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Legality and Morality in Business

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1 INTRODUCTION

What is the relationship between legality and morality. Is there a need for ethics in business? This paper tries to present a theoretical overview of legality, morality and ethics and tries its application in the realm of business. Not everyone agrees that business should be considered with ethics or morality. Finlay²² describes two fundamentally different views of businesses. One view is that the “sole purpose of a profit-seeking firm is to seek profit for the shareholders”, and if one decides to follow this view, enterprises should maybe just follow laws or even only generally accepted business practices in their operations, according to the slogan, “When in Rome, do as the Romans do.” The opposite view is that businesses “also exhibit a moral entity” and consequently have to be occupied with morality while pursuing business. Adopting this view, there are many consequences for an enterprise and a whole lot of other considerations have to be taken into account then.

Following the general practice, I strongly support the second view and would like to highlight the underlying assumptions of this view. Having said this, I also strongly oppose to the perception that “business ethics” has become a pressing issue only in these days. Ethical considerations may have reached the focus of the public finally, but pressing ethical issues in business occurred as early as in the times of industrialization in Europe when labourers had to work under most terrible conditions (“Manchester capitalism”). Such conditions fortunately have become a thing of the past in Europe, but we must not forget that in many areas of the world, they are still the current practice. We must keep that in mind when the term “business ethics” surges together with accounting scandals and management embezzlements, and we must not equate business ethics with corporate governance or with accounting standards. In fact, such an equation is not only dangerous because it strips down ethics to a mere accounting issue, it is at least cynical to reduce the terms ethics and morality to a purely economic issue. Morality and Ethics are terms that should apply to all aspects of our life, that is, *also* to business, but *not only* to business.

2 THEORETICAL BACKGROUND

In order to promote an understanding of legality and morality, this chapter offers insights to some theoretical works of different authors about legality, morality and ethics. This chapter shall give an overview of the terms and show that there is much more behind ethics and morality than just the answer to the question “How shall I conduct when doing business?”. This chapter starts with a definition of the terms and a short overview of Kant’s categorical imperative. It then provides an ethical framework and tries to reconcile the frameworks with various principles. It is important to understand that there is no wrong or right framework, but that each of the framework has its strengths and weaknesses. Finally, this chapter talks about legality and morality in the state, showing that modern democratic republics found can look back to ancient state theories. This may sound like a deviation from the topic, but, as we will see in chapter 4.1, its understanding is necessary in order to tackle the issue of globalization.

2.1 Definition of Legality, Morality and Ethics

The MSN Encarta¹ defines the noun *legality* in three ways, whereby the first definition suits our discussion topic and explains it as “conformity to law”. MSN Encarta then exemplifies this definition as “the state of being in accordance with the law”. This is inline with the definition of the adjective *legal* given by the Brockhaus² which defines the term as “conforming to the law”. Consequently, a person or an enterprise that operates according to the laws in the respective geography or environment, fulfils the requirements of “legality”.

Morality is also defined by the MSN Encarta³ in three ways, whereby two definitions are of interest for this paper. Morality can mean “accepted moral standards” which is explained as “standards of conduct that are accepted as right or proper” or, in the second definition given, as “how right or wrong something is” which is subsequently explained as “the rightness or wrongness of something as judged by accepted moral standards”. While this definition sounds as simple as the one of *legality*, it does not give answers from where we get the information about what is “right” or “wrong”, since there is no written “moral law” where we could look the “right behaviour”. The Stanford Encyclopaedia of Philosophy⁴ gives a very detailed definition of *morality* and distinguishes between the *descriptive definition* and the *normative definition*. In the *descriptive definition*, morality is “a code of conduct that is put forward by a society and that is used as a guide to behaviour by the members of that society”. Proponents of this school of thought (descriptive definition) deny that there is a universal normative morality⁴. However, the Stanford Encyclopaedia of Philosophy mentions that “it is not useful to adopt a definition of

morality as meaning the code of conduct accepted by the members of a society because in many large societies, not all members of the society accept the same code of conduct". An example for this is Singapore where the population is multi-ethnic and consequently exhibits different codes of conduct.

Proponents of the school of thought adhering to the *normative definition* claim "that there is a universal morality that is a code of conduct that all rational persons would put forward for governing the behaviour of all moral agents"⁴. Immanuel Kant is one of the most popular proponents of this theory. But even in this school of thought, there are differences as to whether morality requires charitable actions or not. Some argue that "morality only encourages charitable actions", but that "it is not morally required to be charitable"⁴ while others say that morality includes charity for the needy.

The term *ethics* is closely related to morality, and according to MSN Encarta⁵, *ethics* is defined as the "study of morality's effect on conduct" which is subsequently explained as "the study of moral standards and how they affect conduct". *Ethics* can also mean "code of morality" which is explained as "a system of moral principles governing the appropriate conduct for an individual or group". When this document uses the term of "business ethics", then I mean the conduct related to business resulting from an underlying morality.

In order to understand the relationship between legality and morality better, let us think of a young man who is sitting in crowded MRT travelling from Boon Lay to City Hall. An old lady enters the MRT and does not find a place to sit down. While the young man is not obliged by law to offer his place to the old lady, there is surely consensus among the readers that it would be polite if he did so. If he continues to remain seated, he fully complies to the law, but he would not exhibit a good code of conduct. This is morality in the *descriptive definition* sense.

2.2 Kant and the Categorical Imperative

While this example is very simple, things get more complicated if we question the dressing style of a young girl. In Singapore, what a young girl is supposed to wear or not can depend upon the religion of the young girl. Religious Moslems may consider it appropriate for the girl to wear a scarf, whereas members of other religions may oppose to this idea. In the *descriptive definition* sense, we would have two different moralities in this example. But if we shift our focus to the *normative definition* of morality, what would then the outcome of our decision be? According to Kant, there is only one universal normative morality. But Kant also said in his book that we must distinguish morality from moralising, and Kant refers to moralising when people want to know what the proper code of conduct would be in dressing style, sexuality, etiquette, and so on. These

issues are *not* the scope of Kant's morality, and consequently, the *normative definition* also does not give us an answer. Kant sees morality as a formal principle that does not inherently have any material rules. Morality is “the mainspring of good action”⁶.

Kant’s major legacy in ethics culminates in the *categorical imperative* which states that “no one should act unless they are willing to have the rule under which they act apply to everyone, including themselves”²². As to human interaction, Kant said that you shall “act in such a way that you treat humanity ...never simply as a means, but always at the same time as an end”²².

2.3 An Ethical Framework

Finlay classifies ethics into a framework with essentially three different principles out of which a fourth principle can be derived by a combination of two of the generic ones:

Ethical Framework	Overall Rationale
Utilitarianism	driven by <i>consequences</i>
Formalism	driven by <i>what is just and duty</i>
Human Rights	driven by <i>what is a 'right'</i>

Table 1: Ethical Frameworks²²

2.3.1 Utilitarianism

Utilitarianism is concerned with the usefulness of actions, and these actions are “judged solely on their outcomes or forecast outcomes”²². Therefore, if a person faces an ethical dilemma, that person would prepare a kind of a balance sheet and would list positive and negative items in a sort of a balance sheet. Then, this person would sum up all items and opt for the decision that brings the most positive overall result. Very often however, no outcome is positive at all, and both outcomes incur costs. In that case, the preferred choice is, of course, the outcome with the least negative overall result. An example shall exemplify this approach: An oil tanker on sea is damaged, and oil is leaking out threatening to pollute a large amount of seawater. Since the disaster has happened far away from coastal shelves, no oil-binding chemicals can be transported in sufficient amounts to the scene of the accident. In that case, the manager of the shipping company faces two decisions:

1. He lets the oil leaking from the tanker.
2. He inflames the oil.

How do our balance sheets look like? Table 2 gives an overview:

Let the oil leak				Inflame the oil			
Advantages		Disadvantages		Advantages		Disadvantages	
Name	Score	Name	Score	Name	Score	Name	Score
		pollution of seawater	-100			emission of toxic gases	-80
		Press reports	-30			press reports	-25
						Ignition costs	-1
SUM			-130	SUM			-106

Table 2: Decision Matrix in the Utilitarianism

Obviously, in this example, all outcomes bear a cost, but the approach of inflaming the oil seems to be slightly better than just letting the oil leaking out and doing nothing. Table 2, however, shows a fundamental problem of utilitarianism. How shall we translate the textual issues into a score? How high are the costs of polluting the seawater, and how high are the costs to pollute the air. And even if we could figure out the costs exactly, shall we assume the costs that we (as an enterprise) have to bear or shall we take the overall costs into consideration, that is, even the externalized costs? Furthermore, sometimes we cannot establish the costs at all. How shall we establish the costs of a destroyed painting or a human life? Obviously, in the U.S., monetary compensations for lost lives in the case of an airplane accident can be very high, while they are low in India or Bangladesh. Does that mean that Indians are “cheaper” than Americans? And even if we could precisely establish the costs for a human life, I could easily construct a real ethical dilemma by creating a situation in which an impoverished farmer of an underdeveloped country sells his liver and consequently his life to a person in a rich country that can afford to “buy” his life. The impoverished farmer may even agree to be killed, for the sake of getting money for his wife and his children that then can survive when he dies. How can we decide in that case? As we can see, a purely utilitarian view can bring us into a lot of calamities, and therefore, in my opinion, a pure utilitarian view that puts a price tag to everything is not an appropriate way to go.

2.3.2 Formalism

Kant is the major exponent of formalism, and he “objected to utilitarianism on the grounds that true moral judgments are independent of what any particular individual or group thinks or wants”²². The idea of *duty* is paramount to formalism, and duty is what one *ought* to do in order to conform to a set of ethical rules. Formalism essentially states that there is a universal moral principle, not a relative one, like in utilitarianism, and it is duty that determines whether a motive is ethical or not. Praiseworthiness of personal motives, and that includes charity, for example, is not sufficient to be considered as moral in formalism²².

Formalism can clearly answer us questions like “Should torture be allowed?” or “Do we have the right to suppress other people?”, and of course, the answer to both questions would be a resounding “No”. Nevertheless, formalism does not prevent individuals to be safe of mistake when deciding, and it may turn out to be difficult to realize what the *duty* in some cases is.

2.3.3 Human Rights

The basic idea behind the idea of human rights is that some sort of natural laws exist which take priority over any laws devised by humans²². The key figure of this school of thoughts is considered to be John Locke who also influenced the American Declaration of Independence in 1776 and the French Declaration of Human Rights in 1789²². While there is surely a broad common agreement that human rights include the right to life and to liberty, there are many different ideas about what these rights include? Finlay²² states the question of *minimum wages* and *welfare payments* as an example, and, as we know, the regulations on these issues vary broadly not only between developing and developed countries, but also even within developed countries like Germany and Singapore. Even on the question of the degree of liberty, no real worldwide consensus can be reached. Every country would claim that its citizens are free, but that view may not be shared by countries which have different political systems. So, this school of thought alone also does not help us to reach a clear-cut definition about what morality and ethical behaviour really is.

2.3.4 Proceduralism

Formalism and Human Rights have much in common and can therefore be combined to *Proceduralism*²². Kant himself states (see chapter 2.2) that one shall “act in such a way that you treat humanity ...never simply as a means, but always at the same time as an end”²² and clearly touches the issue of human rights by this assertion. Both emphasize the individual rather than the group, and both schools of thought are not concerned with consequences (like the utilitarianism) but with the question of the correct approach to an issue.

2.3.5 A Comparison of Utilitarianism and Proceduralism

Finlay gives a good comparison between utilitarianism and proceduralism in his book²², and some key points shall be highlighted here. The key difference is that utilitarianism is more concerned with the ends achieved for a group, whereas proceduralism is concerned with the procedures (motives and means) that are adopted by people in their relations to individuals²². In the extreme case, proceduralism would request an individual to a certain action even if the

outcome for the group would reach a worse outcome for the group as a whole. Finlay highlights that utilitarianism is therefore “forward looking”, “fluid”, “democratic” and suited to resolve “questions of degree” whereas proceduralism is “backward looking”, “rigid”, “authoritarian” and suited to “resolve questions of kind”²². I think that from the focus of utilitarianism on “group” and “matter of degree” and the focus of proceduralism on “individual” and “procedures”, we can infer that probably utilitarianism will be more popular in Asian societies which traditionally have focussed on the group rather than on the individual whereas continental European societies (like Germany) may relate better to formalism because they are much more individualistic and, especially in the case of Germany, procedure-based. I think that some striking examples can be found for my assumption. Even a highly sensitive issue like the “Tian’anmen incident” (or “massacre”, depending on the viewpoint) can be explained with utilitarianism by the Chinese government that valued the life of the students less than costs of an undermining of their power with a subsequent possibility nationwide chaos. The SAP enterprise software, on the other side, is a typical cultural product of Germany. In its business process modelling, it defines *processes* and *interfaces*, and the whole company then has to adhere strictly to these processes, otherwise chaos will break out. Similarly, Asian societies focus more on the consensus of the group and rely much more on personal relationships rather than on abstract principles and regulations like Western societies.

2.3.6 The principles of Benefaction, Membership and the Maximin Approach

However, Finlay also says that there is no right or wrong framework, but that both approaches are different and can be led to a common approach subsequently by applying the *principle of benefaction* to proceduralism and the *principle of membership* to utilitarianism²². The principle of benefaction says that you should make an “exemption to a rule when greater overall good or satisfaction will occur by doing so”²² and is therefore immediately comprehensible. The principle of membership implies that people should be “treated the same because the unit in which they work assumes some sort of similarity among the workforce”²².

From that, we can see that only a consideration of both utilitarianism and proceduralism can result in a reasonable ethical guideline for ethical behaviour. In order to reconcile both contradictory schools of thought, we have to apply the two principles as indicated in Finlay’s book²². A third principle to reconcile the two schools of thought has been proposed by Rawls²² and is called the *maximin approach*. It seeks to “distribute profits from an operation so as to maximize the minimum amount that anyone receives”²². This principle essentially recognizes the fact that in an organization, there must be incentives in order to stipulate desired behaviour.

However, such incentives also mean an inequality among the staff. Now, the goal is to avoid too large inequalities, but to provide sufficient individual stimuli for the workforce. The *maximin approach* now permits inequalities if they result in a gain for the poorest. In colloquial language, we could say that high payments to managers are allowed if they result in increased benefits (workplace security, salary) for the staff due to the manager's efforts. A close friend of mine once exemplified this principle very well when, commenting about the high payments of fund managers, he said that he is fine with the high payments as long as a fund manager of his funds yields a higher return for him that he himself would be able to.

2.4 Legality and Morality in the democratic Republic

Kant's categorical imperative has vast political implications if it is to be followed strictly. As Kant states that a person shall "never be used as a purpose only", it is detrimental to the human dignity to degenerate a human to a mere object in a state⁶. The simplification of human beings to mere production factors or, worse, to reproduction units for the sake of some higher political goal is therefore clearly immoral according to Kant's philosophy.

Kant demands that one should "act as in duty bound"⁶, and duties result either from laws or from virtues. In contrast to Finlay who says that legality and morality exist side by side and have an intersection²², Schachtschneider clearly states that morality includes legality and that this implies that laws have to fulfil morality⁶. Since Kant demands in the deontic formula, that a moral act shall have the capability to become a general law, Schachtschneider concludes that in order to decree moral laws, a polity (a *res publica* in the original sense) must be democratic for that everyone's idea is reflected in the law. The law can therefore claim to be a moral one and thus is included in morality. This idea is not only Schachtschneider's one, but he refers back to Cicero which stated "Est igitur ...res publica res populi, ..., sed coetus multitudinis iuris consensus et utilitatis communione societatus"⁷. Such an opinion implies that non-democratic polities cannot claim to have morality because the laws in these communities have not been a consensual effort of all people who are later affected by the law. And he also states that it is the duty of everyone to participate in the legislation, especially since the correctness of the resulting law depends on the contribution of everyone because "res publica res populi"⁶ (A public affair is a people's affair.). Surely, this condition is not fulfilled in many polities today, and it is debatable whether such ideal conditions can even be found in Europe or in the U.S. However, Schachtschneider's text can be applied to explain why the *Apartheid regime* in South Africa or a preferential policy for certain races like the *Bumiputera Policy* in Malaysia is not moral in Kant's sense, despite being legal. Similar to the observations of other authors about globalization (see chapter 3.2),

Schachtschneider sees dangers in globalization because it is a capitalistic internationalization without an institutionalized possibility of democratic legality. Still, the question is, of course, whether one wants to follow Kant's view or a Utilitarian view of morality that would not necessarily result in Schachtschneider's conclusion.

If, however, legality is a subset of morality, as Schachtschneider states, why do we need laws in the first instance if we can assume that people act more or less in accordance with morality? Freitag and Wollenschläger¹⁵ answer this question by responding that in fact, in an ideal ethical polity, it would not be necessary to have laws because everyone would act ethically. However, laws are useful because of the "narrowness of the insight of the individual" and because of the "possible human mistake" that may occur in reality¹⁵.

3 ECONOMIC CONSIDERATIONS

Which implications do the theories of chapter 2 have for businesses? What are situations that typically encounter and how shall we apply the theories in the realm of entrepreneurial activity?

The difficulties which we encounter in the business world, have been very well shown by Bertolt Brecht in his theatre piece “Der gute Mensch von Sezuan” (The Good Person of Sezuan)⁸. Brecht describes the fictive story of three Gods that come to Earth in order to find at least one thoroughly good person. Finally, they encounter the good-hearted, but penniless prostitute Shen Te. Shen Te is kind-hearted and wants to help everyone, but finally always ends up being abused by everyone. In order to resolve the situation, she has to transform herself into the greedy cousin Shui Ta who resolves her problems by the use of brute force. When the Gods finally arrest Shui Ta and accuse him to have murdered the disappeared Shen Te, it turns out that Shen Te and Shui Ta are in fact the same person. Brecht’s piece shows the problem that kind-heartedness alone cannot run a profitable business and that highly profitable businesses often run on questionable business practices.

This chapter therefore looks at some economic theories that influence the business world and how some of these theories play a significant role in a globalized world. A drastic example of uncontrolled power concludes this chapter and warns us of what can happen when moral issues do not play a role at all.

3.1 Three important Economic Theories

The economic theories do not directly relate to the topic of legality and morality. As we will see, however, their understanding is useful in the question as to what globalization means and to which extent businesses are affected by moral issues in a globalized economy.

3.1.1 Adam Smith and the “Invisible Hand”

In his 1776 book “An Inquiry into the Nature and Causes of the Wealth of Nations”, Adam Smith, explains his *Theory of the Free Market* and postulates that supply and demand balance themselves in a way leading to an optimal outcome for all. He literally says:

“He generally neither intends to promote the public interest, nor knows how much he is promoting it...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 society that it was no part of his intention. By pursuing his own

interest he frequently promotes that of the society more effectually than when he really intends to promote it.”

Smith calls this automatic good outcome the “invisible hand”, and according to his theory, the markets need no further intervention.

According to Simon-Schaefer⁹, Smith wants to show that the society can function purely economically, even without the existence of “moral feelings”. It is not our bonhomie that leads us to develop and introduce new and suitable products in the markets, but it is purely our own economical interest. Smith postulates that exactly this behaviour leads to a maximization of wealth for producers and consumers in the end. He calls this effect the “invisible hand”.

According to Smith, the state has only three tasks. It shall protect “the society from the violence and invasion of other independent societies” (defence), it shall protect “as far as possible, every member of the society from the injustice or oppression of every other member of it” (guarantee of freedom) and it has the “duty of erecting and maintaining certain public works and certain public institutions, which can never be for the interest of any individual, or small number of individuals”¹⁰ (public schools, telephone network, etc.).

3.1.2 Karl Marx’ Critique of the Political Economy

In this book “Das Kapital”¹¹ (The Capital), Karl Marx disagrees with the liberal economic theorists like Smith and states that the market feedback mechanisms are not fast enough and that producers have the inherent tendency to overestimate the demand which leads to an oversupply in the markets. The equilibrium of the market, as he says, can only be restored by a breakdown of the market, a development that finally leads to “mass impoverishment”¹². Marx sees the oscillations of the economy (boom vs. recession) as inherent to the economy and not as caused by external events. The only possibility to overcome this is the “revolution of the proletariat”¹¹ which then installs an economic order in which the demand is examined first and then, the corresponding numbers are produced. The whole economy in such a system would be planned.

3.1.3 Maynard Keynes’ Deficit Spending

Keynes¹³ also recognizes the economic cycles and explains them like this: At the end of a recession, the interest rates are low, and capital can be borrowed cheaply, and therefore, producers borrow money and invest. This results in an increased production, the boom phase. At the height of the boom phase, however, interest rates have gone up and consequently, borrowing money has become expensive. Prices rise. Consequently the consumption and therefore, the production shrinks and the boom phase is entering into the recession phase. During the recession

phase, the interest rates decrease and at the end of the recession phase, producers have enough confidence to invest into the market again¹². Keynes sees it as the task of the state to spend money on infrastructure projects during a recession phase with borrowed money (“deficit spending”) and to repay the debts from tax income during the boom phase later. By this, the state could counteract the economic cycles and stabilize the economy.

3.2 *Business in a Globalized World*

A large amount of economic and social literature exists about the topic *globalization*, and the reader may already have an understanding of the term. But what does globalization involve in the economic and social realm that has such conflict potential? According to currently taught economic theories in business schools, an increase of world trade and a distribution of company resources over the globe should lead to an overall increase of wealth. Therefore, the initial assumption should be that globalization is a good development. Nevertheless, according to von Weizsäcker, we can observe that wealth is more and more unequally distributed¹⁴, even in developed countries. Does this have to be of concern?

Von Hayek, one of the supporters of Neo-Liberalism, claims that the idea of the social balance in a society is not only an illusion but a dangerous demagoguery of people who have their own hidden agenda⁹. This statement is inline with Smith’s idea of the *invisible hand* (hence “neo-liberalism”). According to Sistermann, Hayek views the market economy as a place in which everyone can win by luck and skill, and that everyone is responsible for his own success or failure. However, Sistermann strongly opposes to this view claiming that it leads to a world of “social-Darwinism” in which the strongest wins which cannot be *ultima ratio* of mankind. He states that the task of politics is to create a trade-off between the purely economic rules of a free economy and the desire to create a society which counterbalances the evolving harsh economic differences⁹. Freitag and Wollenschläger¹⁵ state the same when they claim that “the economic order in a social constitutional state is at the disposition of the people” and that “the social, the social principle and the social fairness is paramount”¹⁵. Von Weizsäcker, too, concludes that the market dynamics would lead to an undesirable inequality if there were no moral, no religion and no inner politics in the democracy¹⁴. I personally agree with von Weizsäcker when he further elaborates that during the times of the Cold War, the market economy was restraining itself from its dynamics in order not to lose out credibility to the then existing socialist model in the communist states¹⁴, resulting in a contest of ideologies. He says that market economy and democracy were to a large part in the same geographic areas. This is different now, and economies globalize at a much faster speed than transnational polities do. The increasing

competition for increasing returns on investments forces companies to prioritize cost-cutting measures higher than the preservation of a societal consensus which ultimately results in a decrease of environmental and social standards¹⁴. In fact, we can observe that like the examples in chapter 4 demonstrate. Von Weizsäcker states that this development is even accelerated because in globalized markets, politics can no longer decree effective legislation in order to check companies. Therefore, as von Weizsäcker argues, it is necessary to strengthen supranational constructs like the United Nations or the European Union (EU) in order to secure minimum environmental and social standards. But, as he points out, the current development is not encouraging, and supranational activity is mostly centred around economic collaboration rather than political one¹⁴. Schachtschneider presents a similar argumentation claiming that “enterprises have a serving task in the republic”⁶. He says that in a globalized economy, foreign investors cannot be expected to have interests other than a pure focus on the return on investment because they are lacking affiliation to the polity in which they are operating. He concludes that market and competition are only sustainable when they are regulated by a state which regulates issues like social fairness. Therefore, regional unions of states must be accompanied by an economic, social and currency union like the EU so that legislation extends to all operative areas of a globalized enterprise. Individual morality remains a necessary postulate of entrepreneurial activity, he claims. If one follows his argumentation, this conclusion has two impacts. First of all, it shows that purely economic regional unions like ASEAN are not sufficient and should be modified so that they include a currency and social union, as done in the EU. Secondly, facing the fact that a world union is not possible, managers have to be trained in ethics and morality and businesses have to be encouraged to adopt a clear charter of morality which they pursue in all countries where they are active.

Similarly, Leisinger¹⁶ argues that in globalized competitive markets, a single company is confronted with other enterprises and competitors that have far less social and environmental standards and cites the example of salaries in developing countries¹⁶. While economists usually explain salaries as the market price of labour that is defined between the workers supplying labour and the enterprises buying labour, Leisinger claims that in developing countries, this mechanism does not work properly because of other effects like large migrations into the cities and the explosion of the population in these countries. The resulting market price may be “legal”, as he continues, but it is not “legitimate”. This refers to the fact that the resulting conditions may fulfil legal requirements, but are by no means the expression of morality. Leisinger states that entrepreneurial initiatives have to be demanded to the limit of what is technically and economically feasible, a strong counterargument to liberal and neo-liberal economic theorists.

But globalization is not only about endangered social and environmental standards. It can also mean an irresponsible export of culture. Bujo¹⁷ has examined the effects of mass media on Central African culture and concludes that modern mass media divulges a form of culture that is detrimental to the culture of Central Africa because of its unidirectional communication. Bujo highlights that these cultures did not have a written language before, but existed on a spoken language only and that the daily bidirectional communication or the communication in a group, the so-called *palaver*, had an important function in shaping the society. This function is destroyed by the implementation of mass media. Similar statements have been done by Asian state leaders that invoke a preservation of “Asian values” although, often enough, there may be a hidden agenda attached to such statements^{18,19}.

3.3 The Stakeholder Theory

In their Stakeholder Theory of the Corporation²⁰, Donaldson and Preston essentially argue that an enterprise must not only take into account its shareholders, but also its other stakeholders like customers, suppliers, society, staff, government, etc. when considering the implications of its entrepreneurial activity. This theory opposes to the theory of the Shareholder Value which states that the sole maxim of entrepreneurial activity is to generate a sustainable growth of the shareholders' wealth. With their theory, Donaldson and Petersen actually support what Freitag and Wollenschläger and Sistermann state about the purpose of an enterprise.

3.4 The Dangers of Lacking Control: Masks and Unlimited Power

Finlay describes *business ethics* as “concerned with the application of ethics in business contexts”²². But is there a need for business ethics as such? Bender²¹ has made an interesting statement by claiming that a fragmented ethics like a *business ethics* is only a “feeble attempt” which would not “provide the means for managing ethical predicaments faces in many areas”. Instead of that, she claims that we “must give the ethical principles of honesty, integrity, and justice jurisdiction over every area of our lives, over every sector of society”²¹. This is a remarkable statement because it actually says that there is no usage in teaching *business ethics* if the individual has not internalized ethics in all aspects of life before. How does she arrive at this conclusion. In her paper²¹, she explains that unethical behaviour is the result of a “mask” that people are wearing in a certain function. The “mask” enables people to act immorally, for the personal benefit or for the benefit of an organization without having to bear the responsibility for the deeds because the individual can hide behind the mask. Such a mask can be anything from a political system that “legitimizes” certain actions to an executive board that takes a delicate

decision and in which individuals can “hide” behind the group. We can find substantial evidence for this theory. Finlay²² points out that groups often make decisions that pose higher risk than individuals do on their own and explains this behaviour with the “assumption of protection by size of group” and the “diffusion of blame” which clearly points into the same direction as to what Bender says. In its seminal “Stanford Prison Experiment” in 1971²³, Zimbardo²⁴ of the University of Stanford divided a group of students in prisoners and guards, and the guards were empowered to do anything that they want in order to discipline the prisoners. The shocking result was a spiral of violence that the guards were exercising on the prisoners. The guards could hide behind of a mask which was their task, the task to discipline the prisoners. This task allowed them legally to do anything they wanted in order to reach their goal. Similar developments can occur in other situations. Bender names the goal of “profit” in enterprises or the goal of the “good of the nation” in politics as masks behind which individuals can hide and operate in an unethical manner. She sees the reason for that in the human desire to act unethically (for the sake of the desired outcome) “while avoiding guilt and maintaining ethical integrity”. Consequently, she argues in favour of a general education in ethics rather than a segmented ethics like *business ethics*²¹.

I personally think that we need both *ethics* and *business ethics*. In my opinion, people have to be educated in general ethics, but, besides that, I see a need to train ethical decisions in the realm of business and to confront executives with sets of cases that show what ethics in business means. This could help executives when they face situations as mentioned in chapter 4.

4 LEGALITY AND MORALITY IN BUSINESS

4.1 The Importance of Legality and Morality

There is surely a consensus that companies should adhere to existing laws if they do not want to take a chance of being punished in the polity where they operate. But is it sufficient for a company to simply adhere to the laws in all countries where it operates? Fulfilling the laws means that the enterprise would fully comply to legality. But from what has been reflected so far, this is not sufficient, and enterprises should additionally strive for morality rather than just for legality. But what are the benefits of striving for morality? Does that not just add additional costs to the enterprise or even turn certain operations completely unprofitable? Leisinger¹⁶ answers this question and gives four reasons for enterprises to strive for morality:

1. *Decline in the friction costs with the society:* These costs have to be borne when pressure groups highlight legal, but unethical behaviour of companies in public, resulting in a loss of prestige of the company. There are many examples which can support this point. Shell and the Brent Spar debacle is widely known. Initially, Shell wanted to inundate the discarded oil rig and actually had the permission from the Norwegian government to do so. However, Greenpeace brought this idea to the attention of the public claiming that remains of oil and chemicals could pollute the North Sea and that the oil rig should be dismantled at land. Shell initially did not change the plans, and the irritation of the public grew out to a boycott and severe aggression towards Shell in Germany until the company finally gave in.

Nestlé is another classic example of a company that initially did not realize the disaster it was heading for. Nestlé was promoting an infant formula in Africa, when in 1974, a Swiss political organization published a press report claiming that “Nestlé kills babies”²⁵. The underlying problem was that Nestlé’s infant formula in Africa was often used in non-optimal hygienic conditions and with contaminated water since purified drinking water is not everywhere available in Africa. In the consequence, this led to diseases among babies and casualties. The political organization accused Nestlé of neglecting this fact and not highlighting the dangers of the infant formula, of aggressive marketing tactics to encourage women to switch from breastfeeding to the usage of infant formula, and of the failure to emphasize the importance of breastfeeding for the development of babies. In response to the article, Nestlé sued the organization and won the libel suit. However, this only led to a mounting press activity from pressure groups,

and soon, Nestlé faced a boycott in 1977 that culminated in Nestlé signing a joint statement with the International Nestlé Boycott Committee on January 24, 1984²⁵. Despite this agreement, action against Nestlé continued and was even subject to WHO discussions in 1986. In consequence, Nestlé's reputation has suffered from this incident. It shows that if an organization does not consider morality in his business and even aggravates the situation by trying to hammer down protests from pressure groups, this can build up to severe retaliation from consumers and ultimately affect the bottom line of a company.

The same had happened to Nike²⁶ which had subcontracted manufacturing in developing countries like Vietnam and China. When first reports in the press were launched in the early 1990s depicting "alleged humiliation and intimidation, and physical abuse of workers" in the factories of Nike's subcontractors, the reaction of the company was simply to state that these businesses are not their concern because they just buy from them. This arrogant reaction just stipulated an ever increasing amount of negative press about Nike although the company had introduced a code of conduct in 1992. Only in 1998, the company decided to change its strategy and hired an ethics manager. Nike also started to enforce the code of conduct on the subcontractors²⁶. But then, it was already too late, and the public opinion could not be soothed. Nike had become the *bad boy* and every action was seen as a lame excuse by the company to bow down to public pressure. Although in the Nike case, business continued to grow over all the years, this example shows how dangerous it can be for a company to ignore morality in business. A bad image can decrease brand value in an instant.

2. *Employee motivation*: Such critic of pressure groups can lead to a severe loss of employee morale, and employees might lose pride in their company undermining identification with the corporate goals and visions. Employees are one of the most valuable factors in a company, and as the Nike case shows²⁶, U.S. employees were increasingly questioned by the peers, friends and family members about the business practices at Nike, surely an embarrassing situation for many of them.
3. *Entrepreneurial liberty*: This argument may sound strange at first, but an increase in such "yet legal but unethical" incidents may prompt legislators to subsequently implement more and more laws resulting in a loss of leeway for all enterprises and finally lead to more bureaucracy. A good example is the power supply industry in Germany. Currently, about 34% of the electricity generation in Germany results from nuclear power stations, and technically, German nuclear power stations belong to the safest in the world and are

able to generate electricity at reasonable costs. However, due to the inherent (improbable, but existing) risks in the technology and to the unresolved issue of nuclear fuel reprocessing and the necessary final storage of the resulting radioactive nuclear waste, there had been a growing discontent in the public, and the perceived risk of nuclear power generation was high among the German population. But the industry kept on to their line that nuclear power was safe and that the problems could be solved, basically ignoring the public opinion and the mounting resistance in the population. This is especially sad because some industry members like Siemens had engaged in the development of a new generation of coal and fuel fired power stations based on the promising *gas and steam process*²⁷. Finally, after the 1998 elections in Germany, the newly voted coalition between the Socialdemocrats and the Greens opted for a gradual nuclear-power phase-out, to the dismay of the industry. Clearly, if the industry had provided a different solution in time, the law could have been avoided.

4. *Competitive advantage*: Ethical companies will be preferred by informed customers. In developed countries, where material needs are fulfilled so far, consumers concentrate more and more on immaterial issues, and ethical behaviour will be more important.

Increasingly, companies may also be sued in their (developed) home countries for legal violations that they committed abroad as Freitag and Wollenschläger report¹⁵. That shows that companies are more and more scrutinized by the informed public and legislators and therefore should at least enact a binding code of conduct for their executives.

Based on the previous chapters on legality and morality, I therefore propose the procedure shown in Figure 1 which should be adopted by companies. There are some important remarks concerning the procedural model in Figure 1. When the model recommends a set-up and implementation of moral guidelines, this in itself implies a substantial amount of work, ideally with a merger of the two major ethical frameworks, utilitarianism and proceduralism as outlined by Finlay²² and described in chapter 2.3.6.

The model distinguishes essentially three major cases whose specific properties are highlighted in the following sub-chapters.

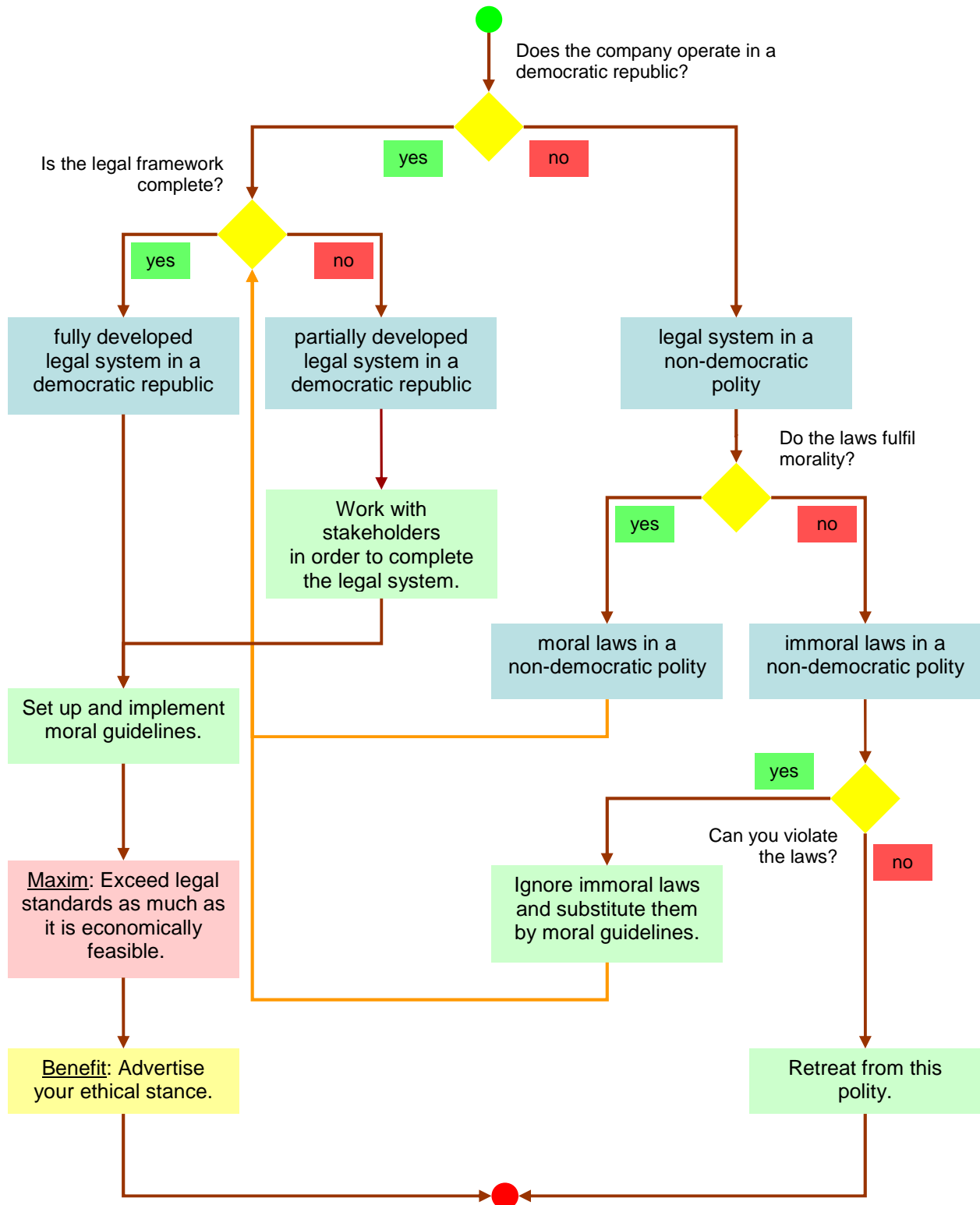


Figure 1: Proposed Procedure for Moral Enterprises

4.1.1 Fully developed legal system in a democratic republic

If a company operates in a fully developed legal system in a democratic republic, we can assume that the laws in this polity fulfil morality according to Kant's categorical imperative. Therefore, we can assume that legality in this case is a subset of morality as postulated by Schachtschneider⁶. *Fully developed* also means that the law covers all aspects that are also covered in other countries, and that implies that there are laws governing emission of pollutants, labour law, social security, etc. So far, there is no statement as to what extent pollutant may be emitted or as to which degree social security exists, and obviously, this can vary from country to country. In such a case, a moral enterprise should set up moral guidelines, that is, a kind of a framework that is valid in the whole organization and bind all employees to this framework. This effort, the establishment of a "moral climate within the organisation" must originate from senior management, it is a clear top down task²². The maxim must be that a moral enterprise must exceed pure legality and act according to moral principles *even if it foregoes profits*¹⁵. Is this unrealistic? I think that the maxim must be to head in the direction outlines by Freitag and Wollenschläger¹⁵, but we also have to realize that if no profit can be made, nobody will set up an enterprise. This is an appreciation of values between the *desirable* and the *affordable*⁹, a classical dilemma of politics. While one enterprise alone cannot achieve everything, it should strive to this goal in the realm of what it can do. As it was mentioned before, the guidance by moral principles is surely a characteristic that enterprises can use as a strong brand management tool in order to win appreciation by stakeholders. This positive effect is a by-product of moral behaviour and an enterprise should use it. However, this useful by-product must not become the means of morality because then, this approach is no longer moral in Kant's sense.

4.1.2 Partially developed legal system in a democratic republic

A legal system in a democratic republic can also be partially developed if important laws are missing. We could imagine a country that does not have a law on the emission of sulphur dioxide from industrial facilities but has laws on other pollutants. In that case, a moral enterprise should lobby stakeholders and legislators in order to complete the legal framework. The underlying assumption is that a moral enterprise which knows that certain activities have negative side-effects cannot just make use of a lacking or incomplete legal framework and ignore the negative side-effects, but it must behave as if a complete legal framework was enacted and strive for the best possible outcome¹⁵. We must bear in mind that at times, enterprises have more technical know-how in their domain than governments can have, due to ongoing research in enterprises.

At the same time, however, the incomplete legal framework will put moral enterprises into a disadvantage compared to immoral enterprises that will effectively make use of the incomplete legal framework. Therefore, a moral enterprise has to lobby legislators and other stakeholders for a completion of the legal framework so that legal certainty is established. As mentioned in chapter 4.1.1, the moral enterprise can make use of its efforts in its public relations (PR) and explain why it thinks that the legal framework must be completed. Sometimes, governments do not like enterprises to interfere in domestic politics, however, and in such cases, the enterprise must re-phrase its PR efforts to something like “We employ the stringent XYZ regulations in our business model and exceed domestic environmental (or social) standards.”

Sometimes, there is not even a law concerning specific aspects in any country of the world. We could imagine a case where an enterprise discovers a negative effect of a chemical that has not yet been reflected in any law worldwide, because this knowledge has just been found within the company. In that case, a moral enterprise *must* inform legislators and eventually the public of the issue and should strive for legally binding regulations in that issue.

4.1.3 Legal system in a polity other than a democratic republic

This case divides up in two interesting sub-cases. Schachtschneider states that morality in a democratic republic includes legality⁶ because laws are ideally the effort of the whole polity, according to Cicero’s “res publica res populi”⁷. If a polity is not a democratic republic, then, legality is not the effort of the whole community and consequently not necessarily moral. However, we could imagine an autocratic system in which the state leader in fact acts according to the will of the people, although in reality, we rarely encounter such polities. If an enterprise encounters such a lucky situation, it may continue as in the case of a democratic republic like shown in Figure 1. We must bear in mind that the examination, whether laws are moral or not, *must not* be limited to certain subsets of legality. It is not moral if a chemical company operates in an authoritarian state that has the same environmental laws than a developed democratic republic, but that discriminates people based on their skin colour. In that case, the autocratic polity does not fulfil the characteristic “moral laws” at all. Even so-called democracies can fail in this aspect. When the black (now called: “Afro-American”) population in the U.S. was not granted full civil rights even in the early 20th century, we cannot call the USA a democratic republic in Schachtschneider’s sense although the Americans may probably see that in a different way. During the Apartheid system, South Africa was not a democratic republic, nor is currently Malaysia with her racial preference of Malays a democratic republic in Schachtschneider’s sense. Therefore, the simple path leading from the rectangle “moral laws in a non-democratic polity” to

the left part of the graph in Figure 1 does not apply in that case, and a moral enterprise must continue to question whether it can, if necessary, *break the laws* in order to fulfil moral principles in that country. At first, this may sound strange, but if we carefully think through it, the question makes sense. In countries like China or Myanmar, enterprises can resort to forced labour in order to produce at low costs. In South Africa, an enterprise could be forced to employ only white people or to segregate white and black people. In Arabic countries, a company may be forced to grant less rights to women because of “religious traditions”. These are severe impacts, and a company does not only make itself to an accomplice of an immoral polity, but it can also face severe negative press in the home markets that can destroy any business literally over night. In the case of South Africa, U.S. businesses that were acting in South Africa, jointly decided to break the law, and the South African government could do nothing because the only possibility would have been to expel all U.S. businesses resulting in a severe damage to the South African economy. But such concerted efforts are in fact rare. Nevertheless, the question “Can you violate the laws?” is clearly a valid one if we consider this background. The answer can then be very different. If a company can break the law, it should and substitute immoral laws by moral principles and guidelines. If a company cannot violate the law because it must fear retaliation or severe consequences, then it *must retreat* from the respective market if it intends to be moral. And in fact we see that some enterprises do not engage in certain markets, Myanmar is such an example, and China has been avoided by some companies directly after the “Tian’anmen incident”.

4.2 Examples of Moral Guidelines for Enterprises

How shall a moral enterprise set up rules for its business? Freitag and Wollenschläger¹⁵ propose the following guidelines for a globalized economy:

1. The company shall respect international laws like Human Rights.
2. The company shall follow internationally agreed minimum standards of ILO¹ or WHO² even if they are not legally binding.
3. Respect commitments to self-restraints from certain practices.

However, this rule set is very vague and generic and cannot be used efficiently in answering the daily decisions that executives have to do. In my opinion, a better rule set is given by the following rule set which results from Webster²⁸ and is in accordance with Sethi²⁹:

1. A company should not do intentional harm.

¹ ILO = International Labour Organization, see <http://www.ilo.org>

² WHO = World Health Organization, see <http://www.who.org>

2. A company should produce more good than harm for the host country.
3. A company should contribute by its activity to the host country's development.
4. A company should respect the human rights of its employees.
5. To the extent that the local culture does not violate ethical norms, a company should respect the local culture and work with and not against it.
6. A company should pay its fair share of taxes.
7. A company should cooperate with the local government in developing and enforcing just background institutions.

In fact, many enterprises have already set up ethical guidelines typically named something like "Code of Ethics" for their employees and have even hired an "Ethics Manager" who tries to align the business with ethical considerations.

4.3 A Need for Education and Training

Schachtschneider states that "morality requires education", and that "moral is a necessity of life, but does not belong to the personality of each man"⁶. Similarly, Bender says that "comprehensive ethics must guide every aspect of our life"²¹ and warns of the attempt to substitute legality for morality, for "legality does not provide the internal impelling forces necessary as the basis for ethics" and only "imposes legal restrictions, not ethical imperatives"²¹. She continues to emphasize that we "must give the ethical principles of honesty, integrity, and justice jurisdiction over every area of our lives, over every sector of society"²¹. But humans are not ethical beings by birth, and so ethics has to be trained. An education in ethics can have different facets, and one may be ethics instruction in school. Sometimes, religious instruction in school is thought to be a suitable replacement for ethics instruction, but in my opinion, religious instruction is not necessarily the same. While in my school, we had ethics as part of the religious instruction, I can imagine that in other schools or countries, religious instruction is focussed more on the proper code of conduct or on a religious rule set that, as we can see in some Arabic countries, does not necessarily correspond to morality in Kant's or Schachtschneider's sense.

Although morality and ethics is a task that should concern the whole society, we see little reflections of this topic in education, press and literature. Consequently, enterprises have to train their staff or at least the executives themselves or with the help of coaches in this field of expertise. This is not an easy task and needs careful planning and implementation, and enterprises face three challenges. First, skilled trainers in ethics may not be widely available, and it is probably not a meaningful task just to copy the code of ethics of other enterprises, because "ethics must be an internalized ethics of consensus"²¹ and therefore requires understanding. The

second challenge is to overcome the currently existing and increasingly applied incentive-based system, because, as Bender says, “we have substituted incentives for imperatives”²¹. This means that the more we get used to an incentive-based system that basically teaches us what to do and what not to do, the more we distance ourselves from imperatives and reflection about what is right and what is wrong. We get more and more used to the fact that the right behaviour pays off in money and the wrong behaviour withholds money, and this may lead to a “breakdown of ethics”²¹. The third challenge is that a multinational enterprise usually operates in different cultures, and as I have outlined in chapter 2.3.5, Asian societies will probably find themselves more attracted by utilitarianism and European societies will experience more affinity with proceduralism. Consequently, a trainer in ethics must keep that in mind when he tries to reconcile these two ethical frameworks as described in chapter 2.3.6. Asia has a special challenge in the fact that Asians traditionally value personal relationships higher than following abstract principles which may require additional considerations in ethical training.

Ethical training must be performed in an enterprise as long as it is not consistently taught already outside the business world, because by acting as an entrepreneur, humans have the capability to create more wealth and more damage as compared to an individual. Besides general ethics, I am convinced that we need some kind of sustaining training that is then adapted to the special needs in business. Case studies and group work may provide a good means of training for such seminars, so that one day, the phrase “The greatest sin of our generation is being caught for a crime, not committing the crime itself”²¹ finally loses its validity.

4.4 Some Examples

The following examples highlight some exemplary issues in the field of legality and morality. Sometimes, it is difficult to state who is at fault, and in some cases, the decision is still open.

4.4.1 Electronic Waste Exports to Guiyu

A mixture of a lacking complete framework, not enacted international regulations and weak law enforcement has led to a thriving export of electronic waste from the U.S. to China as documented by the Basel Action Network (BAN) and the Silicon Valley Toxics Coalition (SVIC)³⁰. The primary reason is the large amount of old electronic devices and computers that contain numerous composite materials whose



Figure 2: Burning of Plastics in Guiyu

recycling is not only costly, but for some materials not even fully developed. This type of waste is, however, toxic because many composite materials have lots of toxic ingredients, and consequently, electronic devices cannot be disposed of in normal household waste but are collected separately. In theory, the collected waste should be recycled, but often enough, the waste is exported to developing countries “in order to be recycled there” because of lower labour costs, etc. At least, that is the usual justification of developed countries when they are accused of exporting waste to developing countries. In the developing countries, however, this waste is often just dumped somewhere or unprofessionally recycled, both with devastating effects on the environment and on the health of the affected workers like the Guiyu case shows³⁰. In the Guiyu case, electronic waste is exported from the U.S. via different routes to Guangzhou and from there transported to Guiyu. Small villages there have “specialized” in the recycling of metals by employing simple, unprofessional and dangerous methods poisoning the environment and the inhabitants themselves. Workers are handling dangerous substances like acid without adequate protection, pour residuals into rivers and burn circuit boards unleashing toxic materials like polybrominated biphenyls (PBB) or polybrominated diphenylethers (PBDE) that are used as flame inhibitors in the production of circuit boards.



Figure 3: Acid Worker in Guiyu

The report states that exporting waste is currently legal from the U.S. whereas countries like Europe already have banned the exports of hazardous waste. So from the viewpoint of the U.S., no laws are violated. The same claim will typically be made by the waste traders that participate in this business and transport the waste from the U.S. sometimes straight, sometimes via dubious channels, to China. What there happens, is not their business, they will claim. Of course, the whole

operation in Guiyu also does not conform to Chinese laws, and the government has cracked down already on operations in Guiyu. But the small village in Guangdong province is far away from Beijing, and local sovereigns who sometimes operate with organized gangs, make money out of the illegal reprocessing and dumping in Guiyu. The gangs, too, are not interested in the welfare of the workers, nor do they care about the environment in Guiyu. They just care about the money they can make by taking in the waste from international waste traders and dumping it in some remote Chinese village.

Now, who is to blame in that case? Are the culprits just the Chinese mafia that violates laws and dumps and processes toxic waste illegally? Or should be waste traders show more “moral

responsibility”? Or should the U.S. not export their toxic waste to other countries in the first place? Or shall we blame the IT and electronics industry because their aggressive marketing leads consumers to replace their electronic devices more and more frequently? Or are the manufacturers at fault because they produce devices with such deadly ingredients? As we see, it is not easy to distribute “guilt”, and this shows that ethics must be a constant companion in our (business) life, starting with R&D and product design, going via manufacturing, marketing, sales until the fact that someone should think about how all the products get disposed of finally. But so far, the electronics industry’s efforts in this area have been miserable, and the legislator has had to come up with laws demanding that toxic ingredients be reduced to what is technically feasible over a grace period of some years, as the EU Directive 2002/95/EC³¹ points out. Similarly, the collection of old electronic devices and the recycling had to be enforced by the EU legislation³² on the industry because the latter did not come up with suitable ideas. That’s a classic example of the *entrepreneurial liberty* issue as outlined in chapter 4.1.

4.4.2 The Cambodia Beer Girl

The case of the *Cambodia Beer Girl*³³ is about girls that promote beer in Cambodia’s restaurants. In Cambodia, as in many other Asian countries like Singapore or China, it is common in restaurants to have scantily dressed girls that try to animate customers to drink beer because the profit of restaurants is higher by selling beer than by selling soft drinks. The girls are usually not employees of the respective restaurant, but mostly work for the beer distributor or the brewery. The girls’ task is to actively promote beer of the respective brand and sometimes drink a glass of beer with the customers or sit down at the table of the customers and engage in small talk. This can be



Figure 4: Waitress and 'Beer Girl' in a restaurant in Suzhou (China)

observed in many food courts in Singapore, too, at night. Sometimes, however, when customers get drunken, they grope the girls or make indecent offers to the girls. The *Cambodia Beer Girl* case³³ describes what Tain Aeng experienced in her “career” as beer girl. Originated from a poor rice farmer family, she left home at 20 and came to Phnom Penh in order to work for a family. After being raped by the family head’s son one day, she left her job and hooked up with beer distributor, earning US\$ 40 per month. One night, a group of men abducted her and one of them raped her. The restaurant owner where Aeng had worked, blamed her for the incident, and she

got no help. Women's rights are not highly prioritized in Cambodia, which is a country shaped by decades of excessive violence and war. Disoriented, Aeng slowly slid into the prostitution business going out with customers after work earning additional money between US\$ 10 to US\$ 100 per night. Meanwhile, Aeng has been tested HIV positive, and the first signs of AIDS have appeared. Her boyfriend whom she later married is also HIV positive. Marshall and Stecklow³³ who interviewed both the distributor and the involved breweries about their view of the matter have found astonishingly ignorant views of the matter. The foreign breweries simply deny any responsibility and claim that they do not have any influence on the distribution itself. They state that they cannot change the "morality of these countries"³³ or that their relationship with the distributor is "basically that of a seller"³³. The distributors say that they cannot force the girls not to go out with the customers and that it's their own responsibility. They also play down sexual assaults on the girls and deny the existence of AIDS among the girls. Clearly, a human life does not count much in Cambodia.

What can we learn from this case? It is very similar to the Nike case mentioned in chapter 4.1 with the difference that here, the downstream channel is affected and not the upstream channel.



Figure 5: Cambodia: Decades of war have left behind a ruined country

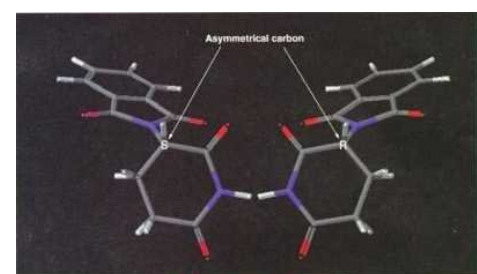
The brewery simply ignores that it is responsible for the application of its products as the arms industry claims to have no responsibility of the

usage of weapons by individuals. The distributor simply does not care about its employees, and probably, he sees them as replaceable anyway. This is quite a cynic view, but unfortunately not rare, as I could witness myself often enough in Asia.

While both the brewery and the distributor act according to the law, their behaviour does not exhibit any morality, but is purely profit-oriented. That case is therefore a precise model case about how business should *exactly not* be done and shows gross lack of ethical behaviour.

4.4.3 Contergan and the Revival of Thalidomide

In Europe, the name "Contergan" brings up terrible memories of the biggest pharmaceutical disaster ever that has occurred in Germany. It was in 1956 when chemists at the pharmaceutical enterprise *Grünenthal* in Germany had developed a new substance called "K17" (N-Phthalylglutaminsäure-imid) which they later got registered



The Two Forms of Thalidomide
The S-thalidomide molecule is on the left; its mirror image, R-thalidomide is on the right. These two structures (technically called enantiomers) both have the same formula and are identical except for the pattern in which the bonds are arranged about the "asymmetrical atom". S-thalidomide causes birth defects while R-thalidomide does not.

Figure 6: The Thalidomide Formula

with the WHO under the name “thalidomide”³⁴. The substance had shown to be effective as barbiturate and calmative and had passed animal experiments and also clinical trials without showing problems or side effects. The substance was then marketed from 1st of October, 1957 on and could be purchased without medical receipt. Thalidomide was non-toxic, and therefore, it was deemed to be much safer than existing barbiturates and consequently recommended for pregnant women³⁵. Consumption of the medicament increased until in 1960/1961, 20 million tablets were sold per month. But thalidomide proved to have terrible side effects when applied



Figure 7: Contergan Victim

during pregnancy.



Figure 9: Birth Deformities

Figure 8: Contergan Package

Early in 1960, the first medical reports suspected a correlation between the application of Contergan and the sudden rise in terrible birth deformities which until then had occurred very rarely and which were attributed to radioactivity at first. Dr. Lenz was among the first physicians to suspect a correlation³⁶. He warned the manufacturer Grünenthal, but the company ignored his warnings. It was only after a press report in the “Welt am Sonntag” on 26 November 1961 that the manufacturer withdrew the medicament from the market. Until then, some 5,000-10,000 Contergan victims had been born already, of whom 2,800 survived with severe deformities. In 1968, the liability process was opened in Aachen in which the victims sued the manufacturer and the chemists of *involuntary manslaughter*. But in the course of the process, several inconsistencies occurred, and it was ended with a settlement in 1970 in which the company agreed to pay 114 million DM.

The reason for the terrible birth deformities, as known by today, is that the thalidomide molecule exists in two mirror-inverted forms as shown in Figure 6. One form has the desired calming and sedating effect, but the other form has a negative effect on cell growth and results in the terrible deformities on the fetus³⁶. The problem is that it may be possible to produce the medicament in one form only, but the human body transforms this form in its mirror-inverted form, too³⁶.

This horrible story in itself would be sufficient to discuss about legality and morality in the pharmaceutical industry, but I want to highlight a different issue.

In 1964, Dr. Sheskin in Jerusalem treated a leper that suffered from strong pains with Contergan and discovered that the skin infections meliorated after the application of the medicament³⁶. Meanwhile, tests have shown promising results in the treatment of leper, AIDS and cancer, and also a meliorating effect on autoimmune diseases³⁶, and thalidomide is admitted again in many countries as a suitable treatment for these diseases. It seems to be exactly this form of the molecule that inhibits cell growth that is used in the treatment of these diseases. However, leper is a disease that occurs mostly in developing countries and many of the affected patients are illiterate and poor. Despite the advice of the physicians that pregnancy must be avoided during the treatment phase, it is reported that in Brazil, already 500 “new Contergan children” have been born³⁶. One must also consider that some of the patients may sell of the tablets that they receive for treatment to other people for money, and the recipients of the thalidomide medicament who may take it for whatever reason, may not know of the inherent dangers. Also, contraception in these countries may not be used all the times, and women may be pregnant in the first month without really knowing it.

Now the question in this case is whether the medicament shall be allowed for treatment or not? Obviously, it can help patients, but there is the risk of terrible birth deformities. Legally, the situation is clear, the medicament has been re-admitted for the treatment of some diseases like leper or AIDS under strict indication. But can we account for the application of the medicament in terms of morality, or must the medicament never be used again? This is surely the most difficult case of the three reported ones.

4.4.4 Current Challenges

Even nowadays, we can find many examples where morality is not strictly applied and profit interest rules in disfavour of the environment or human interests. Here are some current examples from all over the world:

1. *World*: Why do we still discuss whether oil-tankers should be equipped with enforced (double) walls or not if we have clear indications that double walls decrease the risk of oil leakages and disasters? Because of the costs?
2. *Germany*: Why do we not introduce a speed limit on the highway if we have evidence that a speed limit decreases the number of lethal accidents? Because of the foregoing “fun” while driving at high speed?
3. *Singapore*: Why do we request passengers in cars to wear seat belts and allow construction workers to be seated on the cargo area of trucks without any safety measures? Because of the costs for an alternative transport?
4. *China*: Why do we not acknowledge the spread of AIDS and try to counteract? Because of “face loss” if we admit that we have underestimated the epidemic?

As we can see, there are plenty of cases that require attention, and obviously, morality is still an underdeveloped field of expertise.

5 CONCLUSION

This paper has presented different aspects focussing on legality, morality and ethics and presented some, in parts differing viewpoints. It has shown that morality is a desirable goal, yet one that brings costs along and is therefore difficult to enforce. The paper has, however, shown that morality is necessary, and that ethical education, training and application is a necessity in our daily life and consequently also and especially in business because business actions have far-reaching consequences. Therefore, our goal must be to internalize a “sense of the *ought* directed toward universal moral principles”²¹. The paper also has shown that morality in business is not as wide-spread as we may believe if we listen to company’s statement. I have deliberately abstained from touching the field of accounting scandals in order to avoid any misperception that morality equals to corporate governance. Accounting scandals may be severe crimes, but there are more pressing moral issues in the world than accounting scandals, as this paper shows.

“Ethics” and “ethical framework” have become buzz words nowadays, but we are only at the beginning of a development that may take many years and concerned efforts in order to show effects. Morality does not only include the establishment of a rule set because no rule set can be sufficient to cope with all upcoming challenges. This is evident from the examples that have been presented to the reader in this paper. Morality is a mindset and probably implies much more than we anticipate today. Maybe, we have to change our assumptions about business and about management completely if we decide to follow the path of morality rather than concealing some pressing issues with “moral guidelines” once they surface in press reports.

This paper has also shown that morality can already pay off already nowadays and that it may increasingly turn out to be a core competence to exhibit morality in business management in future. So there are valid reasons why today’s managers should get involved with that subject.

The paper has tried to give an approach in the form of a guideline for enterprises to apply morality and to reconcile morality with legality based on Kant’s categorical imperative and Schachtschneider’s view of the democratic republic. It has also shown that utilitarianism may not be sufficient to judge situations, and that proceduralism may not be practicable all the time. The paper has therefore presented three principles described by Finlay which can be used to reconcile the two contrasting ethical frameworks.

Finally, the paper has given examples and highlighted currently unresolved issues showing that morality has not yet reached many aspects of our life.

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