

Retrieving Business Ethics from Political Philosophy

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Abstract

Academic business ethics is in the thrall of normative political philosophy. As a consequence, the content of academic business ethics is *anomalous* in the history of moral reflection on commerce, *irrelevant* to the vast majority of business people in the world, and too *grandiose* to address fruitfully doing business ethically at the level most business is done. Business ethics can be retrieved by refocusing on the activity of doing business, elucidating principles of action that are *modest* in aim and in which the business person can have a corresponding *confidence*.

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I. Introduction

My title commits me to convincing the reader of three propositions. First, business ethics as an object of university teaching and research has been *captured by* or is *in the thrall of* another academic discipline, normative political philosophy. Second, this is a *harmful* or at least *suboptimal* state of affairs about which business people, university academics, the public at large, or some combination of these should be concerned. Third, there exists a compelling *alternative* to business ethics's capture by or thrall with normative political philosophy toward which business people, university academics, the

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public at large, or some combination of these should seek to move business ethics.

In this paper I argue that the main conversation in academic business ethics is *derivative* of normative political philosophy. This state of affairs is cause for concern because the content of this derivative business ethics is *irrelevant* to almost all business people in the world. That is because its content is addressed most naturally to C-level decision makers in large, publicly traded corporations and to legislators possessing the authority advance public policy initiatives aimed at those corporations. In other words, this business ethics is addressed to a small number of people operating at a level far removed from where most of the world's business people do business. Moreover, even in those cases in which its prescriptions are relevant, this business ethics's content is productive mainly of *doubt* about the right thing to do. That is because it is based upon contentious claims about justice derived from contending theories that, in turn, make its prescriptions *contingent* on the truth or correctness of the debatable theories of justice used to derive them. A business ethics retrieved from normative political philosophy can be built on the foundations of both the history of moral reflection on commerce and the model informing other forms of applied professional ethics, such as medical ethics and legal ethics. A business ethics so built promises the twin virtues of *relevance* to the great bulk of business done by the great bulk of business people and *inspiring confidence* in the judgments formed about ethical business practice in accord with its prescriptions.

II. Business Ethics as Normative Political Philosophy

A pioneer and leading figure in the field, the late Robert Solomon (1990) advances a threefold taxonomy of business ethics analysis or argument consisting of levels that he terms the *micro*, the *macro*, and the *molar*. The micro level of business ethics analysis or argument concerns "the rules for fair exchange between two individuals." The macro level concerns "the institutional or cultural rules of commerce for an entire society ('the business world')." The molar level ("molar" from the Latin *moles*, meaning "mass") concerns "the basic unit of commerce today – the corporation" (Solomon, 1990, p.359).

Solomon's micro level sounds like it is focused on business practice. For what, exactly, is business practice if not engaging in exchange transactions and, concomitantly, what is business ethics if

not an articulation of the moral norms that inform engaging in exchange transactions? Similarly, his macro level, at first blush, sounds like it is focused on business practice. For what, exactly, would “institutional or cultural rules of commerce” be if not “rules of fair exchange”? To ask that question, however, is to raise another: If the micro and macro levels are focused on the same basic activity, why distinguish them? The answer is that, for Solomon, they are not focused on the same basic activity. His characterization of the macro level emphasizes the *institutional context* and the notion that the rules of commerce of which he writes are *for the whole society*. Solomon’s macro level business ethics addresses the relationship between political society and economic activity. It “becomes part and parcel of those large questions about justice, legitimacy, and the nature of society that constitute social and political philosophy” (Solomon, 1990, p.359). He identifies as archetypal inquiries of macro level business ethics such questions as:

What is the purpose of the ‘free market’ – or is it in some sense a good of its own, with its own *telos*? Are private property rights primary, in some sense preceding social convention (as John Locke and more recently Robert Nozick have argued), or is the market too to be conceived as a complex social practice in which rights are but one ingredient? Is the free market system ‘fair’? Is it the most efficient way to distribute goods and services throughout society? Does it pay enough attention to cases of desperate need (where a ‘fair exchange’ is not part of the question)? Does it pay enough attention to merit, where it is by no means guaranteed that virtue will be in sufficient demand so as to be rewarded? What are the legitimate and illegitimate roles of government in business life, and what is the role of government regulation? (Solomon, 1990, p.359)

This business-ethics-as-political-philosophy approach is further emphasized by Solomon’s conception of the molar level of business ethics, which sees the corporation as “the basic unit of commerce today” (1990, p.359). If the corporation is the “definitive ‘molar’ unit of modern business” and “the central questions of business ethics tend to be unabashedly aimed at the directors and employees of those few thousand or so companies that rule so much of commercial life

around the world” (1990, p.359), it is but a short step to the view that questions about the justice of the free market and the institutions of capitalism are addressed naturally and necessarily within business ethics.¹

As it is for Solomon, so it is too largely for academic business ethics as a whole. Witness, for example, the business ethics field’s continued embrace of *stakeholder theory* as both its principal mode of analysis in, and set of prescriptions for, business ethics. Originating in the work of R. Edward Freeman (1984), normative ethical stakeholder theory articulates the view that a business firm ought to be managed in a way that achieves a 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. A string of writers in the management and business ethics literatures have taken up the challenge of filling in what this characterization leaves unanswered (see, e.g., Donaldson and Preston, 1995; Jones and Wicks, 1999; Donaldson, 1999).

Whatever the details of the various attempts to fill in stakeholder theory, for present purposes it is enough to observe that in the stakeholder-theoretic account the firm is understood to resemble closely the *political state*. Its stakeholders, in turn, are understood to resemble closely the citizens or subjects of the political state. From this, the academic enthusiasts of stakeholder theory have, like Solomon, concluded that normative political philosophy offers a rich cache of theoretical insight from which to draw for their work. Thus, some have sought to identify the contours of the just firm by applying Rawls’s (1971) two principles of justice or the contractualist thought experiment used to derive them (see, e.g., Freeman and Evan, 1990). Others, whether within the stakeholder-theoretic framework or not, have reached for other (e.g., Hobbesian) strands of the social contract tradition in normative political philosophy to

¹ Whatever the merits of Solomon’s tripartite division of business ethics analysis and argument, his own exposition illustrates the problem academic business ethics has with addressing business practice. Solomon’s is a detailed discussion and characterization of the macro and molar levels of business ethics. Of the micro level the reader learns only that it embraces “the rules for fair exchange between two individuals” (1990, p.359). What those rules are, or what questions might animate discussion among academic business ethicists about them, is nowhere addressed in Solomon’s exposition.

derive the duties of the just firm. Tom Donaldson and Tom Dunfee, for example, have sought to construct a comprehensive theory of and for business ethics under the rubric of what they call *integrative social contracts theory* (see, e.g., Donaldson and Dunfee, 1994, 1999a, 1999b). Others have proclaimed social contract theories to be the way forward in business ethics (see, e.g., van Oosterhout, Heugens, and Kaptein, 2006; Wempe, 2008).

As early works of academic business ethics set the tone for the field by making the large, publicly traded corporation the central object of study and argument (see, e.g., Donaldson, 1982; Werhane, 1985), academic business ethicists have emphasized similarities between that corporation and the political state to underwrite theorizing and prescription-making in the mold of normative political philosophy. One fallout of this approach is that the positions advanced in academic business ethics map neatly onto, and are essentially proxies for, positions advanced in normative political philosophy. Thus, for example, many academic business ethicists seek through their work to convince CEOs and corporate boards that “ethics” is a matter of transforming the firms they lead into the private workplace equivalent of cradle-to-grave welfare states. The often antagonistic stance toward business that characterizes much of the field is a consequence of the fact that no business firm is, and firms in general since the 1970s have approximated decreasingly, the social democratic polity that academic business ethicists (like university academics generally) idealize.

III. Problems: Anomaly, Irrelevance, and Grandiosity

At this point, the reader may be convinced that academic business ethics is in the thrall of normative political philosophy. However, stating that fact is not the same as stating a problem. Thus, the reader may wonder why I conceive of the state of affairs I describe as a problem. If I am not moved by the Rawlsian social contract-based prescriptions that typify the academic business ethics field, ought I not offer alternative prescriptions based on other, more congenial constructs of normative political philosophy (like, for example, Nozick’s (1974) entitlement theory)? If my objection were merely to the *answers* academic business ethicists give to the questions they ask, then the antidote is, of course, to offer better answers. However, the questions themselves raise three problems for business ethics. Call them the problems of *anomaly*, *irrelevance*, and *grandiosity*.

A. Anomaly

By focusing almost exclusively on the large, publicly traded corporation and its governance, academic business ethicists have effectively crowded out consideration of questions that ought seemingly to lie at the heart of and inform discussion in an academic field calling itself business ethics. These questions are not hard to identify, because they are the questions informing almost the entire history of moral reflection on commerce. That history, stretching from the early 20th century back to Adam Smith, to Locke, to St. Thomas, to some parts of the Bible (see, e.g., Exodus 20:2-17; Deuteronomy 5:6-21), to Aristotle's *Politics* and to the Code of Hammurabi, has conceived of bargaining and exchange, the transaction-seeking and -executing activities of buyers and sellers (usually with an emphasis on sellers) that characterizes business of whatever scale or form, as the central phenomena whose moral contours are to be identified and explained. By contrast, the nearly five decades of self-conscious, self-identified academic business ethics has been focused on managing people in large organizations, the governance structures of the organizations in which those people are managed, and public policy toward those organizations. Bargaining and exchange are interesting to this academic business ethics, if at all, as the incidental means by which the funds deployed and distributed by the governance structure are derived. In this, academic business ethics resembles strongly influential strands of mainstream normative political philosophy, which focuses on issues of distributive justice while treating as merely incidental how and by whom what gets distributed is produced (Rawls, 1971; compare Nozick, 1974).² In sum, *academic business ethics is anomalous in the history of moral reflection on commerce.*

² In a roughly analogous way, the intensity of the academic business ethicist's interest in *social* contracts is matched only by his almost complete neglect of contracts of the ordinary kind. Social contracts are invested with great normative significance while ordinary contracts – actual agreements between people who intend them to structure *their* normative relationship – are rarely acknowledged as a legitimate source of moral obligation, even on the matters over which the agreement was made. Of course, this neglect would be understandable if the practice of contracting had largely disappeared in the wake of the large corporation's emergence or, alternatively, if the ethics of contracting were not in dispute. However, contracting is still with us as the principal means by which business is done, and its moral contours remain a matter of disagreement – witness,

Academic business ethics is anomalous in another way. Its focus on the governance of organizations through which business is carried out makes it an outlier among forms of applied professional ethics.³ As a thought experiment, consider what it would mean for other, paradigmatic examples of applied professional ethics to apply the approach characteristic of academic business ethics. As one example, it would mean that issues of law office management, and not of attorneys' efforts to serve clients, are the dominant concern of legal ethics. As another, it would mean that issues of hospital administration, not physicians' efforts to maintain patients' health, are the dominant concern of medical ethics. Perform the same thought experiment with other forms of professional ethics (e.g., accounting, engineering, nursing), and it becomes clear that *academic business ethics is anomalous as a form of applied professional ethics*. (For another discussion of these issues, see Marcoux, 2006, and Marcoux, 2009.)

B. Irrelevance

The anomalies may strike the reader as academic worries without practical import. However, the anomalies are, in fact, the source of what is perhaps the most practically significant problem with academic business ethics. Through its focus on the governance of large, publicly traded corporations, academic business ethics offers little of use or interest to the overwhelming majority of business people in the world. The majority of business persons neither lead, nor direct, nor work in, nor have truck with the large corporations that are academic business ethics's near-exclusive focus. Lest it be thought that I am relying on those who do business in the populous but less developed parts of the world to make my point, consider that limiting our inquiry to conditions in the United States – the most developed part of the developed world – we find ourselves long past the day when employment in the large, publicly traded corporation typified the American work experience. As Steven Rogers (2002, p.42) reports:

as but one example, worldwide disagreement about whether contract ought to settle the pricing of lifesaving drugs (Maitland, 2002).

³ "Professional" here is *façon de parler*. In using it, I don't mean to imply that business is itself a profession. It is, however, a practice. Because professions too are constituted by their practices, business ethics ought to resemble closely other forms of professional ethics.

In the 1960s, 1 out of every 4 persons in the United States worked for a Fortune 500 company. Today, only 1 out of every 14 people work for these companies. Employment at Fortune 500 companies peaked at 16.5 million people in 1979 and has steadily declined every year to approximately 10.5 million people today.

By all accounts, during the last three decades growth in private sector employment in the United States has occurred almost exclusively in firms of fifty or fewer people. Whether in the United States or the world as a whole, the large, publicly traded corporation is the exception, not the rule, as a venue for doing business. If, as Solomon (1990, p.359) observes, “the central questions of business ethics tend to be unabashedly aimed at the directors and employees of those few thousand or so companies that rule so much of commercial life around the world,” that makes academic business ethics an *exclusive* conversation, a dialogue between a small number of university academics and a slightly larger number of corporate functionaries that ignores the overwhelming majority of business people (except, perhaps, as potential victims of predation by large, publicly traded corporations). This business ethics has little of practical import to say to the overwhelming majority of business persons or to the business they do because it doesn’t acknowledge their relevance to the discussion. Consequently, *academic business ethics is irrelevant to the overwhelming majority of business people in the world and to the business they do.*

C. Grandiosity

The irrelevance of academic business ethics to the overwhelming majority of business people is attributable in large part to the grandiosity of its objectives, which are alternatively (or both) the fundamental transformation of the basic institutions of society (hence its intellectual debt to normative political philosophy and its insistence, per Solomon (1990, p.359), that business ethics is “part and parcel of those large questions about justice, legitimacy, and the nature of society that constitute social and political philosophy”) or the fundamental transformation of the large, publicly traded corporation into something approximating a preferred form of political state. However, the grandiosity of academic business ethics is a problem even within the narrow confines of its exclusive

conversation. For even as it addresses C-level executives of large, publicly traded corporations and legislators who pursue public policy initiatives toward those corporations, academic business ethics's prescriptions are productive mainly of *doubt* about what is the right thing to do. That is because its prescriptions are based upon contentious claims *about* justice, derived from contending and often conflicting theories *of* justice. If a business ethicist's prescriptions are derived from, for example, a Rawlsian contractualist thought experiment yielding a conclusion contrary to those derived from alternative normative frameworks (e.g., Nozick's entitlement theory), it follows that the reliability of that conclusion is *contingent* on the (as yet unestablished) truth or correctness of the debatable theory used to derive it. As the debate in normative political philosophy is centuries old and shows no signs of dissipating, the contingent nature of the prescriptions underwritten in this manner affords little comfort to the C-level executive or legislator to whom they are addressed that following them is the right thing to do.⁴ Big theories having far reaching implications over which rival theorists contend are rarely the foundation of confident practical decision making, even in the executive suite or the legislative chamber – yet this is the preferred approach to prescription making in academic business ethics.

IV. Antidotes: Modesty and Confidence

To recap, confidence in the prescriptions emerging from academic business ethics's main conversation must await the outcome of theoretical debates that have no end in sight. Though this is no problem for theorists (whose profession it is to make theory

⁴ This same problem bedevils attempts to rest the content of business ethics on a single ethical theory. Thus, for example, Norman Bowie (1999) advances a series of prescriptions about ethical business practice that he claims are underwritten by Kantian deontology. Assuming that these claims are so underwritten, at best this tells the business person to whom they are addressed that the prescriptions are correct *if* Kantian deontology emerges victorious in a centuries-long debate about the rational foundations of morality that is ongoing and shows no signs of abating. In other words, to the extent that different theoretical paradigms yield different prescriptions, the business person's confidence in the prescriptions underwritten by Kantian deontology is only as great as her confidence that Kantian deontology will emerge victorious instead of, e.g., utilitarianism. Why she should have confidence that *any* theory will emerge victorious (or, for that matter, that the debate will *ever* end) is at least unclear. Consequently, it is unclear why business people should act on prescriptions that are underwritten in this inherently doubt-inducing manner.

and for whom disagreement is productive of subsequent opportunities to publish), it is an immense practical problem for those, like business people, who have to make decisions daily, act on them, and live with their consequences. Consequently, to achieve practical relevance to business people doing business, business ethics cannot be dependent on (and thus be contingent on) normative political philosophy. Put differently, if we have to settle conclusively big questions of justice to answer with a reasonable degree of confidence what we ought to do in the small circumstances of the present moment, then something is clearly amiss. The antidote to this problem is to recognize an intellectual division of labor between normative political philosophy and business ethics. Normative political philosophy is the proper home of ruminations about the nature and structure of the ideal social order. Business ethics, by contrast, is about what one ought to do when doing business *within the actual institutions that business people confront*. In this division of intellectual labor, business ethics is the *modest* activity of advancing action-guiding principles that are *relative to and presuppose* the institutional context in which business is done.

To illustrate what I mean, consider legal ethics. Some attorneys practice law in legal systems whose criminal court proceedings are *adversarial*, as in the countries following the Anglo-American common law. Other attorneys practice law in legal systems whose court proceedings are *inquisitorial*, as in many of the civil law countries. In adversarial legal systems, there are strong ethical norms against attorneys seeking, or judges permitting, *ex parte* communications – that is, communications with the judge without opposing counsel present. That is because the judge is a neutral arbiter between the prosecution and defense, each of whom is charged with advancing the best case for his side and ought, therefore, to be afforded an equal and fair opportunity to make that case and to rebut the other side's case – an opportunity that is denied when one side and not the other communicates with the judge. *Ex parte* communication threatens to undermine the institution-relative conception of fairness that informs the system.

In inquisitorial systems, by contrast, the judge is an independent fact finder, conducting an investigation that seeks to find both incriminating and exculpatory evidence in addition to that produced by the prosecution and the defense. In such a system, *ex parte* communication *may* be a necessary component of the judge fulfilling

the independent fact-finding role. Consequently, we may imagine that different and perhaps even opposite ethical norms apply to *ex parte* communication in inquisitorial legal systems, owing to the different role of the judge in those systems.

It would be counterproductive, as a matter of legal ethics, to say that the “dispute” over *ex parte* communication can be resolved only by considering and coming to a conclusion on whether inquisitorial legal systems are morally superior or inferior to adversarial systems – and thus that legal ethics must be concerned centrally with that question. More reasonable, as a matter of legal ethics, is to say that in adversarial legal systems *ex parte* communication bears significantly on the fairness of legal proceedings and so are rightly, within those systems, subject to ethical norms prohibiting it. In inquisitorial systems, by contrast, *ex parte* communication has a different significance that underwrites correspondingly different attitudes and norms about it. Consequently, attorneys in adversarial and inquisitorial systems must each internalize and practice a different set of norms with respect to *ex parte* communication. Theirs is not, as a matter of ascertaining the ethics of their practice, to ruminate on whether the system in which they practice ought instead to be the other kind of system. That is not so say that the question whether inquisitorial legal systems are morally superior or inferior to adversarial systems is intellectually ineligible. It is to say that this question, while eligible as a matter of normative jurisprudence, is ineligible as a matter of legal ethics, whose norms are necessarily system-relative.

In this understanding, normative jurisprudence is the proper home of big questions about the nature of the (fully and ideally) just legal system, whereas legal ethics is the modest and specific activity of identifying the ethical norms that fit the existing practice within the presently existing legal system. A business ethics conceived along similar lines holds out the promise of dissolving the doubt that is unfortunately endemic to business ethics’s prescriptions when it is conceived as a wholly owned subsidiary of normative political philosophy. A modest, institution-relative business ethics offers the prospect of business people receiving guidance about ethical decision making in which they can have a significant degree of confidence, because doing the right thing isn’t a matter of betting on the right theoretical horse in a horse race without apparent end. A business ethics so conceived promises an intellectual and a practical service

that normative political philosophy *can't* perform. However, it asks of academic business ethicists a corresponding modesty of purpose that few of them (whom Douglas Den Uyl (1984) aptly terms “new crusaders”) seem inclined to accept.

References

- Bowie, Norman. 1999. *Business Ethics: A Kantian Perspective*. Malden, MA: Blackwell.
- Den Uyl, Douglas J. 1984. *The New Crusaders: The Corporate Social Responsibility Debate* (Studies in Social Philosophy & Policy, No. 5). Edison, NJ: Transaction Publishers.
- Donaldson, Tom. 1982. *Corporations and Morality*. Englewood Cliffs, NJ: Prentice Hall.
- Donaldson, Tom. 1999. “Making Stakeholder Theory Whole,” *Academy of Management Review*, 24: 237–241.
- Donaldson, Tom, and Tom Dunfee. 1994. “Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory.” *Academy of Management Review*, 19: 254–271.
- Donaldson, Tom, and Tom Dunfee. 1999a. “Social Contract Approaches to Business Ethics: Bridging the ‘Is-Ought’ Gap.” In *A Companion to Business Ethics*, ed. Robert E. Frederick, 38–64. London: Blackwell.
- Donaldson, Tom, and Tom Dunfee. 1999b. *Ties That Bind: A Social Contract Approach to Business Ethics*. Boston: Harvard Business School Press.
- Donaldson, Tom, and Lee E. Preston. 1995. “The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications.” *Academy of Management Review*, 20: 65–91.
- Freeman, R. Edward. 1984. *Strategic Management: A Stakeholder Approach*. Boston: Pitman.
- Freeman, R. Edward, and William M. Evan. 1990. “Corporate Governance: A Stakeholder Interpretation.” *Journal of Behavioral Economics*, 19(4): 337–359.
- Jones, Thomas M., and Andrew C. Wicks. 1999. “Convergent Stakeholder Theory.” *Academy of Management Review*, 24: 206–221.
- Maitland, Ian. 2002. “Priceless Goods: How Should Life-Saving Drugs Be Priced?” *Business Ethics Quarterly*, 12: 451–480.

- Marcoux, Alexei M. 2006. "The Concept of Business in Business Ethics." *Journal of Private Enterprise*, 21(2): 50–67.
- Marcoux, Alexei M. 2009. "Business-Focused Business Ethics." In *Normative Theory and Business Ethics*, ed. Jeffery Smith, 17–34. Lanham, MD: Rowman & Littlefield.
- Nozick, Robert. 1974. *Anarchy, State and Utopia*. New York: Basic Books.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, MA: Belknap Press.
- Rogers, Steven. 2002. *The Entrepreneur's Guide to Finance and Business*. New York: McGraw Hill.
- Solomon, Robert. 1990. "Business Ethics." In *A Companion to Ethics*, ed. Peter Singer, 354–365. Malden, MA: Blackwell.
- van Oosterhout, J., Pursey P.M.A.R. Heugens, and Muel Kaptein. 2006. "The Internal Morality of Contracting: Advancing the Contractualist Endeavor in Business Ethics." *Academy of Management Review*, 31(3): 521–539.
- Wempe, Ben. 2008. "Contractarian Business Ethics: Credentials and Design Criteria." *Organization Studies*, 29(10): 1337–1355.
- Werhane, Patricia. 1985. *Persons, Rights, and Corporations*. Englewood Cliffs, NJ: Prentice Hall.