necessarily be employed in the analysis of the social contract of science (e.g., [1]).

The Scientific Method as a Social Contract

As we have stated, the academic analysis of the social structure of science and of the relations between science and society from a contractarian point of view is still a project for the future, and this chapter attempts to be an invitation for the development of such a project. By way of example, in the rest of the chapter we shall try to apply the contractarian intuition to a particular aspect of the “governance of science” which has often been considered as totally alien to the introduction of “sociological” or “political” considerations; we are referring to that set of procedures usually referred to under the rubric of “scientific methodology.” Our starting point would be to assume that scientists are players in a competitive game whose goal is the attainment of a particular kind of social and epistemic reward: being acknowledged as the author of an important discovery. The basic idea is to consider that this game is played according to a system of rules or norms that are not absolutely imposed by a transcendental logic or something of the like, but that can be negotiated by the very same players of the game (i.e., the researchers). The question is, hence, the following: if you were a scientist playing that game, i.e., pursuing recognition for discoveries, “against” other scientists attempting exactly the same, *what scientific norms would you like the game were played by?* (for more details on our proposal, see Zamora Bonilla [11–13]).

Firstly, let us see what *kinds* of norms can be expected to arise in a negotiation among “recognition-seeking” researchers. It seems that three types of them are needed, at least:

1. *Inferential norms*: these tell that, if a researcher has accepted certain propositions, and if another proposition stands in certain specified relation with the former ones, then that researcher will be forced to accept also the later proposition. For example, norms of this type will establish when is a hypothesis “well supported enough” to make its acceptance compulsory. These rules are useful for a “recognition-seeking” researcher because they indicate what statements you have to persuade your colleagues about, *before* attaining the public acceptance of your hypothesis.
2. *Observational norms*: in order to prevent the strategic denial to accept *any* statement that can “trigger” the undesired acceptance of a rival’s theory through the rules of the first type, it is necessary that the commitment about some kinds of propositions is compulsory for reasons different from the previous acceptance of other statements. Typically, observations and experiments (or specific parts of them) are the natural locus of this type of norms, though probably not the only one.
3. *Distributional norms*: these norms govern the allocation of the power to control the resources needed for making research and communicating their results. Obviously, this power is interesting for scientists not only for the ability they confer to increase the probability of getting their theories accepted, but also because many other “private benefits” accrue to them together with that power (We admit that these rules are less appropriately called “methodological”).

Secondly, it is perhaps more important to notice some properties that any “reasonable” system of rules must have. These properties are grounded on the very nature of the negotiation process through which the rules are established:

1. Norms are usually chosen “*under the veil of ignorance*” (to use a Rawlsian expression). It is certainly possible that accepting a norm may be interesting for you on a particular occasion because that norm “supports” the theory you are proposing; but committing to a norm *today* forces you to be committed to it also in the future, and perhaps the same rule makes it that the facts discovered *tomorrow* support some of your rivals’ theories more than yours. In general, it is very difficult for you to predict exactly what theories or hypotheses will you be proposing in the future, and what will its connection be with the accepted facts. So, as long as methodological rules operate as real (and more or less durable) commitments, it is not necessarily a wise strategy to “vote” for the rules that happen to favor your “current” theory.
2. As long as the decision of belonging to a scientific community or exiting and constituting a different one is open for researchers, it makes no sense to talk about “imposing” a rule. A norm is a norm *within a scientific discipline* because it is interesting *for all its members* to adopt it. So, a rule will only be established if it promotes reasonably well the prospects for recognition of every researcher. This does not entail that everyone will have exactly the same probability of success, for scientists less talented and poorly equipped will be content with a lesser probability than their more fortunate colleagues.
3. The two previous properties entail that scientific norms will tend to be *impartial*, because they must offer a fair opportunity to *rival* approaches and theories. If a particular approach is seen as “promising” by the members of a scientific discipline, and some existing norms tend to diminish the chances of success of those following that approach, researchers will be interested in negotiating a change in the norms and will begin to explore the new ideas according to the new rules. On the other hand, it also is true that norms may have some “inertia,” and this can slow down the negotiation process.
4. In many cases, the real effects of a norm on the prospects of getting public recognition will be so uncertain, that scientists will tend to be indifferent between several alternative rules *as long as only recognition is considered*. Think, for example, in a norm indicating that “*ceteris paribus*, the theories with a higher predictive success have to be preferred,” and contrast it with alternative norms, as “*ceteris paribus*, the theories with a lower predictive success have to be preferred,” or “*ceteris paribus*, the theories which have been formulated in Latin verses have to be preferred.” Imagine now that you could negotiate with your colleagues which of these three rules to adopt. It is by no means clear which one of the three maximizes the probability of *your* winning a game of research; perhaps you are much better at Latin than the rest, but in this case it is just this differential ability what will make your competitors abstain from accepting a norm so clearly benefiting you. In any case, it is difficult, if not impossible, to ground your decision about which norm to accept on an estimation of your probability of success. What other criteria will you employ, then?

It seems to be a benevolent assumption that, *ceteris paribus*, researchers will prefer methodological norms which are consistent with the maximization of the *epistemic value* of the theories which happen to win in the game of persuasion. After all, why would they have chosen a *scientific* career as a means of getting public recognition, instead of other kinds of activities, as pop music, sports, or politics, if they *did not worry at all* about the attainment of “knowledge”?

A last important point in connection with this is that, although the contractarian approach to scientific norms leaves some space to the influence of epistemic factors in the choice of the rules (and hence in the justification of scientific knowledge), we cannot interpret this result as a return of the classical view of epistemologists as deciding *a priori* how the pursuit of knowledge has to be. Because it is essential to recall that, even if epistemic values enter into the negotiation of scientific norms, these values *are those of the researchers* who are taking part in it, not those of the philosopher or the “science student” who are observing the process from outside. This is again something that our approach shares with that of many scientific naturalists, though we want to point toward an aspect more specific of the contractarian view: the assumption that an explicit or implicit *agreement* between the members of a scientific discipline is the only legitimate way of “aggregating” the epistemic preferences of all these individual scientists. Nevertheless, it is true that other agents outside the research field or even outside science may have an interest in negotiating the norms according to which the game of research is played, and the study of this interaction can also be an interesting point of contact between the approach defended here and other approaches in the field of social epistemology.

Curiously enough, we do not observe that it exists something like an institutionalized “science police” or “science tribunals”: scientific research seems to be “self-policing,” at least in a higher degree than other kinds of practices. It is true that a large amount of case studies in history and sociology of science have been devoted to showing that scientists are far from being mechanical and systematic in their application of methodological norms, and that they tend to use the existing rules “strategically” or “rhetorically.” But we do not think that this may serve to prove that scientific research is not regulated by those norms. In the first place, the vision of scientific method suggested in the preceding sections is *not* that of a logico-mathematical algorithm: actual methodological rules are usually ambiguous in their application to concrete cases, and they are frequently contradictory in their practical suggestions. So, it is natural that each scientist tries to interpret each norm in the way which is most favorable for his own theory. In the second place, usually not all methodological rules are violated simultaneously by a researcher; rather on the contrary, he must employ some rules in order to *justify* why he has broken others; otherwise, his colleagues will simply not take into account what the former scientist is asserting. In the third place, and more importantly, a “rhetorical” use of a norm only makes sense if one expects that others are going to be persuaded by such a move: if *everybody* employed “just rhetorically” the norms *every time*, no one would have a reason to do it. Appealing *successfully* to rhetorical strategies shows that your audience act according to some *predictable patterns* (at least within certain limits), and these *regular patterns of decision making* are just the *real* methodological norms we are referring to.

The main reason why these patterns are chosen *and followed* is probably because of the nature of the reward pursued by scientists, i.e., recognition. Since what you want is that *others* express a public approbation of your own work, you do not obtain anything directly from *your own* decision about what facts or theories to accept; it only matters to you what facts or theories are accepted *by your colleagues*. So, the only question relevant for you is whether *your colleagues* obey the rules or not: if they do it, you will be rewarded for doing “good research” (“good” according to the accepted norms), and you will get nothing otherwise; if they do not obey the rules, you will get nothing no matter what you do, because they are not going to accept your own theory however much effort you might put in defending it. So, the game of persuasion has two possible equilibria in general: either no one obeys the rules of the game (and this means that no research is done, save perhaps by isolated people), or everybody does (though, in this case, further problems arise when deciding *which* norms to institute). Under the contractarian vision of scientific method we are defending here, the first of these two equilibria would represent something like the “state of nature,” or, to express it in popular Kuhnian terms, perhaps the state of scientific disciplines in their “pre-paradigmatic period.” The emergence of a “paradigm,” as well as its subsequent changes, can then be seen as the outcomes of collective negotiations on a “methodological contract.”

Conclusion

Unfortunately, the argument of the preceding paragraph does not entirely solve the problem stated in this section, for it only works properly with inferential and observational norms, i.e., the rules governing what propositions have to be accepted. Distributional norms, instead, open the possibility of enjoying other types of benefits (income, travels, power, relief from boring activities, and so on), and people who have control over this kind of resources will surely be tempted to use them to their own advantage. It seems that, “under the veil of ignorance,” scientists will prefer that an institutional mechanism is established that guarantees that a closer relation exists between the level of recognition one has reached and the resources and advantages that one can enjoy. Anyway, the design of such a self-enforcing, self-policing mechanism (if actual institutions are not satisfactory) is a difficult problem which offers a promising avenue of research for students of the economics of science.

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Cross-References

- ▶ [Agency, Welfare, Equality, and Democracy](#)
- ▶ [The Classic Social Contract Tradition](#)
- ▶ [The Idea of a Contractarian Business Ethics](#)

- ▶ [The Modern Social Contract Tradition](#)
- ▶ [The Philosophical Foundations of the Capabilities Approach](#)

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Abstract

Significance testing is the most widely used statistical tool for quantitative analysis in science and business. We want to explore in what sense significance testing can help in making ethical decisions, and in what sense it may obstruct them. In the section “Ethics and Statistics” of this chapter, we analyze a simplified model of ethical decision-making, showing how consistency in the assignment of probabilities is a prerequisite for any consequentialist justification of our choices. In the section “Two Varieties of Frequentist Statistics,” we provide a short introduction to significance testing and its two main interpretations. In the section “Misuses of Significance Testing,” we point to inconsistencies in the actual practice of significance testing. Finally, we discuss several proposals for a consistent use of statistical tests in practical decision-making.

Introduction

Statistics is a mathematical discipline that provides advice in the making of uncertain choices: For instance, if we want to invest in a company, we would like to see a projection of future prospects before making a decision. There are various statistical tools that we may use to cope with such uncertain choices. In this chapter, we will focus on *significance testing*, the most widely used statistical tool for

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quantitative analysis in science and business. We want to explore in what sense significance testing can help in making ethical decisions, and in what sense it may obstruct them.

Statistics is most useful for consequentialist approaches to ethics, where actions are assessed in terms of their consequences. However, not every statistical tool allows us to justify our choices in a consequentialist manner. Statistical tests can either be interpreted behaviorally, as guiding actual decisions that we make, or evidentially, as providing evidence about the truth or falsehood of a particular claim. In daily statistical practice, significance tests are often used for both ends, for inference *and* decision-making. It is this tension between the behavioral and the evidential interpretation that stands at the heart of this chapter. After all, we need to be consistent in our interpretation of statistical methods if we want a proper assessment of the uncertain prospects we face, and a sound consequentialist appraisal of our choices.

In the section [Ethics and Statistics](#) of this chapter, we analyze a simplified model of ethical decision-making, showing how consistency in the assignment of probabilities is a prerequisite for any consequentialist justification of our choices. In the section [Two Varieties of Frequentist Statistics](#), we provide a short introduction to significance testing and its two main interpretations. In section [Misuses of Significance Testing](#), we point to inconsistencies in the actual practice of significance testing. Finally, in section [Conclusion](#), we discuss several proposals for a consistent use of statistical tests in practical decision-making.

Ethics and Statistics

Long before the establishment of mathematical statistics as a discipline, the ethical dimension of uncertain decisions was appraised in an Aristotelian tradition, namely, in terms of their *prudence* [2]: A good choice depended on finding the correct means for the correct goal. According to Aristotle, there was no general rule for dealing with ethical choices under uncertainty. Rather, like ancient medicine, good decision-making was thought of as a craft where one had to apply one's practical wisdom (*phronêsis*). In the same way that we defer to the advice of a medical doctor when we are sick, we should defer to the practically wise in questions of ethical decision-making. His or her voice settles disagreement about what we should do. One of the most salient examples in Greek history was Pericles, the wise manager of the city of Athens in the fifth century BC.

With Kant, almost 2,000 years later, prudential choices are left out of the proper realm of ethics. The highest ethical good does not consist any more in achieving a certain goal, but in the *good will*. Moreover, in sharp contrast to the Aristotelian deference to experts, Kant developed the categorical imperative as a universal rule of action: to act in a way that could be generalized to a general law. This single maxim is to be followed independently of the uncertainty of the alternatives and the practical consequences they yield. For example, we are not allowed to lie, even if as a consequence of our truth-telling, a malevolent dictator will be able to track down

innocent refugees. In such an act of lying, we would use the person that we are lying to as a means to an end, something that is incompatible with Kant's vision of human autonomy and dignity.

Evidently, statistical advice is most relevant for those approaches in ethics that appraise the rightness of our choices in terms of their consequences. Remember that for Kant, we are morally compelled to abide by the categorical imperative: You are not allowed to protect a refugee by lying about her whereabouts. This emphasis on universal maxims and duties is a *deontological* approach. By contrast, a *consequentialist* in the prudential tradition (cf. [30]) would consider such action wrong, given the likely consequences (the refugee being tortured and/or killed), and would have justified lying. Here, a statistical analysis can step in, by weighting the likely consequences of our actions against each other: Maybe the refugee will be able to escape despite our collaboration with the regime, so telling the truth might not be such a bad thing.

Notably, a statistical analysis does not impinge on our goals: These are taken as given. But if our decision depends on the likelihood of attaining these goals, a statistical analysis may evaluate the ethical correction of our decision. For instance, if a hedge-fund manager invests her customers' money on the basis of careless calculations, we will consider her morally blameworthy: We need accurate estimates of the consequences of our investment decisions in order to justify them. Here arises a source of epistemic and ethical concerns: Since the correction of our choice depends on the correspondence between our models and the actual risks we are dealing with, how do we know that our model adequately captures such risks? The gist of Nassim Taleb's [32] best seller *The Black Swan* is that risks in financial markets (as in other domains) are often not adequately described: We mistakenly assume that the real risks can be structured by a simple probabilistic model, such as the Normal distribution. Due to the idealizing nature of such assumptions (e.g., the extremely thin tails of the Normal distribution), we are ill prepared to estimate the real likelihood of high-impact events.¹

The recent financial crisis illustrates that we can rarely apply statistics blindly, as if we had a mechanical algorithm: Statistical analysis depends on a number of assumptions about the data and the proper way to handle them. Intuitively, the decision-maker seems to have the responsibility to check those assumptions. For instance, according to Michael Lewis [20], there were a number of traders who anticipated the 2007 crash of the subprime mortgage market and actually earned significant amounts of money by selling insurance against it. The standard procedure to redistribute the risk of a mortgage defaulting was through a collateralized debt obligation (CDO), a bond in which thousands of loans were gathered in tranches with different levels of risks, under the assumption that they would not all default together. According to Lewis, it took just a simulation of the effects of home price appreciations on these loans to convince an insightful trader (such as Gregg Lippmann) that default rates would violate the CDO assumptions: They could very easily collapse simultaneously.

Should we blame the sellers of CDOs for not conducting such simulations? Before we answer "yes," we need to be aware of what we may legitimately expect

and require from statistics in order to attribute the responsibility for a proper or improper use. In particular, such a responsibility cannot be easily attributed, unless we have a regulative ideal against which to evaluate a particular choice.

The classical regulative ideal in consequentialist decision-making is *Subjective Expected Utility Theory (SEUT)*, developed by, inter alia, Ramsey [27] and Savage [29]. By now, it has become the standard model of decision-making under uncertainty in social science and in moral and political philosophy. The classical justification proceeds by outlining an intuitive axiom system for individual preferences, demanding that they be complete, transitive, respect the sure-thing principle, apply to mixed bundles of goods, and so on. Then, it is shown that such a system of preferences admits a (unique up to affine transformation) representation in terms of a real-valued utility function over the outcomes and a probability function representing the subjective uncertainty of the agent. That is, if a_1, \dots, a_n denote the available actions, $p(\cdot)$ denotes our subjective probability function over states s_1, \dots, s_n , and u_{kl} the utility of action k in state l , then action a_i is better than action a_j if and only if

$$\sum_{k=1}^n p(s_k)u_{ik} > \sum_{k=1}^n p(s_k)u_{jk}. \quad (77.1)$$

In other words, the averaged or expected utility of a_i exceeds the expected utility of a_j with respect to one's subjective probability function, hence the name Subjective Expected Utility Theory.

As a descriptive model of the average economic agent, SEUT is often contested [1, 9]. However, it is often defended on normative grounds [17]. If you are a consequentialist, not taking into account the principles of probability will put you in a difficult position. Take, for example, the representation of uncertainty by a probability function – an essential cornerstone of SEUT. If our degrees of belief violate the axioms of probability, a malicious bookie can set up a gamble (according to our degrees of belief) whose set of odds and bets guarantees a profit for him, whatever the actual outcome [33]. Since degrees of belief are standardly operationalized via betting behavior or judgments on the fairness of bets, non-probabilistic degrees of belief are arguably self-defeating.

Still, even if we are convinced by this “Dutch Book Argument” in favor of coherent probabilities, it has not been demonstrated that we should maximize the *average* expected utility. The standard argument to that end goes that in the long run, acting in accordance with SEUT delivers practical success. In his 1951 essay “Why *should* statisticians and businessmen maximize moral expectation?”, Jacob Marschak tried to derive from the rule of maximizing expected utility the satisfaction of “the rule of long run success”: Under certain assumptions, it will be almost certain that a sequence of strategies maximizing expected utility will outperform any other consequentialist decision rule ([21], pp. 504–505). Unlike the Dutch book argument, Marschak's case was about winning, rather than not losing, appealing

to the practical rationality of businessmen. Still, this argument has, apart from doubts about the plausibility of its assumptions, often been challenged – particularly by the empirical findings of Kahneman and Tversky [18].

Objections put aside for the moment, we see two different consequentialist justifications for SEUT as a standard of rational and ethical choice. If the moral correctness of our decisions depends on an accuracy of their consequences, SEUT contributes to it in two ways. There is, on the one hand, (probabilistic) coherence: Make your choices in a way that it is not self-defeating for your aims. On the other hand, there is success: Make your choices in a way that actually maximizes your chances of attaining your goals. We will, in the remainder, use SEUT as a regulative ideal against which we evaluate different approaches to statistical testing. If we do not apply our statistical techniques consistently, we cannot expect statistics to increase our chances of success. Hence, from a consequentialist perspective, we will lack a proper statistical justification of our decisions. We will be just deceiving ourselves or misleading our audience into the incorrect belief that we have such a justification.

Two Varieties of Frequentist Statistics

Statistics tries to anticipate random events by drawing on the data that have accumulated in our experience. We try to discern a pattern in the random distribution of these data (past, present, and future): We form hypotheses about such distributions and we use statistical tests to check whether our hypotheses are correct. In its simplest form, a hypothesis test compares two hypotheses H_0 and H_1 about an unknown quantity of interest, represented by the real-valued parameter $\theta \in \Theta$. Sometimes we deal with a precise hypothesis about θ , for example, $H_0 : \theta = \theta_0$ – the null hypothesis – and oppose it to an unspecified alternative $H_1 : \theta \neq \theta_0$. It is then tested whether the data are compatible with the null, or whether a significant deviation is present. Such *hypothesis testing* is the prime activity of frequentist inference – inference that shuns subjective assessments of uncertainty and only builds on the probability of events under the tested hypotheses, that is, the sampling distribution.

There are two main approaches to hypothesis testing within frequentists statistics. The first one, devised by Jerzy Neyman, argues that statistical testing is about *making decisions* about the acceptability of a hypothesis. The second one, due to Ronald A. Fisher, claims that statistical tests should only provide an *assessment of the evidence* for or against a particular scientific claim. Both interpretations are often confused in practice. Below, we spell out the difference: Conflation of both approaches goes at the expense of conceptual consistency that we seek in order to make properly informed decisions.

Together with Egon Pearson, Neyman designed a hypothesis test as a proper decision rule, that is, as a function $T : \chi \rightarrow \{\text{accept } H_0, \text{reject } H_0\}$, χ being the sample space. Think, for example, of industrial quality control. Should we accept

a delivery of bulbs which we have sampled for defective elements? The answer will, inevitably, depend on how many elements in our sample have been found to be defective. We might make the wrong decision if, by chance, we pick a nonrepresentative sample, but if the test is properly designed, only a small number of our decisions will be mistaken.

From an epistemological point of view, the Neyman-Pearson approach receives its justification by the associated *error probabilities*. Let the null hypothesis be that in our delivery of bulbs, there are not more than 10% defect elements, and let the alternative posit that there are more than 10% defect bulbs. (Assume that 10% is the highest proportion of defect bulbs at which it is still economically advantageous for us to accept the delivery.) The test statistic T is then so designed that the null hypothesis is rejected in at most 5% of all cases where it is true, that is, where the delivery is acceptable.² This *type I error level* – the probability of an erroneous rejection of the null – can also be chosen to be 10%, or 1%, etc. – the cutoff is purely conventional and reflects how important we find it that the null is not erroneously rejected.

Evidently, there are various tests that satisfy this property. Trivially, even a test that always accepts the null (and the delivery of bulbs) will have a type I error level as low as 0%. While such a test appears desirable in theory, it is practically unsound: The decision does not depend at all on how many defect bulbs are found. In other words, the test is not responsive to the strength of the evidence. Therefore, the acceptance region should be chosen such that, for a type I error level deemed acceptable, say, 5%, the *type II error level* – the *probability of an erroneous acceptance* of the null – is minimized. We say in that case that the *power* of the test, its ability to recognize the alternative when it is true, is maximized conditional on the level of the test being 5%. In this way, both possible types of error are controlled, and the optimal Neyman-Pearson test will rarely lead to a wrong decision:

we shall reject H_0 when it true not more, say, than once in a hundred times, and in addition we may have evidence that we shall reject H_0 sufficiently often when it is false. ([25], p. 291, notational details changed)

Such a behavioral rationale is well suited to inform real decisions with concrete, immediate impact. Neyman's approach emerged from the world of industrial quality control, where every decision has costs and benefits. Statistical tests à la Neyman were aimed at hedging costs, conforming to the consequentialist spirit presented in the previous section. But not every statistician shared such an applied perspective: Many "decisions" in science are just preliminary and subject to further evidence. A behavioral interpretation of statistical testing was considered inferior to an evidential, inferential interpretation, where we assess the truth of a hypothesis, independently of the consequences of a wrong assessment. As R.A. Fisher put it:

In the field of pure research no assessment of the cost of wrong conclusions [...] can conceivably be more than a pretence, and in any case such an assessment would be inadmissible and irrelevant in judging the state of the scientific evidence. ([11], pp. 25–26)

Two arguments are implied here. First, we cannot quantify the utility that correctly accepting or rejecting a hypothesis will eventually have for the advancement of science. The far-reaching consequences of such a decision are beyond our horizon. Second, statistical hypothesis tests should state the *evidence* for or against the tested hypothesis: A scientist is interested in whether she has reason to believe that a hypothesis is true or false, and her judgment should not be obscured by the long-term consequences of working with this rather than that hypothesis. For Fisher, testing a hypothesis requires an assessment of the significance of the evidence against it. By his emphasis on evidence rather than decisions, Fisher departs from Neyman and Pearson's consequentialist reasoning – a change that severely affects the interpretation of those statistical testing procedures.

Significance tests aim at determining whether a perceived effect in the data is real or possibly due to chance. If the discrepancy between data and null hypothesis is large enough, we are entitled to infer to the presence of a significant effect. Suppose we have a precise null hypothesis $H_0 : \theta = \theta_0$ vs. $H_1 : \theta \neq \theta_0$. For measuring the discrepancy in the data $x := (x_1, \dots, x_N)$ with respect to the postulated mean value θ_0 of a population with known variance σ^2 , one canonically uses the standardized statistic

$$z(x) := \sqrt{N} \frac{\frac{1}{N} \sum_{i=1}^N x_i - \theta_0}{\sqrt{\sigma^2}} \quad (77.2)$$

Thus, we may reinterpret Eq. 77.2 as

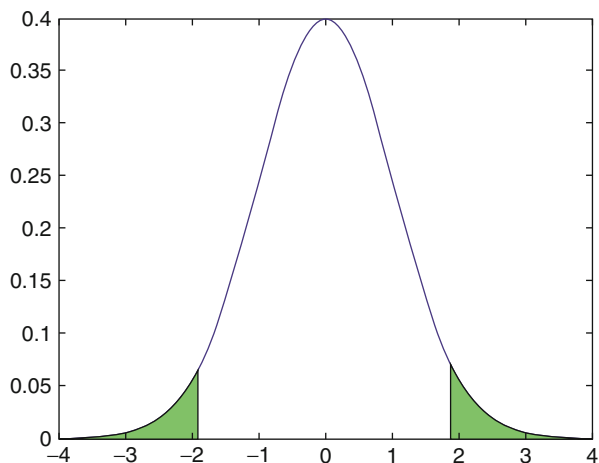
$$z = \frac{\text{observed effect} - \text{hypothesized effect}}{\text{standard error}}. \quad (77.3)$$

Determining whether a result is significant or not depends then on the distribution of the value of z . Practitioners usually use the so-called *p-value* or *significance level*, the “tail area” of the null under the observed data (see Fig. 77.1), which can be computed as

$$p := P(|z(X)| \geq |z(x)|) \quad (77.4)$$

that is, as the probability of observing a more extreme discrepancy under the null than the one which is actually observed. On that reading, a low significance level indicates evidence against the null since the chance that z would take a value at least as high as $z(x)$ is very small, if the null were indeed true. Conventionally, one says that $p < 0.05$ means significant evidence against the null, $p < 0.01$ very significant evidence, etc. To repeat, p-values serve, in the first place, the purpose of statistical inference, not the purpose of statistically informed decision-making.

Fig. 77.1 The rejection region for testing the mean of a $N(0,1)$ -distributed random variable at the 5% level



Fisher has interpreted significance levels as “a measure of the rational grounds for the *disbelief* [in the null hypothesis] it augments” ([12], p. 43). What is more, Fisher is explicit that some cutoff value for p should be regarded as necessary for speaking about the presence of a scientifically significant effect:

Personally, the writer prefers to set a low standard of significance at the 5% point, and ignore entirely all results which fail to reach this level. A scientific fact should be regarded as experimentally established only if a properly designed experiment rarely fails to give this level of significance. ([11], p. 504)

The possibility of integrating these two approaches to statistical inference into a consequentialist framework is remarkably different. Neyman incorporates an explicit consequentialist dimension: We can justify the acceptance of a hypothesis in terms of the balance between the number of successes and failures we will obtain if we consistently apply our decision rule. If we are willing to bear a mistaken decision about hypothesis in 5 out of every 100 tests, an appropriate hypothesis test provides the statistical tools to ensure this error rate in the long run. In this way, frequentist statistics can be naturally integrated into responsible decision-making.

However, the majority of inferences and decisions in science and business are derived from observed significance levels, in line with Fisher’s evidential approach. Indeed, Fisher’s above quote demonstrates that the borderline between evidence and practical decisions is thin (“ignore entirely all results which fail to reach this [significance] level”). Significance tests do not quantify how often will we succeed or fail if we apply such rules, and leave ample room for interpretation when we try to apply them in practice. As a consequence, they are often misused, without no clear way to attribute responsibility for the failures. The next section illuminates those criticisms in detail.

Misuses of Significance Testing

As mentioned above, significance tests are, although devised as procedures for stating the evidence against the null, frequently used for substantiating practical decisions, for example, the null is either accepted or rejected depending on the strength of the evidence. Is this practice compatible with the regulative ideal of SEUT? Do significance tests give a valid assessment of our uncertainty about the tested hypothesis?

Concretely, we have to ask whether p-values can be meaningfully related to subjective posterior probabilities (that is, probabilities conditional on the observed evidence) that enter the expected utility analysis. While a subjective analysis is often charged with being arbitrary, it cannot be doubted that in some cases, for example, when reasoning in games of chance, subjective probability assignments can be objectively grounded. In these canonical cases, p-values should give a valid cue about subjective posterior probabilities.

However, the analyses of Berger and Delampady [3] and Berger and Sellke [4] have shown that p-values tend to grossly overstate evidence against the null, to the extent that the posterior probability of the null – and even the *minimum* of $p(H_0|x)$ under a large class of prior uncertainty assessments – is typically much higher than the observed p-value. In other words, even a subjectivist analysis that is maximally biased against the null is still less biased than a p-value analysis. This has led statisticians to state that “almost anything will give a better indication of the evidence provided by the data against H_0 ” ([3], p. 330). The main source of the problem is that p-values do not make use of the full information contained in the data – namely, that the observed discrepancy is *equal* to z – but only of the information that the discrepancy is greater or equal to z , cf. Eq. 77.4.

The situation is further complicated if we focus on the justification for using (Eq. 77.4) as a statistic that measures the strength of the evidence against the null. Fisher famously argued that a low p-value, that is, a highly significant finding, means that “either an exceptionally rare chance has occurred, or the theory [= the null hypothesis] is not true” ([12], p. 39). That is, in the face of surprising results, we make an inference to the best explanation, namely, to the falsity of the null. On a superficial glance, this inference rule provides a natural implementation of Popper’s critical rationalist attitude into statistical reasoning. According to that school of philosophy, scientific method consists in the successive testing and refutation of conjectures one comes up with. However, the analogy is superficial. Fisher’s Disjunction can be rephrased as the inference

$$p(\text{Data} \mid \text{Null Hypothesis}) \text{ is low.}$$

$$\frac{\text{Data is observed.}}{\text{Null Hypothesis must be false.}}$$

Many arguments and counterexamples have been raised in order to show that this probabilistic *modus tollens* is invalid [5, 13]. First of all, what is valid in deductive logic need not be valid in probabilistic logic. Second, only with respect

to a well-specified set of alternatives, we can meaningfully say that a certain set of data constitute evidence against a hypothesis. The idea of testing a hypothesis “in isolation,” without consideration of alternatives, has proved to be incoherent [8, 28, 31]. In other words, even for purely evidential purposes, we should not use significance testing without a very careful consideration of the way we frame a hypothesis and the alternatives.³

In actual practice such caution in the use and interpretation of significance testing is often missing. In economics, for instance, the economists Deirdre McCloskey and Stephen Ziliak have launched strong attacks against significance tests in a series of papers and books [23, 24, 36, 37]. Let us give their favorite example.

Assume that we have to choose between two diet cures, based on pill *A* and pill *B*. Pill *A* has an average effect of making you lose 10 lb, with an average variation of 5 lb.⁴ Pill *B* will make you lose 3 lb on average, with an average variation of 1 lb. Which one leads to more significant loss? Naturally, we opt for pill *A*, in spite of the higher variation, because the effect size is so much larger.

However, if we translate the example back into significance testing and identify the null hypothesis with the default claim that there is no effect at all, the order is reversed. Observing a three pounds weight loss after taking pill *B*, with a known standard error of one pound, is stronger evidence for the efficacy of *B* than observing a ten pounds weight loss after taking pill *A*, with a known standard error of five pounds, is evidence for the efficacy of *A*:

$$z_A(10) = \frac{10 - 0}{5} = 2 \qquad z_B(3) = \frac{3 - 0}{1} = 3$$

Thus, there is a notable discrepancy between our intuitive judgment about which pill is effective in making a patient lose weight. This occurs because statistical significance is supposed to be “a measure of the strength of the signal relative to background noise” ([16], p. 58). On this score, pill *B* indeed performs better than pill *A*, and reasonably so because there is quite some noise in the effects of pill *A*. But what really matters, what economists, businesswomen, and policy makers are interested in, is the effect size, not the signal strength/noise ratio captured by significance tests, argue McCloskey and Ziliak. We are not interested in whether we can ascertain the presence of *some* effect, but whether we can demonstrate a *substantial* effect. In other words, we have to state in which currency we measure effects, and what a deviance of one, two, or three standard errors actually means for the intended application.

According to McCloskey and Ziliak, economists and other social scientists frequently commit the fallacy of neglecting this fundamental difference. By scrutinizing the statistical practice in the top journal *American Economic Review*, as well as by surveying the opinion of economists on the meaning of statistical significance, they arrive at the conclusion that most economists are unaware of the proper meaning of statistical concepts.⁵ In practice, “asterisking” prevails: for example, in correlation tables, the most significant results are marked with an

asterisk, and these results are the ones that are supposed to be real, big, of economic importance, whereas other correlations are neglected. This neglects two salient pitfalls: First, an effect need not be statistically significant to be big and remarkable (like pill A); second, a statistically significant effect can be quite small and uninteresting (like pill B).

Even more disconcerting is that according to empirical surveys, many practitioners believe that if a result speaks highly significantly against the null, then it must be wrong [26]. In other words, the null is believed to be highly improbable if a highly significant result is observed. But posterior probabilities of the null hypothesis do not have a place in the frequentist inference framework that we have assumed so far. Even if that particular fallacy is avoided, conflation often reigns: p-values are often perceived as the probability of replicating an effect of at least the same size, as the level of type I error, etc. None of these standpoints are statistically valid.⁶

A main danger of conducting significance tests is thus that misinterpretation is so prolific, distorting the results. Methodologists such as Fidler [10] and Cumming and Finch [7] have therefore suggested to drop significance tests altogether and to report confidence intervals for the parameter of interest instead. Taken together with the more theoretical criticisms of significance tests, it seems that the practice of basing business and science decisions on statistical data is often far from the ideal of ethically responsible and prudential decision-making.

Conclusion

Our analysis has revealed that despite their apparent simplicity, significance tests are difficult to interpret and to practically use in a consistent manner. From a consequentialist perspective, we should not value much decisions that are grounded on misinterpreted significance tests. If our hedge-fund manager had made an investment on the basis of any such test, we may consider him morally blameworthy, but if the confusion is so widespread (as the CDO case seems to point out) no court will declare him guilty.

Therefore, it is not only an epistemological, but also an ethical requirement to publicly agree on standards for consistent statistical practices. As for significance testing, there is much room for improvement. We briefly sketch three possible options within the frequentist paradigm, none of them being entirely unproblematic.

1. Keep significance tests, but interpret them properly, for example, by including effect size and power measures. This proposal by Hoover and Siegler [15, 16] accepts that failure to distinguish between significance level and effect size is a fallacy, but argues that significance testing *does* have an important function in science and particularly economics: namely, to decide whether the error in a statistical model can be regarded as truly random, or whether a systematic bias is present. To our mind, however, pure significance testing without considering explicit alternatives is difficult to embed into a coherent logic of inference.
2. Move to confidence intervals. A solution that has become increasingly popular in psychology and that has, in the meantime, reached out to editorial

policies [34]. Confidence intervals replace significance level by providing 95%/99%/etc. coverage areas for the data, given a particular value of the parameter of interest. It has been argued [6] that they are a much better indicator of *effect replication* than significance levels, and that they are more stable for the purpose of meta-analysis. However, these intervals must *not* be interpreted as credible intervals in the sense that with 95% probability, the parameter is contained in the confidence interval. If scientists already have trouble to distinguish between p-values and posterior probabilities, they may be equally likely to commit the natural fallacy of interpreting confidence intervals along the lines of degrees of belief about the location of the parameter value.

3. Retract to Neyman's behavioral interpretation of statistical tests. That is, statistical tests are not used for finding out whether a hypothesis is right or wrong, but only for supporting a particular decision. This proposal has never found many supporters in practice. One of the most salient reasons is that any statistical analysis would then be highly idiosyncratic, dependent on the interests and the particular loss function of the individual that conducts the analysis. Intersubjective communication of results and conclusions would, as a consequence, suffer. Moreover, the technical problems – how to compute the level and the power of more complicated testing problems, how to avoid the slippery slope to a subjectivist framework – are far from trivial. An intermediate position between Neyman and Fisher is advocated by Mayo and Spanos [22] under the label of *error statistics*.
4. A radically different solution goes back to the grounding of decisions and tests in SEUT. The idea is to conceive of statistical inference as providing the relevant probabilities for what might or might not be the case, and to feed these probabilities into an expected utility analysis. That is, we inform good decisions by means of well calibrating our subjective assessments of uncertainty. The standard way of doing so is via *Bayesian Conditionalization*. If we are revising our degree of belief in hypothesis H in the light of evidence E , our new degree of belief in H can be computed as

$$p_{\text{new}}(H) := p(H|E) = p(H) \frac{p(E|H)}{p(E)}. \quad (77.5)$$

Statistical analysis can thus inform right decisions in the following way: We start with a *prior* probability function $p(\cdot)$ that represents our initial uncertainty, revise it in the light of statistical evidence E by Eq. 77.5, and apply the principle of maximizing expected utility with our new *posterior* probability function $p(\cdot|E)$.

This subjective understanding of statistical inference is called Bayesian inference. It dominates in moral and political theory, decision theory, and game theory. One of its big advantages is its coherence, simplicity, and universality: It is by construction in sync with SEUT. Moreover, while complex applications demand mathematical sophistication, the basic conceptual framework of Eq. 77.5 remains unscathed. Finally, the epistemic and the

ethical/utility-related aspects of the analysis are separated from each other (an advantage vis-à-vis Neyman's approach), and the probabilistic assessment precedes and serves as an input for the actual decision-making.

However, many scientists – in particular those coming from the natural sciences – have problems with the subjective interpretation of probability, or consider it unsuitable for scientific analysis. According to that view, science should deal with objective facts, objective evidence, not with revising subjective (and ultimately arbitrary) degrees of belief. A fortiori, scientific inference must not proceed by Bayesian Conditionalization. The main attraction of the frequentist paradigm is, to repeat, that it eschews degrees of beliefs, builds on the view of probability as relative frequency, and devises statistical methods that fit these parsimonious modeling assumptions. But in the light of the problems that the most popular frequentist testing procedures experience, the Bayesian paradigm may deserve more attention. Indeed, recent developments in statistical methodology support a trend toward increased use of Bayesian methods.

Thus, a responsible decision-maker needs to think carefully about statistical methodology: Too much can depend on choosing an adequate or inadequate interpretation of a statistical test. We believe that striving for ethically sound decisions does not commit oneself to Bayesianism or frequentism; however, the frequentist stance may be loaded with more challenges and pitfalls with respect to applying it consistently.

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Cross-References

- ▶ [Aristotelian Business Ethics: Core Concepts and Theoretical Foundations](#)
- ▶ [Moral Implications of Rational Choice Theories](#)
- ▶ [Property Rights Versus Utilitarian Ethics](#)
- ▶ [Utilitarianism](#)

Notes

1. Frank Knight [19] famously argued that statistical theory could not be applied to business decisions. When a businessman is making a choice between uncertain alternatives, this uncertainty arises from so many particular circumstances that there is no way of telling if such a decision will ever take place again. For Knight, each choice is entirely unique and cannot be made part of a class of similar choices arising from a general decision rule. On the other hand, statistical decision theory is a theory of probabilistic decisions, and at Knight's time, probabilities in statistical inference were usually explicated as relative frequencies. We could

estimate how *risky* a decision rule is by analyzing how frequently it yields successful choices, but if each decision is entirely singular, as Knight argued, we cannot quantify the risk: We are dealing with real *uncertainty*. Modern financial economics assumes precisely the opposite: There are precise mathematical models of the risks involved in most of our economic decisions, and these models allow us to determine which option is best.

2. Mathematically, this is done by assigning the acceptance region a weight of 0.95, that is, $\int_{T=0} P(x)dx = 0.95$.
3. See Hartmann and Sprenger [14] for further discussion of the problems of interpreting significance tests.
4. The concept of “average variation” is intuitively explicated as the statistical concept of standard deviance: for a random variable X , we calculate $\sqrt{E[(X - E(X))^2]}$.
5. Their results are disputed by Hoover and Siegler [15], but reaffirmed in McCloskey and Ziliak [24]. It is fair to say that the discussion of this point is still open. See also Zellner [35].
6. Even sophisticated defenders of significance testing in economics, such as Hoover and Siegler [16], sometimes go wrong, for example, when they call a significance level a “type I error probability.” To recall, error probabilities are pre-experimental characteristic of a decision procedure, significance levels are measures of discrepancy between data and null.

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