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The Concept of Business in Business Ethics

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Business ethics is either ancient or very new. Construed broadly as moral reflection on commerce, business ethics is probably as old as trade itself. If law is a rough guide to moral intuitions (Goodin, 1985),[1] the Code of Hammurabi (1700s B.C.), prescribing prices and tariffs and laying down both rules of commerce and harsh penalties for noncompliance, evidences some of civilization's earlier attempts to identify the moral contours of commercial activity. Aristotle's *Politics* (300s B.C.) addresses explicitly commercial relations in its discussion of household management. Judeo-Christian morality, as expressed in, e.g., the Talmud (200 A.D.) and the Ten Commandments (Exodus 20:2-17; Deuteronomy 5:6-21), includes moral rules applicable to commercial conduct.

However, as a discrete, self-conscious academic discipline, business ethics is barely four decades old.[2] Prominent business ethicist

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[1]Goodin argues that law is a reliable, though not infallible, guide to our settled moral intuitions.

[2]Dating the birth of business ethics as an academic discipline is an inexact science, not least because of the multiple projects pursued under the rubric of business ethics. For the purposes of this paper, little or nothing turns on it. I choose the rough "four decades" characterization on the basis of Raymond Baumhart's groundbreaking work. His "How Ethical are Businessmen?" (*Harvard Business Review* 39(4) (1961): 6-9), *Exploratory Study of Businessmen's Views on Ethics and Business* (DBA dissertation: Harvard Business School, 1963), and *An Honest Profit: What Businessmen Say About Ethics and Business* (New York: Holt, Rinehart and Winston, 1968) are generally regarded as original works of a self-conscious business ethics. Richard DeGeorge, in his "History of Business Ethics"

Norman Bowie dates its first academic conference to 1974 (DeGeorge, 1982). An outgrowth of the corporate social responsibility (CSR) and business-and-society literatures originating in law and in business, academic business ethics displays its CSR heritage in the peculiar constellation of concerns that pervade its literature.

This paper focuses less on the answers academic business ethicists give to the questions they ask, and more on the questions themselves. Its topic is how business is understood by those who pursue academic business ethics. The focal questions addressed in business ethics, natural though they may at first appear, are actually quite strange. Indeed, they are not really questions about business at all.

In this paper, I aim to: (1) characterize the central concerns of academic business ethics; (2) show that these concerns are only ancillary to business because a correct account of business recognizes it as a practice, not an organizational form; (3) sketch an account of business practice based on commonsense understandings of what it is to do business; and (4) indicate some of the questions to which a business-focused business ethics is addressed.

A dizzying array of projects is pursued under the rubric of business ethics. Programs of legal compliance, empirical studies into the beliefs and attitudes of business people, arguments for mandatory worker participation in management, a panoply of best-practices claims (in the name of both their moral merit and their contribution to business success), and ruminations on applying theories of justice to firms and the functional areas of business are all advanced as contributions to business ethics—even, and especially in, its academic literature. These projects vary considerably. They often seem to have little in common other than the conviction held by their authors that

[http://www.scu.edu/ethics/practicing/focusareas/business/conference/presentations/business-ethics-history.html , accessed: 20 June 2005], dates academic business ethics to the 1970s and identifies Baumhart as a forerunner to what I am here calling self-conscious business ethics.

whatever each is propounding is business ethics.

Beneath the apparent, almost kaleidic diversity, however, recurrent themes emerge. Business ethicists are centrally concerned with organizational life, in general, and organizational life within the corporation, in particular (Donaldson, 1982).[3] Moreover, it is the manager's role in shaping the contours of organizational life that is crucial to this corporate drama. In short, the academic business ethics literature is focused on organizational ethics, and the organizational ethics pursued is managerial ethics.[4]

This focus on the organization and its management is evident in what is widely regarded among business ethicists as the most significant theoretical construct in their discipline, stakeholder theory.

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[3]See Donaldson for a comparatively early work in academic business ethics that sees the corporation as the central focus of business ethics.

[4]Lest this be thought an unfair characterization, examine the leading business ethics journal. In its issue (Volume 15, Number 3, July 2005) *Business Ethics Quarterly*, the journal of the Society for Business Ethics, includes papers bearing titles like "Distributive Justice and the Rules of the Corporation: Partial Versus General Equilibrium Analysis" (John H. Beck), "Spirituality and Archetype in Organizational Life" (David W. Hart and F. Neil Brady), and "Can Corporations Be Citizens? Corporate Citizenship as a Metaphor For Business Participation in Society" (Jeremy Moon, Andrew Crane, and Dirk Matten) among the seven regular articles appearing in that issue. By an admittedly informal and unscientific count, 34 of 85 articles (40%) appearing in *Business Ethics Quarterly's* last twelve issues are devoted explicitly to organizational ethics as I have conceived it here. That is, if anything, an understatement of the degree to which organizational ethics dominates the pages of *Business Ethics Quarterly*—for those twelve issues include three special issues devoted to topics that do not lend themselves as readily to an organizational ethics-focused treatment: "Business Ethics in a Global Economy" (Volume 14, Number 4), "Accounting Ethics" (Volume 14, Number 3), and "Finance" (Volume 13, Number 3). Had the special issues been regular ones instead, it is a fair conjecture that the share of organizational ethics-focused articles would be at least as high as the 40% figure that is diluted by the special issues.

Originating in the work of R. Edward Freeman (Evan and Freeman, 1993), stakeholder theory is the view that a business firm ought to be managed in a way that achieves balance among the interests of all who bear a substantial relationship to the firm—its stakeholders. In Freeman's account, the very purpose of the firm is coordination of and joint service to its stakeholders.

This characterization is vague, but deliberately so. For the stakeholder theory literature in business ethics consists principally in ruminations over the questions this characterization leaves unanswered: Who counts, i.e., who are the stakeholders? What interests, held by those who count, count? What is balance (or coordination, or accommodation), why is it valuable, and how is one to know when it has been achieved or what activities promote it? How are the ends, values, or practices commended by stakeholder theory incompatible with directors and officers extending fiduciary care to shareholders, such that stakeholder theory stands as a rival to the so-called shareholder theory? Whatever the success of stakeholder theorists in answering these questions, there can be little doubt that stakeholder theory and its mode of analysis (identifying stakeholders and their interests; asking how these interests ought to be accommodated, served, subordinated, or traded-off in directing the firm's activities) are the tools for which academic business ethicists reach most readily in considering most any moral controversy they address.

If the first thing to see about stakeholder theory is its focus on the business organization *qua* organization,[5] the second is that it conceives of the managerial role in essentially adjudicative terms. Writing with William M. Evan, Freeman characterizes managing corporations as a challenge requiring Solomonic wisdom (Evan and

[5] I say this because any organization—whether or not it is a business organization—has stakeholders, whose interests are affected by the organization's activities and can be balanced.

Freeman, 1993). Recall that Solomon's wisdom is demonstrated, in the biblical account, by his skillful adjudication of competing claims of motherhood. The business manager's fundamental task (at least insofar as ethics bears on it) is to weigh and balance the competing claims of shareholders, employees, customers, suppliers, and the communities in which the firm does business, in order to achieve some joint satisfaction of claims that is appropriately balanced.[6]

The manager-as-adjudicator conception informs business ethics deeply, and not just among those who subscribe to a stakeholder-theoretic vision of the firm. The social scientific organizational justice literature appeals at least implicitly to this understanding of the managerial role. Business ethicist and management scholar Dennis Moberg makes the manager-as-adjudicator the explicit topic of his paper, "Management as Judges in Employee Disputes: An Occasion for Moral Imagination" (Moberg, 2003).

From the adjudicative focus of managerial ethics, it is but a short step to the view that there is a telling analogical relationship between business organizations and political states.[7] Call this the

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[6]Of course, the disanalogy to Solomonic wisdom is clear: Solomon proposed splitting the baby not as a way to satisfy jointly the competing claims to motherhood, but as an indirect means of determining whose claims were genuine and whose false.

[7]The step is short because much democratic political theory is informed at least implicitly by an adjudicative conception of legislative action. Legislators in a democratic polity are charged with the task of serving a common good that can be discerned in, or constructed out of, the many competing interests of the citizenry. An account that sees the promotion and achievement of a preferred conception of distributive justice as the principal aim of state action, like Rawls's in *A Theory of Justice* (Cambridge: Harvard University Press, 1971), will for that reason cast the legislator in an adjudicative role, weighing and balancing competing ends in terms of their promotion of that conception.

firm-state analogy. Largely implicit in works appealing to Rawlsian constructs to undergird stakeholder theory (Freeman and Evan, 1990), or other, non-stakeholder-theoretic claims about how firms ought to be governed (Hartman, 1996), the firm-state analogy is made explicit in a forthcoming paper by Jeffrey Moriarty (2005) that captures at its outset the animating spirit of the business ethics literature:

> The central problems of political philosophy mirror the central problems of business ethics. Political philosophers offer theories of state legitimacy. This leads them to discussions about the best kind of government and about the extent of citizens' political obligations. Business ethicists offer theories of corporate legitimacy. This leads them to discussions about the best kind of corporate governance and about the extent of workers' obligations to their firms. Political philosophers try to determine how to distribute justly the state's benefits and burdens. Business ethicists try to determine how to distribute justly the firm's benefits and burdens.
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> The similarity between these two sets of problems may lead business ethicists to ask: should political theories be applied to problems in business ethics? This is not the question of whether business ethicists can make use of the concepts common to all branches of moral philosophy: virtue, duty, utility, and so on. It is clear they can. It is the question of whether business ethicists would be justified in applying, in whole or in part, theories of the state directly to the workplace. If a version of egalitarianism is the correct theory of justice for states, for example, does it follow that it is the correct theory of justice for businesses? If states should be democratically governed by their citizens, should businesses be democratically managed by their employees? If the principles of justice for states should be

> derived from John Rawls's 'original position,' should the principles of justice for businesses be derived from this position also (Moriarty)?

As a description of the questions animating academic business ethics, Moriarty's is without peer. It tells us the business ethics literature is more applied political philosophy than applied ethics and, given the preoccupations of business ethicists, perhaps ought to be more so still. The interesting challenge, however, is not characterizing the degree to which the firm-state analogy is apt (a question over which organization-focused business ethicists differ—at least by degree). It is determining whether the organizational features of firms inform (as Moriarty explicitly, and others by their choice of questions implicitly, claim) "the central problems of business ethics (Moriarty)."

Imagine that the above-quoted passage were written not about business ethics, but medical ethics. If one substituted 'medical' for the adjectival 'business', 'hospital' for 'business' ('firm,' 'corporation') in the noun form, and 'health care personnel' for 'workers' ('employees'), it would be a fanciful description of medical ethics' central problems. It would describe a medical ethics in which the justice of hospital governance is focal; a drama in which the hospital administrator plays the leading, and the physician treating patients the supporting, role. Similarly for legal ethics: If one made the appropriate substitutions, Moriarty's would be a fanciful description of legal ethics in which the justice of law firm governance is focal and the moral implications of the attorney's efforts to serve clients are peripheral.

A hospital-focused medical ethics is fanciful because medicine is a practice and the moral contours of the practice, not the organizational features of that practice's venue, are focal to medical ethics. Indeed, one would be hard pressed to conceive of a hospital as a hospital without its connection to medical practice. This is not to deny that there are moral issues surrounding hospital administration or that these issues may at times be of importance to medical ethics. It is to deny that these issues are focal. If they are important to medical ethics, it is because they bear on medical practice—and they are not important to medical ethics if they don't.

A law firm-focused legal ethics is fanciful for the same reasons. It is legal practice that makes a law firm a law firm and not a firm of another kind. This is not to deny that there are moral issues surrounding law office management or that these issues may at times be of importance to legal ethics. It is to deny that they are focal. If they are important to legal ethics, it is because they bear on legal practice—and they are not important to legal ethics if they don't.

Of course, Moriarty's is not a characterization of medical or of legal ethics, so one may justly ask, What has this to do with Moriarty's account of business ethics' central problems? If we concede that medical ethics is about medical practice (physicians' efforts to treat patients) and legal ethics is about legal practice (attorneys' efforts to serve clients), what is the upshot for business ethics? The answer is that, like medicine and law, business is a practice.[8] We have an intuitive grasp of what it is to do business and it is that activity, rather than the entities conducting it, that makes it business.

Business firms differ from other kinds of organizations not principally in their organizational features, but in what they are organized to do—business. There is a world of difference between Google Inc. and the California Franchise Tax Board, but they are not nearly so different organizationally as they are in the diverging practices each is intended to support.

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[8]It may be thought that I am hereby arguing that business ethics is, like medical ethics and legal ethics, a species of professional ethics. I am not. Professions are defined by particular expertise and highly technical regularities of practice that are absent in business. Nonetheless, business is a practice, an activity. It is the moral features of that practice that are central to business ethics, properly construed.

Business is a practice, not an organizational form, for two main reasons. First, there are organizations that don't do business. The Upper Sandusky Ladies Bridge Club is undoubtedly an organization (presumably of bridge-playing ladies in the greater Upper Sandusky area), but it is such even if it does no business—as it may if, for example, its officers do no more than schedule and publicize to members the next game, and its members do no more than play in the appointed place and at the appointed time, taking tea and sandwiches during the break.

Second, there are business-doers who are not organizations. The sole entrepreneur who sells her services, performs them, and accepts the payment for them (like the house cleaner I regularly hire) is undoubtedly doing business, but she is not an organization and doesn't have recourse to one in order to do business.[9]

Together, these two observations underwrite the conclusion that whatever business is, it is not organizational in character. Just what business is, and what is focal to business ethics, is not answered by these observations. I take up those topics below.

The business ethics literature's shareholder-stakeholder debate, interesting though it is, is a debate between those who see the firm as a nexus of contracts and those who see it as a polity. Whoever has the better of it, the debate is largely peripheral to the moral contours of doing business. For it is a debate not over how business ought to be done, but over the organizational character of some or all of the entities who do it. It is a debate over the support structure, not the practice supported by it.

Some may think the organizational focus reasonable for business ethics because, after all, the great bulk of business people are

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[9]The sole entrepreneur is the crucial case. If we say that she too is an organization, then that is a *reductio ad absurdum* on the concept of an organization—not because nothing is organizational but because everything is.

not like my sole entrepreneur house cleaner; they work in organizations. But the same can be said of physicians with respect to hospitals (health maintenance organizations, physician practice groups) or lawyers with respect to law offices. Yet, as we have seen, it gets the focus wrong to say that medical ethics is about hospital administration or legal ethics is about law office management. Business ethics lacks and needs a focal conception of business. If business is a practice, like medicine or law, then business ethics is a form of practice ethics, like medical ethics or legal ethics. Just as medical ethics and legal ethics focus upon the moral contours of their defining practices, business ethics focuses on the moral contours of its defining practice. But what is the defining practice of business ethics? What does it mean to do business?

Characterizing business practice is not easy, but working from clear cases the beginnings of an account emerge. People do business when they transact, or trade. One engages in trade by alienating some property rights and acquiring other property rights by means of exchange. Business is, at least in part, a transaction-executing practice.

But one does not do business only when executing transactions. Transactional opportunities do not always present themselves immediately and transparently. Often, we have to seek them out. It may be as simple as locating a convenient vendor who sells the commodity one seeks or as complex as identifying potential customers for a product yet unmade. Finding transactional opportunities requires alertness to them and imagination about how best to exploit them. Another way to say this is that business is an entrepreneurial practice (Kirzner, 1973). Because alertness is critical to executing transactions, business is not just a transaction-executing, but also a transaction-seeking, practice.

Transactions are sought and executed typically not for their own sake, but in pursuit of some end. Not all ends one seeks through transactions are business ends. The free clinic that transacts with medical suppliers, buying their wares with donations from concerned citizens, is transaction-seeking and transaction-executing, but we are rightly reluctant to characterize its transactional activities as business.

The clear case is where the transactor seeks to make transactional activity self-sustaining. One engages in business by seeking to identify and implement profitable sets of transactions—seeking to yield something of value that was not there before the transactions were initiated. Nothing in this account depends upon the view that people are motivated exclusively, or even primarily, by profit. It says only that people pursue their aims through business, rather than through other means, when they attempt to transact in a profit-generating (self-sustaining) way. Business, then, is a(n intentionally) self-sustaining, transaction-seeking and transaction-executing practice.

One of the virtues of this account is that it accords well with widely-held intuitions about which sorts of entities are business doers are which are not. It is not my purpose here to advance a conclusive standard for identification of business doers, but some remarks are worth making.

Garden-variety for-profit firms are undoubtedly business doers on this account. They seek to make the sum of their transactions self-sustaining (and indeed, self-advancing).

The aforementioned free clinic is not a business doer, on this account, because its transactions are not and are not intended to be self-sustaining. The free clinic seeks monetary or in-kind gifts from some to buy what it needs to give other in-kind gifts to others. The sum of its activities may be self-sustaining (and must be, if it is to continue its activities), but its transactions (e.g., purchasing medical supplies) are not.

Some households are business doers. Those containing members who intend their transactions (e.g., selling their labor, purchasing goods and services) to be self-sustaining are; those containing members who intendedly depend upon monetary or in-kind gifts to supplement or supplant transactions and sustain the household are not.

The viewer-supported public television station offers a more interesting case. On the one hand, like the free clinic, it seems to rely intendedly on monetary gifts to sustain itself and so is not a business doer, on this account. Indeed, public television donors are often called *sustaining members*—suggesting that it is not the transactional activities of the public television station that are intended to sustain it. On the other hand, these sustaining pledges are not always straightforward gifts.

When a pledge of $100 nets the viewer a *Best of Peter, Paul & Mary* CD, this seems at first blush more like a sale, a transaction (in my sense), than a gift. These pledges are interesting because they involve *two* interactions between donor and public television station where there appears to be only one. One interaction is a transaction—sale of the *Best of Peter, Paul & Mary* CD. But note that the donor likely would not pay just anyone $100 for the CD. If donor's local Virgin Megastore sought $100 for the CD, which commands $20 on Amazon, the donor would likely be uninterested in paying the extra $80. If $20 is indeed the prevailing price for the CD, then donor is more reasonably interpreted as engaging in (i) a $20 transaction for purchase of the *Best of Peter, Paul & Mary* CD and (ii) an $80 gift to support public television station.[10] Public television station is not a business doer, on this account, because its *transactions* are not and are not intended to be self-sustaining.

On the account sketched here, business is a practice focused on transactions, seeking self-sustenance from a sum of them. Business ethics, conceived as an account of the moral contours of business practice, is, or should be understood as, a transaction-focused, rather than an organization-focused, intellectual enterprise. What questions

[10]This analysis leaves untouched the terms under which public television station acquired the *Best of Peter, Paul & Mary* CDs. They may have been gifts from the record distributor or, if sold below cost to public television station, a partial gift/partial transaction like the one between public television station and donor.

does business-focused business ethics address?

Business-focused business ethics takes as given a regime of institutions over which normative political philosophers, and business ethicists who view their discipline as applied political philosophy, contend. Because one cannot do business without a regime of private property rights alienable and acquirable through bargaining and exchange in markets, business-focused business ethics takes these institutions as given. It asks not whether we should do business at all (which, properly, is a question of normative political philosophy), but what we ought to do when doing business.[11]

Again, the analogy to medical ethics is instructive. Medical ethics is not centrally concerned with whether the Christian Scientist's objections to medical practice are right or wrong. It takes as given that, morally, physicians may treat patients and asks what are the moral contours of that practice.

Business-focused business ethics takes the transaction as its basic unit of analysis. It is concerned with the moral features of transaction-seeking and transaction-executing and addresses questions like:

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[11]In "Two Concepts of Rules," Rawls distinguishes between justifying an action or rule under an institutional arrangement and justifying the institution itself. In the canonical example, justifying the institution of capital punishment itself calls for a different kind of justification than justifying capitally punishing a particular person under the institution of capital punishment. On the account sketched here, business-focused business ethics occupies the 'justifying an action or rule under an institutional arrangement' side of the distinction, whereas arguments about the moral permissibility of capitalist economic institutions occupy the 'justifying the institution itself' side. My criticism of organization-focused business ethics can be understood as the claim that it occupies the 'justifying the institution itself' side of the distinction, and that's the wrong side for a practice ethics like medical, legal, or business ethics. On the distinction, see John Rawls, "Two Concepts of Rules," *The Philosophical Review* 64(1) (1955), 3-32.

- What is a just price—is it any price agreed to by buyer and seller, absent force or fraud, or are there some substantive pricing norms to which buyers and sellers must adhere, as well?

- Is price discrimination morally wrongful? Does justice demand a unitary price—the same price afforded to one buyer and all?

- In bargaining and negotiation, does the Anglo-American commercial law's distinction between material (i.e., legally wrongful) and immaterial (i.e., legally innocuous) misrepresentations capture also the distinction between morally wrongful and morally innocuous misrepresentations?

- Is the ubiquitous practice of reservation price deception in negotiation morally wrongful or morally innocuous?

It may be contended, correctly, that these are old questions. St. Thomas, for example, addresses the just price in the *Summa Theologica* (1273 A.D.). But although questions about the just price are old, they are not settled. More importantly, they are vital unsettled questions. Contemporary controversies over the pricing of life-saving drugs (Maitland, 2002) or the moral permissibility of abrogating patent rights in them (Rosenberg, 2004) are new manifestations of these admittedly old but nonetheless live questions. The fate of millions, both living and yet unborn, turn on how we answer them.

Like the just price, questions about the morality of price discrimination may be more pressing than ever. The advancing technology of e-commerce raises the specter that an array of goods and services will in the future be priced the way only airline tickets once were.[12] One-size-fits-all, take-it-or-leave-it retail pricing may become the exception rather than the rule. The widespread, visceral dislike of price discrimination threatens to make it an important issue in business. Clear thinking about the ethics of price discrimination will be useful in addressing it.

Bargaining and negotiation are near ubiquitous business activities, and they are not confined to those who make their living doing business. Life in a commercial culture ensures that at least as consumers almost all of us will have frequent recourse to bargaining and negotiation in order to acquire the goods and services we seek. In sum, these admittedly old questions are increasingly vital ones. Business-focused business ethics is connected to a long and increasingly relevant tradition of moral reflection about commerce.

In fairness, it must be said that the questions animating business-focused business ethics *are* addressed to some degree in the extant business ethics literature. Issues in advertising and marketing ethics, for example, are informed by concerns about representations made by sellers that are related to the ethics of bargaining and negotiation (Brenkert, 1998). (Indeed, one way to construe advertising is as an opening volley, an overture to negotiation.) However, the speed with which discussions of advertising and marketing ethics abandon the transactional context for analysis of aggregate social impact, implications for public policy towards business, or claims about CSR indicates the thrall in which organizational ethics holds academic business ethics even when it turns its attention to matters closer to the heart of business practice.

Business-focused business ethics invites the business ethicist to talk about business, the way the medical ethicist talks about medicine

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[12]Then again, that same technology has made airlines less able to secure widely differing prices for airplane seats because it has facilitated the emergence of last-minute travel sites.

and the legal ethicist talks about law. It entertains organizational ethics to the extent that organizational issues bear on self-sustaining, transaction-seeking and transaction-executing activities, but it distinguishes sharply the focal and the peripheral. Business-focused business ethics leaves little room to entertain the ideological commitments pervading organizational ethics. But it provides ample room for reflecting upon the nature of commercial practice, inviting the business ethicist to engage in the kind of normative explication Nicholas Capaldi commends elsewhere in this volume.[13]

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