

Business Ethics and the Austrian Tradition in Economics

Hardy Bouillon



Routledge Frontiers of Political Economy

Business Ethics and the Austrian Tradition in Economics

Stakeholder value, corporate social responsibility and sustainability: Are these, and similar, concepts sufficiently clear for fruitful research in business ethics? What is the benchmark to prove their utility? *Business Ethics and the Austrian Tradition in Economics* is a treatise on the fundamental questions of business ethics and addresses significant shortcomings in the field. It is the result of correlating reflections on phenomena, resulting from an intersection of ethics, economics, methodology, and political and social philosophy. Sparked by the business ethicists' tendency to consider certain areas outside their field and accept others unquestioningly, this book provides answers in the tradition of Austrian Economics and, in particular, of Hayek and Popper.

Through detailed examination and reflection, this book presents the thesis that many themes in business ethics are discussed either unduly intensely, unbalanced or rarely, measured against what business ethics as a science should deliver. It does so by offering an answer to one of the most crucial questions in business ethics, namely that of justice in moral economic actions. Bouillon develops an original definition of morally just economic action in the course of three chapters, and subsequently uses it as a yardstick, from which, in Chapter 4, he reads which of the relevant concepts and topics in business ethics ask for restatement. As a side-product Bouillon discloses logical inconsistencies in prominent political philosophies, and the consequences of these inconsistencies for maldevelopments in business ethics.

Business Ethics and the Austrian Tradition in Economics illustrates and analyzes the business ethics' peculiarities particularly within German literature, providing the reader with a focus rarely found elsewhere. This book should be of interest to economics postgraduates and researchers looking at business ethics, economic theory, and social and political philosophy.

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Dedicated to the memory of Gerard Radnitzky

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Preface

This book was initiated by a development in science that, although not new, still astonishes the author. The development is characterized by unexplained omissions, on the one hand, and intensive discussions, on the other; both observable in the field of business economics. Certain approaches towards intensive discussions – usually rubricated under the philosophy of justice (or associated with it) – along with omissions as a result of reckless treatment of the most fundamental questions of the methodology of business ethics and of the conceptual, logical, and methodological basics in philosophy, keep this amazement alive.

Keeping in mind that ethics – as a sub-discipline of practical philosophy – is predominantly an analytic science, while economics is almost exclusively an empirical one, we should expect that the discipline that unites both, namely business ethics, in its self-reflections should accommodate more room for the tensions (at least much more than is currently the case) that result from the merger of analytic science with an empirical discipline.

The sparsity, with which business ethicists look inside their field, is paired by a fixation to consequentialist reasoning that asks competing perspectives to take a back seat. Both phenomena represent insufficiencies. This book contributes to the attempt to disclose these inadequacies and to show ways to dismantle them.

Against this background, it is tempting to say that this book is primarily a book on *meta-business ethics*. However, it aims for more besides. The reader will notice that – when it comes to the contents of the book – the author is mainly concerned with the clarification and/or definition of key concepts in business ethics and an exposure of critical implications that come along with these concepts. In other words, the book is about understanding justice. And it is about the impact of the view of justice, as presented here, on the key terms in business ethics.

One of the actuators of the astonishment that led to this study is the method – obviously a new paradigm – to adjust the notion of justice to

norms which, according to some schools, are preferable to formal justice, and the little interest in going in the opposite direction, i.e. to adjust these fashionable norms coherently to the requirements of formal justice. What has caused this new method is above the author's head to say and remains subject to speculation. One reason might be that justice is a value, which leaves no latitude. An action, according to the criteria of formal justice, is either just or unjust, and not somewhere in-between. However, when it comes to courage, magnanimity, and temperance, one might judge an action with gradation – at least in the Aristotelian tradition. That is to say, there are no 'more' or 'less' just actions, as there are more or less courageous, generous, and moderate acts. He who suggests a norm that is not entirely compatible with justice, willy-nilly recommends injustice – a cause most people try to avoid, for instance by ways of redefining 'justice'.

Be this as it may, whether or not one is prepared to live in a world that is guided by the principle of formal justice – as understood here – is a value decision left to each individual. This book seeks to unveil those criteria of justice not subject to whim, but rather to (a sufficient measure of) reason, logic and concept analysis.

This book was originally written in German. Therefore, it relates in many instances to literature by German business ethicists, most of which were chosen as exemplars for certain peculiarities, which can be found in similar examples in business literature elsewhere on the globe. To make a long story short, the author decided not to cause further undue delay of the translation by rewriting the respective paragraphs and adapting his reflections to other sources, although the reader might be more familiar with alternatives, written by English speaking authors. Leaving the structure of the book, as it is, has the, perhaps not uninteresting, side-effect that the reader gains some insights about characteristics in German business ethics, he otherwise finds rarely illustrated and analyzed elsewhere. I hope he welcomes these as supplementary assets of his reading. In any case, where appropriate and possible, links to corresponding literature in English have been added.

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Though everything said here falls within the responsibility of the author, there are many to whom he is deeply indebted. I wish to thank in particular Gerard Radnitzky (1921–2006), my life-long mentor and friend, whom I owe – directly or indirectly – most of my insights and techniques of reasoning. I also wish to thank Anthony de Jasay, who freed me from the erroneous belief that liberties were rights and enroute induced me to write this book. Moreover, I am grateful to Hartmut Kliemt, who prevented me from swapping old errors for new ones, and Enrico Colombatto, at whose suggestion, and after a great deal of hesitation, I started writing this book. I also want to express my gratitude to the *International Center for Economic Research* (ICER) in Turin, who granted me a fellowship and thus gave me the opportunity to commit my thoughts to paper. In addition, I owe a great debt to SMC University, Vienna, and its chairman Michael Schmelzer in particular, for the generous institutional support in preparing this book for publication. Last, but not least, I cordially thank Kurt Leube for his friendship and his gentle readiness to include this book in its German version in the series *Studien zur Wirtschafts- und Gesellschaftsordnung*.

Introduction

As mentioned in the preface, the actuators to this study were a series of peculiarities and omissions in business ethics. Meeting the aspiration to eradicate these inadequacies, it seemed advisable to place an introductory chapter on a number of *preliminaries of ethics*. Equipped with these preliminaries, many of the subsequent arguments are easier to follow than without them. Apart from this, the gentle reader will learn about the assumptions taken by the author. Knowing of these assumptions makes it easier for the reader to critically appraise the arguments and suggestions that are put forward here.

The fundamental suppositions of Chapter 1 of this treatise belong to the distinguishability of classes of propositions, namely of analytic, empirical, and normative propositions, as well as the logical impossibility to infer from representatives of one class of propositions to representatives of one of the remaining two classes. This logical impossibility derives from, what we call here, the *implications compliance rule*, saying, that a conclusion cannot have implications that are not already implied by its set of premises. To put it differently, a logical conclusion may not smuggle in new information and claim validity at the same time. As we shall see later, the distinguishability and the logical gap between the classes of propositions mentioned above are of particular importance for the relation between empirical and normative propositions in business ethics.

Moreover, what is proposed here is what I call *methodological individualist ethics*, an ethics that corresponds with the fundamentals of *methodological individualism*. That is to say, I assume that all actions, which can be classified as moral actions, are executed by (or retraceable to) individuals alone, and not by any other entities *sui generis*, be it groups, nations, cultures, or similar collectives. This assumption is important insofar as business ethics stress is laid on the morality of firms (and many other types of economic organizations); collectives which, following *methodological individualist ethics*, are not actors in themselves, but rather the

2 Introduction

outcome of the interplay among individual economic actors. Hence, before talking (unless metaphorically) of the responsibility of an enterprise (or any other economic entity), and before asking if it is applicable at all to look at the action in question as moral action one needs to clarify to which individual action or default it is retraceable, given it is retraceable at all.

An additional assumption for the deliberations to come is that sufficient constitutive characteristics of moral action must be named. Without a sufficiently clear definition of moral action (and moral action in economics in particular), each proposition of morality would be so imprecise that the testing of empirical assertions or the rational acceptance of normative recommendations in business ethics would be doomed to fail. Neither could one (with sufficient determination) say that the moral action, subject to empirical testing or moral recommendation, is a moral one, nor that it is an action at all.

Closely connected with the constitutive characteristics of moral acting, and the requisitions of the *methodological individualist ethics*, is the Hayekian distinction between natural, designed, and spontaneous orders, and the insight based on this, namely that interacting individuals, each acting morally (for instance by keeping or breaching contracts¹), may bring about a result that does not necessarily have to be a moral one.² This insight becomes important in conjunction with what I call an intact *triad of moral action*, namely a steady connection between intention, exertion and result of a moral action.

The preliminaries named here and subsequently explored in the following sections of Chapter 1 are not the only assumptions that will be used throughout this book. Other more specific ones, for instance the *argumentum pro libertate*, will be introduced in later chapters, because their meaning will unfold more easily when put into conjunction with the topics discussed there.

Chapter 2 proceeds, step by step, from the definition of *economic action* to the definition of *morally economic action*. As we shall see, in the process of this undertaking it will be necessary to give precise definitions of 'freedom' and 'property' and to explain which conditions are to be considered in order to avoid inequitable obligations. The core elements of the argument presented here are the *presumption of liberty* (*argumentum pro libertate*), the *finders keepers principle*, and the assumption based on both, namely that it is not the bringing about of a status quo that asks for legitimacy, but rather the change of it.

Chapter 3 provides the foundations of a proper understanding of *morally just business*. The starting point of our reflections rests in insurmountable difficulties of justifying norms. Rather than troubling with the (scientifically fruitless) *justification of norms*, we look at various modes of

establishing norms and argue for a *modus operandi* – namely negative selection – that presumably causes the least problems, namely establishing norms by contract (unanimous agreement among contracting parties). Thereupon we examine if (and, if so, how) the understanding of morally just economic action has to be curtailed or complemented by modern conceptions of ‘social justice’. The chapter closes with a definition of morally just economic action.

The aim of Chapter 4 is to illustrate with the help of prominent conceptions in business ethics what is meant by peculiarities and omissions in the field of business ethics, namely the insufficient and incoherent consideration and sometimes downright ignorance of the criterion of justice in business morality, when it comes to the examination of pivotal themes in our discipline; the neglect of reflections on our science, when it comes to the use of significant key terms; and the careless and defective labeling of the analytic, empirical, and normative parts, when it comes to the core propositions of the various schools of business ethics. Chapter 5 concludes.

1 Ethical preliminaries

1.1 Preliminaries – what for?

For a better understanding of the ideas on the relation between economics, ethics, and justice presented here, it is advisable, first, to extensively elaborate the assumptions mentioned in the preface and, second, to explain some effective habits and rules of grammar in ethics, which can be used fruitfully throughout business ethics. The latter applies in particular regarding the relation of ethics and morals.

1.1.1 ‘Ethics’ and ‘morals’ – and other rules of grammar

The concepts ‘ethics’ and ‘morals’ are often used interchangeably in ethics (and in business ethics). This holds for propositions in everyday language as well as for those in professional jargon. Nevertheless, within the German speaking community, it is still common practice to reserve the concept ‘ethics’ for the philosophical discipline or to denominate a certain ethical school¹ and by ‘morals’ to mean their subject (or content).² Following this tradition, several mistakes and misunderstandings can be avoided. Therefore, and unless severe reasons for deviance are given, this tradition is kept up throughout the book.

Linguistically induced misinterpretations in ethics and business ethics have other reasons as well. Occasionally in literature, authors talk of *immoral* behavior (action),³ while it is not revealed to the reader what meaning the author intends to give to his amphiboly.⁴ A demeanor can be called immoral if it has no moral dimension at all. Since the distinction between a moral behavior (action) and a behavior (action) that is not moral at all is of utmost importance for this study, we name a demeanor or action ‘immoral’ mainly when we intend to say that the behavior or acting in question has no moral dimension. We do so despite the fact that in ordinary language as well as in professional jargon ‘immoral’ or ‘unethical’ is

used to denounce a behavior or action that – vis-à-vis the reference system of morals in question – is treated as vicious or evil.

Occasionally, a behavior or an action that an author rates as evil is labeled either ‘amoral’ or ‘unmoral’ or even uses these labels interchangeably. This in turn gives rise to much confusion, among other reasons, because the two concepts are often understood as being different. The concept of ‘amorality’ is often used to express either the thesis that the distinction between good and evil actions is not possible at all, or that morality is nothing but a chimera.

Be this as it may, to escape misunderstandings, which derive from the ambiguities of the concepts ‘immoral’ and ‘unmoral’, we will prefer the phrase ‘not moral’ to denounce an action or behavior that has no moral dimension at all.

In general, as a guideline it might help to bear in mind the categorical relationships between ethics and morals, morals and moral judgments and, finally, moral judgments and virtues, respectively vices. Ethics comprise statements about morals, while morals represent the category that includes moral judgments. Ultimately, moral judgments can be split into those which call moral actions either morally good or evil, while these two categories comprise all possible judgments concerning virtues and vices. To put it differently, the rules of grammar supposed here are developed along the categorical relations of ethics, morals, and moral judgment. Consequently, concepts like ‘ethical’ and ‘unethical’ are not utilized to replace adjectives in one of their subsequent subcategories. Hence they are neither used to replace ‘moral’ or ‘immoral’, nor to substitute ‘morally good’ or ‘morally bad’ – and vice versa. Non-synonymity holds also for the pairs of concepts ‘moral’/‘immoral’ and ‘morally good’/‘morally evil’.

1.1.2 Reference-morals and moral dimension

In the previous section two notions were repeatedly used, which ask for further elucidation, namely *reference-morals* and the *moral dimension* as an accidental quality of an action.

He who wants to morally judge an act or an act of omission may go back to a huge reservoir of diverse schools of morals. He may make use of ‘virtue ethics’, ‘Kantian ethics’, ‘Christian morals’, ‘utilitarianism’, or any other morals. Whatever his choice may be, he cannot but *willy-nilly* refer identifiably to a moral position, or a mix of several moral positions, unless he does not care that his judgment will be rated as purely arbitrary. Resorting to morals, documents the criterion (criteria) on which his judgment rests. If in no way he documents the criterion (criteria) used, then his judgment remains unreferential to the external observer. At best, one can

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assume *that* the judgment is based on a moralizing intention, however, not on *which* one.

Hence, the sentence, ‘Corruption is an evil’, is a proposition that formally corresponds to a moral judgment, but it is left unsaid on which criterion the author’s discretion is founded. If, instead, the author extends his proposition by adding ‘Corruption is an evil because it is against Christian principles’, then he reveals his criteria that underlay his judgment; then his proposition can be used for academic ethical discussion.

In a case like this, in which an author calls a spade a spade, the identification of the morals, i.e. *reference-morals*, is rather easy. In the case in question, we can conclude that the Christian morals serve as reference-morals. Of course, the sentence, ‘Corruption is an evil’, could have any other reference-morals. Important, if not indispensable for the ethical discussion of moral judgment, is the fact *that* these judgments have reference-morals. Desirable in terms of improved clarity is that the reference-morals is sufficiently precisely and unambiguously ascertainable.

The role of a criterion, which all morals share when it comes to moral judgments, indicates the function that the concept ‘reference-morals’ is going to play in this treatise. The term ‘reference-morals’ mainly will be a placeholder, representative for all possible morals to which moral judgments can refer.

Moral judgments, with a well documented criterion of judgment, express two things: first, they signify *that* an action is morally rated; second, they voice *how* an action is morally valued (for instance ‘good’ or ‘bad’). The latter implies the first. To put it differently, each moral judgment of an action implies the assertion that the evaluated action (supposedly) has a moral quality at all. Alongside our reflections on the constitutive characteristics of moral action,⁵ actions are not moral actions per se. It is not until after the application of moral norms that they become moral actions. The notion ‘moral dimension’ means – to use a Lockean term – a *secondary quality* of human action, a quality that may or may not fall upon our actions.

1.1.3 Analytic, empirical, and normative propositions

As it is in many other sciences, in business ethics analytic, empirical, and normative propositions play significant roles. As mentioned in the preface, the thesis, that these types of propositions clearly are distinguishable, is a fundamental assumption. Many of the theses, introduced in this book, stand and fall with this assumption. The subsequent reflections are devoted to the function, confusion, and distinguishability of analytic, empirical, and normative propositions.

1.1.3.1 Theory and practice – a preliminary remark

Each acquiescent husband knows that the sentence ‘Darling, the garbage can is full’ is more than a descriptive proposition. In it, he recognizes the tacit wish of his wife to take out the garbage can, and usually he is prepared to meet her request. In daily life, examples, like this one, in which a sentence serves empirical as well as normative functions, is common practice. In fact, it is part of the charm of every language that with each function, which a proposition can fulfill, ‘language games’ and, hence, misunderstandings are possible. This is so if, for example, a sentence, which formally is a descriptive one, is used in a context in such a way that the recipient can (or even should) allege a prescriptive meaning. If the abovementioned husband were to react to the implicit incitement of his wife, to carry out the garbage can, simply by saying ‘yes’, without showing the slightest inclination to do so, then this easily could breed ill blood in an otherwise happy marriage because the wife could be tempted to assume that her husband was unwilling to meet her wish and ignored the ‘real’ meaning of her statement.

Be this as it may, the fact, that such misunderstandings are possible, rests on the possibility that propositions can fulfill different functions at the same time, a possibility which we tend to make use of when we want to send hidden messages, for instance requests; when we replace normative propositions of the form ‘Please Darling, take out the garbage can’ by descriptive ones (‘Darling, the garbage can is full’). (Hidden messages require the presence of several conditions. One of them is that the sender as well as the recipient know the ‘real’ meaning of a proposition, despite its formal characteristics.)

An effective option, to avoid such misunderstandings, is to reconcile the content and form of a message. In daily life, it is difficult to abide with such a practice – let alone desirable. Things are different in academic disputes. Here a violation of the rule, to present propositions – at least the core propositions of a theory – in a form that is sufficiently unambiguous, is not only an impediment in the process of scientific progress, but also – in cases of deliberate acts of omission⁶ – a blatant transgression against intellectual honesty. Those who care about the preservation of intellectual honesty, prefer to express their messages by propositions that convey their meanings as precisely as possible.

Elucidations, like these, may look like truisms in the daily course of science. However, the fact, that – as we are going to see – in much of the literature in business ethics and adjacent disciplines we can observe a pretty careless commitment to the common rules of grammar in science, asks us to go into details here. It is one of the most important theses of this

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treatise that most of the misleading theories in business ethics go back to a confusing, if not abusing, use of language.⁷

1.1.3.2 Analytic propositions and definitions

Analytic propositions,⁸ above all definitions, play an important role not only in philosophy, but also in empirical sciences. They express the meaning that certain concepts and propositions of a language *S* have. They can be true or false, but only with reference to *S*. If, as Gerard Radnitzky has put it, we assume that in a language community, who use language *S*,

‘Bachelor’ means ‘unmarried man’, then the proposition that asserts this identity of meanings, namely the proposition ‘A bachelor is an unmarried man’ (*D*), is *analytic in S*. That is to say, *D* has no empirical content, it owes its truth not its logical form, but only the circumstance that the definition, that introduces ‘bachelor’ as an abbreviation for ‘unmarried man’, is accepted or valid in the normal speech of language *S*.⁹

Consequently, a definition names only those criteria that need to be fulfilled so that a concept, that is given to the object or fact in question, is given to it for good reasons. Whether or not Peter justly is called a bachelor is an empirical question. The definition of a bachelor cannot answer that question. It only states the criteria that need to be given, so that in language *S* Peter rightly can be called a bachelor. It does not indicate how to discern whether Peter meets the criteria. Generally speaking, a definition does not state how to prove whether the attribution of a concept to an object or fact is correct or not.

In view of this, we might say that analytic propositions owe their truth value definitional and logical arrangements alone.¹⁰ Unlike empirical propositions, they do not say anything about reality. It goes without saying that neither can the truth value of an analytic proposition depend on the relation of its content to reality, nor can any conclusion be drawn from the truth or falsehood of an analytic proposition to the truth or falsehood of an empirical one.¹¹

In the face of this, there are many tasks definitions can have in empirical sciences. Among these is the task to provide practical abbreviations, without which scientific writings and work would be difficult to exercise.¹² According to this task, a definition should allow for an abbreviatory expression (*definiendum*) that replaces a cumbersome long sequence of symbols (*definiens*), which in turn gives the *definiendum* its precise meaning.

Definitions that meet this purpose are usually the result of several interactions in a given language community. How successful a definition is in its language community depends largely on the chosen definiens. A definiens has to be sufficiently clear and should take recourse to self-evidences, or else it can contribute little to the elucidation of the definiendum. The rule for successful definitions could run as follows: ‘Formulate your definitions as clearly as possible, and make your assumptions, which are necessary for the understanding of your definition, explicit!’

Of course, the possibility to resort to what is self-evident sets limits to definitions. One could not possibly define all concepts sufficiently clear, even if one wanted to. Moreover, it would not be for the better of a science to look at definitions as a perennial task. One has to set limits to the formulation of analytic propositions in science, not least because a scientist should formulate above all empirical propositions. Defining the right borderline here is a subject one easily could debate forever. Nevertheless, the following two rules seem to ease the efforts of defining the key terms of a science.

The first rule runs as follows: ‘Define at least the concepts in the center of your discipline, and theories, and start defining them before going on to define others.’ The second rule demands: ‘Define the key concepts of your discipline and theories as precisely and unambiguously as necessary for the testing of those theories in which they are applied.’

Both rules serve objectives that are quite obvious. The first objective is to provide for a sufficient measure of intelligibility and understanding for scientific dispute. The second objective is to avoid the preference of scientific theories, which should be guided by the degree of corroboration of competing theories, and not become dependent on language problems. If scientific progress is carried out through criticism¹³ – as is supposed here –, then, in service of this, one should strive to reduce all obstacles to criticism deriving from unintelligibility and misunderstanding to a minimum.

1.1.3.3 Definitions and explications

Within the category of analytic proposition, explications play a special role. Similar to definitions, they are undertaken for an improved determination of a concept. However, they are distinct from definitions. They are a by-product of the process in which scientific theories progress. An explication is, according to Gerard Radnitzky, the attempt,

To replace an existing concept – be it a concept of colloquial language or a concept that represents a particular stadium of scientific development – by an improved version, i.e., by a ‘new’ concept, that

nevertheless is akin to the ‘old’ concept (the explicatum), in order to work at certain theoretical problems.¹⁴

An explication is successful, according to Radnitzky, if the explicata, to come, are more fruitful than the old ones. They are more fruitful if they (*a*) have a higher degree of precision than the old concepts, in terms of avoiding more ambiguities; (*b*) provide for a method of identification, with the help of which one can find out whether the state of affairs in question exemplifies the concepts; (*c*) are as simple as possible so that the application of the method of identification is feasible; and (*d*) are formulated such that the explicatum bears resemblance to the explicandum, sufficiently to exclude the explication of different, new concepts.

These minimum requirements of successful explications disclose a particular endeavor. They should warrant that in the transition from the old to the new concept important information of the theory proposition should not disappear, also that no new information, that would change the theory proposition, is smuggled in. The loss as well as the increase of information of a theory would result in a change of the theory proposition upon introduction of the explication. To put it simply, not only the concept, but also the theory would have been replaced. Exactly this consequence should not occur. Explications aim at an exchange of concepts under full reserve of the theory.

In this book, the gentle reader will be confronted with several pertinent explications that miss that goal. Misexplications can bring about tremendous costs for the building and testing of theories. In business ethics (as well as in adjacent disciplines) the reader will find explications of concepts – for instance ‘social justice’, ‘sustainability’ – that are either so distant from the old concepts, that they vastly (if not completely) change the content of the theories in which they are applied, or so nebulous that the content of the theories is hardly identifiable at all.¹⁵

To put it differently: successful explications bring sources of misunderstanding to an end. Take for instance the case of the thermometer. In the course of scientific progress, it turned out to be useful to replace the imprecise and subjective notions from normal speech, like ‘hot’ and ‘cold’, by an objective one (namely ‘temperature’). Thus many problems, related to the accuracy of measurement, disappeared. What it took was a thermometer and a convention of scaling. In fact, several of these conventions came up (Celsius, Fahrenheit, and Kelvin, to name the most popular). The truth value of propositions concerning the degree of heat is testable more easily than those of propositions which use ‘hot’ and ‘cold’ alone. Analogously, we come to similar situations when we compare the subjective notions ‘tall’ and ‘small’, or ‘long’ and ‘short’, with the objective ones, ‘size’ or

'length'. Once you have a yardstick, controversies whether or not Mary's hair is 'short' or 'long', Peter's son is 'small' or 'tall', become obsolete. It is sufficient to present the length or size of the object of dispute.

However, the replacement of imprecise *explicanda* by precise *explicata* depends on the development of theories. Regarding the development of thermometers, it was necessary to go back to theories that explained and predicted the extension of suitable substances under heat.¹⁶ Once you have access to progress in science and to the respective improved concepts, it is irrational to go back to the Pareto inferior alternative¹⁷ (namely the old concepts). Chapter 3 on *Justice* can be seen as an attempt to develop a benchmark that allows at least to divide economic actions with a moral dimension into 'morally just' and 'morally unjust' economic actions.

1.1.3.4 Missing links and their consequences

Claiming, as above, that misexplications pose business ethics an additional problem implies the thesis that normative business ethics faces several problems. Before further elaborating this thesis, we address here one of the main reasons for problems that do not originate in misexplications. What I allude to here, is the insufficient consideration of the *missing links* between analytic, empirical, and normative propositions.

Analytic, empirical, and normative propositions do not allow for direct conclusions among each other. The relation between analytic and empirical propositions was already mentioned in the previous section. Both, analytic as well as empirical propositions, can be either true or false but they have different fields of application that are not linked with each other. The area of validity of analytic propositions is the language community in which the propositions are used, and the validity of these propositions, in turn, is determined by the rules of that community. The area of validity of empirical propositions is determined by the correspondence of the propositions to reality.¹⁸

What unites analytic and empirical propositions disassociates them from normative propositions. Normative propositions cannot have any truth value. They are prescriptive rather than descriptive. To infer from empirical propositions to normative ones is not possible. Doing so would be a clear case of an 'is-ought-fallacy'.¹⁹ The main reason for this logical impossibility is that such a conclusion (in this case the normative proposition) would implicate at least one element (the 'ought') that was not among the premises. Logical conclusions, however, follow the *implications compliance rule*.

Let us illustrate this matter of fact by a simple example. The norm '*pacta sunt servanda*' ('contracts have to be fulfilled') cannot be inferred

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logically from any empirical proposition, such as, ‘in the past contracts were fulfilled’. What is not among the premises is the normative element, the *value decision*, which is exactly what would mirror the normative claim.²⁰

To preempt a possible objection, namely that our remarks seem to exclude every deduction of norms, two closely connected comments should be made here.

- 1 It is perfectly possible that a conclusion *C* cannot be inferred from a set of premises *A*, but yet from a set of premises *B*. This is the case if *C*'s elements are also in *B*, but not (at least not all elements of *C*) in *A*. Hence norms (or a set of norms) can be inferred from a set of other norms if they form a subset of the latter, which in turn functions as the set of premises for that matter.

This, in turn, raises the question whether or not this deductive procedure would not imply an infinite regress. This question and its significance for our study we will turn to later when we discuss *rights* and *obligations*.²¹ To say this in advance, is a justification of norms that exemplifies a *regressus ad infinitum* incompatible with the *implications compliance rule*.

- 2 The logical necessity, to admit the conclusion *if* the premises were admitted before, does not imply that the premises have to be admitted. Conceding that the street is wet if it rains does not imply to concede that it is raining. In the language of logic: $\neg(A \vdash B) \vdash B$. The admittance of an *if-then-relation* between A and B tells us nothing about the admittance of A. It only says that the conclusion will be admitted according to the *if-then-relation*, given the *if-then-relation* itself is admitted. (B would be implied if not only the premise $(A \vdash B)$ were given, but also the premise A. Logically formulated, $A, (A \vdash B) \vdash B$). However, if the ‘*if*’ of this *if-then-relation* is an implicit consequence of an admitted premise C, then things are different. The admittance of C implies the admittance of B, that is, $C, (C \vdash A), (A \vdash B) \vdash B$.

This correlation is of importance for normative conclusions from normative premises. The following example might illustrate this. Rule R says: ‘If you do x, then you must do y.’ Admitting the logical relation of this *if-then-relation* of rule R does not imply the compliance with R. (If I admit that I would do y upon exertion of x, then still I have the option to omit x and, hence, skip y.) In other words: the *logical admittance* of a rule does not imply the *practical compliance* with the rule. The reason to stress this here is, that normal speech blurs this distinction, rather than emphasizes it. If we talk of the admittance of a rule, then we usually mean the *practical*

compliance with it. However, the logical admittance of a rule does not imply anything of that kind.

Nonetheless: If I concede that C is the case, and that if C holds, the condition for the compliance to the rule holds, then things are different. Indeed, these conditions imply the practical compliance with R. An example: The rule says: ‘If I have time, then I jog.’ The rule does not imply that I jog today. (It might be that I have no time today.) However, what follows logically if a premise is added, namely ‘Today is Monday. On Mondays I have time to jog’? If this premise is admitted and given too, then I have to jog.

To conclude our remarks on the logical relation between analytic, empirical, and normative propositions, we should note that the abovementioned inadmissible logical conclusions are also inadmissible in the ‘opposite’ directions. So far we have argued only that (a) analytic propositions do not allow to infer to empirical propositions, and (b) neither analytic nor empirical propositions permit logical conclusions to normative propositions.

However, due to the different characteristics of the types of propositions the following holds as well, namely (c) empirical propositions do not allow to conclude to analytic propositions, and (d) neither analytic nor empirical propositions can be derived from normative propositions.

1.1.3.5 Bidirectional impact

Despite all that, one ought not to deny that there are many close relations between empirical and normative propositions. Not only for the emergence and change of norms, but also for the explanation of the genesis and alteration of norms, empirical hypotheses are of significant importance. Just as it is important for the pricing of industrial goods to know the factor prices before deciding the offer price at which the good is finally advertised,²⁴ it is important to know the factors that lead to the observance or breach of the norms. Nevertheless, it holds in both cases that the knowledge alone (that about the factor prices in the first, and about the factors of observance or breach of norms in the second case) has no logical implications for the decision about the offer price or the norm in question. For both, for the offer price as well as for the norm, a decision is constitutive.

Probably the most well-known connection between empirical and normative proposition is the *hypothetical imperative*, introduced by Kant. For our purposes, it should be read as a prudential rule that has the form of an *if-then relation*: ‘If you pursue aim x, then you should follow norm y.’ With respect to its content and formal structure, it is an empirical proposition. It claims that norm y would lead to aim x. Whether or not the

addressee of the hypothetical imperative follows the advice, finally depends on his decision.²³

Be this as it may, the impact among empirical and normative propositions is not unidirectional. It runs both ways. Existing norms in a society are crucial for the selection of those areas which empirical propositions target. Think of embryo science. What researchers do in the cultural community, in which they live, depends largely on what may or may not be subject of research.

Instances of close mutual impact not only exist between empirical and normative propositions. They also exist between empirical and analytic propositions and between normative and analytic propositions. The explanations mentioned above may illustrate the impact empirical propositions can have on analytic ones. Depending on the direction into which science moves, language ‘follows’. Terms change in order to keep pace with science. On the other side, analytic propositions can give an impetus to empirical propositions. Think of conceptual history or of disciplines that explore language change.

Finally, there should be little reason to deny bidirectional impact among normative and analytic propositions. Norms influence the course of science. Likewise they influence language. Restrictions on free speech and free thought end in ‘newspeak’, reinterpretation of existing concepts, and creation of new ones. Think of language changes as consequence of ‘political correctness’. In addition, analytic propositions sometimes cause repercussions on normative propositions. Think of Platonic maieutics or of pedagogy in general. A great deal of pedagogy is devoted to promote change via analytic propositions.

Despite the multitude of the bidirectional impacts mentioned here, one has to emphasize: none of them is such that an impact from one to the other would be sufficient to cause a change there. By ‘sufficient’ we mean that, *per impossibile*, one type of propositions is a set of premises that has logical implications for the other type of propositions.

While *positive* conclusions from one type of propositions to another cannot be drawn, it is not unusual to think of *negative* conclusions, which might appear advisable against the background of the impacts mentioned above. Take, for instance, the rule ‘*ought implies can*’. This rule is commonly seen as unproblematic and practical.²⁴ This rule, which was already incorporated into Roman law, means to restrict oneself to those requests, which are compliable in principle. The rule is *not* a logical necessity, but it enjoys a high degree of plausibility because a change of the status quo can be expected only from norms that are compliable. The following example may illustrate this. Let us assume that B owes money to A. A is willing to abate the debt if B conveys him with a time machine into the late

eighteenth century. A cannot fulfill that wish because time machines are a logical and practical impossibility. Hence the status quo remains: Still B owes money to A, while A does not travel into the late eighteenth century. Impinging the rule ‘*ought implies can*’, A’s request is fruitless. Let us modify the case: B owes money to A. A is willing to abate the debt if B allows him to spend some time in his villa and enjoy all the amenities that come along with his stay. In principle it is possible for B to fulfill A’s request. In this case a change of the status quo is possible, i.e. A’s request, which meets the rule ‘*ought implies can*’, is fruitful.

1.1.4 Sufficient and necessary conditions

Obviously, the correlations mentioned in the previous section take recourse to the elementary building blocks of propositional logic. *Sufficient conditions* imply that which they serve as condition. To put it in logical terms: If A, then B. It does not matter whether the implication expresses a causal, material, temporal, or any other relation between A and B. A *necessary condition* does *not* imply that which it serves as condition. That is to say, a necessary condition is not sufficient. The distinction between a sufficient and necessary condition is usually illustrated by the already used rain case. ‘If it rains, the street is wet’ exemplifies the meaning of a sufficient condition. However, the proposition ‘If it rains, the street is wet’ is not a necessary condition at the same time. The street can be wet for other reasons, for instance as a consequence of a water-pipe rupture.²⁵

All impact relations discussed in Section 1.1.3.5 represent *necessary conditions*. Necessary is a condition if that, which it serves, presupposes the condition, but cannot be without further conditions. To recall, a necessary condition does not imply to be also a sufficient condition. However, and more importantly, for our reflections is something else, namely that a sufficient condition does not imply to be also a necessary condition. We remember: The street is always wet when it rains, but can be wet under other conditions too. This aspect of a necessary condition is very helpful for the little hardships of everyday life. If we have a cold and also do not like to follow an invitation to a party, then it is sufficient to turn down the invitation because of our cold. It is not necessary to rebuff our would-be host by naming him the ‘real’ reason of our absence.²⁶

The abovementioned fact (that a sufficient condition need not be a necessary one at the same time) is significant for our reflections on business ethics. This significance burgeons once we discuss (in Section 3.6) to what extent a moral dimension can be assigned to actions and omissions that are sufficient but not necessary for the consequence they cause. Nonetheless, the following example should give a quick hint as to what we are

going to discuss later vis-à-vis the idea of social justice. Think of a case in which a voluntary transfer from A to B would be a sufficient (but not a necessary) condition for a better material well-being of B, while A omits to do the transfer. As said, the relevance of such a case for our study will be elaborated in great detail later.

1.1.5 Negative selection

The distinction between necessary and sufficient conditions not only has immediate impact on questions concerning business ethics, but also a mediate one. The mediate impact, which is meant here, relates to the idea of *negative selection*. In turn, the meaning of negative selection becomes evident when contrasting it with *positive selection*. Let us illustrate the distinction between the two types of selection by going back to the example of an invitation to a party, previously mentioned. In order to follow that invitation, a couple of conditions need to be met. Among these conditions are to be healthy, to be in a good mood, etc. Of course, several other conditions need to be given, for instance, to have time, to be free, and many others. To accept the invitation practically (positive selection) one has to comply with all these conditions, while the refusal of an invitation (negative selection) needs only one unfulfilled condition. It does not matter which of the conditions is unfulfilled. Of course, to turn down an invitation, two, or even more, unfulfilled and unrelated conditions at once will do too, i.e. being sick *as well as* unfree. Moreover, it is possible that two (or more) related unfulfilled conditions lead to the refusal of the invitation (being sick and in bad mood). That is to say, although in a bad mood, we would have accepted the invitation if we had not been sick on top of it. However, what characterizes a positive selection is the fulfillment of *all* conditions at once, while a negative selection requires the non-fulfillment of *just one* condition. Hence, the distinguishability between positive and negative selection rests on a two-tier foundation: Crucial for positive selections are necessary conditions and a maximum requirement (fulfillment of *all* necessary conditions), whereas a negative selection is characterized by sufficient conditions and a minimal requirement (non-fulfillment of at least one condition). In short: The distinction between positive and negative selection rests on asymmetric demand profiles in the face of different types of conditions.

The entire relevance, which this distinction will unfold for our topic, can be barely intuited at this stage. This is so because it takes a long detour first. This detour will take us to two additional relations, which themselves are characterized by the asymmetry of negative and positive selection. What is meant by this is the relation between the weak and the strict Pareto

principle and the relation between the justificationist and the falsificationist methodology.

1.1.5.1 *Strict and weak Pareto principle*²⁷

Economists talk of a *strict dominance* of A_2 over A_1 if A_2 is superior to A_1 in each respect or along each rating dimension. From this dominance they bridge over to the *weak Pareto principle*. The weak Pareto principle holds for the comparison of two alternatives out of the set G , encompassing all alternatives. It says: An alternative $A_1 \in G$, strictly inferior to alternative $A_2 \in G$, should not be selected (chosen). This principle, corresponding with strict dominance, is ‘weak’ insofar as it does not demand much. The structural parallelism to the negative selection, mentioned above, is obvious. All sufficient reasons for a negative selection are met. (If all conditions speak in favor of a refusal, then the invitation should be turned down.) To put it differently, in a case like that, we have all good reasons to wish that the strictly dominated alternative should not be chosen. Hence, the proposal to avoid a strictly dominated alternative expresses only a weak demand, which is reflected in the adjective ‘weak’ Pareto principle.

When it comes to the *strict Pareto principle*, things are different. The strict Pareto principle correlates with a *weak dominance*. Weak dominance of A_2 over A_1 is given if A_2 is superior to A_1 at least in one respect or at least along one rating dimension, while at least equal along all others. The strict Pareto principle demands much more than the weak Pareto principle, namely: An alternative $A_1 \in G$ should not be chosen if an alternative $A_2 \in G$ is given, which is superior to A_1 at least in one respect or at least along one rating dimension, while at least equal in all others. (If at least one reason causes one to mind accepting the invitation, while all other reasons for a decline are at least equal to those for an acceptance, then one should refuse the invitation.)

It is noteworthy that neither the strict nor the weak Pareto principle allows for conclusions to a positive selection. None of the principles implies a criterion whereby we positively could select A_2 . Intuitively, one is prone to say it was obvious to choose A_2 , rather than A_1 . However, this inclination ignores that the two Pareto principles are not made for binary decisions, but rather for choices between more than two alternatives. (Accepting or refusing the invitation usually depends on many other conditions that are at hand, i.e. watching a movie, reading a book, jogging, etc.)

As we shall see later, many moral economic actions are *not* the subject of binary decisions, but rather the result of selection processes that are based on many (more than two) alternatives. In so far, the dominance

relations that exist among the alternatives which are subject to choice, and the correlating Pareto principles are useful instruments for analyzing cases of non-binary decisions.

1.1.5.2 *Pareto inferiority*

In a sense, the linchpin of the abovementioned principles is composed of two different *Pareto optima* that can be confronted with each other. To put it simply, a choice can be such that all are better off, or that at least one is better off, while all others are not worse off. We can have similar reflections regarding two possible *Pareto inferior* outcomes. That is, a choice can be such that all are worse off, or that at least one is worse off, while all others are not. Both Pareto inferior options reflect social choice situations. Nonetheless, they are rarely considered (at least more rarely than Pareto superior options). This has quite obvious reasons. Assuming, that man prefers greater goods over smaller goods, and smaller evils over greater evils, there is little, if any, temptation in the offer of lesser alternatives. Nonetheless, including Pareto inferior options in our reflections (especially of the last type mentioned) allows for some remarkable insights regarding the *finders keepers principle*, elaborated in Section 2.2.5.

An example that illustrates the first of the abovementioned *Pareto inferior* options can be seen in the decision to pitch into the wood strawberries, stored in the refrigerator. Luther and Martin, the owners, share the wood strawberries fifty–fifty and eat them. After the meal, the strawberries are no longer at their disposal. Leaving aside the mutual betterment, which came along with the consumption, and concentrating only on the consumed strawberries, we might say, that Luther and Martin are worse off now. In the course of consumption, those inferiorities are unavoidable. Moreover, one could say that the mutual Pareto inferiority is not inequitable because the split and consumption of the wood strawberries took place under mutual consent of the owners, namely Luther and Martin.

With respect to the equity, which comes along with the mutual Pareto inferiority, it does not matter whether the wood strawberries have been in the refrigerator or in the woods, given the woods are not owned. Say, while Luther collects some at the edge of the woods, Martin picks some deep in the forest. The total amount of wood strawberries decreases because both eat what they cull. Hence, again both are worse off after consumption. And again, this mutual Pareto inferiority is a natural and unavoidable result of consumption, this time consumption of free goods. Also again, we have reason to say that this Pareto inferiority is *not* inequitable. However, the reason for saying so is a different one. We do not reason that the splitting has been mutually agreed *and* applied exclusively

to private goods; instead, we argue that neither Luther nor Martin violated any existing priority of competing utility preferences.²⁸

However, what is meant by an option that worsens the status quo of at least one, without making the others worse off? Such an option emerges if an alternative $A_2 \in G$ is given which is *inferior* to $A_1 \in G$ at least in one respect (or at least along one rating dimension) and *not* inferior in each other respect. The last condition (*not* inferior in each other respect) is fulfilled in *three* cases: (a) if A_1 is on par with A_2 in each other respect; (b) if A_1 is on par with *or* superior to A_2 in each other respect; and (c) if A_1 is superior to A_2 in each other respect. Distinguishing these three cases is of importance for social choices. The last and second-last cases are important to classical utilitarianism, which holds that the worsening of at least one person (but not all individuals) is legitimate if it benefits others or all others. For our reflections, these cases do not matter. We turn our attention to social choices in which the worsening of the status quo of at least one person goes along with the unaltered status quo of the rest. We direct our attention to this case because a social choice of an alternative A_2 , which makes at least one worse off, while it leaves the status of all others untouched, implies an *inequitable inferiority* among competing utility preferences.²⁹

To illustrate this, let us assume the following. Three friends are playing canasta. Three other contemporaries, playing poker, pop in and ask the friends to stop playing canasta and play poker instead all together. The friends, in turn, insist on continuing their game. Let us assume that abandoning canasta would worsen the status quo of the friends, while not worsening that of the contemporaries. Under this condition, the request to stop canasta appears to be inequitable, whereas that of the friends (everything should remain unaffected) does not, the reason being that the first demand asks for a worsening of some people involved whereas the second does not. The two demands are *asymmetric*. Things are the same if the friends playing canasta asked their contemporaries to stop playing poker and play canasta instead all together, while the poker players wish to keep the status quo. As it is in the previous case, the first request appears inequitable, whereas that of the poker players does not because the former implies a worsening of some people involved, whereas the second implies no such consequence.

1.1.5.3 Theory preference

It is part of daily life in science to choose among competing theories. In this regard, business ethics faces the same challenges as all other sciences. Which selection procedure will be applied cannot be said at the outset.

However, there are two methodological alternatives at hand which are fundamentally different and provide for two opposing ways of bringing about a choice. We are talking of the *justificationist* and the *falsificationist* methodology.³⁰

Justificationist methodologists assume that the truth of a theory, and hence its superiority over false competitors, can be demonstrated. Falsificationist methodologists deny this possibility. Instead, they view theory preference as a procedure, guided by the degree of corroboration that competing theories have. In other words, they recommend preferring the theory that, *ceteris paribus*, has the least problems among all competing alternatives. As is well known, falsificationist methodology, going back to Karl Popper and having been refined by other representatives of *Critical Rationalism*, is based on the idea that all theories are fallible. Following Popper, theories that claim to be ‘*scientific*’ should be formulated in a way that makes it possible to test and refute them. In short, theories should be *falsifiable*. But what is meant by ‘falsifiable’? As Popper has put it:

According to Popper, a proposition (or a theory) is falsifiable if and only if at least one test statement exists that contradicts it logically. . . . what characterizes the class of test statements is that a test statement describes an event that is logically possible (a possible fact), while, in turn, it is logically possible to observe that fact.³¹

Hence, falsifiability is a requirement, namely that a theory and a test statement exemplify a particular logical relation.³² ‘It has nothing to do with the question whether or not a proposed falsification is accepted as such.’³³ It also has nothing to do with the practicability of testing (whether a test is possible technically at the time, affordable, etc.).

Applied to the well-known example of white swans, the idea of falsifiability can be illustrated quite easily. A theory, tagged as ‘T’, should be interpreted in the following way: ‘All swans are white.’ That is to say, that for all x, if x has the attribute S (to be a swan), then x also has the attribute W (to be white).³⁴ Let us assume that in a given space–time-coordinate we observe a swan, which is not white (for instance, a red or yellow one, at least one with a distinct color, for it is impossible to observe a *not white* swan, properly speaking). From this observation we can conclude the corollary that the swan is not white, which, in turn, can be expressed by test statement B, which reads, ‘In the time–space-region r exists a non-white swan.’ Hence, T and B are incompatible. That is all logic tells us. Logic cannot tell which of the two propositions is false. However, it can tell that both statements contradict each other and, hence, not more than one of them can be true. Whether a scientist is prepared to accept that B falsified

T depends on his answer to the question, ‘which statement is more problematic?’ His answer, in turn, depends on the amount of relevant information he has.

In science, cases like that of the non-white swan are rather rare. In most cases, it is not only a theory, but rather a system of statements that is put to the test. Following Karl Popper and Gunnar Andersson, we call such a system of statements a ‘theoretical system’.³⁵ It consists of several different components, namely theories (T), hypotheses (H) and single statements that describe specific initial conditions (C), in short: TS: $(T_1, \dots T_n, H_1, \dots H_n, C_1, \dots C_n)$. Consequently, a theoretical system could be seen as a conjunction, TS: $(T_1 + T_2 + T_3 + \dots T_n; H_1 + H_2 + H_3 + \dots H_n; C_1 + C_2 + C_3 + \dots C_n)$.³⁶ From TS, respectively its components, many prognoses can be inferred, given its empirical content is high.

To illustrate what all this means for the falsification, let us take out a single prognosis P and assume that an observation has led us to statement P* that contradicts P. Hence, if P*, then $\neg P$ (non-P). The question, we face, is this: ‘Which statement is more problematic?’ Is it observation statement $\neg P$ or theoretical system TS? The scientist who has to answer that question faces the same situation as he does in the simple case, the model case, with which we began. If the scientist views test statement $\neg P$ as more problematic than TS, then he holds theoretical system TS for *not* falsified. If he views test statement $\neg P$ as less problematic, then theoretical system TS is falsified to him. To put it logically:

After P has been deduced from TS, while $\neg P$ is the case (*ex hypothesis*), modus tollens says that the falsehood of the conclusion implies the falsehood of the set of premises:

$$(TS \vdash P, \neg P) \vdash \neg TS.$$

$\neg TS$ means that at least one element of TS has to be false. Logically it is possible that more or even all elements of TS are false. That is all logic says. It does not tell us where the error(s) is (are). It is up to the scientist to decide where to begin looking for the error(s). However, the logical relation allows us to deduce the following: He who wants to continue work with TS while accepting its falsification, has to look for the error(s) within TS.

More problematic, yet more interesting, than the case just mentioned, are cases in which several theoretical systems compete with each other. Let us take a simple case here as well: If, *ceteris paribus*, TS_1 predicts P, while TS_2 predicts $\neg P$, and if the observation leads to $\neg P$, which is seen as less problematic than TS_1 , then we face a case, which, in accordance with the strict Pareto principle mentioned above, provides good reasons to

suggest the following: A theoretical system $TS_1 \in G$ should not be chosen, or used for further research, if there exists an alternative $TS_2 \in G$ which is superior to TS_1 in at least one respect, in at least one falsification, and at least equal in all other respects.

This correlation already has proven its usefulness for the selection of competing theories in business ethics. One of the main schools in business ethics in the German-speaking community (i.e. the *Homann-School*, named after its founder, Karl Homann) feels obliged to the methodology of *Critical Rationalism*, not by chance, I suppose.

Be this as it may, theory preference is not guided by methodological insights alone. Other reasons also may cause negative selection of theoretical systems, or theories, for instance the use of different explicata. *Ceteris paribus*, a theory $T_1 \in G$ should not be chosen, according to the strict Pareto principle, if an alternative $T_2 \in G$ is given that is superior to T_1 as regards at least one explicatum, while at least equal as regards all other explicata.

1.1.6 Methodological individualist ethics

Obviously, there is no direct link from the falsificationist methodology to the methodology of ethics. However this may be, looking at the components of the concept '*methodological individualist ethics*' gives us an idea of what is meant by the term. *Methodological individualist ethics*, as used here, means that all phenomena, to which a moral dimension is attributed, are retraceable to actions, or omissions, of individuals. Obviously, our reflections seize an idea that is prominent in *methodological individualism*. Both 'MIs' deny the existence of acting entities, except human individuals.

Methodological individualist ethics, as understood here, focuses on the individual, his actions and omissions. It assumes that the individual can and does act, alone or in conjunction with others, and that the adjective 'moral' can be attributed at least to some of his actions and omissions. Talking of actions and omissions implies the assumption that man can act in the strict sense, meaning that he also can act otherwise.

Moreover we assume – what probably most non-individualist schools of morals assume too – that moral comes into play only if interactions among men occur, in short, that moral is a social phenomenon, which is unknown to the world of Robinson Crusoes. This assumption is not a necessary one, though it is otiose to discuss it here because the topics of business ethics, analyzed in this treatise, mirror phenomena whose nature is social anyway.

Before we approach the fundamental assumptions, to be addressed to human action against the background of *methodological individualist*

ethics, we should note that *methodological individualist ethics* must not be confused with any individualist ethics, no matter whether an ‘egoistic’, ‘altruistic’, or any other variant of it. Be that as it may, every individualist ethics, or morals, for that matter, comprises particular moral norms, whereas *methodological individualist ethics* contains only formal, or methodological, conditions whose acceptance, as the author believes, leads to fruitful statements in business ethics, and ethics in general.

1.1.6.1 *Methodological subjectivism*

Methodological subjectivism, as understood here, forms a part of *methodological individualist ethics*. Consequently, and in accordance with Austrian Economics, we assume that all valuations, done by individuals against the background of decisions to be taken, reflect the subjective preferences and the subjective knowledge of the valuating person. As we shall see later, from this perspective, we can draw conclusions regarding the justness of contractual agreements.³⁷

1.1.7 *Actions and omissions*

As elaborated in Section 1.1.6, the focus of *methodological individualist ethics* is not only on human actions, but also on human omissions. This being said, a focus is also on the moral dimension that can be attributed to omissions. These remarks may seem trivial at first sight, nevertheless, they will become important against the background of the ethical questions to be discussed here, especially when discussing the role of contracts in business transactions, and economic actions in general.

Many market transactions rest on written or unwritten agreements. This holds true for craftsmen’s jobs in your house, stock exchange transactions, daily shopping, haircuts, and many others. Usually market transactions imply a tradeoff between goods or services on the one side, and money or other means of payment on the other side. If all agreed parts of the transaction are fulfilled, we talk of contract compliance. If at least one part is not fulfilled in time, then we talk of breach of contract, notwithstanding all other parts being observed.

For instance, if we do not pay the hair cutter after he has done his job, then we omit to keep our agreement obtained before. The same holds true if the hair cutter cashes beforehand and omits to cut our hair.³⁸ These examples make us aware of a fact that becomes important for later reflections, i.e. once it is agreed that a moral dimension can be attributed to market transaction in general, the floor is open to look from an ethical perspective at *all* options, market participants have, namely economic actions *and* omissions.

As we shall see at a later stage,³⁹ not only omissions of actions that imply a breach of contract play a role in business ethics, but also omissions for which that does not hold. A comparison with moral actions in normal life may illustrate to which omissions we allude here. Take for instance *denial of assistance*. Most cultural communities view *denial of assistance* as a moral case. That is to say that an individual who fails to help someone in need, although he could do so, becomes the subject of moral judgment, notwithstanding the fact that his failure could also be seen as a morally neutral omission.

Similar things hold for several economic activities which are not executed, despite their feasibility. Think of the financial crisis, which started in late 2008. It was often expressed in the media at that time that managers *morally failed* because they did not forego the boni, paid by their employers, although, as some media sources perhaps thought or wanted their readers to believe, a relinquishment would have helped the company and the shop floor.

Whatever the moral judgment of omissions of actions is like, whose exertion was not promised before, does not matter. The only thing that counts within the frame of our ethical preliminaries is the observation that inside the realm of business ethics a moral dimension can be attributed to *executed* as well as *omitted*⁴⁰ actions.⁴¹ Nonetheless, as indicated before, it is of quite some importance whether the omitted action is merely an omission or an unfulfilled promise. If it is merely an omission, then we face two difficulties, which need further consideration, as we proceed: (a) if an action were not executed, the admonition, that it was omitted, can be addressed to everybody, who, in principle, was able to execute it;⁴² (b) the first difficulty leads to the second one – it is impossible to elude that admonition. Not executing an action implies that the action was omitted.⁴³

1.1.8 Constitutive characteristics of moral action

Examining the constitutive characteristics of morals is a difficult task to undertake. A definition of morals that is not controversial is hard to deliver, not least because, as Kurt Bayertz has put it, ‘the phenomenon of morals is historically and culturally not uniform, changeable, and, often, debated.’⁴⁴ However, there is another difficulty to name the constitutive characteristics of morals. That difficulty is to name what is meant by a *constitutive element* of morals.⁴⁵ The answer to that last question faces some restrictions, especially within the frame of *methodological individualist ethics*. As mentioned in Section 1.1.6, methodological individualist ethics assumes that all phenomena, to which a moral dimension is attributed, must be retraceable to actions or omissions by individuals. Hence,

within that frame, the question regards the constitutive characteristics of morals is identical with the question as to the characteristics that actions and omissions must have in order to be classifiable as *moral* actions. To put it differently, our final question is what are the constitutive characteristics of moral action?⁴⁶

1.1.8.1 Heuristics of definition

Strictly speaking, one could object that asking for the characteristics of moral action is different than looking for the constitutive characteristics of morals. Yet, a brief look into the literature seems to support that objection. Several authors have attempted to characterize ‘morals’ or ‘moral’ via moral norms because, without doubt, what is in the center of morals are norms (rules, principles).⁴⁷ Some authors even attempt to define morals via the universalizability, that often comes along with norms.⁴⁸ There is much to say for and against such procedures.⁴⁹ What speaks in favor of them is the empirical evidence. When ethicists discuss morals, they often debate on norms and their universalizability. However, that heuristics of definition is a different one than the one we propose here. To my understanding, the procedures, mentioned above, mainly look at the subject of morals and their attributes (norms, universalizability, for instance). If you like, it is mainly a contents-orientated determination of morals, rather than a formal one.

The difference between the two procedural methods of defining moral action might become clearer by calling, though with some reservation, one method inductive and the other deductive. He who wants to define moral action via its normative aspect (thus moving from the particular to the general), chooses a way that resembles the inductive one, whereas he who starts with the general (actions) and moves to the particular (moral actions), obviously prefers a more deductive method. The core of this deductive method forms a systematic selection process that excludes everything that is not seen as moral, for good reasons. This core, obviously, relates to the idea of negative selection, as described in Section 1.1.5. Moreover, it reflects the intention to lower the risk, or twofold risk, that goes along with the inductive method: (*a*) to overlook some of the characteristics of the definiendum in the process of collecting them all and, thus, to take a loss of precision and unambiguity; (*b*) to stop looking for further characteristics as soon as a promising one is found. In comparison, the deductive method, by excluding non-constitutive characteristics, aims for a degree of precision and unambiguity that a definition needs in order to serve empirical and normative purposes. Instead of stopping work upon the first eureka, it leaves undiscovered characteristics for further search,

hence avoids throwing the baby out with the bath water, which would be disastrous in case of a mistaken definition.

Yet, still one could say, perhaps with a sardonic undertone, that the heuristics of definition, proposed here and characterized by negative selection, would perfectly serve him who does not know what he is looking for. The author is prepared to accept that caricature, but would add that it does not replace the full picture.

Despite all that, the author is aware of the fact that, up to this point, he has given to the gentle reader only a sketchy distinction of a contents-orientated and formal determination of 'moral action', notwithstanding the final aims behind all that differentiation. He hopes for the reader's ongoing patience and is confident that, as we move on, the reader will get better access to the author's intentions.

1.1.8.2 Back to the constitutive characteristics of moral action

An approximative answer to the question, as to what constitutive characteristics of moral action in a formal sense are, can be deduced from the opinion, taken by Aristotle and, later, by Hume, that evil causes pain, while good evokes pleasure. What speaks in favor of the phenomenon as a constitutive characteristic of moral action is the fact that these two reactions occur whenever we attribute a moral dimension to an action. This attribution can relate to own actions or those taken by others. At first sight, it appears as if this phenomenon, extensively described by Hume, was a human constant. However, the psychic phenomenon of amorality (no reaction in face of moral actions) makes us aware of the fact that this is not always so. We have to keep in mind that Hume's definition of morals includes an empirical statement, and, probably, a deficient one, namely, *that* moral action cause the psychic reactions of pleasure or pain. In face of this, it seems advisable to prefer a less vulnerable contention, i.e. that moral action *can* cause pleasure or pain.

Following Hume, despite all this, means to assume that actions that cause pleasure or pain should be considered as actions to which the characteristic 'moral' possibly can be attributed.⁵⁰ Whether or not an action can be named 'moral' solely because of its faculty to evoke pleasure or pain is not yet said. The faculty, to cause a particular sentiment, might be a necessary condition, but is it a sufficient one?

A closer look reveals that the answer is in the negative. A constitutive characteristic of a concept, to be defined, is sufficient if the determination of the definiendum, it gives hereby, is sufficiently precise and unambiguous.⁵¹ However, an unambiguous determination of what classifies an action as moral cannot be given by the quality, to evoke pleasure or pain, alone.

Other actions, which we do not view as moral, can cause pleasure or pain as well. For instance, we sense pleasure during an excellent performance in the opera, or at the sight of an engine with 16 valves, or as a spectator of a breathtaking match. In these cases, art, technology, or sports cause our sentiments.

Sticking with Hume's criterion, while willing to obtain a sufficiently precise and unambiguous definition of moral action, asks us to look for additional characteristics of morals. It is obvious, to continue where Hume's criterion left us behind with ambiguities, and to search for a characteristic that helps to distinguish between sentiments of pleasure and pain, evoked by artistic performances, technological masterpieces, sport events, etc. and those caused by moral actions. Indeed, there is such a characteristic, two characteristics, to be exact. The second characteristic, as we shall see, is burdened with an 'intellectual mortgage'. It includes empirical assumptions, fallible ones, of course, that cannot play a role in a definition, minding the proper sense of a definition.⁵²

Be that as it may, we begin with the first additional characteristic. It concerns a side-effect of moral action. Different from artistic, technological, sportive, or every other non-moral action, moral actions evoke good or evil for at least one person. Whether we hit a person without reason, witness how someone is beaten up, help derelicts, listen to neighbors abusing each other: always is a good or an evil for at least one person the result of the action, to which we attribute a moral dimension. An excellent opera performance, an engine with 16 valves, a breathtaking match: none of the actions included here cause a good or an evil for at least one person, not taking into account the good or evil that rest in the sentiments.

To illustrate, what we have said regards the examples, mentioned above: If we witness a robbery, then this causes fright (a pain, or evil). Furthermore, the robbery creates an additional evil, namely the material loss of the victim. If we hit a person without reason, then this causes fright as well (horrified at the sight of our deed, an evil). Yet, the practiced violence causes an additional evil, namely the pain of the victim. Also, if we help derelicts, then we take delight in doing so (pleasure). On top of that, it improves the lot of the derelicts (a good). Finally, if we listen to neighbors, having a fight, we know that they suffer. On top of that, the argument, they have, causes us pain because of the noise (evil).

Although they do not cover all possibilities, the four examples should be enough to make our point clear, namely to illustrate the distinction made.⁵³ Nevertheless, they cannot belie that with the additional characteristic, just outlined, the determination of moral action is not yet done. Probably, the gentle reader wants to know in greater detail how pleasure and pain relate to good or evil, caused by moral action. Why is it that we can

sense pleasure *as well as* pain, when a party receives a good because of a moral action? And why is it that we can sense pleasure *as well as* pain, when a party receives an *evil* due to a moral action? Again, an example might shed some light on this issue.

Let us assume that A purchases a good from B, meaning A receives a good resulting from his buying. This result meets our goodwill (causes pleasure). By contrast, let us assume also that A robs a good from B, meaning A receives a good as a consequence of his theft. This, in turn, meets our disapproval (causes pain). Now, what causes pleasure in the first case, and pain in the second? It does not take much to see that, in the first case, a transaction takes place, to which, presumably, both parties consented voluntarily.⁵⁴ A transaction takes place in the second case as too, however, this one is, presumably, not based on the consent of both parties involved.

Let us modify our examples. We assume that A has bought a commodity from B and, consequently, has to pay now. In this case, A faces an evil (to give away money), due to his buying, which meets our goodwill (causes pleasure). Let us assume further that A has paid B upon receipt of the commodity, yet finds the good willfully damaged by B. In this case, A experiences an evil because of B's impairment, which meets our disapproval (evokes pain). Again, we may ask, what causes pleasure in the first case, and pain in the second? Upon some pondering, it becomes obvious that, presumably, the transaction in the first case rests on the voluntary consent of all parties involved, while, presumably, it does so as well in the beginning of the second case, but, very likely, will lose A's consent upon noticing the intentional damage by B.⁵⁵ In short, in the second case, the voluntary consent is not given in the end.

The examples show that the answer to the question which sentiment is caused by a moral action is a dependent one. It depends on whether or not the additional good or evil, caused by the action, meets the voluntary consent of all parties involved. If it is met, then we sense this with pleasure, if it is not, we feel pain.

Thus, the second additional characteristic of moral action indicates under which conditions moral action causes pleasure, and under which pain. However, it has a serious disadvantage that should not be hidden. Indeed, it may find more consent than dissent that we are pleased if the good or evil, caused by moral action, is freely accepted by all parties involved; and suffer, if it does not.⁵⁶ However, to say so is an empirical assertion, a fallible hypothesis. Aiming for a satisfactory definition of moral economic action and of just economic action, one should not burden oneself with unnecessary empirical hypotheses. At this stage, we venture to say that we can do without this hypothesis. However, according to the

deductive method of defining concepts, mentioned in the previous section, we will not throw it away. If we will not succeed without the hypothesis, we may well take up on it some time.

Resuming what we have said concerning the characteristics of moral action, replacing ‘pleasure’ and ‘pain’, which might give rise to some misleading connotations,⁵⁷ by less antiquated terms, such as ‘approval’ and ‘disapproval’, and bearing in mind the specifications, given so far, leads us to a first draft definition of moral action. It reads as follows: *An action is moral if it causes a party a good or an evil and calls for our approval or disapproval.*⁵⁸

1.1.9 Actions and causality

In the definition mentioned above, we talk of a good or an evil ‘caused’ to a party. The author is aware of the fact that the expression ‘cause’ needs some specification. Without it, our definition would suffer under a lack of precision and unambiguity. In respect thereof, the greatest problem arises from the fact that it is unclear whether or not the initiator of the good or evil is also a sufficient causer of the good or evil. If he is, then the definition will not face any negative consequences, if he is *not*, then things are different.

Let us illustrate the aforesaid by going back to the idea of ‘spontaneous order’, as we find it in the works of Friedrich August von Hayek. Hayek classifies ordered structures into natural, designed, and spontaneous orders, while holding the latter two to be the most eminent social orders.⁵⁹ Designed orders are, according to Hayek, the result of plans and agreement among humans. Spontaneous orders, in turn, are also the result of human actions, but not of human design, not of plans and intentional agreement to bring the order about. The paramount examples of spontaneous orders, named by Hayek, are the market order and language. Both are orderly structures, yet not the result of human design. Instead, they arose continuously, undergoing slight changes over time, in the course of, what he calls, ‘cultural evolution’.

The results of the free market are also a spontaneous order, and not a result of human design, following Hayek. Consequently, he views it as a misnomer to qualify these results either as just or unjust. His argument runs as follows:⁶⁰ If man can act, in the strict sense of the word, we can judge his actions, including his moral actions. A prerequisite for such a judgment is that the actor sufficiently causes the result, which is subject to our judgment. If, standing in a crowded bus, we step on our neighbor’s toes, right after the bus driver suddenly braked hard, then nobody will excoriate us, simply because our reaction was not sufficient for causing

our neighbor harm. Following Hayek, we have to reason accordingly when it comes to the result of the free market: None of the billions of market actors alone, or in consultation with others, creates the market result. By implication, it is nonsensical to attribute a moral dimension to the market outcome, to name it either just or unjust.

To put it generally and suitable for our purposes, we can adjust our first draft definition in the following way: *An action is moral if it sufficiently causes a party a good or an evil and calls for our approval or disapproval.*

Definitions do not become simpler by way of specification. However, despite the specification, made above, our draft definition of moral action, presumably, needs further refinement. As it stands, one could object that the definition, although considering the action, its cause, and the relation between these two, ignores the intention of the action. Still more, or more precisely, one could demur that an action hardly can be called moral if the actor has neither intended nor improved its consequences. Both objections, closely related, cannot easily be dismissed as irrelevant and, hence, deserve further critical analysis.

1.1.9.1 The triad of moral action

To live up to the expectations, raised in the previous section, it is advisable to have a closer look at the *triad of intention, action, and consequence* into which all actions, moral actions included, are imbedded, and at the internal relationships among the triadic elements. The reason for the aforementioned objections is that an action, without a target-aimed intention, does not qualify as action in the strict sense. This view of things is reflected in our language. We do not talk of murder if there was no intention to kill, let alone no base motives.

The intention of an action, the action itself, and the consequence(s) of an action form a triad. As long as the band that connects the elements of that triad is in good order, we have little, if any, problems to attribute to an action the dimension it deserves. To put it in relative terms, as long as the band is all right, we face lesser problems in attributing a moral dimension to the action in question than we would if the band was disrupted. As soon as the band cracks, or even rips apart, things are different. The abovementioned case is about cracks that may occur between intention and action.

For our purposes, let us use the examples that were already in use before. If it is *not* the intention of B to deliver a damaged good to A, then we find it more difficult to talk of a moral action than we would if it *was* B's intention. If it is *not* the intention of A to steal the good from B, then we face more difficulties to talk of a moral action than we would if it *was*.

A similar change occurs, regarding the set of difficulties, when the band gets chapped between action and consequence. If B intends to deliver, acts accordingly, yet without the expected result (assume, B places the good in front of A's domicile, in good faith that A will discover it upon his return; however, it is stolen before A gets it), then, again, we find it more difficult to talk of a moral action than we would if B successfully handed over the good to A. In addition, we talk of a moral action only with reservations if A intends to pay, gives the money to a friend of B, in good faith that the friend passes it on to B, while the friend fails to pass it on (say, because he loses it in the meantime), then, again, we find it more difficult to talk of a moral action than we would if B succeeded. Similarly, only with great difficulties are we prepared to talk of a moral action if A intends to pay, not walk the talk, yet B gets his money accidentally (say, by an unknown benefactor who pays on behalf of A, who is not aware of this). Probably, the last of the three cases of a single crack in the triad is the one that evokes the least readiness to talk of a moral action. (Note, that we do not include the moral issue of neglected promises in our reflections.) Obviously, we hold the middle link in the chain, namely the action, to be the most significant element of the triad.

If we are not mistaken, then we can conclude that schools of morals that recommend to give more weight to either the intention or the consequence of an action, rather than to the action itself, given the triadic system is out of balance, run into deeper problems than competing schools that do the opposite. That is to say, that any ethics of conviction that gives more weight to the intention than to the action, or any sort of consequentialist ethics (for instance, utilitarianism), which attaches greater importance to the consequences than to the action itself, expectedly, face more problems than all other schools of morals, which decide upon the moral dimension of an action mainly with reference to the action itself.⁶¹

Finally, it is even worse if the cracks occur at several places of the band. Can we attribute a moral dimension to an action in case two components of the triad are missing or doubtful? For instance, if someone intends an action, yet he neither acts accordingly, nor does the consequence (which was expected if he acted accordingly) come up by other means; or if someone acts, neither with intention, nor with result; or finally, if a consequence pops up, without anyone having intended and caused it: in all these cases, we would hardly attribute a moral dimension to any of these phenomena, would we not? The only exemption could be seen in the second case. If at all, we would attribute a moral dimension to an action, given that somebody acts without the respective intention and consequence, but not without causing spontaneously a result that causes a good or an evil to someone. Indications might be seen in the legal

treatment of such cases. If a young man walks into a bank on a whim, his hood covering most of his face, he might horrify several clients and employees. Although he neither intends, nor executes, a bank robbery, he causes a spontaneous result. And although he is not a sufficient cause for this result (fantasy and the capability to put one and one together on the side of the clients and employees to do the rest), we are inclined to say that the action of the young man is not freed of a moral dimension, reason being, that he is a necessary condition for the moment of shock (without his performance nobody would have been shocked).

1.1.10 Schools of morals and business ethics

Given the examples, used in this book so far, the reader could have gained the impression that business ethics is mainly about bank robberies (tried, faked, or failed), daily shopping, and minor cases of fraud. However, he will not really believe that the author wants to raise that impression: In fact, the author does not. The examples, used here, only serve as illustrations of what was said. Similar to what happens in the forefield of a surgical operation, where the instruments are laid out, the examples help us to put on display a set of intellectual instruments that enable us to turn to the relevant topics of business ethics and enter into the proper discussion later, equipped with the necessary tools for minor operations, or major ones, for that matter.

Prior to the foray into the next chapters, closing preliminary remarks to the correlation of what was said to the schools of morals and, bearing this in mind, to the schools of morals and business ethics, need to be brought forward. Triggers for these remarks are given in great numbers in the relevant literature of business ethics. In the literature, we are often confronted with a preselection of moral positions and other assumptions, without being informed about the causes for these preselections.

However, let us have a look first at the correlation of what was said in this chapter and the most prominent schools of morals. The gentle reader already will have noticed that none of the schools of morals seem to be such that they would live up to all the preliminary requirements, stated up to this point. This impression is not by chance. The main, but also the minor, schools of morals, are the result of many different magnitudes of influence, be they historical, cultural, ideological, political, or otherwise, and express particular moral beliefs. Our observations, and the reflections attached to these, are determined mainly by formal aspects of ethics and morals. Thus it would be wondrous if, among the existing schools of morals, one, or more than one, would match all the possible objections, which can be deduced from the formal preliminaries mentioned.

On top of that, we do not want to leave the impression that meeting the formal requirements automatically would entail an improvement of the schools of morals in question. What can be achieved at best is a set of intellectual instruments for a comparative analysis of competing schools of morals, comparing what they deliver in an applied field. Should that be achieved, much would be gained.

To have a set of instruments for a comparative analysis of schools of morals does not imply that in each case all schools have to be included in the comparison. Sometimes it is sufficient to keep the numbers low, manageable, and sometimes it is the stage reached in the business ethical discussion that takes care of the selection of schools to be compared. However, it can be quite useful to have an outline of all schools, or at least an apparatus that categorizes them. Such an apparatus would allow us to go back only to those alternatives, which promise to provide fruitful solutions for the problems discussed by the scientific community. It would make it obsolete to study all variants each time anew when a problem of applied ethics is to be discussed.

Such an apparatus, though not a complete one, could take its starting point at a distinction, which we owe to Charlie Dunbar Broad and Elizabeth Anscombe, who divided schools of morals into deontological and consequentialist ones.⁶² As is widely known, deontological schools of morals address mainly actions and the alleged principles guiding them, whereas they are less affected with the consequences of actions. Kantian morals would be an example, to be named here. In opposition, consequentialist schools of morals look mainly at the consequences of actions in order to come to moral judgments. Utilitarianism, that of Bentham or others, could be mentioned here.

Against the background of the abovementioned triad of action, it is obvious that all schools of morals, which chiefly address the intentions of actions (for instance ethics of conviction), hardly fit into that frame at all and, consequently, state a complement to the deontological and consequentialist categories. A categorizing apparatus should take that into account, as well as all other schools of morals, which cannot be subclassified by the categories mentioned so far.⁶³

1.1.11 Business ethics and schools of business morals

As explained in Section 1.1.1, traditionally, the term ‘ethics’ is used in at least two different meanings. First, it is used to denote an academic discipline, namely a part of practical philosophy,⁶⁴ and, second, to name particular schools of morals (virtue ethics, contract ethics, utilitarian ethics, etc.). Similar things hold for business ethics. On the one side, the name is used

to designate a science, on the other side, to label particular schools of morals, that are devoted to business activities. Probably, there is little dissent about this distinction and its usefulness. Despite this, there is little attention devoted to this distinction. More than this, it seems as if many, including representatives of the science 'business ethics', would cross the division line occasionally, either intentionally or without paying too much attention to the confusion created thereby.

The division line between these two functions is clear, in as far as it is the task of every science to produce analytical as well as empirical statements, or propositions, whereas schools of morals impose norms or relate norms to particular moral situations, no matter whether the actions have economic relevance or not. The norms of the schools of morals can be subject to scientific research, of course, but they are not the goal of science.⁶⁵

Once the division line is accepted, a correlation, relevant for several problems in business ethics, emanates out of business as a science, particular schools of morals, and economic moral action in general. In order to outline this correlation and to avoid misunderstandings, evoked by the ambiguous meaning of the term 'business ethics', we make a terminological proposal: In the future, we reserve 'business ethics' as a term for the academic discipline, while we use the term 'schools of business morals' to denote schools of morals concerned with moral business activities.

This being said, business ethics is concerned mainly with two tasks: (a) it is up to business ethics to define moral business action, or moral economic action in general, in order to enable empirical identification, and to examine (by analytic, logical, and methodological tools) the judgment of these actions by schools of morals (of course, including schools of business morals); (b) it is also up to business ethics to produce empirical theories concerning moral business (economic) actions and to test these. By the measure of this distinction, we can speak of *analytic business ethics* and of *empirical business ethics*. Given the two different tasks, one easily could apply division of labor to business ethics, some doing the analytic job (philosophers), and others the empirical one (economists). However, things are different when it comes to reality. Many contributions to business ethics, if not most of them, deal with analytic as well as empirical questions.⁶⁶ Some of them see themselves explicitly or tacitly as a normative science, at least in parts.⁶⁷

Finally, it should be said at the end of this chapter that it is not the task of this treatise to give a critical appraisal to the existing schools of business morals. However, if useful, we shall give an account of our understanding of the current schools of business morals. Doing so, should ease

the reader's challenge to judge if, and if so, to what extent the criticism, expressed in this study, is worth the paper it is written on. The reader should easily and quickly reach a position from which he can decide whether the arguments, presented here, rest on misunderstandings or present void objections to the examined views.

2 Economics

2.1 Economic and moral action

An author, who launches a treatise on business ethics, should say, right from the beginning, what he means by business ethics. Moreover, he should make clear, also from the outset, what has caused his understanding, in particular, if it diverts (in many aspects) from the mainstream view. He can do so, first, by introducing the main features of the existing perspectives on business ethics, and, second, by explaining which criteria made him take a different angle regarding one or the other feature. This two-step method is one way, the way we pursue is another, as the reader might have guessed already. The author has chosen the second way, i.e. to start with undemanding assumptions (or least demanding ones), disclose their implications for his subject (or, at least, allude to these), approach, step by step, the main topics discussed in his field, and (hopefully) avoid the negative side-effects, he is inclined to attribute to the first method. (Already, much of the first chapter was written to this effect.)

The author of this study, believing to have good reasons for this assumption, and also believing that it is advisable to save the reader from his reasons at this stage, takes the second route also because he thinks that the negative side-effects mentioned will become apparent by the time we reach the end of this book and, hence, need no separate analysis at this moment.

2.1.1 *Constitutive characteristics of economic action*

To the abovementioned undemanding, or least demanding, assumptions belongs the conjecture that business ethics, generally speaking, looks at economic action, to which a moral dimension can be (or is) attributed. This is so, despite all the narrow and constrained focusing on particular topics, on the one side, and all the omissions and overlaps to adjacent fields, on

the other side, which will cover much of our attention in the course of this treatise. In short, business ethics deals with economic actions that are moral at the same time.¹

After an extensive treatment of the constitutive characteristics of *moral action* in the last chapter, we face the necessity to treat the constitutive characteristics of *economic action* equally well, before proceeding to the constitutive characteristics of *moral economic action*. For the very reason, that the last chapter dealt with much of moral actions, what also holds for actions in general, a great deal of our job is already done. There is no need to explain again what acting means in the strict sense of the word, and no demand for repeating the relevant aspects of the correlations between intention, action, and consequence.

An additional advantage of our undertaking is the fact that economists are usually much more successful than philosophers in determining (constraining) their field(s) of study. This greater success story may rest, in part, in the subjects themselves. However, we should welcome that fact happily and may leave the reasons for it uncommented.

According to a common view in economics, economic actions are actions with scarce resources in face of rival interests. To the non-economist, and to the reader, who wants to know the assumptions of this study, it should be noted, what is meant by goods, scarcity and the relation between both. For this purpose, we go back to the ideas of Carl Menger. Menger treated this subject in a very commendable way in his *Principles of Economics* [*Grundsätze der Volkswirtschaftslehre*].² He starts with the hardly debatable observation that many things share the faculty to serve human needs.³ As Menger puts it:

If a thing is to become a good, or in other words, if it is to acquire goods-character, all four of the following prerequisites must be simultaneously present:

1. A human need.
2. Such properties as render the thing capable of being brought into a causal connection with the satisfaction of this need.
3. Human knowledge of this causal connection.
4. Command of the thing sufficient to direct it to the satisfaction of the need.⁴

Hereinafter, all the assumptions made by Menger, except for the third one, will be explained. The third assumption includes difficulties that do not affect our concern at this moment. Hence, we afford to exclude it at this point and return to it later.⁵ Above all, to understand the correlation,

with which we are concerned at this point, the third condition is dispensable, while all others, which can be read from an analytic perspective exclusively, are not.⁶ These three conditions are plausible also in the analytic sense, as well as in the empirical one. They are very plausible in the analytic sense in terms of implying simple logical relations. Determining a thing as a good, because of its faculty to serve the satisfaction of human needs, implies that we have to assume for each thing, that we call a good, that man has a corresponding need as well as the power over that thing, while the thing indeed can satisfy the corresponding need.⁷ Even in the empirical sense, we have little reason to doubt that a thing can satisfy human needs without meeting these three conditions. Be that as it may, for our reflections on the constitutive characteristics of economic action the empirical character is insignificant.

Nonetheless, Menger admits that even things which do not satisfy human needs immediately can become goods by serving the production of goods which satisfy human needs immediately. Menger calls these things complementary goods.⁸ However, complementary goods, as well as goods serving our needs immediately, are not economic goods yet. What it takes to turn a good into an economic good, is scarcity.⁹ Scarcity causes the value of a good. Scarcity makes a good an economic good and, thus, tradeable. Goods that are not scarce (so called ‘free goods’) are not exchangeable. The reason is obvious. Why should one buy a good that one can have for free?

Consequently, constitutive for economic acting is scarcity (in the relative sense of the word). Of course, absolute scarcity, in terms of factual or natural limitedness of goods at our disposal (presumably, one day the sun will go down for ever, so to speak), sets its limits to relative scarcity, but is irrelevant for the understanding of economic acting. Decisive for relative scarcity is the existence of rival interests. Without competing interests, a good would not be tradeable. It would only serve the satisfaction of the needs of the one who disposes of it. However, a sandwich, that allays the hunger of Peter, can also appease the hunger of Paul. Hence, the needs of men compete for useful goods and, thereby, cause their tradeability.

Menger knew that many material things (an apple, for instance) could become goods, while not all goods need to be material.¹⁰ Even intellectual goods (or what we believe them to be¹¹) are subject to use, demand, and, hence, tradeability. Thus, there are three characteristics that are constitutive for economic activities: the usefulness of things (material as well as immaterial ones) for the satisfaction of human needs, the emergence of goods (in productive societies via complementary goods), the scarcity of these goods in relation to competing interests, and the tradeability of goods (called economic goods), based on all these characteristics.

Of course, one could reconstruct this correlation, relevant for economic action, by going back to other classical economists. To give preference to Menger rests in the combination of his theory of goods with the idea of subjective value.¹² The idea of subjective value will become important at some later stage. With the help of it, we can sharpen our distinction between business activities (or economic actions, for that matter) that are just and those that are unjust.¹³

2.1.2 *Constitutive characteristics of moral economic action*

After having determined which characteristics constitute *economic action*, i.e. what marks actions to which we attribute an economic dimension, we are prepared to reflect on the constitutive characteristics of *moral economic action*. In other words, we ask what characterizes economic action to which we attribute a moral dimension.

In as much as the characterization of moral action, given in the previous chapter, is accepted, we can conclude that economic action must be compatible with this characterization for being entitled to use the label *moral economic action*. Taking up what was said in Chapter 1 on *Preliminaries*, regards the place of business ethics as a science, we may state that it is *moral economic action* that forms the core of business ethics, or, *should* form it.¹⁴

Despite this interim result, the matter is still up in the air. Not only does (or should, for that matter) business ethics ask whether or not alleged moral economic actions are ‘true’ moral economic actions and how findings can be identified and tested; business ethics is also about what makes a business action¹⁵ good or bad, just or unjust, etc. and what are the criteria for these attributes.

The more fundamental of the two questions cannot be answered by going back to the draft definition, provided in the previous chapter. Doing so would exclude the question of private property, and with it the related topic of legitimate private property. However, it is exactly the latter question, which is repeatedly put, given competing interests in scarce resources. The nature of man allows this problem to be settled either peacefully or with conflict.

Almost certainly, the attentive reader has asked himself what would happen if the draft definition of moral action would simply be put on economic action. The result would read as follows: *An economic action is moral if it causes a party a good or an evil and calls for our approval or disapproval*. Would that not do it?

Probably not if we recapitulate some of the examples provided in the previous chapter. Also, what should make us uneasy is the provisional

acceptance of a particular understanding of ownership, made there. This uneasiness pops up for good reasons, as we shall see. Let us remember! For all examples, given in Section 1.1.8.2 (buying and stealing goods, paying for goods and deception), it was implicitly assumed that the question of ownership was already settled. This assumption does not go without saying. Saying this, in turn, does not mean that we need to sort out in each of those cases whether the ownership was correctly identified. Rather we mean that we need to examine on which principles ownership in itself rests. If ownership is not justified (justified in the moral sense), then do the examples not deliver what they pretend to provide. (Similar things hold if the respective attributions of ownership in our cases were mistaken.)

Things are even worse! As the reader might have guessed already, there are good reasons to assume that the questions of ownership and justification of ownership are closely tied with another question, innate in the draft definition of moral action, namely, what is meant by that voluntariness, extensively discussed in 1.1.8.2, no matter whether its presence causes either approval or disapproval to the disputed moral action.

2.1.2.1 *Voluntariness of moral economic action*

The answer to the last question is so demanding that it has to be given in a separate section (2.2). Our starting point is determined by the meaning of economic and moral action. Assuming that economic action includes the handling of tradeable goods already implies the assumption of acting subjects. To put it simply, economic action is a social phenomenon. In this sense, Robinson Crusoe was not an economic actor before Friday arrived. At the same time assuming that inflicting a good or an evil (as a consequence of acting) rests either on *mutual* voluntariness or involuntariness, or even universal voluntariness or involuntariness (given that more than two parties are involved), is admitting also that society is given (consisting of two or more people).

In simpler words: Economic as well as moral action, and, hence, moral economic action too, implies society. Consequently, what needs clarification is the voluntariness of the individual in society, keeping in mind that within society individual liberty can either be given or refused. Alas, the definition of individual liberty (or individual freedom) is, as we shall see soon, subject to circular reasoning. This circularity needs to be avoided in order to prevent that our definition of moral economic action becomes useless in the face of a circularity problem. The subsequent examination concerns the emanation and resolution of the circularity problem, guided by the aim to provide an unproblematic definition of individual freedom that can be used fruitfully for other further reflections.

For this purpose, I draw heavily on a previous study of mine, entailing an attempt to lay down the reasons why individual freedom and the welfare state are logically incompatible.¹⁶ As we shall see soon, the definition of individual liberty cannot do without assuming private property.

2.2 Freedom, property, and moral economic action

2.2.1 *Individual freedom and property*

‘Individual freedom’ is widely discussed in political philosophy and adjacent fields as a concept and as an idea. Usually, individual freedom is understood as the absence of coercion by another.¹⁷ Hence, determining individual freedom as absence of coercion by another implies that coercion can have an impact on the set of our feasible options. However, not every impact on our option set of actions implies coercion by another. Often, we admit the impact of another, especially if the overall amount of feasible options increases as a consequence, but also if it reduces the set of possible actions (for instance, when we follow the diet restrictions of our physician).

Nonetheless, whenever we talk of a coercive impact on our set of feasible actions, we mean a restriction on at least one option to which we do not consent, notwithstanding the eventual increase in the overall number of options. However, there are cases in which another restricts our options of actions against our will although we would not say that the restriction is due to coercion. It is reported that Diogenes once lay half in the tun and half in the sun, while Alexander the Great passed by and, during conversation, promised to fulfill him one wish, anything under the sun. Thereupon Diogenes reportedly replied: ‘Stand out of my sun.’ The Greek emperor had taken away one of the options Diogenes had before his arrival. Economists, and many others too, for that matter, would not rate Alexander’s standing in the sun as coercion despite the limitation it caused Diogenes. They would call attention for the fact that the sun is a free good, not owned by anybody, and, hence, Diogenes had no reason why his utility preference should override that of Alexander. However, they would admit that things would be different as soon as the limitation of one’s options to act would imply a restriction of the private property of that person. Exactly at this point of our efforts to define individual freedom property enters the game.

However, pointing at the necessity to include ‘property’ in our reflections says nothing about the moral dimension that, eventually, could be attributed to property. If and, if so, how this attribution is possible will concern us later.¹⁸ Up to here, we can admit that the inclusion of ‘property’ in the process of defining pushes our undertaking, which otherwise, probably, had come to a standstill.

Let us recall! In respect of the constitutive characteristics of moral action, we have learnt that moral action needs to cause a good or an evil to at least one person. Would we examine Alexander's appearance regarding its eventual moral dimension, and would we find (for the sake of discussion) that his action was intended and sufficient for its consequence, then we could hardly argue it has a moral dimension, reason being, that evils resulting from the use of free goods do not qualify for our definition. To the question, why they do not, we would reply that Diogenes' demand on Alexander, not to cause that consequence, implies an unjustified prioritization of one utility preference over another.

This being said, a prioritization of utility preferences (*preference prioritization*, for short) is possible via an introduction of 'property'. To put it differently, by attributing the label 'property' to a thing one indicates the reason for the claimed *preference prioritization*. The reason is principally subject to proof, fallible as all statements are. It is not *creative*, in the sense that the claimed preference prioritization would come out of the blue, and would not be open to criticism. By contrast, a preference prioritization that is not creative (*non-creative prioritization*, for short) is open to criticism. Without forestalling too much, it should be said here, that to put the *preference prioritization* on a least problematic foundation, if not an unproblematic one, is the nub of the matter of introducing the concept of property into the game.¹⁹

2.2.1.1 *Individual freedom and the problem of circularity*

Undertakings that serve the specification of definitions are often subject to unforeseen problems. Our undertaking is not an exception. Close inspection of the results, up to now, reveals that we are near the line beyond which we would start arguing in a circle. Crossing that line would be fatal. Circular definitions are fruitless.²⁰ To prevent a failure of our efforts makes it necessary to solve this problem of circularity. We do so by outlining first what brings that problem into existence.

As has been demonstrated in the previous section, we can talk of a violation of voluntariness, or individual freedom, only if the restriction of a feasible option goes along with a restriction on private property. The result of our draft definition of moral economic action was that an economic action can be called moral only if the action was sufficient to cause a person a good or an evil. (If Alexander had taken away the tun from Diogenes (and had been sufficient for that abstraction), in order to bereave him of a feasible option he otherwise would have had, then, and only then, would he have executed an economic action that, undoubtedly, would have had a moral dimension. He had performed a robbery, plainly and simply.)

In order to indicate the said problem of circularity properly, we will call actions which are sufficient to imply a restriction on the feasible options a person has, due to his property, *artificial restrictions on private feasible options*.²¹ The problem, in face of this, is that artificial restrictions on private feasible options can meet the consent of the restricted person. (We could imagine that Diogenes would have not objected to Alexander's action.) Sometimes, we even beg another to limit our private feasible options, for instance, to overcome our weak will. If Peter asks his wife Mary to take away *his* chocolate bar, so he cannot continue nibbling, and if Mary meets his wish by putting the chocolate bar away, then she limits his private feasible options and is a sufficient condition for that restriction, but she can appeal to his voluntary consent. By no means would we call her action coercion. Peter's wish (or consent) would absorb that possibility, in the first place.²²

Hence, artificial restrictions of private feasible options imply coercion only (and, consequently, can have a moral dimension only) if not implying the voluntary consent of the restricted person. Taking this into account, we could determine the individual freedom of a person as absence of artificial restrictions of private feasible options, unless the restricted person freely consented to it. Now, this determination is useless, at first sight, because the condition 'unless the restricted person freely consented to it' brings individual freedom into the definition through the back door. We can consent to someone's restrictions 'freely' only if we enjoy individual freedom.

Let us summarize up to this point! Within the draft definition of moral economic action, the problem popped up to determine the concept of voluntariness. Following a widely shared point of view, we understood voluntariness as absence of coercion, meaning, not being subject to the arbitrary will of another. To qualify coercion, we interpreted it as artificial restriction of private feasible options in the absence of the voluntary consent²³ of the restricted person. In other words, we made the definiendum a part of the definiens. That caused our ending up in a fruitless circle.

If we want to abandon that circle, then we have to replace the criterion 'absence of voluntary consent' by a fruitful one, in the first place. That is to say that we have to explain what we mean by 'absence of voluntary consent' without using the term 'individual freedom', or a modified version of it. For instance, it would not help much if we declared: 'The individual freedom of a person is the absence of artificial restrictions on her feasible options, which would cause her costs.' Such a definition is fruitless because, as the example of Peter and Mary proved, someone can be happy with the costs that come along with a restriction on his feasible options. What we are looking for is a specification of the abovementioned costs that helps us break the circle. These specified costs could replace the

criterion of absent consent. Hence, what we need is a distinction of two types of costs, one that results from self-restraint, immediate or mediate, and one that can count as coercion.

THE CRITERION OF ABSENT CONSENT

Searching for a criterion of absent consent, we shall make use of two matters of fact, as we shall elaborate later. First, we resort to the fact that man, by facing new information, is confronted with a decision in principle, namely, either to stick to his original plan or to divert from it, facing new information; second, we take up the question, what happens in a case of freedom that also occurs in case of coercion, and what happens in the one case that does not transpire in the other.

Let us illustrate first the fact that new information asks for a decision. As said, as soon as we register information, we face a decision in principle, an *either-or-decision*: Will we stick to our plan or deviate from it in the light of the new data? Daily life is full of such situations, though we do not necessarily realize them as such. When we cross the market place, see fruits and vegetables, we constantly decide whether we shall stop or go on; check and, eventually, buy the offered goods or leave them untouched. When we read advertisements in a paper, we decide on each whether we should follow up or leave aside. Whenever we meet friends in the street, we decide whether to say ‘hello’ or not. Most of these decisions are routine, presumably. Nevertheless, they are decisions or can be reconstructed as *either-or-decisions*, at the very least. They emanate the perception of information. This is even so if the information itself, expressing an explicit offer, includes a choice also, and if we assume that the person receiving this offer is free to accept it or turn it down.

The following example should illustrate this fact and its consequences for our reflections. After a couple of beers and whiskeys late at night, Nick is sitting tired at the bar of his favorite pub. The barkeeper, by the name of Joe, asks Nick whether he would like to have another beer or whiskey. For the sake of argument, we ignore that the question is clear and could be answered clearly as well. Instead, we turn to the offers that are implied in Joe’s question. Joe made Nick a clear offer, namely to decide between two alternatives, either beer or whiskey. In spite of this, his question constitutes an additional decision to take, namely: ‘Shall I respond to Joe’s saying at all, or shall I not?’ As soon as Nick registers Joe’s doing, whatever it may be, he receives information whereupon he has to decide whether it is worth considering or not. In a way, a free-to-choose offer, as the one made by Joe, includes two different, but correlating, choices. We call the one ‘*object-decision*’ and the other ‘*meta-decision*’. By *object-decision* we mean the

choice between two or more alternatives (beer or whiskey, for instance), whereas *meta-decision* means the decision to accept or refuse the object-decision. A meta-decision effecting a decline, is called a *negative meta-decision*, and a meta-decision effecting an acceptance, is named a *positive meta-decision*. A case like this one, constituting two correlating decisions, is termed *double decision case*.

Interestingly, a double decision case is also given when the offer made is forced on us. Assume that Nick would not respond at all, and Joe would turn mad, due to this. (To stimulate our imagination, let us say, that Nick repeatedly has reacted mulishly towards Joe in the past, so that Nick's behavior tonight drives him up the wall. 'That is enough,' Joe speaks to himself, 'I will let him know what it means to ignore me so late at night.') Abruptly he grabs at a bottle and, brandishing the bottle over Nick's head, he repeats his offer.

By all sympathy with Joe's reaction, intuitively, we would say that this time he forces Nick to choose, that the offer entails coercion. The question is, why? To answer this, we repeat our initial question. 'What happens in a case of freedom that also occurs in a case of coercion, and what happens in the one case that does not transpire in the other?' To deal with the first part of the question, the same happens concerning the object-decision. With respect to the object level, it is irrelevant whether the meta-decision is taken in freedom or not. No matter whether Nick takes his meta-decision with or without a bottle above his head, this does not change the set of alternatives (beer or whiskey). The answer to the second part of the question can be deduced by comparing the respective meta-decisions. In the case of freedom (that is, without the threat with the bottle), a negative meta-decision (implicit refusal of the offer via continuous ignorance) causes no expectable costs for Nick's privacy, and no costs for life and limb. When it comes to the opposite case, things are different. In the case of coercion (Joe brandishes the bottle over Nick's head), Nick faces costs if he takes a negative meta-decision, by not responding to the offer, costs being to get hit by the bottle, which, presumably hurts him, causes him costs, i.e. restricts his set of private feasible actions. We call these costs, which are forced on a person in the case of a negative meta-decision, the *follow-up costs* of coercion, the *follow-up costs of a negative meta-decision*. They are implicitly or explicitly announced costs, to be expected as a result of a negative meta-decision.²⁴ These costs are neither in any way announced, nor to be expected, in case the meta-decision is taken in freedom. Therefore, the *follow-up costs of a negative meta-decision* can serve as a criterion to tell freedom from coercion. Hence, our search for a criterion that can replace the fruitless, i.e. circular, criterion 'absence of consent' was successful.

Quite useful for our search has been the insight that offers, either forced or free, in terms of a performative speech act.²⁵ Performative speech acts are statements about matters of fact which become realized in the very moment of the speech performance, for instance, ‘I name this ship *Bounty*’, or ‘Yes!’ by the bride upon the priest’s question, ‘Will you take this man as your lawfully wedded husband?’ Similar things hold for questions, like, ‘May I ask you a question?’ While saying so, the speaker already asks. (A wise reply would be, ‘Don’t you do this already?’) The submission of an offer presents an analogous situation. It, i.e. the object-decision, already implies a meta-decision.

Let us turn now to a standard instance of coercion that also includes a *double decision case*. Doing so helps to abandon the impression that the abovementioned correlation is valid only for strange cases that take place in some obscure bar late at night. In short, we want to strengthen the opposite impression, namely that the distinction between meta-decision and object-decision is one that is universally applicable to all cases of moral economic actions.

A robber approaches his victim and confronts him with the classical request, ‘your money or your life’. He affirms his demand by adding, ‘or else I beat you up’. Now, the victim can decide whether he gives his money or his life away (object-decision); on top of that whether he sticks to his original plan or not (meta-decision). Some might object that there is no ‘real’ difference between the two choices, that meta-decision and object-decision are only one single decision, that being it. However, a slight change proves that this objection does not hold. Admitted, that the victim does not speak the robber’s language. In this case the victim would still be confronted with the meta-decision (sticking to the original plan or not). He would still have to decide, ‘Shall I respond to the incomprehensible talk of that man, or shall I keep going?’ Of course, he could not take a decision on the object level because he does not understand. Nevertheless the object-decision exists. It is addressed to him, though not to the expected effect.

With the help of the gained criterion, saying what is meant by ‘absence of consent’, we now can define individual freedom in a non-circular way and, hence, keep our draft definition of moral economic action. We can define, ‘A person, put in a double decision case, enjoys individual freedom if he can take a negative meta-decision without follow-up costs for his private feasible options.’²⁶

Henceforth, this understanding of individual freedom will be an implicit part of our draft definition, expressed by the addendum ‘*regarding her private feasible options*’. Hence, our draft definition reads now as follows: *An economic action is moral if it sufficiently causes a party a good or an*

evil, regarding her private feasible options, and calls for our approval or disapproval.

Admitted, short and precise is different. Notwithstanding, we should keep in mind that it is one of the prime tasks of definitions to provide practical abbreviations.²⁷ The length of the definiens does not matter at all. It may be as long as necessary. Its length has no influence on the brevity of the definiendum.

2.2.2 Introduction of ‘property’

The previous sections revealed that the concept of moral economic action presupposes not only economic goods and having them at one’s disposal, but also the assumption that the priority among competing utility preferences regarding these goods is resolved. A way to resolve this priority leads to the introduction of ‘property’. In other words, by way of introduction of ‘property’ it becomes possible to use the concept of moral economic action in business ethics fruitfully. As long as the prioritization of competing utility preferences over goods is not clear, we cannot distinguish between theft and legitimate ownership, simply because we have no criterion that would allow us to say, why the preference of A should overrule that of B, why, for instance, the original user of a good should be preferred to the one who intends to take the good away for his own use. We face a typical stalemate if the priority is unresolved. We even cannot call the one, who wants to take away the good, a thief because the concept of a theft presupposes that we can distinguish between property and possession. Similar things hold for concepts like ‘cheater’, ‘owner’, and many others, belonging to the key concepts of daily business and business ethics as well. In short, without clarification of the question by which criterion we should decide on the prioritization of competing utility preferences, meaningful conversation in business ethics is impossible.

2.2.2.1 Criteria for introducing property

Before introducing property and, thereby, examining the respective theories of property, a couple of preliminary remarks are useful. The first concerns the definition of individual freedom. Defining individual freedom is nothing more than defining individual sovereignty in terms of absence of the arbitrary will of another. A sovereign person is a person that enjoys individual freedom. As shown, individual freedom, or individual sovereignty, for that matter, presuppose property, in terms of private feasible options. Again, property presupposes individual freedom (individual

sovereignty), since property, or private property²⁸, for that matter, implies sovereign use over particular goods.

The mutual conditionality of concepts that come as pairs of concepts is a well known phenomenon, a common particularity in the world of definitions. Without ‘wife’ it is almost impossible to define ‘husband’, and vice versa. Similar things hold for ‘Tom’ and ‘Jerry’, ‘Romeo’ and ‘Juliette’, ‘Starsky’ and ‘Hutch’, etc. Although mutual conditionality is not a peculiarity of ‘individual freedom and property’, it should be mentioned, for the sake of completeness. It should be noted also to preempt concerns about thinkable problems that could arise from mutual conditionality.

Another remark that should be made before introducing property comes as a question, namely, whether there are any formal prerequisites to the introduction of ‘property’, whatever these may be like. In other words, can we, or even do we have to, deduce particular requirements for *any* theory of property, as a consequence of our preliminary remarks in the previous chapter? The author believes that one can *and* has to deduce such conditions, in order to argue logically and consistently within the frame of our *preliminaries*. For instance, one of our fundamental assumptions, made there, is the *implications compliance rule*. Applying this rule to any theory of property means that each mode of increasing property has to be logically consistent with the mode of initializing property, no matter *which* mode of initializing property is proposed by the theory in question.

Let us allude briefly to how this presupposition is to be understood. For that reason we recall the Lockean theory of property, which is to be discussed in more detail later. Locke introduces property with the help of the idea of ‘original appropriation’. According to this idea, man can acquire property on unowned goods by mixing them with his labor. This modus is applicable once per good. After a good is privatized this way, it cannot be privatized again by the same mode. (Paul cannot acquire property on land by mixing it with his labor if that piece of land already has been acquired by Peter, who has mixed it with *his* labor beforehand.) Otherwise the acquisition would include theft, no matter how much work that theft would include. In short: Theft is not a mode of increasing property (*increasing mode*, for short) that would be logically consistent (logically compatible) with the Lockean mode of initializing property (*initializing mode*, for short). However, Peter can sell the produce of his acre to Paul. Trade, or exchange, is an increasing mode, which is logically consistent with the Lockean theory of property.

As we shall see later, in particular when discussing intellectual property,²⁹ compliance with the rule, to permit only those increasing modes that are logically compatible with the initializing mode, presupposes some conditions, which make some theories of property (almost) come to naught.

An additional problem that each theory of property faces results from the fact that fractures within the chain of accumulating property or wealth (*accumulation chain*, for short) can occur. If, within the frame of a theory of property (the Lockean, for instance), an increase in property took place (via trade, for example), logically consistent with the initializing mode, but directly or indirectly based on an increasing mode that is not (theft or receiving, for instance), then the complementary rule that (within the logical frame of the theory of property) names the criteria, used for decisions about ‘Who is the true owner, finally? The original owner or the concealer?’, may not be logically incompatible with the initializing mode. Again, the reason for this rests in the principle of logical coherent increase of property.

This rule is of great importance, for instance, when it comes to historical and principle questions. (Who owns America? The white men or the Indians? May I keep the goods, I bought, although they are stolen goods?) Not forestalling the answer to such questions, we can say at least the following, up to this point: When it comes to a controversial issue, a rule that implies to blame the one first whose accumulation chain follows the abovementioned route of logical consistency seems to be more problematic than the opposite alternative. A reason for this presumption, although presumably not the only one, is that it appears reasonable to start solving a problem by looking first at the one who has initialized the problem, or who seems to have caused that initialization.

This reason has a similar structure to the one on which the police usually rests its principles of investigation. Before investigating someone who is less likely the delinquent, it seems prudent to investigate the suspects first.

Before resorting to the introduction of ‘property’, a further remark pertains to the relation between societies who have different rules about how to prioritize utility preferences. Assume, society A has adopted Lockean rules of property for their territory, while in society B different rules of property are applied. Consequently, they have different rules, different modi of *preference prioritization*. To put it simply, they have different rules of the game. More precisely, not only have they different goods, but also they have different modes of how to prioritize the use of these different goods. Does it go without saying that A is justified to ask B to adapt their rules to those of A? Or, vice versa, is it self-evident that B is justified to ask A to adapt their rules to those of B? In other words, does either of the two have good reasons why his rules should override those of the other in their playground? The answer is in the negative. None of them has an obvious reason why all should give preference to his rules, i.e. a criterion for deciding on the eventual priority of his rules, and the results possible under these rules.

Let us illustrate what we have said above by an example, very similar to one we have already used in Section 1.1.5.2. Three friends are playing canasta at the blue table, while three other friends are playing poker at the red table. Can the red team ask the blue team to change the game? And vice versa? In Section 1.1.5.2, we denied these possibilities, arguing that in both cases the demands were inequitable, due to their asymmetry. Here we provide a complementary argument that takes up the idea that none of the teams has a criterion for the prioritization of their utility preferences. It is a typical stalemate. On top of that, the impossibility to present such a criterion is also an implication of the *implications compliance rule*. Neither the red team, nor the blue team, can conclude the prioritization of their rules on the basis of their own preference alone. Stalemate is the logical and practical consequence of this, meaning that the status quo alone (each team continuing to adhere to its rule) is logical and compatible with the premises, while every change, *including the request for having things pending*, is not.

This condition, which determines the relation of non cooperating parties, including *yet not* cooperating ones, is, from the perspective of the author, apt to remedy a serious defect of the Lockean theory of property. It is also apt to support conceptions of property which, like that of Anthony de Jasay, rest on the *finders keepers principle*.³⁰

The last comment, preceding the introduction of ‘property’, is also an implication of the *implications compliance rule*. Answers to hypothetical questions (‘How would we introduce ‘property’ if conditions x, y, z were fulfilled?’) do not allow for direct logical inferences to answers that can be given to non-hypothetical questions (‘How do we introduce ‘property’ under the given conditions a, b, c ?’). This comment needs no further elaboration here, but will gain quite remarkable importance when we discuss conceptions of social justice.³¹

2.2.3 Introduction of ‘property’ à la Locke

In a sense, this point is a turning point of this treatise. Up to now, our reflections and comments were meant for formal criteria; criteria which, according to the author, should play a role in the debate about the foundations of business ethics. While turning to particular theories of property now, we start making use of these criteria. From now on, can and should these criteria be applied to the fundamental questions in business ethics, be it, as is the case in later parts of this book, to analyze critically current topics in business ethics, or be it, as it will be in the next sections, to carefully examine the fundamental principles of economic action, which are reflected in all relevant questions of business ethics. One of these fundamental

principles is the respect for property, a basic principle, which, as the reader may recall, is of eminent importance because it provides a criterion with the help of which the prioritization of utility preferences can be decided.

Probably the most influential theory of property, explaining how property ‘came into’ our world and why it should be respected, is that of John Locke. Certainly, there are few theories that are near to matching his, as regards forming civil society. Hereafter, his ideas concerning property will be outlined and confronted with the criteria mentioned above. Another reason for choosing Locke is his explanation of the role of money in flourishing societies. Needless to say, that a great deal of moral economic actions include money, mediately or immediately. Since money is not provided by the market – or, may not, to be precisely – but rather by governmental authorities (central banks, mostly), business ethics cannot ignore the question which consequences the state monopoly of money has and can have.

John Locke explains the emergence of property in the second treatise of his *Two Treatises of Government* of 1689.³² In this book, Locke takes up the issue of legitimate sovereignty over persons and things. The first treatise is mainly a rebuttal of the theses of Sir Robert Filmer, expressed in his *Patriarcha*. Filmer had argued that sovereignty over people was passed on from God to Adam and, subsequently, to the firstborn male. Locke detects and presents several logical incoherencies in Filmer’s reasoning, before undertaking his own attempt to explain the rise of sovereignty in his second treatise.

Locke starts his reflections by assuming a state of nature, which is,

A state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man. *A state also of equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.

(II §4)³³

Locke is not interested in a historical thesis, in the modern sense. He provides a scenario as the starting point for an explanation of political

power, which every rational human being can understand and accept easily.³⁴ Locke's thesis of a 'state of equality' seems to imply implicitly the leading question, 'Why should we assume that in a world of creatures of the same species some should rule over others?' He who claims sovereignty over others has to demonstrate what justifies his claim. It is he that has the burden of proof, rather than the one who objects to becoming his subject. To use Locke's words again,

There being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection.

Although it was clear to Locke that man has self-ownership (II §27) (a limited one, nevertheless, as man should not take his own life or sell himself to slavery), he did not see a *prima facie* reason for man to have authority over nature. After all, God has given 'the world to men in common', says Locke (II §26). As an individual, man can use natural goods only if he can make them his own, if he can transfer them from the state of common property to that of several properties, allowing for exclusive use. But how is this transfer possible? What makes it legitimate? Locke's attempt to solve that problem starts with the observation that man can mix the produce of nature with his labor.

The *labour* of his body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*. It being by him removed from the common state nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

(II §27)³⁵

The passage serves, more or less successfully, two masters: (a) it *describes* the original acquisition of property out of common possession; and (b) it *justifies* the legitimacy, claimed for this mode of acquisition. To business ethics, the second of these is, undoubtedly, the most important. Locke renounces consent as the source of legitimate acquisition of property, for practical and technical reasons. For the same reasons he believes that his proposal would meet common sense.

By making an explicit consent of every commoner, necessary to any one's appropriating to himself any part of what is given in common, children or servants could not cut the meat, which their father or master had provided for them in common, without assigning to every one his peculiar part. Though the water running in the fountain be every one's, yet who can doubt, but that in the pitcher is his only who drew it out? His *labour* hath taken it out of the hands of nature, where it was common, and belonged equally to all her children, and *hath* thereby *appropriated* it to himself.

(II §29)

We cannot but think that Locke handles the legitimacy issue somewhat too relaxed. The argument that other solutions to the problem are less practical and the proposal would be common sense hardly can defend the legitimacy of the, presumably, most practical solution. Here, one should recall the internal logical relationship between empirical and normative statements, also the *implications compliance rule*, both elaborated in the first chapter of this book.³⁶

Locke's failure to settle the legitimacy issue has been the subject of much learned discussion.³⁷ Locke's position has been criticized, among others, by Anthony de Jasay. His criticism is of eminent importance to this treatise because it includes an alternative to Locke's theory of property that, most probably, is in harmony with what we have presented, so far, as formal requirements of fruitful theory building in business ethics. We will outline Jasay's alternative at a later stage. In order to not unduly interrupt the outline of Locke's explanation of property and money, we now turn back to his second treatise.

Lockean theory does not provide legitimacy to the principle 'first come, first served', although the first impression might be different. His proviso to leave 'enough, and as good' to second comers did not help him out either. At a closer look, it is exactly that proviso that erases the necessity of property. Why acquire a good and make it private, when there is plenty of it? And if it is scarce, it is privatization that annuls the chance to leave enough and as good to others.³⁸

2.2.3.1 Introduction of 'money'

Although the proviso to leave 'enough, and as good' leads to a contradiction, as said before, it has its propaedeutic value in explaining the origin of money. Regarding the origin of money, Locke wrote:

It will perhaps be objected to this, that if gathering the acorns, or other fruits of the earth, etc. makes a right to them, then any one may

ingross as much as he will. To which I answer, Not so. The same law of nature, that does by this means give us property, does also *bound* that *property* too. *God has given us all things richly*, 1 Tim. vi. 12. is the voice of reason confirmed by inspiration. But how far has he given it us? *To enjoy*. As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy.

(II §31)

To engross only as much as one can enjoy; to leave enough and as good for others; all that works in a land of plenty. Locke lets on that he assumes this to work also in his days, when saying,

This I dare boldly affirm, that the same *rule of propriety*, (viz.) that every man should have as much as he could make use of, would hold still in the world, without straitening any body; since there is land enough in the world to suffice double the inhabitants, had not the *invention of money*, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions, and a right to them; which, how it has done, I shall by and by shew more at large.

(II §36)

Then Locke goes on to stress that the introduction of means of payment is no violation of the legitimate use of property (II §46), and outlines a scenario about the origin of money. He does it in the form of a *conjectural history*, to borrow a term from Dugald Stewart, a sort of narrative that claims no historical truth, but comes along as a very plausible historical fiction (sometimes combined with biblical documented history), which is also very illustrative.³⁹

Thus, at the beginning, *Cain* might take as much ground as he could till, and make it his own land, and yet leave enough to *Abel's* sheep to feed on; ... But as families increased, and industry enlarged their stocks, their *possessions enlarged* with the need of them; but yet it was commonly *without any fixed property in the ground* they made use of, till they incorporated, settled themselves together, and built cities; and then, by consent, they came in time, to set out the *bounds of their distinct territories*, and agree on limits between them and their neighbours.

(II §38)

Following Locke, in those days people mainly gathered useful things they could exchange. He who traded less durable goods, like plums, against durable goods, like nuts, was allowed to hoard them.

Again, if he would give his nuts for a piece of metal, pleased with its colour; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others, ... the *exceeding of the bounds of his just property* not lying in the largeness of his possession, but the perishing of any thing uselessly in it. ... And thus *came in the use of money*, some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life.

(II §46, 47)

According to Locke, money opens the door for an accumulation of wealth beyond what it takes to satisfy daily needs, *without* a breach of natural law. Even more, the origin of money enables man to acquire more than his fellow-men. It allows for unequal possessions, while the *increasing mode* is logically consistent with the *initializing mode*.

But since gold and silver ... has its *value* only from the consent of men ... it is plain, that men have agreed to a disproportionate and unequal *possession of the earth*, they having, by a tacit and voluntary consent.

(II §50)

One can hardly fail to see that Locke viewed money as a means to increase individual as well as common wealth. To him it was clear,

That he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind: for the provisions serving to the support of human life, produced by one acre of inclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common.

(II §37)

2.2.4 The problem of legitimacy and libertarian anarchism

It should not come as a surprise, or even a folly, if we assert that Locke's failure to solve the legitimacy question is less a problem than a gain for the fundamentals of business ethics. The true meaning of this will become

disclosed in the course of outlining the position of Anthony de Jasay. Before turning to him, we shall discuss an attempt to solve Locke's legitimacy problem; an attempt, though not a success, a Pareto improvement of Locke's theory of property, in terms of being less problematic.

The attempt, which is meant here, is to be found in the writings of Murray Rothbard and Hans-Hermann Hoppe, the main representatives of the so-called property-rights anarchism, or libertarian anarchism.⁴⁰ Rothbard and Hoppe rest their anarcho-libertarian theory on particular axioms, which are presented in a precise and short manner by Rothbard in his book *For a New Liberty*.⁴¹ Rothbard starts with the axiom of non-aggression. As he puts it, 'The crucial axiom of that creed is: no man or group of men have the right to aggress against the person or property of anyone else. This might be called the "non-aggression" axiom.'⁴² Though Rothbard discusses three reasons in support of this axiom, he stands fast only to one. Then he refers to freedom as a prerequisite for humans to learn and decide upon what is necessary to survive. In his words:

Since each individual must think, learn, value, and choose his or her ends and means in order to survive and flourish, the right to self-ownership gives man the right to perform these vital activities without being hampered and restricted by coercive molestations.⁴³

The conceptual proximity to Locke is quite obvious. It is also obvious that Rothbard's argument, although a sort of natural rights argument too, is different to that of Locke. Locke's argument in favor of self-ownership rests in the existence of God and proper interpretation of his will. Rothbard's argument does not. Hence, he avoids all difficulties connected with the traditional natural rights approach. On the reverse side of this, his abandonment of the traditional natural rights reasoning reveals that his argument is a functional or instrumental one, rather than a sheer natural rights argument. The right to self-ownership, we learn, helps man to pursue his vital interests. Rothbard, then, goes on arguing that the right to self-ownership can be executed only if man is free to acquire unowned natural goods. This acquisition, taking place by mixing a free natural good with one's labor, in turn, presupposes the right to do so and to stand on land, where the good grows. Only he who has a '*right to homestead*' can make use of his right to self-ownership. As a consequence of this, Rothbard claims not only man's right to self-ownership, but also man's right to homestead.

In his book, *A Theory of Socialism and Capitalism*,⁴⁴ Hans-Hermann Hoppe, friend and disciple of Rothbard, provides a complementary reason for the *non-aggression-axiom*. It is an attempt to justify the axiom via an

‘a contrario’ argument. The Latin *argumentum e contrario* is a sound logical argument, that requires to accept the proof of a statement if its contradiction is proven false. In chapter 7 of his book, Hoppe outlines his idea to justify a norm with the help of the *argumentum e contrario*. He starts with the hypothesis that each attempt to justify the norm of non-aggression already presupposes the acceptance of the norm, because ‘justifying *means* justifying without having to rely on coercion’.⁴⁵ Hoppe also holds that the non-aggression, by excluding force on others, implies that everybody has the right to dispose of his body as he wishes, without any restrictions. This right to self-ownership, in turn, includes the right to original appropriation (of goods yet unowned). As he puts it:

As soon as scarce resources are visibly appropriated – as soon as someone ‘mixes his labor,’ as John Locke phrased it, with them and there are objective traces of this – then property, i.e., the right of exclusive control, can only be acquired by a contractual transfer of property titles from a previous to a later owner.

The right to appropriate things visibly, can be proved by an *argumentum e contrario*, says Hoppe.

Its validity assumed, Hoppe’s proposal would do away with Locke’s legitimacy problem because it includes none of the restrictions on self-ownership and original appropriation that gave rise to Locke’s problem. Hence, let us have a closer examination of this *argumentum e contrario*. Hoppe writes,

If one does not have the right to acquire such rights of exclusive control over unused, nature-given things through one’s own work, i.e., by doing something with things with which no one else had ever done anything before, and if other people *had* the right to disregard one’s ownership claim with respect to such things which they had not worked on or put to some particular use before, then this would only be possible if one could acquire property titles not through labor, i.e., by establishing some objective, intersubjectively controllable link between a particular person and a particular scarce resource, but simply by verbal declaration; by decree.⁴⁶

For the time being, let us assume that the justification of a norm would be possible at all.⁴⁷ Under this assumption, we would have to admit that the justification, aiming at the voluntary consent of others, presupposes that the others are not subject to any force or threat. However, from this we cannot conclude that the attempt to justify the non-aggression norm

would imply the acceptance of the norms by those who listen to the attempt. The only necessary condition for the justification in the Hoppean sense is the *factual* absence of coercion during the process of justifying. Analogously, the absence of alcohol is a necessary condition for soberness. However, the attempt to be sober does not require a non-alcohol norm of the form, ‘You may never drink alcohol!’.

Hoppe’s error rests on the assumption that the necessity of a condition would imply its universalization. This assumption ignores that, for logical reasons, it is impossible to infer from an ‘is’ to an ‘ought’. Such an inference ignores the *implication compliance rule*, in the end.⁴⁸

On top of that, Hoppe’s *argumentum e contrario*, by the help of which he wants to demonstrate the logical compatibility between the non-aggression axiom and the right to original appropriation via visible acquisition (work, for instance), is subject to another irremovable difficulty, meaning that the logical status of the *argumentum e contrario* remains unchanged if the terms ‘work’, or ‘labor’, on one side, and ‘verbal declaration’ or ‘decree’, on the other side, are interchanged. The quote would read as follows, with interchanges put in italics:

If one does not have the right to acquire such rights of exclusive control over unused, nature-given things through one’s own *verbal declaration*, ..., and if other people had the right to disregard one’s ownership claim with respect to such things which they had not *verbally declared* on ..., then this would only be possible if one could acquire property titles not through *verbal declaration*, i.e., by establishing some objective, intersubjectively controllable link between a particular person and a particular scarce resource, but simply by *labor*; by *work*.

This exchange does not create any problem because *every* justification of property in other bodies is incompatible with the non-aggression principle. It does not matter whether the justification of original appropriation is based on labor or declaration. Despite this, one can easily admit that original appropriation of free goods is compatible with the non-aggression principle, reason being, that the execution of original appropriation does not presuppose force or aggression against others. However, to state this, it does not require an *argumentum e contrario*.

For the reasons, mentioned above, one cannot see a sufficient or satisfying solution to the Lockean legitimacy problem in the theory of property by Rothbard and Hoppe. Nevertheless, their libertarian alternative to Locke entails improvements in comparison with their intellectual forerunner. Locke’s natural rights approach includes restrictions on self-ownership

(and first possessions), unknown to Rothbard and Hoppe. Declaring man to be a creature of God, which is required to sustain itself, expectedly has restrictions on self-disposal. Suicide and voluntary slavery are inhibited by natural law, according to Locke.⁴⁹ Many issues of modern business ethics, and related applied ethics, touch upon instances of self-disposal Locke wished to be forbidden. Think of assisted suicide, organ trade, etc. It does not take much to imagine that it would be difficult to identify what Locke's position would be today. In comparison, the Rothbardian–Hoppean position would not face these problems because it excludes such limitations on self-ownership.

Greater logical consistency may have some attractiveness per se, but it is not this quality that is important here. The comparison of the two theories of property is interesting for another reason. If the key concepts of a theory have to be defined as precisely and unambiguously as possible, for the benefit of empirical statements, as we have argued in Section 1.1.3.2, then one can come to the conclusion that Rothbard and Hoppe did a better job than Locke, regarding the concept of self-ownership.

Similar things hold, when looking at the concept of labor. This is so because Locke leaves many questions unanswered. For instance, we would like to know why the mode of initializing property should be limited to work alone. Hoppe, instead, views it as sufficient to document this initialization visibly. As he puts it,

[Scarce resources] only become someone's property once they are treated as scarce means, that is, as soon as they are occupied in some objective borders and put to some specific use by someone. This act of acquiring previously unowned resources is called 'original appropriation'.⁵⁰

Another question, to be addressed to Locke, would be, why the mode of acquisition via labor should stay restricted. As we know from Section 2.2.3, Locke pleads to accept this mode only if 'there is enough, and as good, left in common for others' (II §27). As we have seen, Rothbard and Hoppe do not defend such a restriction, probably for good reasons. Locke's restriction smuggles in a rule for the *preference prioritization* that overtly is incompatible with the first. The first rule says: Regarding unowned goods, priority of utility preferences is determined by the initialization of property via mixing the goods with one's labor. The second rule says: The first rule is invalid if not enough, and as good, is left in common for others. However, it is exactly this condition of the second rule that cannot be met because each taking of scarce goods includes that less and, hence, not as good is left in common for others.⁵¹

Be this as it may, recalling our reflections on the strict Pareto principle in Section 1.1.5.1 makes us conclude that, in face of our comparison, we should not choose to continue with Locke because an alternative is given, namely that of Rothbard and Hoppe, that is superior to Locke in at least one respect, and at least equal in all others. Of course, one is not inclined to draw this conclusion if one has serious objections against this comparison and views no Pareto superiority of Rothbard and Hoppe over Locke.

Independent of whether or not one shares the conclusion, the strict Pareto principle does not allow the following inference, namely that not choosing the Lockean theory of property for further progress in science would imply to choose the libertarian anarchist alternative. In this case, as in so many others, we do not face a binary decision. In Jasay's critique of Locke's theory of property, we find another alternative, which, according to the author, dominates the approaches of Locke, Rothbard and Hoppe weakly, if not strictly.

2.2.5 *The finders keepers principle*

Rothbard and Hoppe replace the Lockean mode of legitimizing the appropriation of unowned goods by particular axioms and an *argumentum e contrario*, assuming they would have bigger legitimizing power. In the previous section, we have put forward arguments that deny this legitimizing power. The author sees no need to provide further arguments to this effect, reason being that it is the legitimacy problem as such, which is wrongly put. As we shall see against the background of the *preference prioritization*, the question of legitimacy does not address the origin of property. More to the point: *It does not address the origin of the status quo, but claims to change that status quo.* How is this to be understood? This will become clear, as we proceed in this section.

The traditional question of legitimizing property is based on an implicit assumption, videlicet, that the acquisition of property, respectively the acceptance of the *initializing mode*, asks for legitimacy. As the gentle reader may recall, in Section 2.2.2.1, we have argued that two different societies, having not only different goods, but also different *initializing modes* and *increasing modes* of property, cannot ask of each other that one society should give up their modes for those of the other because none of them has a criterion that would help to decide on the prioritization of the competing modes.

A stalemate of competing utility preferences means the absence of a criterion to change the status quo one-sidedly. Should any of the parties, or both, wish to have a change of the situation, they face basically two options, a peaceful and an offensive one, basically cooperation or fight.⁵² Both options, if taken, can serve the aim to introduce a binding criterion

for resolving the issue of prioritization. A and B can come to an agreement about the criterion or can solve the problem forcefully. As long as none of the two options has been pursued successfully, the stalemate remains, i.e. the modes of initializing and increasing property and the distributions of goods that come about under these modes. The same holds if none of the parties even makes an attempt to change the stalemate.

The fact that different initializing and increasing modes of property, and different distributions of property, coming about under these different modes, can coexist without making the deduction of any *preference prioritization* is not free of consequences. One of the consequences is the insight that different norms of property and different distributions of property do not imply any demand for legitimization. However, the request by one to change the status quo does create a legitimacy problem.

In a way, the *finders keepers principle*, that Anthony de Jasay⁵³ brought into the game, is a consequence that can be deduced from the reflections presented here. In this sense, the principle is not a rule, whose plausibility would create legitimacy. Legitimacy caused by plausibility alone would be magic. It would be a clear instance of a *naturalist fallacy* and a violation of the *implication compliance rule*. The *finders keepers principle* (in face of what was outlined here) is meant as a rule, that, in the absence of prioritization criteria can be followed without creating claims, which to observe, in turn, would require a criterion.

The first comer, and that is what we mean by ‘first comer’, is someone who finds an unowned thing first. In the moment of discovery and acquisition, he does not meet anybody (or else, he would not be the first comer) who eventually could have a reason for his utility preference overriding that of the first comer. The question whether the first comer has a criterion that justifies his preference prioritization does not come up at all. This is quite obvious, in face of the absence of any competing utility preferences. If the first comer acquires what he discovers, in whatever mode of acquisition, no problem regarding preference prioritization occurs. To take up the example of the card playing teams, he can dispose about the acquired good as it pleases him; he can play his rules.

With the second comer, being interested also in the good acquired by the first comer, things change significantly. Now different utility preferences compete. But the claims of the first comer and the second comer (as that of all other late comers) differ profoundly. The second comer has no criterion that would justify priority of his utility preferences over those of the first comer. (As an aside, the same holds for all subsequent comers.) The case is analogous to that of the card playing teams. After one team has started its game (like playing *finders keepers*), the second team cannot provide a criterion that would justify priority for its utility preferences over

the preference of the first team. The second can accept the status quo or try to change it, either peacefully or offensively, but he cannot change the fact that his utility preferences do not provide him with a justification for any priority claim, he eventually might wish to make. Again, the first comer faces a different situation. For him the question of preference prioritization does not exist. To keep the status quo, he can refer to the fact, that the arrival of the second comer (or any other late comer) causes no legitimate claim for a change of the status quo.

Hence, it is not the case that with the arrival of the second comer the status quo, caused by the first comer, would be nullified. His arrival does not change the status quo into a pending matter. The status quo is a fact, a creation by the first comer, facing no valid objection in the moment of emergence.⁵⁴ This, in turn, is exactly the fact to which the second comer (and, of course, each subsequent comer) cannot refer, namely that to lay down new rules and to change existing distributions of goods *could not* face any objection.

The gentle reader might recall an announcement, made in Section 1.1.5.2, in which some reflections concerning decisions in face of Pareto inferior alternatives were presented. These reflections, we said, could elucidate the *finders keepers principle*. This is the place for showing how they do that. Let us remember! We had chosen the following example. Three friends are playing canasta. Three other contemporaries, playing poker, pop in and ask the friends to stop it and play poker instead all together. Stopping the game, so we noted, would worsen the situation of the friends, whereas it would not worsen that of the contemporaries. The request to stop canasta appeared more problematic to us than the wish of the canasta players to continue because the former implies a worsening of some people involved, whereas the second implies no such consequence. In other words, the two demands are asymmetric.

This asymmetry is also given if, as it is in the case of original appropriation, the second comer asks the first comer to cease his use of the acquired good, while it is the stance of the first comer to continue his use. Consequently, the second comer requires the first to accept a worsening of his status quo, leaving that of the second and of all subsequent comers not worsened. In comparison, the demand of the first does not worsen the status quo of anybody at all. In face of this, the demand of the second comer is an inequitable one, while that of the first comer is not.

Some might object that every first acquisition by ‘finders keepers’ implies a ‘worsening’ to the status quo of all late comers because the first comer uses a good whereupon all others have no access to it anymore. That, so one might reason, also implies an asymmetry, and, hence, an inequitable demand. Although this asymmetry has to be seen in a different

light, as our following reflections will demonstrate, the objection, at first sight, mirrors a logic that seems worth to ponder on. First, it cannot be denied that each individual consumption of a material good implies the exclusion of other uses. It is an unavoidable consequence of every consumption of material goods. Second, let us assume, for the sake of discussion, that it is appropriate to call the above-said consequence a ‘worsening’ of the status quo of others. (After all, if the good was not in the reach of others, hence, not a part of their feasible options, nothing has changed for them.) Third, and more importantly, the resulting ‘worsening’, which we call W^* , is of a different kind than the worsening W of the first comer would be, due to the second comer’s claim. W^* differs from W , in as much as it holds for all parties, for first comers as well as for second comers. If A uses good G, then G is not available anymore to B. Vice versa, if B uses good G, then G is not available anymore to A. Both claims, that of A *and* of B, to refrain one-sidedly from using G because of W^* , are *symmetric*, while that of A *and* of B, to refrain one-sidedly from using G because of W , are *asymmetric*.⁵⁵ W and W^* would be of the same kind if unowned goods, rather than being owned by nobody, would be common property. However, this claim, that all unowned goods belong to all, does not go without saying. It implies a norm and faces, as well as all other norms do, the problems that go along with the justification of norms.⁵⁶

To put things in a different wording, and to forestall objections, resulting from eventual misunderstanding, the following should be added:

- 1 The abovementioned consequence of the *finders keepers principle* relates to existing original acquisitions, following that principle. Any acquisition of a good, along ‘finders keepers’, does imply neither that the applied initialization mode has to be applied accordingly to all other unowned goods, nor that the exerted acquisition would include the acquisition of any other good. Both conclusions would stretch the *implications compliance rule* unduly. Moreover, as was elaborated in Section 2.2.2.1, the *increasing mode* may not be logically incompatible with the *initialization mode*. In the course of increasing his property, it is no implication for A, who takes possession of good G by ‘finders keepers’, to use a good H, which is already in the property of somebody else. However, A faces no prima facie objections to using the acquired good G according to his preferences, including using it as a complementary good to produce other goods (G^* , G^{**} , G^{***} , ...) or to trade it for other goods. In short: All subsequent goods that are added to the property of a person by the increasing mode that is compatible with the initializing mode do not include any objections, which G would not face too.⁵⁷

- 2 The question, how to document an original acquisition properly, though very relevant in terms of practicability, does not influence the logical relation, discussed here. Our reflections aim, and hardly could do any different, at the consequences that result if the documentation is given.

The final, and probably the most important, addendum is the following one. First possessions by ‘finders keepers’ have *no normative implications*. They are not normatively binding for any late comer. Such a normative implication, deduced from the fact of acquisition that took place, is impossible, for reasons outlined in Section 1.1.3ff. However, and this insight is even more important for our future reflections, any second comer’s claim to change the status quo also has *no normative implications*, meaning also, no right to require from the first comer legitimization of his appropriation by ‘finders keepers’, and eventual increases in property, that result from applying the increasing mode, compatible with the initializing mode. He who wants a change of the status quo, cannot justify his claims by referring to the first comer’s failure not to legitimize his property, acquired in the abovementioned way. In turn, he can justify his claim by presenting documentation for his claim that the status quo is invalid. (A could mistakenly be viewed to be the first.) He also can try to change the status quo either peacefully or offensively. Not pursuing any change, is not identical with a declared admittance of the status quo. However, practically it is an identification for tolerating the status quo, and, hence, the implied priority of utility preference for the time being.

For the sake of completeness, but also regarding issues that include the trade of physical goods,⁵⁸ we finally have to address self-ownership. Our reflections in this section, so far, concerned only those economic goods, originally appropriated by man, which do not belong to human physique. However, man’s body, which also can be treated as a scarce good, cannot be simply eclipsed from our reflections.⁵⁹ The self-disposition over one’s body can be seen as a special case of original appropriation. From its very first moment of existence, the human body, however incomplete it may be, is subject to use. The use of the human body, no matter how intensively taken place, is a constitutive characteristic of life. Hence, the first appropriation of the human body coincides with the beginning of life. Consequently, whoever claims interest in the use of the body of another human life, is not the first one. If he claims a change of the status quo, it is to him to state his reasons for a change in the preference prioritization. By implication, even in the case of self-ownership we could say (with reference to Rothbard, Hoppe, or Locke) that it is not self-disposition that needs legitimization, but rather interest in the human body of another, who obviously has already originally acquired that body.

2.2.5.1 *Presumption of liberty* – argumentum pro libertate

The crucial insight of the above-said is that legitimization is not an issue that would address the disposition of goods per se. Existing modes of initializing property, and rules of property, related to these modes and documenting the relating prioritizations of utility preferences, are not questionable as such. They do not carry with them the burden of legitimization. They do not owe an explanation to anybody.

Approaching a good, over which someone disposes already, calls upon the presumption of innocence, as Jasay has outlined.⁶⁰ *'In dubio pro reo'* holds as long as evidence for doubts cannot be provided.⁶¹ As soon as someone suspects that the existing disposition over goods is problematic (with respect to one of the abovementioned arguments), he is free to lay open any evidence in the support of his claims. If he fails to provide this support, the existing disposition of goods remains unproblematic.

Gerard Radnitzky has transformed this insight into an argument *in favor of freedom*. His *argumentum pro libertate* basically rests on two elements, namely the rule *ought implies can*,⁶² and the logical analogy between the presumption of liberty and the falsificationist methodology. With respect to the latter, Radnitzky goes back to Karl Popper and his idea that scientific theories cannot be verified, but falsified. Following Popper, verification is impossible because the list of potential falsifications is denumerably infinite. For instance, the list of potential falsifications of the theory 'All swans are white' is denumerably infinite. Though it might be viewed finite in an absolute sense, it cannot be counted by man. To put it simply, in a man's lifetime, it is not possible to count all possibilities, notwithstanding test them. Therefore, it is logically and practically impossible to verify an empirical theory. At this point, *'ought implies can'* comes into play. It appears implausible to ask someone for an act that to perform is, in principle, impossible to him. Nonetheless, what can be delivered in the course of a testing procedure, at least in principle, is one counter-example. Falsification needs just one counter-example to what the theory in question asserts.⁶³ Hence, it seems right and proper *not* to ask the defendant of a theory, which is corroborated up to now, to do the impossible, namely the proof of the truth of his theory, and view the theory as unproblematic, as long as it is not falsified. Hence, the ball is in the court of the claimant, i.e. in the court of the one who claims the theory to be false.

Following Radnitzky, similar things hold for what he calls *basic liberties* [*Grundfreiheiten*]. Basic liberties cover all feasible options for an individual, for which no restrictions are agreed upon within the respective social order. The assumption of basic liberties can be seen in A's claim to be free to perform particular acts. Such a claim can be formulated as a

theory, namely, ‘all my actions, which can be performed in the respective social order, without facing valid objections, are free’. According to Radnitzky, such a theory mirrors an analogous case to that mentioned above. As he puts it:

The burden of proof is with the one who denies that *A*, or any other random person, has a particular basic liberty, who denies that a person, chosen at random, is free to act accordingly, as long as within the relevant social order no valid objections against this sort of action exist. It is to the claimant to present such objections, if any. Thereby, he can verify his assertion. He who wants to act cannot falsify the claimant’s objection if, as it is usually the case, the list of valid objections is denumerably infinite because then it is logically impossible to falsify *B*’s objection. Therefore, a rational legislator has to place the burden of proof on the claimant.⁶⁴

It is plain to see how Radnitzky’s argument correlates with the *finders keepers principle*. Original appropriations are expressions of basic liberties performed. He who disagrees with the exercise of basic liberties can present his objections, but cannot ask the one who makes use of his basic liberties to verify that his exercise is not in contradiction with any valid objection.⁶⁵ If he does, nevertheless, he poses an undue demand, in relative as well as in absolute terms. It is undue in a relative sense because it includes an asymmetric request. It is undue in an absolute sense because it asks from a person, who exercises no more than his basic liberties, over and above what he possibly can do.

2.2.6 Breaks in the accumulation chain

The elucidations to the *criteria of introducing property*, given in Section 2.2.2.1, deem it necessary to have a closer look at the relation between two remarks made there. The first remark made was about the idea of increasing property, while the second was about possible breaks in the *accumulation chain*. We remember: We have said that the increase of property may not be conducted in a mode that is logically incompatible with the initialization mode of property. Consequently, as long as the increasing mode is compatible with the initialization mode, there is no reason to object.

If, however, the increase of property takes place in a harmony with the initialization mode (say that of ‘finders keepers’), but includes, mediately or immediately, an increasing mode that is *incompatible* with the initialization mode, we face a problem. A simple example would be the purchase of stolen goods. While purchasing as such is unproblematic, because

consistent with the initialization mode, theft, which precedes the purchase in this case, is logically inconsistent with the initialization mode. The problem culminates in a simple question: ‘Who is the “true” owner, now?’ Taking into consideration what was said in the previous two sections, one is inclined to say that the putative victim of the theft has to document his original ownership, while the purchaser has not to legitimize his possession. In fact, this is how most societies treat such cases legally. In a society that decides upon questions of ownership according to the presumption of innocence everybody is well-advised to keep his belongings very well documented, in order to be prepared to get his property back in cases of theft, burglary, or fraud.

Be that as it may, with respect to material goods, such provisions are quite easily to take. Material goods occupy distinct space/time-coordinates. Though they can be stolen, compressed or hidden, they are detectable, at least in principle. Dispersing a stolen material good lowers its value to nil and is, hence, usually not the reason for stealing them. To document house and land ownership, land registry offices exist, to prove ownership in a car, a vehicle registration document will do. While documentation of ownership in material goods is, despite tried and tested means of documentation, not always undisputed, it is, in comparison to documenting ownership in *intellectual property*, an easy undertaking.

2.2.7 *Intellectual property*

Documenting and, hence, identifying, intellectual property is more difficult than documenting and identifying material property, among other reasons, because the ontic status of an intellectual entity differs from that of matter. We cannot offhand say what we mean by an intellectual entity. To illustrate some of the difficulties that come along with an attempt to do so, nevertheless, we have a brief look at the ontology of Karl Popper, who distinguishes three different worlds.⁶⁶ World 1 comprises material goods. According to Popperian ontology, ideas have an immaterial status. They are entities of World 3 and can be the subject of mental processes. These processes, in turn, belong to World 2. Of course, if we do not claim of ideas, problems, theories, arguments, etc. that they fill spots in time and space, what are they after all? To which world do they belong? Do they belong to World 2 or World 3? Do we mean the process of thinking, or do we mean, following Popper, the product of mental activity, when we talk of intellectual property?

If we mean by intellectual property the process of thinking, then we assume that intellectual property is linked to the materiality of the brain to come true. Consequently, we face a difficult question, namely, what in this

process exactly is what we call intellectual property, and how can it be conceived as a tradeable good? If, in turn, we mean by intellectual property the product of mental activities, then it is seen in some generic dependence of the materiality of the brain too, but it can be conceived as a tradeable good much easier.

The determination of mental or intellectual entities, though fascinating in itself, belongs to ontology, a field to which the author has little to contribute. Hence, he does not claim to have a convincing answer to the question what makes for intellectual entities. However, moral economic actions relate very often to intellectual property. Hence, it is quite desirable to determine intellectual property at least precisely and unambiguously enough to use the concept fruitfully for questions in business ethics that relate to this very phenomenon. This wish, much smaller than the general ontological task, just mentioned, could possibly be fulfilled, of course, in accordance with the definition heuristics outlined in Section 1.1.8.1. This is so because from the characteristics of material goods we can deduce some insights about the characteristics of non-material goods, to which intellectual goods have to belong. We can do so in terms of negative selection. Thereupon, one can have a critical examination of the implications that come with it. In the beginning, we can state that intellectual goods, due to their immateriality, cannot have characteristics that material goods (can) have alone. This conclusion is of great importance, considering the various uses material goods can have.

In as much this is the case, we will outline it now. If we assume that intellectual property is not material, then this implies that it cannot share the constitutive characteristics of material goods (while it says nothing positively about the characteristics of immaterial goods). In spite of all differences, there exists a considerable consent among philosophers about certain characteristics of matter. An often named characteristic is 'extension'.⁶⁷ Assuming that extension is a constitutive characteristic of matter, and, hence, of material property, means that each material good fills one spot in time and space, however extensive the spot may be in either dimension, meaning either time coordinate, or space coordinate. (A car can serve as a material good for five, six, or ten years, or for another time span, premises can be 1,000, 5,000, or 10,000 square feet large, or of a different size.) One and the same point in the time-space-coordinate-system cannot be taken more than once. Each good *has to have one*, and *cannot have more than one* time-space-coordinate. This exclusive relationship between matter, time, and space helps to identify, i.e. locate, material goods. (Your car can stand only on one parking lot, your keys can only be either in your pocket or your bag, etc.) When it comes to intellectual property, things are different. We have to assume, due to what distinguishes material goods

from immaterial ones, that intellectual goods are *not* tied to a unique spot in time and space.

For the sake of argument, if we would assume that intellectual property could fill a unique spot in time and place, nonetheless, then we could not ‘defend’ intellectual property any longer. The reason for this is quite obvious: Ideas in A’s head could not be identical with ideas in B’s head because the ideas of A and B fill different spots in time and space. Assume, further, A would tell B some of his ideas, whereupon B uses the ideas economically, against A’s will. Now, if A accused B of having stolen his ideas, B could simply counter that this has been impossible because those ideas of A would be still in A’s head.

If, in turn, we do not assume that intellectual property can fill a spot in time and space, then we face the question of how intellectual property can be identified at all. Without any criterion of identification, we cannot say anything positive about an alleged intellectual good, notwithstanding, who is the owner of it, after all. Hence, under this condition, we cannot defend intellectual property either. Looking at both alternative assumptions and their consequences at the same time, this seems to be a lost cause.

Anyway, if we continue our reflections, then we will notice a telling detail. So far, we always implicitly assumed that the question concerning the determination of intellectual property (which, in fact, is a difficult one, as we have seen), or, more precisely, the question regarding the interest in intellectual property, would have to deal with the *direct interest* in intellectual property, and not with the *indirect interest* in it, respectively with the interest in something that is tied to intellectual property in some way, but not identical with it. Once we abandon this assumption, we come to insightful conclusions. To deduce these conclusions, we, first, state that, in spite of the vexations regarding the criteria of identifying intellectual property, there is little dissent concerning the *phenomenon* of intellectual property. We ‘know’ what we mean by intellectual property. At least, we have a faint idea of it, sufficiently clear for the hypothesis that a *bidirectional impact* exists between intellectual property and matter, to use a prominent term of the *preliminaries* in Chapter 1. Whatever ontic status we are prepared to give intellectual property, we ‘know’ that by intellectual property we mean something that can have a *mediate* impact on matter.

This insight will prove to be very useful for our further reflections. As widely known, it is a common practice in economics to distinguish three modes of commanding material resources, namely: (a) regarding the immediate use of the resource (*usus*); (b) as regards its revenue (*usus fructus*); and (c) concerning the transformation or sale of it (*abusus*). I may

use my apple tree by sitting under it (*usus*), eating its apples (*usus fructus*), or by selling it to a neighbor (*abusus*). Material *usus*, *usus fructus*, and *abusus* of the apple tree are possible without any further material good added to it. Obviously, when it comes to immaterial goods, things become different. The material *usus* of any immaterial good is not possible without material added to it. Take a melody. It takes a voice, a guitar, or any other instrument to use it materially. Mixing the melody with an instrument makes for a *usus fructus*. Neither an idea nor its fruits are per se material. Even if transformed into another idea, an idea stays immaterial. The material 'extension' of an idea, so to speak, comes into existence not prior to the mixture of the idea with matter. In other words, intellectual goods need materiality as a complement to make a usage possible, while this complement is already entailed in material goods. This being so, helps to explain why theories cannot be understood, and used, by non human beings. They do not dispose of the materiality of a functioning brain, necessary to make this use come about.

The impossibility of intellectual goods, and immaterial goods in general, to cause immediate usage on their own does not imply that intellectual goods would not qualify for original appropriation. In spite of the immaterial status of intellectual goods, we can assume that first possession can be taken of ideas, melodies, or theories. Writing down an idea, theory, or tune can be viewed as documentation of its original appropriation.

Nevertheless, intellectual goods differ from material goods in being not scarce. The consumption of an intellectual good faces non-rivalry, finally a consequence of its immateriality. A theme (Beethoven's *Ode to Joy*, for instance) can be used by an unlimited number of people, all over the world, as often as possible, without facing a loss of its quality.⁶⁸ An apple can be eaten just once. With respect to the consumption quality, intellectual goods come closer to free goods than to economic goods, in terms of Menger.

The lack of rivalry in consumption of intellectual goods is not free of consequences for our reflections. An intellectual good can be used as complementary good to produce new material goods, without reducing the mediate use it has for its owner. 'Gramma's' recipe for a cherry pie can be used by many housewives to bake a pie without reducing the use the recipe has for 'Gramma'. (Still, she can bake cherry pie according to her recipe.)

Of course, of interest to business ethics are other instances of using intellectual goods as complementary goods, say, the use of chemical formulas for the production of pharmaceutical, textiles, plastics, etc. Developing new fabrics, synthetics, or pills is very expensive and takes hard, long work in the laboratories. Therefore, it is reasonable that research industries have an economic interest in keeping their results undisclosed.

Obviously, they face serious disadvantages to their competitors if all jointly consume their intellectual property because they have to redeem the research costs, whereas the competitors have not. Granting patent rights, copyrights, trademarks and other means of positive discrimination to companies or individuals, who invent or discover new theories, production techniques, technologies, etc. are widely recognized as instruments, serving two functions. They are meant to avoid the comparative disadvantage of research, mentioned above, and to provide artificial incentives for industrial developments that the market, presumably, cannot cause in the absence of intellectual property protection. In short, patent rights, copyrights, and other means of intellectual property protection, are granted to avoid the use of intellectual goods as complementary goods, which is not in the interest of the respective owner of intellectual property.

Though having a high degree of plausibility, at first sight, such a perspective ignores a problem that is of great importance to our reflections. Granting patent rights, as well as similar means of positive discrimination, is the source of eventual collisions between such titles and material property rights. The reason for this is obvious. A patent on an idea prohibits another to apply that idea on his material property. A patent on grandma's cherry pie recipe, granted to a pastry shop, prohibits all other confectionaries to bake and sell cherry pie according to this recipe. The option to use the recipe, granted only to the patent holder, prohibits competitors' full sovereignty in their material property, i.e. wheat, sugar, cherries, etc. This restriction, despite all conceivable reasons to maintain it, is in conflict with the *implications compliance rule*, respectively the *accumulation chain*, as discussed in Section 2.2.2.1.

Be that as it may, to all our reflections on intellectual property one can issue the caveat that we cannot precisely and unambiguously say what we mean by intellectual property. Is it a process or a product? If it is a product, will it stay the same in the course of reproduction? (So far, we have implicitly assumed that.) Or, is it a new product, then? Is Locke's theory of property, if thought by Tom, the same or a different one, if thought by Jerry. Depending on how we answer this question, we obtain different consequences. If we assume that a theory changes, depending on who is thinking it; if it, so to speak, becomes a new product in the moment of being thought by someone, then it is impossible for the originator of that theory to defend his property by the argument that all components would be his, for they are not. Others could come to the conclusion that the reproduced theories were positive externalities of the original, to which the originator has no title, similar to a street musician, who cannot claim from passers-by compensation for the positive externalities his performance eventually causes.

The problem of intellectual property one could summarize up to now, is that its externalities cannot be internalized in the way the owner wishes. To take up again the example of the apple tree, it is as if the tree had apples that the owner cannot pluck, but only collect from the bottom, from where everybody else can too because the tree stands on no-man's-land. To put it differently, the owner would prefer selling the apples over watching others collecting them, whenever they spot them first.

Of course, the owner still has the exclusive right to *abusus*. He can cut the tree and sell it. He can also mention this option to his fellow neighbors, leaving the decision with them, either to refrain from collecting as much as they did in the past and leaving to him the lion's share, or go on as before and see the tree cut. Most probably, the first option is preferable to all parties included, to the neighbors as well as to the owner. This result, in turn, might indicate a mode of handling intellectual property without harming the increasing mode. Why not should it be the case, as in the instance of the apple tree, that the owner of intellectual property can make his 'harvest hands' aware of a deducible win-win-situation? If so, why should he not enter into negotiations with them? The following side essay is dedicated to cases entailing such a possibility.

2.2.7.1 *A short excursion into the drug industry*

The elaboration concerning the specifications of intellectual property, made in the previous section, has, by its very nature, no normative implications. Whether or not one is willing to grant patent rights, is a value decision that cannot be deduced from analytic or empirical statements. Nevertheless, it is worth considering alternatives to patent rights, and similar instruments of positive discrimination, which fulfill the two functions of these instruments, without violating the *accumulation chain*. After all, making a decision requires at least two options and the applicability of '*ought implies can*' to all of them. Hence, if we want to arrive at a point where a decision between discriminatory solutions (patent rights, etc.) and non-discriminatory solutions can be taken, our alternative has to meet the two mentioned requirements first. Let us see, now, whether it does or not.

Our little excursion into the drug industry should help us finding that alternative. Therefore, we assume the following: A research-based pharmaceutical company (RBPC, for short) is interested in developing a new drug that supposedly can heal two million patients, or, at least, improve their life significantly. The company expects that developing costs will amount to \$200 million. On the basis of this cost expectancy, it can start calculating the buying price per unit for retailers. Of course, without an assumed quantity of sales, this calculation is unfounded. RBPC knows that

without a patent right granted, producers of generics will catch up soon, bringing their product to the market. Hence, he expects, that due to this competition, the needed quantity of sales cannot be achieved. In the absence of patent rights, two consequences are likely: (a) there are insufficient incentives for RBPC to develop the new drug, hence, the drug will not be developed; (b) in the absence of the new drug, the improvements for two million patients will not take place.⁶⁹

In face of this, both parties (RBPC and patients) have sufficient reason to find an agreement that would guarantee the producer a market share, big enough to allow for the revenue needed in order to compensate the development costs generic competitors do not face, and would put the new drug within the patients' grasp. The agreement could look as follows: RBPC commits to develop and launch the new drug within a certain time span T , in a particular quantity Q and to a reduced market entry price per unit U , whereas the patients P commit to buy Q at price U . If RBPC fails to deliver within T , the agreement is void. P does not face any costs. All development costs are with RBPC, as it is in markets with patent rights. If $U \times Q \geq$ the needed revenue, RBPC has an incentive situation that equals that in markets with patent rights, or is superior to it.

The needed incentive threshold for P is reached if U is lower than the market entry price. It is quite obvious why U has to be lower than the market entry price. Why should P commit to buy Q at a price U that is equal to the regular market entry price, while other consumer groups, without any commitment, pay the same price and, shortly after the launch, can get cheaper generics, while P still has to use up Q at a higher price? In other words, the price reduction compensates for the risk to be worse off than consumers without commitment, while the commitment compensates for the risk to find at T no product on the market at all. It goes without saying that there is no obvious reason why this model should not work equally well for all sorts of consumer products in markets without patent rights, copyrights, etc.

Of course, the sketched scenario is not the only one. Also, we can think of different versions, taking particular problems into consideration, for instance, getting the right size of P . A practical problem can be seen in organizing P . It is conceivable that RBPC engages an agency, taking care of this problem. As it is in similar cases, such an agency would set up a unified contract, or variations of it, meeting the market demand. In any case, it remains risky whether RBPC will succeed within T . Both parties share a risk, with different premiums. In short, we face a typical insurance case.

In principle, several arrangements are conceivable, arrangements, in which both parties would afford the expense to increase the likelihood for

a win-win situation. Given that the situation mirrors an insurance case, we can also think of the following scenario (which includes no commitment of P to buy Q at a certain price). In this scenario, an insurance company (IC)⁷⁰ bears (most, if not all of) the development expenses, financed by the premiums paid by P (the future consumers). If RBPC fails to deliver, IC returns the premiums, or most of it, to P. If RBPC succeeds, the premium, or most of it, is not paid back. The insurers get a reduction on the market entry price, a return for their insurance investment. (Insurers, nevertheless, committing to buy certain quantities at an agreed price, receive further reductions.) All consumers keep their freedom to buy rival products at any time in any quantities. If RBPC carries a portion of the development cost, the portion should be small enough to promise a profitable outcome, and big enough to keep RBPC busy.

2.2.7.2 *Back to Menger's third criterion*

The gentle reader will remember that in Section 2.1.1 we left aside Menger's third criterion of goods-character and determined to come back to it at a more appropriate place. That place is here. To recall, Menger assumes that a thing can acquire goods-character if it meets four criteria, one being that man understands the causality between the thing and the satisfaction it has for human needs. However, during our reflections on intellectual property in Section 2.2.7, we realized that little can be said about intellectual property, and hence little to the causality between it and the satisfaction of our needs, that deserves the adjectives 'precise' and 'unambiguous'. Apart from this, there are other reasons to doubt Menger's thesis. These reasons, too, rest on goods, which are either immaterial or go back to immaterial goods.⁷¹

These doubts were provoked by several consumer goods, which we use in order to satisfy some of our needs, without knowing how they do so. Who would sincerely claim to know in which way the personal computer, he uses day by day, manages to convert his ideas into an electronic document? Regarding this, the author assures the reader not to have the faintest idea, though he uses a personal computer day in, day out. However, hardly any of us would be prepared to claim that this missing knowledge would cause a loss in the goods-character of the personal computer. In short, Menger was probably wrong, asserting, 'a thing loses its goods-character: ... (3) if knowledge of the causal connection between the thing and the satisfaction of human needs disappears'.⁷²

However, one could counter that this worry is premature because Menger possibly meant that the knowledge of the causal connection between the thing and the satisfaction of human needs does not necessarily

have to be present to everybody, as long as it is not lost completely. Hence, one could argue, that Menger's third criterion of goods-character is met if at least someone knows of that causality.

Again, this demur faces many examples (including the market and languages, understood as goods) and some epistemological views, taken by Friedrich A. Hayek. Hayek describes such goods, like the market and languages, as spontaneous orders. In *The Sensory Order*,⁷³ he outlines his epistemology. In the course of this, he presents the hypothesis that the human brain would be a classifying system that could classify only those systems that have a lesser degree of complexity than the human brain itself. Consequently, the brain (sensory order) can neither explain itself, nor a system of a higher complexity, following Hayek. Examples of systems with a higher complexity than the human brain are the market order, languages, law, mores, rites, and others. According to Hayek, only patterns of these complex systems can be understood. Consequently, if these goods cannot be fully understood, then it is impossible to fully understand the causal connection between a spontaneous order and the satisfaction of human needs. Doing justice to both Menger and Hayek, implies to deny that free goods, caused spontaneously (market, languages), can have goods-character.

Doubts about Menger's hypothesis find additional support in some other reflections. What Menger offers as definition of a good represents a special subset of definitions, namely *relational definitions*. Hence, he proposes to define a good via the relation it has to man; a causal relation, in this case, since the good causes the satisfaction of human needs. There is nothing to object to relational definitions as such. Many concepts have relational definitions. How else should we define a wife, if not via the relation she has to her husband; and vice versa? If it is clear that man stands in a use-relation to a thing, then it is also clear that the thing qualifies as good, following Menger's definition. If we want to know whether Mr Smith is, according to definition, the husband of Ms Smith, then we have to clarify whether both are married at the time in question. Possibly, they only share the name, or still share the name, while being already divorced. Consequently, if we want to know whether language is, by definition, a good, we have to prove certain things, namely whether man *has a need* that can be satisfied by language, whether language *has the quality* to satisfy this need, and whether man *commands* language, so that it can serve his need.

Almost certainly, nobody is really interested in executing such an examination. In face of our daily use of language and the manifold experience we have made with it, we have ample evidence that on a zillion occasions language has satisfied human needs (think of theater, literature,

entertainment, exchange of information, etc.), had the necessary quality to do so, and all this, in the light of the respective needs, existing on man's side.

However, concerning *relational definitions*, only those characteristics can be constitutive which belong to the relation between the *relators*. Of course, by *relators* we do not mean relators in the linguistic sense, but elements that constitute the relation (relators in the logical sense), for instance, 'husband' and 'wife' are relators in the relation 'marriage'. Characteristics that bring additional relations into the game (say, knowledge about the relation between the partners) are not necessary to constitute the relation 'marriage'. In the face of that, we have little reason to assume that Menger was moved by reflections concerning proper definitions. (What is part of the definition of a concept, what is not?) Probably, he was led mainly by the attempt to develop a theory of relations between goods that could explain the value of goods and distinguish use value from exchange value sufficiently clear.

Sections 2.2.7ff. had the task to trace the conditions that intellectual property has to meet in order to make moral economic actions, which are performed via the use of intellectual property, in a sufficiently precise and unambiguous way identifiable. Looking at those qualities, that tell material goods from immaterial ones, has led us to the insight that positive discrimination (by granting patent rights, for instance) violates the *accumulation chain*, respectively the *implications compliance rule*. It has led us also to a scenario, outlined in Section 2.2.7.1, showing conceivable alternatives that do not imply such a violation.

At this point, we could stop our reflections regarding the proper criteria property has to meet in order to define moral economic actions sufficiently precise and unambiguous, were there not a means, which market participants use day by day, without having a chance to influence the moral economic quality it has: money.⁷⁴

2.2.8 The moral economic quality of money

As Ludwig von Mises has pointed out in *The Theory of Money and Credit*, a book to which we will refer several times, henceforth, many barter transactions face a particular problem in case the contracting parties do not, or do not have to, fulfill their part at the same time. As Mises puts it: 'But when the exchange is one of present goods against future goods it may happen that one party fails to fulfill his obligations although the other has carried out his share of the contract.'⁷⁵ While one party has to wait longer for the share of the other party, it faces a disadvantage, difficult to calculate. Thus, delays in contract fulfillment create a moral economic problem.

However, our concerns are not the disadvantages of delays. Our concerns are the disadvantages that result from the fact that exchange takes place via a common medium of exchange, i.e. money.

In as much as different moments of contract fulfillments are consented by the exchanging parties (for instance, payment due ten days upon receipt), *both* contractors run a risk, which they do not create themselves, but, nevertheless, cannot circumvent. The reason is that they cannot exclude money as means of payment, at least not in the regular case. In today's societies, money has been deprived of its quality of being a voluntary chosen means of exchange, in the Lockean sense. As Mises puts it: 'What the law understands by money is in fact not the common medium of exchange but the legal medium of payment.'⁷⁶ And Mises goes on: 'Goods can become common media of exchange only through the practice of those who take part in commercial transactions; and it is the valuations of these persons alone that determine the exchange-ratios of the market.'⁷⁷

From the very moment the state declares a common media of exchange (gold, silver, for instance) as legal tender, things change significantly. Now the exchange-ratios are not longer determined by the valuations of the exchanging persons, but by the state.⁷⁸ On top of that, if government takes over, it can adhere to gold and silver as standards or replace them by paper money. This, in turn, allows for three options. The exchange-ratio can stay the same or change in either direction. As Mises puts it:

Three situations are possible when the State has declared an object to be a legal means of fulfilling an outstanding obligation. First, the legal means of payment may be identical with the medium of exchange that the contracting parties had in mind when entering into their agreement; or, if not identical, it may yet be of equal value with this medium at the time of payment. For example, the State may proclaim gold as a legal medium for settling obligations contracted in terms of gold, or, at a time when the relative values of gold and silver are as 1 to $15\frac{1}{2}$ it may declare that liabilities in terms of gold may be settled by payment of $15\frac{1}{2}$ times the quantity of silver. Such an arrangement is merely the legal formulation of the presumable intent of the agreement. It damages the interests of neither party. It is economically neutral. The case is otherwise when the State proclaims as medium of payment something that has a higher or lower value than the contractual medium. The first possibility may be disregarded; but the second, of which numerous historical examples could be cited, is important. From the legal point of view, in which the fundamental principle is the protection of vested rights, such a procedure on the part of the State can never be justified, ... But it always means, not the fulfillment of

obligations, but their complete or partial cancellation. When notes that are appraised commercially at only half their face-value are proclaimed legal tender, this amounts fundamentally to the same thing as granting debtors legal relief from half of their liabilities.⁷⁹

Hence, the moral economic problem of money (as legal tender, in particular, as exclusive legal tender) rests on the fact that the state has the power to determine the exchange-ratio, and, hence, the power to change it within the time span, one contractor is waiting for contract fulfillment by the other. As a consequence, it is possible that the debtor, by rights, will be remitted a debt, to the disadvantage of the creditor. Of course, it is also possible that the disadvantage is with the debtor. It all depends on the course the exchange-ratio takes in the meantime. In other words, the state can provide a good to a contractor and an evil to another, due to his changing of the exchange-ratio. This makes his action a moral economic action, as outlined in Sections 2.1.2ff.

2.2.8.1 A little excursion into the financial crisis in 2008

The determination of the exchange-ratio of money is not the only fiscal means government can use to act in a way that is of moral economic relevance. Determining the interest rates is another tool that can be interesting in terms of moral economic action. This little excursion into the financial crisis, that started in 2008, may illustrate two consequences if the state, respectively its legal authorities,⁸⁰ determine interest rates, namely, (a) the state, respectively his representatives, can operate as a moral economic actor; (b) state action has a significant impact on the moral economic action of market participants. This impact sheds new light on the moral economic quality of the main actors in the crisis: the very low money rates in the United States offered for a rather long period in the 1990s, offered to many Americans with low incomes, who would have had no chance to buy a house at higher money rates, the opportunity to get credit and buy decent housings. The heyday of Freddie Mac and Fannie Mae began and the dream of many poor Americans to live in a private house became true.

The US Department of Housing and Urban Development (HUD) favorably acknowledged the interest of Freddie Mac and Fannie Mae in subprime mortgages. As the palliating term 'subprime' already indicates, the loans were given to clients with a low credit-worthiness. Subprime mortgages include three problems that exacerbate the situation over time: (a) he who cannot pay the installments of his house, but only redeem the loan, as long as interest rates are low, will never become the 'owner' of 'his' house. It is his residence, in which he lives on tick; (b) if the government

offers its citizens incentives to live beyond their means, then they will take the offer, being rational human beings (even he who has his doubts in the beginning, will finally give in if he does not want to accept that almost everybody, except him, gets the benefits, although he is entitled as well. After all, even if there is no happy ending to the story, he will not lose anything, which he would otherwise have had); (c) if the state, at some later stage (for reasons whatsoever, fiscal or other), raise the money rates again, then the creditors have to ask their debtors for higher rates of interest – rates, most of the debtors cannot redeem. As a consequence, the creditors themselves face serious liquidity problems. Some go bankrupt. At this moment, the crisis takes off.

The moral economic quality of the debtor in such a case is different from that of other market actors in regular market situations. In regular ones, risks exist too, that go along with lost advantages. (If Peter does not buy the apartment, although it is a steal, and Paul purchases it, then Peter has lost an advantage, taken by Paul.) However, the risks of regular market situations, either taken or omitted, are only those of the market participants. When it comes to crises, induced by mistaken fiscal policy, like the mortgage crisis discussed above, things are different. Accepting an advantage, created by fiscal policy, is not on the account of the market participant alone. The expectable consequences (financial crisis) will be met by others as well (for instance, tax payers) in order to cover the costs of the crisis (bailouts, etc.). In such cases, the would-be debtor is in a moral dilemma: Shall he relinquish the offered advantage, although the individual risk (or huge parts of it) will, at the state's desire, be covered by the common? Or shall he resist the offer, have no benefits, and only costs (as taxpayer)? His moral dilemma is, in short: Shall I do a wrong, or shall I suffer a wrong?

In addition, the moral economic quality of the creditors in such cases is also different from that of other market actors in regular market situations. Let us illustrate this by the help of the following scenario. Alvin is head of a bank that sells property loans. Until now, he accepted only clients with a sufficient degree of creditworthiness, clients, who could redeem the interest on credits and the installments of the credit. His competitors have done the same. All of a sudden, the domestic fiscal policy changes. Now, money rates are so low that potential clients, although they cannot pay the installments of a property loan, can at least redeem the interest rates of a property loan. Alvin suspects that these clients would lose 'their' houses if money rates were to go up again. Alvin's competitors start giving loans to subprime clients, gain additional market shares. Alvin's bank loses market shares and faces trouble. What shall he do? Shall he say, 'I do not offer loans to subprime clients, even if they ask me'? Or shall he say, 'Although

I see the long-term risk, I offer credits to subprime clients too because otherwise my competitors make the profit, I lose market shares, risk jobs or, eventually, bankruptcy'? Whatever Alvin does, his decision is induced by the moral economic action of the state. This fact cannot be left aside, when it comes to the judgment of Alvin's moral economic action.

3 Justice

3.1 Justice and the origin of norms

In Chapter 1 on *preliminaries*, we did not elaborate the term ‘justice’ despite, or even because of, the fact that justice is widely acknowledged as the highest moral norm for judging moral and moral economic action. Our reticence in Chapter 1 was neither caused by the nimbus, attributed to justice, of being men’s *highest* moral norm, nor by that of being men’s highest *moral* norm, but rather by the assumption of being a *norm*. How this is meant, needs some explanation.

Let us recall what we said in Section 1.1.3.4! In that section we argued that analytic and empirical propositions cannot imply normative statements, for logical reasons. In addition, we dealt with the question under which conditions norms can be deduced from propositions at all. As outlined in that section, norms can be derived from normative propositions alone. This conclusion made us assume that such a derivation cannot lead to a satisfying result. Instead, we assumed, it runs the risk of ending in an infinite regress. Those, familiar with the *Münchhausen-Trilemma* by Hans Albert, know that there exist two alternatives to an infinite regress, but also know, that these alternatives are equally hopeless, since they lead to dissatisfying results too.¹

First of all, it should be noted that the trilemma situation, reconstructed by Albert, mainly addresses the procedure, executed in every justificationist philosophy, to verify an empirical statement, an empirical theory. He who wants to demonstrate his statement to be true, can deduce the truth of his statement from pre-assumptions, which in turn deduce their truth from previous pre-assumptions, and so forth, ad infinitum. Instead of pursuing this infinite regression, he can also stop and choose between two other options. One option is to deduce the truth of the statement from another statement, whose truth is already based on the truth of the statement to be proven. Doing so, includes, obviously, a logical circle. The final remaining

option is a dogmatic stopping point. In this case the truth of the statement is deduced from a statement, which truth is claimed to be evident and, hence, would not require further proof.

Albert's reconstruction allows also for some conclusions regarding procedures of deducing norms. Not all derivations of norms need to end in a regressus infinitus. Some may end in a dogma, others in a logical circle. Perhaps, the most well known example of circular norm derivation is Joseph Heller's novel *Catch-22*.² Dogmatic claims, too, should not be unknown to the reader. Authoritarian regimes use this technique quite often. Several religious communities, too, favor that mode of reasoning to dogmatize their belief systems.

Summarizing these results with those of Section 1.1.3ff., concerning the impossibility of deducing normative propositions from analytic or empirical propositions, we can conclude that the justification of norms faces two general difficulties:

- 1 Norms are *not* logically deducible from non-normative propositions.
- 2 Norms are logically deducible from normative propositions, but the modes of derivation cause irresolvable problems.³

The attempt to derive norms from norms leads either to an infinite regress, a logical circle, or a dogma. In the first two cases, it is fruitless, in the last case it violates the non-prioritization idea. If, however, norms cannot be derived from any propositions, without causing the problems outlined, how else can they originate, free of all those difficulties? This is the question we will examine, henceforth.

Again, we should recall to our mind that Albert's Münchhausen-Trilemma, although we have applied it to normative statements, addresses empirical statements and the justificationist attempt to verify fallible empirical statements, in the first place. Obviously, normative statements are not empirical statements. They have no truth value, as empirical propositions have; they are *ought-statements*, not *is-statements*.⁴ *Ought-statements* need a decision to become a norm. They do not need anything else. When it comes to empirical statements, things are different. The point of empirical statements is to make either true or false assertions. One cannot deduce the truth or falsehood of an empirical proposition by decision. (Whether the proposition 'Today, the sun shines' is true or false, is not a matter of decision, but rather a matter of correspondence between the content of the proposition and reality.)

3.2 Contracts, rights, and obligations

Let us resume what we have said up to this point! First, logical derivation of norms is only possible out of normative statements. Second, there is another way of deriving norms, namely via decision, via enactment. Confronted with these two options and the difficulties the first option faces (infinite regress, logical circle, dogma), nothing is more obvious than turning to the second option. The thesis by Anthony de Jasay, that contracts breed rights, rather than the other way round, is, according to the author's view, a successful attempt to show how norms can be derived from decisions without violating any of the fundamental principles, rules, and ideas, outlined in this treatise, so far.

For our purposes, there is a further reason for examining Jasay's theory on the origin of rights. This reason relates to our attempt to define moral economic action, precisely and unambiguously enough to serve for usage in formulating and testing empirical theories. If our definition of moral economic action – which, as we think, has the above said usefulness – should be used for deciding whether or not the moral economic action in question shall be named 'just' or 'unjust', then we have to use a conception of justice that, too, is precise and unambiguous enough to sustain this usefulness.

In the end, what had we won, if we could say that an economic action has a moral dimension, but could not, lacking an appropriate criterion, determine whether it is just or unjust? In terms of empirical serviceability, norms, deciding about justice or injustice of moral economic actions, should be sufficiently precise and unambiguous.

The starting point of Jasay's theory of justice is the assumption that rights and liberties denote two different conceptions. He buttresses his assumption by an idea that we have outlined in the previous chapter⁵ (though using different wordings), namely that the use of resources, which does not meet valid objections, needs no justification, although interference into it does.

In order to get Jasay's argument right, it is advisable to make oneself familiar with his terminology. Following Jasay, liberties and rights address two different prototypes of relations between persons and things. While 'liberties' comprise feasible actions, which do not violate valid conventions in society,⁶ 'rights' constitute a different case. A right entitles A to demand B to execute a particular action, or set of actions, and puts an obligation on B to meet the request if A demands fulfillment.⁷ (It goes without saying that a right implies that the right holder *may* require from the obligor to fulfill his obligation, but not that the right holder *must* require fulfillment.)

A necessary conclusion of this rights conception is that rights imply obligations, and vice versa. There is no point in having a right if there is no corresponding obligation to it. Without a matching obligation on the obligor's side, the right loses its faculty of being enforceable, enforceability being a constitutive character of rights.⁸ Analogously, it is nonsensical to talk of an obligation B owes to A, if A has no corresponding right to it.

To say, rights can come about by enactment, includes several options. An enactment can be one-sided (decided either by the alleged right holder or by the alleged obligor) or mutual (agreed by right holder and obligor). Both enactments, coming from inside, face an external alternative. An enactment can stem from a party that does not belong to either right holder or obligor. Moreover, it can meet the agreement of both (right holder and obligor), one, or neither. In addition, the enactment can be either identifiable or unidentifiable, with or without difficulties. If it is written on paper it is rather easy to identify, if it is communicated only verbally, the identification is probably more difficult. Be this as it may, among the mentioned options, rights with unanimous consent among all contracting (and enacting) parties give, presumably, the least reason to expect among all parties involved controversial interpretations about the right–obligation relation in question.⁹ Moreover, in comparison to the other alternatives, the conditions, that come with this option, for testing whether or not the enacted right implies an inequitable preference prioritization, are relatively undemanding.

Cases in which the obligor enacts the right–obligation relation are pointless.¹⁰ The enactment cannot be enforced practically because the right holder does not have to insist on the alleged right. If the enactment is established by the right holder alone, one is inclined to suspect that the obligor is not prepared to accept it and that a preference prioritization is included that rests on a problematic asymmetry. If the enactment is an external one, but meets the mutual consent of all parties involved, things are similar to the contract case. It is the bigger number of interpreters alone that raises the risk of controversial interpretations of the enactment. Reason for more expectable controversy is given if the external enactment meets the consent of only one or even none of the parties involved. In this case, the inducement for suspicion grows due to the reasons mentioned in the first two cases.

3.2.1 Enactments without contracts

External enactments without contracts face special problems, which become evident if compared to enactments that rest on the unanimous

consent of the enacting contractors. Contracts, as source of enactment of rights and obligations, document at least two things. First, they document *which* rights and obligations the contracting parties enacted. Identifying a claimed right or obligation is principally feasible in the presence of the respective contract.¹¹ It is the very nature of contracts, written ones in particular, to serve as *document of identification*, documenting what was agreed upon and, hence, provide a means for identification that goes far beyond mere declamation. Second, contracts document, moreover, *that* the contractors found an agreement about the subject of the contract.¹² Thereby, it becomes identifiable that the agreed preference prioritization is not facing any objection by any of the contractors. Very simply, the contract is a *document of agreement*, documenting the consent of all contractors to the enacted preference prioritization.

He who claims contractually agreed rights and obligations to exist needs to present the contract alone, which entails the agreement, as reference source to prove his claim. It goes without saying that this sort of documentation is lacking for rights not based on written contracts. If we want to prove the validity of our claims upon rights and obligations, unable to present such a written contract, we have to rely on different sources of reference. If we refer to rights and obligations by external authorities, the respective decree serves as a source of reference and documents the initiator of the enactment. Consequently, presenting the edict makes it possible to principally prove the claim and the author of the enactment. Can it also be documented that the originator of the enactment acted on behalf of all parties included, we face an unproblematic case. Although the enactment was not originated by the involved parties, it meets their consent. (A sales contract drawn up by a notary would be a typical example.) The initiator of the rights and obligations did everything within his authority to decide. Things are different when he does so beyond his authority to decide; when he only claims the rights and obligations. Since his claim includes a prioritization of utility preferences (and presumably an inequitable, yet asymmetric, Pareto inferiority), we would like to see his arguments for this and additional reference sources, supporting his claim.

Such reference sources can be of all sorts of origins. Some of them are of religious origin. Consequently, it is often claimed, explicitly or tacitly, that an alleged right–obligation relation would exist by a corresponding enactment of the respective religious authority. For example, when it comes to Christendom, one could claim that the alleged right–obligation relation is entailed in the Bible. If the involved parties consent to that interpretation, they can document their agreement retroactively. If they dissent, then the ball is in the court of the claimant, who, by enforcing his claim, would violate the involved parties in their liberties. To support his claim,

the claimant can make an attempt to derive his claims in accordance with one of the three modes,¹³ outlined above (infinite regress, logical circle, dogma), hoping to make the involved parties change their minds. If that does not work, he has used up all his peaceful means of imposing his norms. Disillusioning, as it may sound for the claimant, he has not done more than presenting an unjustified claim for preference prioritization, which is as good or bad as any other unjustified claim. Whatsoever one can derive from it, one cannot derive its validity.

3.2.2 *Norms by conventions*

Conventions create a special case. On the one hand, they are *not* representing an enactment imposed externally on a group, claiming the enacted rights and obligations to be justified. On the other hand, they are *not* explicit contracts either.¹⁴ Some authors, as for instance Anthony de Jasay, look at them as tacit contracts, binding its members less strictly.¹⁵ This view is not without problems. Though it might be applicable to several conventions, it might not to others. The problem is to say to *which* conventions the description applies. The assertion, *x, y is a convention*, hence, expression of a tacit contracts, and binding (if only loosely), can be made for any rule one wishes to impose on others without having their consent. Therefore, we should go on cautiously. Otherwise we run the risk to accept alleged conventions and enter into unidentifiable collisions with *formal justice*.¹⁶

Yet, what if a convention does *not* violate formal justice, does *not* harm the idea of non-creative prioritization? In this case, conventions do not create a problem. Noteworthy, Jasay not only believes that conventions are unproblematic regarding formal justice. He also thinks that it does not unjustly harm the interests of an obligor if by the convention he is placed under an unrequited obligation that robs him neither of any right nor any liberty he would otherwise have had. As he puts it:

There is one clear case where the obligor can be placed under an unrequited obligation without unjustly harming his interests: when the obligation in question does not deprive him of any liberty, nor of any right, that *he would otherwise have had*. The obligation to respect the property of another acquired by ‘finders keepers’ would be of this kind; the wider obligation to respect the status quo can be derived along the same lines (though there are alternative ways of deriving it, too). In any other case, imposing an obligation on someone without his agreement, and in the really important cases in spite of this explicit dissent, is a *prima facie* injustice.¹⁷

Jasay's position entails one conclusion that is not in accordance with our reflections. What is in accordance with them is that conventions, as unrequited obligations, which do not deprive someone of a right or liberty he would otherwise have had, produce a status quo that does not violate formal justice. What is not in accordance with them is the thesis that the status quo would cause an obligation for others. It contradicts the arguments outlined in Sections 1.1.3ff., 2.2.5 and 3.1ff., which, if correct, imply that empirical statements have no normative implications. Therefore, the *finders keepers principle* is, as outlined in Section 2.2.5, not a rule that would produce an obligation for others due to its conformity with formal justice. Such a conclusion would exemplify the *is-ought fallacy* and stretch the *implications compliance rule* unduly. Following our reflections, the *finders keepers principle* is a convention that, in the absence of any prioritization criteria, can be maintained without implying any claim that would require justification. At the time of his arrival, the first comer does not meet anyone with competing utility preferences. His acquisition of an unowned good is only the exertion of his freedom, which does not collide with the idea of *non-creative prioritization* (of competing utility preferences) because competing preferences are absent. For all later comers this does not hold. If they want to change the status quo, they violate that idea and that of formal justice. The problem of their acting is not that they would violate an obligation imposed on them by the finder, since that obligation does not exist; rather it is in the collision with the ideas of non-creative prioritization and of formal justice.

3.2.3 Norms by contract

Subsequent to our reflections in the previous sections, one might look at Jasay's conception of rights as a successful attempt to reach one's aim by strictly following a clear motto: If you want to introduce rights, avoid the discussed modes of deducing norms and ask only for those concessions which are least demanding and, hence, least problematic. Jasay's results finally rest on the same arguments as those of the *finders keepers principle*. The correlation between the *finders keepers principle* and Jasay's conception of rights could be reconstructed as follows: If original appropriation does not collide with the idea of non-creative prioritization¹⁸ and does not face any other valid objections,¹⁹ its adherence needs no justification. Analogously, if the exertion of a liberty (first acquisition, for instance) faces no valid objections, it needs no justification either. To these liberties belongs contracting with others. Contracts between consenting parties document their enactment of a rights–obligations relation that includes rights and corresponding obligations.

As we have seen, Jasay avoids all calamities that show up when norms are derived in the above discussed modes, traces rights back to the use of freedoms (that are supported by the presumption of liberty), and does not impose inequitable demands. In the light of this, it is quite obvious to use Jasay's concept of rights as a starting point for defining the concept of justice, which can serve as criterion to distinguish just moral economic actions from unjust ones.

To derive such a concept of justice in an alternative way, say, by going back to an existing concept of justice that rests on suspicious pre-assumptions,²⁰ would entail the risk of smuggling in these suspicious pre-assumptions and, therefore, missing the goal, to circumvent all the problems, outlined already at several places in this treatise. Hence, we should be careful and reserved, also in terms of terminology. Without this caveat, we would have little reason not to look at commutative justice (also translated as rectificatory justice) first, which, following Aristotle, is a subset of particular justice, applies to voluntary and involuntary transactions among individuals, and calls actions conforming to commutative justice 'just' and non-conforming ones 'unjust'.²¹

However, trying to avoid terminological misunderstandings, on the one hand, and to generate an easy to handle (rather unproblematic) concept of justice, on the other hand, while aiming at a determination of the concept, which classifies rather as formal than as content orientated, it is almost impossible not to use the term '*formal justice*' as the most appropriate.²² This holds all the more because '*social justice*' – which, as we will argue later, contradicts formal justice by aiming for material redistribution (for a variety of reasons, depending on the respective conception) – could be named '*material justice*'.

Equipped with the term 'formal justice', we can proceed with the definition of morally just economic action (just in terms of formal justice). Doing so, we will give preference to a deductive procedure, as outlined in the *preliminaries*. In accordance with our preference, we deem it more fruitful to start determining those characteristics, which the to be defined concept *may not have* (negative selection), than to begin with characteristics the concept must have, according to the yet to be named reasons.²³ Against this background, we get the following definition of moral economic action: *A moral economic action is formally just if it does not unjustified obstruct another in the use of his liberties, and unjust if it unjustified obstructs another in the use of his liberties.*

It should be noted at this point that, by defining just and unjust moral economic action, not all possible moral economic actions are encompassed. It cannot be inferred from the definition of just and unjust moral economic actions alone whether and, if so, to which extent, courageous,

generous, or moderate economizing have a moral dimension. Nonetheless, there is probably little dissent among business ethicists that the value of justice as subject of study relishes priority among all moral values.

In the following section we will deal with the correlation between formal and material justice (mostly referred to as social or distributive justice). The reason for this is the thesis, which will be discussed at length in subsequent sections, that the conformity of economic action with formal justice would not offer a sufficient criterion for calling this action 'just'. Due to certain terminological standards in the learnt discussion about justice, we will, for the time being, refrain from using 'formal justice' and 'material justice' as a pair of (mutually exclusive) concepts.

3.3 Justice and social justice

Moral economic claims are usually made, explicitly or tacitly, on behalf of justice, which they, supposedly, serve. Thereby, justice stands as placeholder for the most important of all moral values, despite the fact that from ancient times onward philosophers continuously debate about the proper meaning of the term. Already Plato has one of Socrates' adversaries say:

No one has ever adequately described either in verse or prose the true essential nature of either of them abiding in the soul, and invisible to any human or divine eye; or shown that of all the things of a man's soul which he has within him, justice is the greatest good, and injustice the greatest evil.²⁴

Enriched by one adjective, social justice seems to be a subclass of justice, at first sight. Whether the impression is justified is subject to discussion,²⁵ – in particular, because much of what Plato comments on justice holds for social justice as well. Paraphrasing Plato, one could say: No one has ever adequately described either in verse or prose *social justice* nor shown that – as some think – of all the things of a man's soul which he has within him, *social justice* is the greatest good, and *social injustice* the greatest evil. Now, how can the praise of a value, be it justice or social justice, be so overwhelming if what can be said about it in terms of precision is rather underwhelming?

However that may be, a first systematic attempt to determine the correlation between justice and distributive justice was made by Aristotle in his *Nicomachean Ethics*.²⁶ It is the fifth book, where Aristotle introduces the distinction between justice in a universal sense (conformity to law) and particular justice, which in turn consists of commutative and distributive justice. As he puts it:

Of particular justice and that which is just in the corresponding sense, (A) one kind is that which is manifested in distributions of honour or money or the other things that fall to be divided among those who have a share in the constitution (for in these it is possible for one man to have a share either unequal or equal to that of another), and (B) one is that which plays a rectifying part in transactions between man and man. Of this there are two divisions; of transactions (1) some are voluntary and (2) others involuntary – voluntary are such transactions as sale, purchase, loan for consumption, pledging, loan for use, depositing, letting (they are called voluntary because the origin of these transactions is voluntary), while of the involuntary (a) some are clandestine, such as theft, adultery, poisoning, procuring, enticement of slaves, assassination, false witness, and (b) others are violent, such as assault, imprisonment, murder, robbery with violence, mutilation, abuse, insult.²⁷

The translation by W.D. Ross, though very close in style to the original, still makes it very comprehensible to modern readers what Aristotle had in mind. If we want to decide about ‘distributions of honour or money or the other things that fall to be divided among those who have a share in the constitution’, then we have to apply distributive justice. If we have to deal with voluntary or involuntary transactions of man, then we have to apply commutative justice.

Sale, purchase, loan for consumption or use, pledging, depositing, letting; they are all well known economic actions, deriving from voluntary agreements among economic actors. Those, as well as actions that lack voluntariness by at least one party (like theft, poisoning, assassination, assault, imprisonment, murder, robbery), should be ruled by commutative justice, according to Aristotle. The principle of rectificatory justice should be guided by *arithmetic proportionality*, which asks for restitution, to put it simply. Consequently, as Aristotle put it, ‘the judge tries to equalize by means of the penalty, taking away from the gain of the assailant’.²⁸

Distributive justice, in turn, should follow *geometric proportionality*, in order to distribute the means proportional to the merits. As Aristotle clearly puts it:

Further, this is plain from the fact that awards should be ‘according to merit’; for all men agree that what is just in distribution must be according to merit in some sense, though they do not all specify the same sort of merit.²⁹

To summarize: While Aristotle recommended commutative justice for voluntary and involuntary transactions, he reserved distributive justice for

distribution of awards ‘according to merit’ alone. Other parameters (need, belonging to a particular group, etc.) played no role in Aristotle’s conception. They gained prominence only in modern theories of social justice.

We have good reasons to assume that Aristotle conceived his two modes of justice as complementary concepts. However, what happens if there is dissent on the merits of the citizens? Will distribution be suspended until further notice? Or will one opinion dominate others? If so, which one? And according to which principle will that be decided? Suspending distributions nullifies the very idea of distributive justice. Giving preference to one opinion destroys the idea of having complementary concepts. Aristotle might not have given sufficient attention to these tensions.³⁰

However this may be, the intended complementarity of commutative and distributive justice in Aristotle is plain to see. For one, it is mirrored in the categorization of both types of justice as subclasses of particular justice. Another indication is the absence of parameters of distributive justice other than ‘merit’. It is assumed, Aristotle had pondered those (need, for instance), it is quite obvious that they do not conform to merit and its principle of ‘geometric proportionality’. However, as our examination of various new theories of social justice will demonstrate, apparently the idea to combine the ideas of commutative justice and social justice in a logical coherent way has not lost any of its attraction to date. Whether those modern attempts were successful has to be examined at a later stage.³¹

Apart from that, the impact of the Aristotelian distinction was huge and long lasting. How else could we explain that it was never systematically questioned?³² It is far from being evident that there is a need for distributive justice at all, once you have commutative justice. What Aristotle provides, by introducing distributive justice, is a mode of distribution that is compatible with rectificatory justice. It does not take a complementary form of justice to provide such a modus. All it takes is consensus between the involved parties about the distribution mode. This consent, being voluntary, is *eo ipso* compatible with commutative justice.

The redundancy of distributive justice as a conception had no influence on the impact of the division of particular justice into commutative and distributive justice. Still the question is raised regarding the proper field of application of social justice, and the ambition to arrange it with commutative justice in some way is widely present in the theory of justice, despite the change of the meaning of social justice in modern times. Whatever the answer to this question from our standpoint, at this point we can say that: if in the name of social justice it is recommended that goods of A are to be transferred to B without A’s consent, although, in the course of involuntary transactions, A has not taken his goods from others and B was not

deprived of any goods by others, then the recommendation collides with commutative justice.³³

Before examining those sorts of collisions, we have to ponder on some preceding problems. First of all, we will shed some light on the origin of the idea of social justice. On top of Hayek's phylogenetic explanations and studies on the history of ideas, we will analyze whether and, if so, how a particular understanding of property, justice, and equality had an impact on forming the idea of social justice.

3.4 The origin of the idea of social justice

Although the *concept* of distributive justice goes back to Aristotle, the idea of social justice is a more recent phenomenon.³⁴ What distinguishes the modern idea of social justice from the Aristotelian conception of distributive justice is, as we have indicated above, the neglect or dismissal of the 'merit-based justice' as the leading principle and the recourse to other parameters. This alone deems it wise to suspect the rise of the idea with the beginning of utilitarianism, which – to use the famous Benthamite phrase – argued for 'the greatest happiness of the greatest number'. This utilitarian aim cannot be achieved without the dismissal of the idea of merit-based justice and formal justice.

Be that as it may, as the examination of the Rawlsian conception of justice will show, there are many theories of justice that are not, or not completely, inspired by utilitarian assumptions. Therefore, it is still rational (and for our purposes still necessary) to examine whether conceptions of social justice exist which are compatible with that of formal justice.

3.4.1 Social justice and the moral system of the horde

In the second volume of his trilogy, *Law, Legislation and Liberty*, Hayek addresses the origin of the idea of social justice in two ways. First, as indicated above, he is interested in the historical roots of idea and conception of distributive justice, and, second, he asks for ethological reasons explaining man's desire for what is commonly meant by social justice.

To answer the last question, he takes a look at man's phylogenetic heritage. Hayek assumes that the morality of men has been determined largely by the way living men exercised throughout tribal history. According to Hayek, for hundreds of thousands of years, men lived in small communities, with a membership of 20–60 individuals on average. That size formed the development of our morals and caused a phylogenetic embedding.³⁵ The daily physical contact of the members of the group has paved the way for the selection of some moral preferences and the sifting out of others.

Mutual care, give and take day by day, proved useful.³⁶ Hayek's explanation sketch has a high degree of plausibility. It seems evident that groups, whose survival was determined by successful hunting and gathering, depended on a minimum size. In order to survive, especially in competition with other groups, each group had to keep this minimum size, including 'stand-by players'. Therefore, it probably proved more useful to cure and care for a sick member than consigning it to its fate. Hence, compassion among the group members has paid.³⁷

Hayek outlines his idea about the moral of the horde not only to explain the origin of social justice in terms of moral sentiment, but also to argue for its inapplicability to modern societies, whose memberships are much larger than those of tribal groups. Following Hayek, the *abstract* or *great society* of our times needs moral rules that order commerce with strangers too. Respecting the property of others, keeping contracts, are practices which determine the life in the huge, anonymous society much more than those of the *face-to-face-society*.³⁸ Hayek's reflections on the moral requirements of large societies have a high degree of plausibility. Whereas small, intimate groups hardly absorb a loss in membership, abstract societies cope comparatively easily with those losses, affecting them only marginally. On top of that, a growth in anonymity among members raises the risk of misuse of compassion and, thus, the chance that sympathy becomes detrimental to society.

3.5 Social justice as misnomer

As explained in Section 3.2.3, a definition of justice, derived deductively (via negative selection), cannot slide over the conception of social justice. It is conceivable that social justice represents a subclass of justice and, hence, could become useful for the precision of our definition. Of course, a necessary requirement for this is to be logically compatible with justice. Since many conceptions of social justice are on the market, a careful study of the various options seems appropriate. In addition, arguments need to be examined, which name criteria that social justice may not match in order to serve the mentioned logical compatibility. Such an argument was put into the debate by Friedrich A. Hayek.³⁹ On the one hand, Hayek deals with the question whether the results of the market can meaningfully be called socially unjust. Following the idea of methodological individualism, which requires that all social phenomena can be reconstructed as the result of individual (inter)actions, Hayek distinguishes social results that stem from plans, to which each contributed according to his role, and results that evolve spontaneously from individual actions, but not from a common plan. The results of the market are such spontaneous results. Nobody in the free market follows commands, the results are not planned by anybody,

says Hayek. Within Hayek's analysis, only the outcome of a planned economy exemplifies the first sort of social results.

While in a planned economy nobody is sufficient, but at least necessary (as part of the plan), for the designed result and its distribution, actors in the free market economy follow individual goals. Thereby they are neither sufficient, nor necessary for the overall outcome. Consequently, none of the market participants can be called a necessary or sufficient condition for the results (and their dispersion).

If we assume that only those outcomes of actions can qualify as moral, for which an actor can be identified who sufficiently has caused the result, then we have to conclude that the spontaneous results of the free market do not qualify as moral. Hence they can be called neither 'unjust' nor 'just'. Both adjectives are inappropriate.⁴⁰

As has been outlined in Section 1.1.9.1, difficulties to qualify an action as moral grow with the breaks in the triad of moral actions. If intention, action and consequence are connected without interruptions, we can judge with more ease which moral dimension should be attributed to them (just or unjust, for instance). If one of the three elements is missing (for example, when intention and action are given, but the respective result is lacking), attributing a moral dimension, and judging which moral dimension, become more difficult or imply a caveat. (We think morally different of a murder than of an attempted murder.)

Following Hayek's argumentation, we can conclude that in the case of market results two elements of the triadic system are lacking, namely intention and result. (Market participants neither intend nor cause the market outcome.) Moreover, one can add that it is inappropriate to view a market action as remaining element in that triad, since it is neither necessary nor sufficient for the spontaneous result. Hayek's conclusion, not to attribute a moral dimension to the spontaneous results of the free market, and to argue that the term 'social justice' is a misnomer, seems to be highly justified in face of such a shattered triad.

Obviously, a conception of social justice that aims for calling the results of the free market 'socially unjust' is inapt to serve as a logically compatible subcategory to the upper category 'justice'. From the perspective of formal justice (and of commutative justice as well), that asks for restitution as reaction to performed injustice, one can add that a demand for social justice as compensation for social injustice would be an invalid claim because, as Hayek's analysis has shown, the results of the free market do not cause a state that could be called either just or unjust.

Despite all that, we have to keep in mind that Hayek criticizes a particular conception of social justice, namely one that, though falsely as we have seen, assumes that regular actions of market participants would cause

social injustice. His criticism does not apply to conceptions assuming that social injustice is caused by omissions. As we shall see later,⁴¹ those theories face a couple of other problems, but cannot be excluded from our reflections from the outset because, as shown in Section 1.1.7, moral economic actions do not only include actions, but omissions as well.

Also not a subject of Hayek's critique are conceptions of social justice that do not assume that social justice has to be demanded (only) because of social injustice, but argue that the call for social justice is based on other reasons. As subsequent sections will elucidate, the idea of omissions does not play an insignificant role in those conceptions.⁴²

3.5.1 *Social justice as prudential practice*

The following excursion into the ordoliberal thinking leads us to a conception of social justice that may serve as an example for what was mentioned in the previous section: To advocate social justice does not need to admit social injustice. Moreover, it does not even require coming along, *expressis verbis*, as a request of 'social justice'. What is meant here is the ordoliberal idea of a 'social market economy'. The terms 'social market economy' and 'social irenic' go back to Alfred Müller-Armack, who prominently put them into the debate in postwar Germany.⁴³ At that time, the redistribution of wealth was not on the agenda of economic policy, due to a lack of wealth that could have been redistributed.⁴⁴ Hence the main question was not if and, if so, how the market has provoked 'unjust' outcome, and how this is to be corrected: the principle question was the production of wealth.⁴⁵ Müller-Armack strived for 'a liberal market economy, not left on its own, but purposefully steered, namely socially steered'.⁴⁶ His conception of 'social market economy' implied the steering of the market for social irenic purposes. A 'pre'-correction of the expectable results of the market was deemed appropriate for the aimed ordoliberal purpose. Though the leading ordoliberals, including Walter Eucken, Franz Böhm, Wilhelm Röpke, and Alexander Rüstow, had different aims at the margin, they shared the view that the market could and should be corrected, from time to time, to maintain it. In short: If social unrest is endangering the market order, interventions (including redistributive measures) should be taken that leave the functioning of the market intact, while erasing the source of unrest. Hence, market interventions, or 'corrections', whether rhetorically in the name of 'social justice' or 'social market economy', are prudential practices, in the end, following this reasoning.

In other words, the conception of social justice, guided by the idea of a social market economy, aimed not for the correction of *old* results, but for an anticipatory correction of expectable *new* ones.

3.6 Social justice as ‘default justice’

This section has to be unlike all others. We know of no prominent example in the literature that would exemplify the conception of social justice discussed here in a systematic way. Perhaps we are dealing here with a class that has no (fully developed) representative yet. Nonetheless, the characteristics of that class are easy to describe. Going back to our early reflections, we can speak of social injustice in terms of failure to render assistance. Let us recall! We have argued in Section 1.1.7 that a moral dimension can be attributed to an action if the action is not performed, despite being promised. Picking up this idea, one could reason that ‘social injustice’ is caused by unfulfilled promises, or other unredeemed commitments. Strictly speaking, along the lines of this conception, one would admonish a breach of contract and ask for restitution or compensation on behalf of formal justice. Since the person who has promised an action defaulted, one would ask for ‘*default justice*’, so to speak.

Though the possibility to conceive ‘social justice’ as a legitimate claim for compensation of ‘social injustices’ of the kind described is plain to see, it does not (yet) exist, at least not in the form of a systematic conception.⁴⁷ However, in the literature we meet several ideas and proposals that seem to aim at a systematic use of such an option or fall back on reflections of the kind described above. Ideas like those of inter-generational contract, solidarity, or global justice belong to that category of ideas and conceptions.⁴⁸

The inter-generational contract, which is at best a fictitious contract among members of different generations, often used as argument legitimizing pay-as-you-go financed pension systems, is almost ideal for a systematic illustration of the idea of ‘default justice’. Along the line, Clemens Fuest argues:

Since pay-as-you-go financing of social security systems is often labeled as expression of the inter-generational contract, it would be an obvious criterion for inter-generational justice to ask whether all members of all generations, living at the moment of introduction, would consent to the introduction of the social security system.⁴⁹

Fuest refers in a footnote to an attempt by Wilfried Hinsch,⁵⁰

Starting from the Rawlsian theory of justice, to elaborate the implications for social policies that rest on contractarian criteria of justice. He comes to the conclusion that certain kinds of loan subsidies can be legitimized by the Rawlsian difference principle.⁵¹

Be that as it may, theories of social justice that (would) refer back to ‘social injustices’ caused by unfulfilled promises or other unredeemed commitments (would) face a number of problems, in particular, if the contract in question (that allegedly entails the promise or commitment) is not a fact, but a fiction – a fictitious contract not being a special kind of contract, but no contract at all. In spite of this, even when it comes to fictitious contracts, we have to distinguish between contracts closed *for* people, and contracts closed *by* people. Let us address the first case first! The possibility to enact rights and obligations for others, without asking for their consent, has been discussed already elsewhere.⁵² As we have stated there, the reason to assume dissent among the parties concerned is in those cases more justified than in cases in which the contracting parties decide unanimously on the rights and obligations. The possibility to identify the position of everybody, involved in the enactment, and the respective rights and obligations, faces worse conditions than in the second case. This fact gives even more cause for concern because testing a possible collision with the idea of non-creative prioritization depends decisively on the identifiability of the positions of all parties concerned.

Moreover, even if it is assumed that, certain conditions x, y, z fulfilled, a fictitious contract would be (or would have been) closed by all parties concerned, still the conception of social justice, referring to an unfulfilled contract, would face considerable problems. In particular, problems would occur that also come up in the case criticized by Hayek (i.e., social injustice results from market transactions), since the argument would be a symmetrical one, claiming that the results of the market would have been the outcome of omitted actions. In accord with Hayek, one could respond that the results of the market are spontaneous; that the omissions, playing a role in the genesis of the overall outcome, pursued individual aims and intended not the overall result; that this is also a case in which (at least) two elements of the triadic system lack, namely intention and consequence – the actors neither intended the result and its dispersion, nor have their actions been a sufficient cause for it –; that, strictly speaking, it is inappropriate to view an omitted market action as remaining element in that triad, since it is neither necessary nor sufficient for the spontaneous result. Finally, one could conclude (a) that it is highly justified *not* to attribute a moral dimension to the result of the free market that spontaneously evolved from omissions; and (b), again in line with Hayek, denoting such a state as ‘social justice’ would just add another misnomer to the list.

A conception, claiming social injustice as a result of omissions in market transactions, would, in addition, face a problem that does not appear in theories of social justice that claim social injustice in the course of regular market transactions: Actions can be attributed to actors,

omissions cannot, or only under the condition that the inactive actor is identified beforehand. This condition unfulfilled, the assertion x or y was not done, has no addressee. It applies to everybody who could have, in principle, executed the action. It is universal and, hence, has no point. Let us illustrate the difference by an example. Given, A has received no loan until now, then ‘A receives a loan from B’ implies that it holds for B, and only for him, that he gives a loan to A. Whereas ‘A receives no loan from B’ explicitly implies that it holds for B, and implicitly implies that it holds for everybody else, not giving a loan to A. In the first case, only one, namely B, causes the result; in the second case, not only B ‘causes’ the result (A receiving no loan), but everybody else does – though the use of ‘cause’ is a metaphorical one in the second case.

However, a conceivable variant of social justice in terms of ‘default justice’ would be one that claims a norm and asserts that those obliged by the norm failed to conform to it. For example, when it comes to the problem of large scale poverty induced premature deaths one could, along with Locke, argue that, in the course of applying the Lockean theory of property, survivors had failed to obey God’s command to save the species. Redistributions to those who suffer hunger, so one could reason further, are justified in terms of the heavenly norm; justified also in terms of ‘default justice’.

It is also possible to go along with Locke first and, after a while, assert that all goods on earth are common goods; that an unproportional use by some causes costs to the common; and that on behalf of the common the heavy users have to pay back to the common, as a demand of commutative justice.⁵³ This interpretation of free goods as common goods parallels the interpretation of externalities as pool goods and faces analogous problems. Since the reader will be confronted with these problems at large in Section 3.8.2, it is unnecessary to anticipate them at this point. Apart from that, our reflections on the *finders keepers principle* in Section 2.2.5 and the subsequent insight that norm postulates, including the one that unowned goods would be common goods, have no priority to rival norm postulates per se, allow for the conclusion that omitting an elaborate examination of the common good theory at this point is excusable.

However, it is obvious that ‘social justice’ as ‘default justice’ would have to be confronted with the arguments addressing the problems of deducing norms and preference prioritization. The author refrains from confronting the reader again with these arguments, given the reader knows them already, the discussed conception is not represented among the prominent theories of social justices, and the prominent versions of social justice deserve more systematic attention than ‘virtual’ ones. Those prominent theories are the subject of our subsequent sections.

3.7 Social justice as complementary justice

Theories of social justice that do not want to run the risk of being afflicted by the Hayekian critique should determine the subject, namely social justice, in a way that does not presuppose social injustice to be a consequence of the dispersion of goods in the free market economy. Some of the prominent theories of redistribution seem to meet that requirement,⁵⁴ assuming that the market actors would agree, under certain conditions, to redistribution, and naming the aimed state ‘social just’.

For the purpose of our initial question, only those theories are of interest that do not overtly contradict the conception of justice outlined in Section 3.2ff.; those that do not assert it would be just if, in the course of ‘social justice’, one is unjustifiably hindered in the use of one’s liberties; those that explicitly exclude unjustified interferences into individual liberty and require that the proposed redistributions (and other changes) could meet, in principle, the approval of all concerned. In other words, we are talking of contract theories.

Contract theories, propagating a conception of social justice and fitting into the profile sketched above, have to assert, at least implicitly, that a conception of justice, that excludes unjustifiable obstructions of individual freedom, has to be either *curtailed* or *complemented* for reasons that need to be specified. Regarding our topic, those conceptions of social justice have to claim that principles, like ‘to each his own’, do not face any general objections and, hence, are applicable to moral economic action, but, nevertheless, are subject to either limitations or supplements, for reasons that build the foundations of social justice.

First of all, we look at the type of theory that, tacitly or explicitly, assumes that social justice is a complement to formal justice.⁵⁵ The best and best known representative of that type is the theory of social justice by John Rawls, more precisely, the variant of it that one could call the Paretian one.⁵⁶

In order to illustrate what we mean by the Paretian variant of the Rawlsian theory of justice, we start with a thought experiment; with a hypothetical question that reads as follows: Would you agree to an economic order that is in all regards at least equal to the market order and in some even superior; that, conforming to formal justice, does not make anyone worse off, but at least one better off?⁵⁷ Hypothetical questions like this one recommend caution. With a view to Vilfredo Pareto (or Alfredo Pareto, as named by some), one would attempt to give an answer that avoids the snares of gullibility, while keeping the door open for further improvements. Thanks to Pareto, one could say the following: Given an alternative to the market economy, which is superior to it in at least one respect or along at least one

rating dimension, we have no reason to give priority to the inferior option, namely the market economy. That answer would indicate that one is not prepared to prefer an inferior alternative A_1 to a superior alternative A_2 , and that one is not willing to choose A_2 without knowing about eventual alternatives ($A_3, A_4, A_5, \dots A_n$), which are equal or even superior to A_2 . In short: Always prefer better to worse and never be happy with the next best, for you never know who walks through the door thereafter.⁵⁸ Following the advice, not to be too gullible, might be best done by raising additional requirements. A supplementary requirement could be the assurance to go back to the previous alternative without (high) costs in case A_2 forfeits its superiority prematurely. Of course, such a warrant cannot be given, because in the moment of decision between the established alternative A_1 and the untested alternative A_2 no experience value with A_2 exists that could be used as decision guidance. Hence the decision has to be taken between alternatives with significantly different degrees of corroboration.

As explained in Section 1.1.5.1, economists talk of a *strict dominance*⁵⁹ of A_2 over A_1 if A_2 is superior to A_1 in each respect or along each rating dimension. From this dominance they bridge over to the *weak Pareto principle*. The weak Pareto principle holds for the comparison of two alternatives out of the set G , encompassing all alternatives. It says: An alternative $A_1 \in G$, strictly inferior to alternative $A_2 \in G$, should not be selected (chosen). This principle, corresponding with strict dominance, is 'weak' insofar as it does not demand much. To put it differently, in a case like that, we have good reasons to wish that the strictly dominated alternative should not be chosen. Hence, the proposal to avoid a strictly dominated alternative expresses only a weak demand, which is reflected in the adjective 'weak' Pareto principle.

However, for our thought experiment it is not the weak, but the *strict Pareto principle* that is of interest. The strict Pareto principle demands much more than the weak Pareto principle, namely: An alternative $A_1 \in G$ should not be chosen socially if an alternative $A_2 \in G$ is given, which makes at least one individual better off, while all others remain at least equal. This strong demand of the strict Pareto principle correlates with a *weak dominance*. Weak dominance of A_2 over A_1 is given if A_2 is superior to A_1 at least in one respect or at least along one rating dimension, while at least equal along all others.

It is intuitively clear in as much the *strict Pareto principle* is more demanding. On the one hand, we do not ask too much of individuals, that would not be worse off with A_2 , not to stick with A_1 if A_2 would make at least one better off. On the other hand, individuals, naturally moved by self-interest, probably ask themselves why they should swap A_1 for A_2 if they do not get anything out of it. Self-interested individuals probably ask

whether they can participate in one way or another from the improvement of the better off after the change, for instance in form of an agreement premium. Such a premium could be interpreted either as profit sharing, or as risk compensation for eventual costs in case the weak dominance of A_2 over A_1 turns out to be short-lived, and a return to A_1 better after all.

Even more important for our reflections, regarding compatibility between formal and social justice, is the insight *that* the strict Pareto principle implies a demand, while a demand per se does not allow to infer its compatibility with formal justice. Let us recall! In Section 3.2, we called an economic action ‘morally just’ that does not unjustifiably hinder another in using his liberties. If A asks B to redistribute goods, B’s consent needs to be identified as being present before we can say that the redistribution as moral economic action is just. It is not sufficient to say the change is just because it does not make B worse off and, hence, B would have no good reason to refuse the change.

The preliminary remarks on Pareto relations are quite useful in as much as they help us to examine the Paretian variant of the distributional justice proposed by Rawls and, thereby, to give an answer to the question whether the (Paretian) Rawlsian social justice is compatible with formal justice. In order to answer this question, we have to show first that it is at all possible to assume that Rawls does *not* propagate redistribution useful to some and costly to others, but only redistribution that conforms to the strict Pareto principle.⁶⁰ To put it simply, the Paretian Rawls, so we have to assume, takes only those redistributions into considerations that make none worse off, but at least one better off.

First of all, one can ask whereupon the assumption rests that a Pareto superior alternative to the free market order could exist. The reason for this assumption can be found in the Popperian distinction between universal and singular existential statements. An example for a universal statement in the Popperian sense would be ‘all swans are white’. *Universal statements* are apt to express theories, since theories claim that a fact holds for all representatives of a class. Hence, the theory ‘swans are white’ holds for all swans, without exemption. One counter-example (that is deemed to be less problematic than the theory) is enough to falsify the theory. For singular *existential statements* the opposite holds, in a sense. The proposition ‘there is one non-white swan’ cannot be falsified, but verified. What it takes is the appearance of a non-white swan. (Just as a side remark, one should add that the principled fallibility of all statements, including verified statements, of course, does not affect the verifiability as such.)

The Paretian version of Rawls, as discussed here, can be interpreted in form of a singular existential proposition, which reads as follows: ‘There is one alternative to the market dispersion of goods that makes at least one

better off, while leaving all others not worse off.' It is well known that Rawls' conception of justice offers more, as we shall show below. Rawls believed that, under the veil of ignorance (about our own talents and future prospect), individuals would agree to a distribution of goods (and, thereby, agree to an unequal distribution of goods) that would make at least the worst off better off, while leaving all others not worse off. In a way, his assertion adds a further singular existential statement to the previous one:

There is one alternative to the market dispersion of goods that makes at least one better off, while leaving all others not worse off, and there is one case in which all would prefer that alternative, namely, under the assumption, taken under the veil of ignorance, that the alternative meets the difference principle.

As it is for all singular existential statements, or conjunctions of those, they are unproblematic concerning their logical structure. They are verifiable, but not falsifiable. However, one would like to know what could be concluded from singular existential statements or conjunctions of those, apart from their implications for falsifiability and falsification. Strictly speaking, nothing! Further conclusions could be drawn only if singular existential statements could contradict each other.⁶¹

Interesting is, at least with respect to methodology, that a singular existential statement can be transformed into its logical equivalent, namely a universal statement, negating the corresponding singular existential statement. It reads as follows:

There is no alternative to the market dispersion of goods that makes at least one better off, while leaving all others not worse off, and there is no case in which all would prefer that alternative, namely, under the assumption, taken under the veil of ignorance, that the alternative meets the difference principle.

Or, to give it the standard form of a universal statement:

For all alternatives to the market dispersion of goods, it holds that they do not make at least one better off, while leaving all others not worse off; and that they are not preferred to the market dispersion of goods, under the assumption, taken under the veil of ignorance, that the alternative meets the difference principle.

Universal statements can be falsified, but not verified, according to Popper. The impossibility to verify them, he argues, rests on the fact that

the set of possible falsifications is logically and, hence, practically unlimited. Recalling what we have stated somewhat differently in Section 1.1.5.3, we can put it as follows: One may present as many white swans as one wishes, the possibility remains that one day a non-white swan turns up.

The impossibility to verify a universal statement gives rise to a few conclusions, for instance, not to demand what cannot be fulfilled. If someone points out the superiority of the market when it comes to the dispersion of goods, and asserts that there is no alternative to the market dispersion of goods that makes at least one better off, while leaving all others not worse off, and that there is no case in which all would prefer that alternative, namely, under the assumption, taken under the veil of ignorance, that the alternative meets the difference principle, then we do not expect him to verify his theory, the more so as it takes just one example to falsify his universal statement.

In lieu, we expect the adversary, who, like Rawls, asserts that such an alternative exists, to present proof for his claim, rather than be content with the assertion and the naming of the conditions under which, supposedly, the claim comes true. However, Rawls does not fulfill this expectation. Also, he does not prove to be the Paretian Rawls one initially might have envisaged. More than that, he goes far beyond Pareto. Instead of leaving it to the insight that an alternative dispersion of goods, superior to that of the market order, is conceivable, and that under this condition it would not be reasonable to stick to the inferior alternative; and instead of leaving it to the criterion that such an alternative has only to be 'at least as good as' the status quo, he qualifies that alternative as 'better', which helps to make it look even more reasonable to require:

Thus, in comparing different arrangements of the social system, we can say that one is better than another if in one arrangement all expectations are at least as high, and some higher, than in the other. The principle gives grounds for reform, for if there is an arrangement which is optimal in comparison with the existing state of things, then, other things equal, it is a better situation all around and should be adopted.⁶²

To sum up, the alleged Paretian Rawls is not a Paretian in the end. Even if we would interpret his brisk claims benevolently,⁶³ other problems remain, namely (a) that individuals, who will not be better off, presumably ask for profit share, or risk compensation for eventual losses in the course of change – a problem which disappears only under the assumption of altruistic motives; (b) that individuals have to choose among alternatives

with significantly different degrees of corroboration; (c) that eventual extra costs can show up, should the expected superior alternative fail to keep its superiority over time. However, the crucial question is whether Rawls requires at all the voluntary consent of the involved parties (which is the *sine qua non* for formal justice) to justify the move to a Pareto optimal alternative.

As is widely known, Rawls does not ask for the voluntary consent. He only asserts that all individuals would consent if they would decide under the veil of ignorance. Moreover, he assumes that they would not prefer *any* Pareto optimum, but only that one that, expectedly, would improve the lot of the worse off. This assumption rests on the maximin principle, which implies that everybody has to expect the worst, given the future is open. Consequently, everybody has reason to assume, under the veil of ignorance, that he could be the one with the least fortune. Therefore, everybody has reason to choose the Pareto optimum that makes us expect that the worse off will be better off (difference principle). ‘The basic structure is perfectly just when the prospects of the least fortunate are as great as they can be.’⁶⁴

The quote and our reflections above show that the Rawlsian conception of justice is not compatible with that of formal justice. The compatibility is only given if all involved parties would practically opt for the Rawlsian changes. However, a hypothetical consent is not a factual consent. It is not a variant of consent, it is no consent at all. If one asks all to agree to the distribution that follows the Rawlsian criteria, then the consent of all must be presented identifiably, before we can say, the distribution is a just moral economic action. Consequently, Rawls’ ‘social justice’ is *not* a complement to *formal justice*, but only a fiction, although one that, due to the inclusion of Paretian parameters, may raise different expectations in the first place.

The extensive examination of the Rawlsian theory of distribution, and the result that the implied conception of social justice does not conform to formal justice, make it superfluous to examine similar distribution theories of justice, regards the logical compatibility to formal justice. Such supplementary examinations are unnecessary because the existing alternatives to the Rawlsian theory have no structural differences that would be relevant to our concern; some of them, for instance that of Thomas Scanlon, are not even inspired by Paretian motives.⁶⁵ What distinguishes them are the conditions under which the individuals are supposed to choose the ideal of justice of the respective author. For Thomas Scanlon it is the ‘unrejectability’, for Brian Barry the ‘impartiality’ that should make us opt for a different scheme of distribution. However, the conditions, whatever they might be, do not influence the fact that a fictitious contract is not a contract.

Hence, we can do without Scanlon and Barry, both (like Rawls) discussing only fictitious contracts.

3.8 Social justice limiting formal justice

If our reflections, so far, are accurate and, hence, the idea of social justice as complementary justice inappropriate, one still can doubt that the compatibility of an action with formal justice would be a sufficient criterion for a morally just economic action. It is conceivable that reasons could be found that require limiting the applicability of formal justice to a certain range of economic activities (for instance, limiting the sovereign disposal of property). Such reasons could be seen in peculiarities regarding acquisition or use of property; peculiarities that inhibit an unlimited disposal of goods, although those are acquired in conformity to formal justice. One could point out that the acquisition or maintenance of property would be impossible without an authority providing security (the state, for instance). One could further argue that taxation was necessary to provide this security; that taxes would not be levied for redistribution, but rather to execute formal justice.⁶⁶

Admittedly, up to this point, the allusions in the preceding paragraph sound partially vague, despite (or, because of?) some similarities in the classical liberal defense of the state. However, as we go on examining some arguments of modern distribution theorists, things will become more lucid; arguments, which Anthony de Jasay has criticized,⁶⁷ starting with the following concession:

Modern redistributive doctrine tells us, reasonably enough, that no output is ever produced by a single input. For even if you make something single-handed, you owe your capacity to do so to teachers who taught you, doctors who kept you alive, policemen who protect you from malefactors and supermarket operators who feed you.⁶⁸

Jasay, then, goes on to show that some redistributionist theorists derive their arguments for a redistribution of produced goods from the genesis of the production. He quotes James Griffin, who makes the following statement in his book on well-being:

A medical researcher might make a discovery of great commercial value. He might have worked terribly hard to bring it off. But even so, who trained him? Who moved the subject to the point where the discovery became possible? Who built their lab in which he worked? Who runs it? Who pays for it? Who is responsible for the enduring

social institutions that present the commercial opportunities? One who cleverly exploits the social framework has both his cleverness and the framework to thank.⁶⁹

Jasay finds similar statements and thoughts in Joel Feinberg, who argues that the individual productivity owes probably as much to the 'pool' of goods, summarized by Griffin above, than to the efforts of the individual, if not more.⁷⁰ Following Jasay, Feinberg and Griffin reason that each acquisition of goods, and each market transaction uses pool goods (including traditions, rites, customs), commonly owned by the members of the society.⁷¹ This reasoning can be reconstructed as follows: He who acquires more goods than others, uses the 'pool goods' more often than his fellow members of society. Consequently, it is right and proper to compensate others for this above average consumption, and by doing so correct the market dispersion of goods. If he does not compensate others, he disobeys the shares of the fellow members in the pool goods. Consequently, since no market transaction is taken without partial use of pool goods, each uncorrected market distribution of goods is unjust, despite the fact that market actors, while involved in the production of these goods, conform to formal justice.

This reasoning, if correct, could form a solid foundation for a serious objection to the thesis that justice could be achieved without redistribution of produced goods. However, before examining the argument in more detail, we have to distinguish between goods, owned by somebody, and goods without an owner.

3.8.1 *Ne bis in idem – Do not pay twice!*

First of all, let us have a look at goods that have an owner, for instance, a house. Jasay concedes that the value of a house depends on many factors, among these, goods and services which appeared before the house was finished or exist beyond its completion. Consequently, one can say:

If there were no fire brigade, the whole street might have burned down and your house would no longer stand. The fire brigade has contributed something to its value, and some figure ought to be put against their name. The utilities should not be forgotten, for how would you like to live in a house without running water, electricity and so forth? Some tentative numbers had better be credited to them. Surely, however, you cannot just ignore the builder who erected the house, the lumberman, the brick factory, the cement works and all the other suppliers without whom the builder could not have erected it. They

too must have their contribution recognized, even if it must be done in a rough-and ready fashion.

Then, Jasay asks: ‘Is it right, though, to stop at this primary level of contributions? – should we not go beyond the cement works to the builder who built the kiln, the gas pipeline that feeds the fire, the workers who keep the process going?’⁷²

Although these goods increase the value of the house, their producers (owners) cannot argue to deserve payment for the value they added, simply, as Jasay points out, because they have been paid already before.

All contributions of others to the building of your house have been paid for at each link in the chain of production. All current contributions to its maintenance and security are likewise being paid for. Value has been and is being given for value received, even though the ‘value’ is not always money and goods, but may sometimes be affection, loyalty or the discharge of duty. . . . For in a voluntary exchange, once each side has delivered and received the agreed contribution, the parties are quits. Seeking to credit and debit them for putative outstanding claims is double counting.⁷³

3.8.2 Pool goods, toll goods, and positive externalities

To pick up the abovementioned example, given by Griffin: The builder of the laboratory, or the person who runs it, cannot ask the medical researcher for repayments, or else they would ask to be paid twice for a good or service delivered just once. But how about the ‘social institutions’, the ‘social framework’, as Griffin names it, used by the medical researcher? Who owns them? Who owns the market, the language, the rites, the customs, which the researcher, as well as everybody else, uses day by day for the production of new goods? At this point, the thesis of Griffin and Feinberg becomes interesting. As they see it, these ‘goods’ belong to everybody. They build a pool of goods, out of which we ladle when producing new goods. Following that view, pool goods are common goods.

Consequently, redistribution can be interpreted quasi as toll for using these pool goods, implying that pool goods are basically toll goods.⁷⁴ The justification argument for paying a toll when ladling the pool can be reconstructed in the following way: Likewise using a tunnel or a highway, whose maintenance is provided by contributions of all, everybody pays per unit he uses the pool. The collected toll is forwarded to the owners of the pool, evenly distributed among them. Strictly speaking, this distribution is

not redistribution, but restitution, because every consumption implies a wear out of the toll good, which in turn causes mending, while mending creates costs. The compensation of these costs, in turn, has to be handled by the principle of formal justice, hence via restitution.

Interpreting pool goods as toll goods looks plausible, at first sight. Paying a toll is compatible with the conception of formal justice, and paying per unit of use appears very reasonable – implying no problematic preference prioritization. (If a tunnel is owned by the common, and maintenance costs grow in dependence of usage, it is appropriate to ask every user to pay according to his use-frequency. Market actors, using the pool more often than others, pay more than others.)

Be that as it may, treating pool goods as toll goods implies a serious flaw, concerning the very nature of pool goods. It is mistaken to assume that pool goods belong to the common. They are not owned by society. Traditions, rites, customs, ‘social institutions’ and the ‘social framework’ are toll goods only in a metaphorical sense. Their production is not the result of a plan or intentions by the originators, as it is in the case of toll goods. Pool goods are created spontaneously. They are *positive externalities*⁷⁵ of previously executed actions or transactions, which bills have been settled, which execution has been gratuitous, or which created no title. These goods are owned not by everybody, they are owned by nobody. If we want to rubricate them, we can say, they are free goods, emanated spontaneously from the interactions of uncounted individuals, useful to many, hence goods, but not economic goods, hence no subject of trade. What they share with free goods too, is that they are not productive per se. Only in the course of using them do they contribute to productivity, initiated by the user. (The market does not produce fish, offered by the fisherman on the market, but the fisherman does. In this respect, the market does not give the fisherman anything for free, at least nothing he would not give for free to everybody else.)

Nonetheless, the reader might be interested in a logical conclusion that can be derived if, in spite of the reasons mentioned above, one is willing to retain the opinion that pool goods are commonly owned goods. If one does so, one has to look also, with respect to the totality of tolls, at the goods that are added to the pool. Under consideration of these, the overall toll balance changes significantly, reason being that the use of pool goods increases the stock more than it reduces it. Think of language! The more people speak, ‘consume’, a language, the higher its value.⁷⁶ Using a language means maintaining it, building new words, expressions, sayings, etc. The same holds for the market. By closing new contracts, trusting others during market transactions, we ‘consume’ the market, but we enrich it as well, buttress the trust in the market. Following the thesis that pool goods

are commonly owned, we would have to pay market actors, who use the market more than others and, hence, enrich it, compensation for their above average contribution, payable by those who use the market below average. In other words: Not only a redistribution from above average users of the market to the ‘market owners’ would be necessary to conform to justice, but also a redistribution from below average users to above average users. Since using the market increases its value on balance, the redistribution flows from the below average users to the above average users would be bigger.⁷⁷

3.9 Résumé

Examining the problems of deriving norms from facts, confronting *formal justice* with *material justice* (social justice) and combining the results with some reflections concerning the *finders keepers principle*, produces a very significant insight. As outlined in Section 2.2.5, establishing a status quo, by using one’s liberties, requires no justification, as long as eventual preference prioritization is not unjustified and the logical compatibility with the initialization mode is met. As shown in that section too, claims to change that status quo, in turn, asks for justification. If that reasoning is correct, then it is up to those moral philosophers, who tacitly or explicitly claim that formal justice should be either complemented, curtailed or even suspended, to explain why their claims should be accepted. When it comes to the question of moral economic justice, it is not up to norm x , y , z to set the criterion to which formal justice has to conform, rather it is formal justice that sets the benchmark and it is up to the respective norm to prove its logical compatibility to it. In short: Formal justice is not to be compared with any moral norm, rather it is the benchmark for all of them.

This result was heavily promoted by the insight that the justification of norms has to go back to preexisting norms, and that this regression does not yield fruitful results, apart from the insight that a norm cannot but rest on a precedent norm and, hence, cannot achieve a higher status than a postulate. Yet, a postulate P_1 can always be confronted with a postulate P_2 , and there is nothing inherent in a postulate per se that would give him priority to any other postulate.⁷⁸

The predominant aim of this chapter was to determine what can be called ‘just’ and ‘unjust’ in moral economic terms. The reason for clarifying this was the fact that the issue of just economic action is apparently dominating in business ethics. Under the influence of preliminary reflections and the irresolvable problems relating to procedures of deriving norms, we refrained from deducing norms from statements. It proved unproblematic to favor an understanding of justice in terms of formal

justice. This understanding rests on the relation between rights and obligations established by contracts. If our reasoning concerning formal justice is correct, we can define, bearing in mind the definition in Section 2.2.1.1.1, a just moral economic action as follows: *An economic action is moral if it sufficiently causes a party a good or an evil, regarding her private feasible options, and calls for our approval or disapproval. And it is just if it does not interfere in the liberties of another; unjust, if it does.*

The definition presupposes that 'just' is understood in terms of formal justice. Since modern redistributionist theory expresses doubts that the logical compatibility of an economic action with formal justice is a sufficient condition to name that action morally just, it was necessary to deal with those doubts, and the reasons that have caused them. Examining the reasons revealed their untenability. 'Social justice', at least in terms of the examined theories, is *neither a necessary complement to formal justice nor a necessary limitation of it*. Consequently, we have no reason to recede from our abovementioned definition of just moral economic action. Equipped with this result, we can move on to Chapter 4, look at prominent topics in business ethics, illustrate what gave rise to the initial astonishment of the author, and what was meant by 'unexplained omissions, on the one hand, and intensive discussions, on the other hand; both observable in the field of business economics'.

4 Business ethics

4.1 Concepts, questions, and topics of business ethics

The previous chapters reflect the attempt to answer a trinomial question, namely: What is moral action, what is moral economic action, and what just moral economic action? With our above said definition, we should be equipped to examine to which extent the prominent concepts and theories in business ethics deal appropriately with just moral economic action. The said definition should also serve to illustrate what justifies the amazement of the author with respect to unexplained omissions, on the one hand, and intensive discussions, on the other hand.¹ The list of concepts and topics is rather long, reaching from ‘abortion’, ‘bribery’, ‘bucketeering’, ‘corporate citizenship’, ‘corporate governance’, ‘corporate social responsibility’, ‘corruption’, ‘creative accounting’, ‘data protection’, ‘discrimination’, ‘environmental pollution’, ‘exploitation’, ‘forex scams’, ‘freedom’, ‘fraud’, ‘global (international) justice’, ‘global compact’, ‘inter-generational justice’, ‘justice’, ‘industrial espionage’, ‘insider trading’, ‘organ trade’, ‘property’, ‘protectionism’, ‘responsibility’, ‘shareholder value’, ‘solidarity’, ‘social justice’, ‘sustainability’, ‘stakeholder value’ to ‘theft’, though the list is neither complete nor systematically ordered, apart from the alphabetic sequence. Some of the concepts and themes play a role in business ethics, others mirror principles or norms of political philosophies, while, in turn, others exemplify moral economic actions in general.

As will become explicit in the following sections, the author’s amazement is partly caused by the fact that (some) business ethicists deal with actions that do not qualify as subjects of the discipline, because they do not include the use of economic goods, as defined by Carl Menger. Hence they cannot be viewed as *economic* actions.² Consequently, they cannot be rubricated as moral economic actions either. For instance, rather prominent concepts of business ethics, like ‘stakeholder value’ or ‘sustainability’,

have recourse to the use of free goods, but not to the use and trade of economic goods. In face of this, questions concerning the logical compatibility of the stakeholder principle, or sustainability, with moral economic justice (or injustice) cannot be posed in a meaningful sense. (The moral justness of a putative economic action can be questioned only if the respective action is not only presumably an economic one, but really an economic action.)

In the coming sections, we shall examine the moral economic content of some of the abovementioned concepts (and the business ethical subjects they denote). 'Property', 'freedom', 'justice' and 'social justice': general reflections on these concepts of business ethics are not necessary, for they have been elaborated at length in the previous chapters. Also spared can be reflections on topics which obviously include clear violations against freedom, property, and contracts (for instance, market access denial, theft, robbery, fraud, etc.). Apparently, the classification of those actions, regarding compatibility with formal justice, needs no clarification.

Moreover, questioning whether or not norms can (or should) have an impact on the judgment concerning violations of freedom, property, and contracts is superfluous, given the conclusions drawn in Section 3.9. It should be sufficient, with reference to the respective paragraphs of that section, that norms cannot have an impact on the judgment of such violation, simply by being postulations. However, one remark, though an obvious one, should be made at this point. Judgments of the moral economic quality of contracts, closed in conformity with formal justice, have to be confronted with possible implications of norms if the contracting parties have accepted these norms before. In such cases we have to deal with pre-contracts, which have to be logically compatible with subsequent contracts, relating to them. For instance, members of a religious community, that forbids money lending, cannot close loan contracts among each other. If they do, the contract is morally defective.

After having mentioned those themes we are not going to examine, we turn, now, to those at which we will have a closer look. We start by exploring a pair of concepts, namely 'shareholder value' and 'stakeholder value'; for one, because it is apt to illustrate a general problem of concepts in business ethics, namely, to treat certain phenomena, which do not belong to business ethics, given they do not conform to the constitutive characteristic of economic or moral economic action; for another, because too many business ethicists the stakeholder theory, correlating to stakeholder value, is the most significant subject of business ethics.³

4.1.1 Shareholder value vs. stakeholder value

In Section 3.2.3, we named economic action morally just that does not unjustifiably hinder another in the use of his liberties. Acquisition of property that took place without colliding with the non-prioritization principle, and increasing such property by an increasing mode that conforms with the initializing mode, exemplify morally just economic actions. Accordingly, it is up to the owner to invest his property in economic activities. As long as he sticks to the conforming increasing mode, his economic actions are just in terms of our definition. Shareholders, buying or selling shares, and managers making use of their freedom and closing management contracts with publicly traded companies agreed to by all contracting parties, do exactly that. If, for whatever reason, the owners and the manager signed a contract that, contrary to common practice, would entail that the manager should minimize, rather than maximize profits, their doing would be just, and every action by the manager that included the opposite would be unjust.

However, such agreements should rather be the exception to the rule. In the regular case, a manager is hired to maximize profits. Nonetheless, it is difficult to test whether the manager's activities are to this effect, the reason being, that his activities are not sufficient to achieve the intended result.⁴ It is up to business ethics as an empirical discipline to develop appropriate test methods to find out whether management activities are morally just with respect to the agreed arrangement. In spite of this, we can already name the criteria by which we judge whether such economic actions are just or unjust: each economic action conforming to the contract, implying non-creative prioritization and being logically compatible with the initializing mode, is morally just, while economic actions violating at least one of these principles (contract conformity, non-creative prioritization, implications compliance) is morally unjust.

Given that *shareholder value* is understood in terms of the stock price of a company, and an agreement, implying just economic actions, is settled between the owner(s) and the manager(s), then we face the regular case, which was once described, boldly and exactly, by Milton Friedman, saying: 'The social responsibility of business is to increase its profits.'⁵

Consequently, economic acting aiming to increase the shareholder value is morally just, according to our definition. Things are different when it comes to the increase of the 'stakeholder value'. To show this, one has to clarify what is meant by stakeholder value, in the first place. We note consent among business ethicists *that* individuals and groups, not necessarily identical with shareholders, belong to stakeholders, but dissent when it comes to the question, *which* individuals and groups, apart from shareholders, *should* belong to the stakeholders. Should only groups (or

individuals) be considered who are in *direct* exchange with the company (beside owners, employees, clients, victualers, etc.), or shall others, being only in *indirect* contact with the company (the state, interest groups, media, public), be rubricated as well? Leaving that question unanswered for the moment – simply because we have no criterion ready at hand to decide it –, we address another question first. To which extent, if at any, can claims and expectancies in terms of morally just actions be addressed to a company, apart from the justified claims of shareholders? Claims to a company, emanating from contracts between the claimant and the company (employment contract, delivery contract, for instance) are just claims, according to our reflections, requiring each party to fulfill its obligation upon demand of the right holder. Things are different when it comes to exceeding claims. A necessary restriction, already deriving from our previous reflections, is that any exceeding claim, which includes a violation of one the abovementioned criteria (contract conformity, non-creative prioritization, implications compliance), would imply a morally unjust economic action.

For example, if a labor contract is closed that entails no specifications concerning termination (reason of termination, notice period, etc.) at all, then the enforcement of claims, such as to terminate the contract only in face of strong reason, would include an unjustified restriction of individual liberty. In such a case, neither employer nor employee would be permitted to make use of their freedom to terminate a contract at will. Demanding the enforcement of such claims, obviously, implies to ask for a morally unjust action, violating contract conformity as well as the ideas of non-creative prioritization and implications compliance.⁶

Somewhat different are things, when it comes to claims from groups that have only indirect exchange with a company, for instance, when a neighbor of a factory asks the factory to lower its emissions. Those demands do not collide with contracts between the two, unless those contracts would exist. Hence it is up to the neighbor to justify his demand.⁷ If he fails to provide reasons for it, his claim is unjustified, and, therefore, its enforcement morally unjust.

However, claims by stakeholders are not necessarily limited to unjustified restrictions of economic liberties. Justified restrictions of economic liberties, claimed by stakeholders, are conceivable too. Sticking to the previous example, if the neighboring factory would use the neighbor's acre to deposit temporarily its waste, without prior consent by the neighbor, the action would collide with the implication compliance rule.⁸ If the neighbor proves the unauthorized use of his land, the collision becomes evident, the economic action morally unjust, and the demand for restitution justified. If he fails to prove it, the status quo asks for no change.

Interesting are those claims by stakeholders which do not rest on violations of private goods, but rather have recourse to the use of free goods. Let us modify our example! The said factory uses a hot-air balloon for promotion purposes above its premises. Doing so includes no harm to any of the abovementioned criteria (contract conformity, non-creative prioritization, implications compliance), though it includes a use of a free good, since we assume that the space above the premises is not owned, hence a free good. Nonetheless, the neighbor could view the hot-air balloon as a nuisance. He could point out that the factory uses a free good (giving the unused space coordinate above the company grounds an aesthetic value of questionable quality). He could go on, saying that the hot-air balloon would be ugly and, consequently, lower the value of his house, which would be standing almost in reach of it. Therefore, he could argue, his claim to remove the hot-air balloon would be justified (in order to give back to his house its pre-balloon value).

The question with which we are concerned is not whether or not a negative externality can diminish the value of an economic good. It can. What we want to know is whether or not A has a justified title to have B avoid or reverse economic actions that cause A negative externalities. First of all, breach of contract or damage of private property: neither option is given in this case. The remaining way out for A would be to demonstrate that his utility preference over the free good (the space coordinate above the company's grounds) has a justified priority over that of B. But what should justify this priority? Properly speaking, there is no reason to favor A's preference, but one reason to favor that of B is because his using the free good is nothing more than a case of original appropriation. By placing the hot-air balloon above the factory's premises, B has established a status quo, which was his liberty to create. The second comer (as all other late comers) has no criterion to override the status quo; he has no criterion why his preference should have priority to that of the first comer. If A wants a change on moral grounds, he can try to document that the status quo is, contrary to evidence at hand, morally unjust. Failing to prove that and still wanting to change the situation, leaves only two options to him. He can still try to solve the problem peacefully and, hence, in compliance with moral justness, or via conflict and hence, contrary to moral justness.

Also speaking in favor of the parallelism to original appropriation is the fact that, by placing the hot-air balloon in the sky, the factory attributes scarcity to the space coordinate, which was a free good before. Arguing that the formerly free good would be still a free good, despite its occupation, would imply that it is not scarce, according to the definition of free goods. Since only scarce goods can be economic goods (following Menger's definition outlined of economic goods in Section 2.1.1), and

only actions using economic goods can be economic actions, we have to conclude that the placement of the balloon has not been an economic action at all and, therefore, not a moral economic action. In other words, stakeholders asking companies to refrain from using free goods, or to use them carefully and compensate stakeholders for eventual losses, could not be the subject of business ethics at all.

Be that as it may, stakeholder interests, having recourse to externalities of entrepreneurial actions, that include the use of free goods only, do not justify moral claims that companies would have to fulfill. To put it differently: Economic action, intending to conform to such claims, and, hence, conflicting with contract conformity, non-creative prioritization, or implications compliance, is morally unjust. To illustrate the practical consequences of this conclusion, one can point out that a manager who would give in to the neighbor's demand would act morally unjust. The same holds for a judge who would force the factory to pay compensation to its neighbor or remove the panel advertisement. His action would be morally unjust too.

In spite of this, it is conceivable that stakeholder claims have recourse to the thesis that companies use free goods, which, in the end, are common goods. Following that reasoning, the interests of stakeholders would mirror the justified demand for a toll when using common goods. In the face of what we have concluded, in Section 3.8.2, about pool goods and toll goods, it is plain to see with what kind of criticism that position has to be confronted. For one, free goods and common goods represent two different classes of goods that have no overlapping. Common goods belong to everybody, free goods to nobody. For another, if, for the sake of discussion, we would assume that both categories were identical, stakeholders could ask companies for a toll, whereas companies could ask stakeholders for a toll, both using identical arguments.⁹

4.1.2 CC, CG, and CSR

We admit that it is a bad habit to use acronyms, unless they are well known. When it comes to the acronyms that embellish the heading of this section, the use is justified. They stand for topics, which are still very prominent in business ethics. What they express, incidentally, is a preference for publicly traded companies as subject of business ethics.¹⁰ What they also express, incidentally, is the replacement of moral philosophical arguments by concepts and related reasoning of political philosophy. 'Citizenship', 'governance' and 'social responsibility' are concepts that are commonly used in political science, political economy, and political philosophy. In the meantime they have been adopted by business ethicists and

helped them to build analogies between state governance and corporate governance.¹¹ Not only have they enhanced the building of analogies, they have also promoted the view that corporations would need an extra ‘input’ of moral justness, because they would not produce it (at least not sufficiently) on their own. Against this view one can hold that economic action per se promotes morally just action (for instance, by observing contracts and respecting private property, etc.).¹²

In a way, *Corporate Citizenship* (CC), *Corporate Governance* (CG) and *Corporate Social Responsibility* (CSR) represent an advanced version of the stakeholder idea, in as much as they presuppose that corporations have to meet obligations, which do not result from any of their voluntary agreements, but rather from the peculiarities of the constellation in which corporations stand to other parts of society. Although the distinction line between CC, CG, and CSR is everything apart from precise and the concepts are used differently across countries,¹³ it can be said *cum grano salis* what unites and what distinguishes the three concepts. *Corporate Citizenship* usually comprises all those rules, which a corporation can have in order to play the role of a good citizen, at least in a metaphorical sense. Which actions turn a ‘corporate citizen’ into a ‘good corporate citizen’ is subject of controversy. Although there is little dissent that *corporate giving*, *corporate foundations*, and *social commissioning* are means of *Corporate Citizenship*, there is little consent on how to judge these means from a business ethical perspective. For our concern it is crucial to find out whether such means are morally just economic actions or not.

Against the background of what was said in the previous section, the answer can easily be generated. If a manager takes economic actions in terms of CC, without the backing of the owners of his company, he is acting morally unjust; morally just, if he refrains from such actions or executes them with the owner’s backing. We can argue analogously when it comes to CG and CSR. To make it distinct from *Corporate Citizenship*, one could define that *Corporate Governance* summarizes all values and manners a corporation can have to regulate the relations among the corporation, its members and those outside who are in direct exchange with it. *Corporate Social Responsibility*, in turn, comprises all concerns a corporation can have, or is, as the European Commission puts it, ‘a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis’.¹⁴ Social concerns and environmental concerns can be included in business activities either in a morally just or morally unjust way.

Going through the relevant literature, the reader gets the impression that moral economic questions concerning conformity between the goals of the company owner and the measures of the management were of minor

importance, and the existence and magnitude of this conformity hardly worth any empirical study.¹⁵ This impression is evoked, among other reasons, by the priority given to the study of the moral economic impact of entrepreneurial activities on society and environment. In order to avoid eventual misunderstandings, it should be noted that examining the latter indeed belongs to business ethics. On par with this, it should be noted that examining this aspect of moral economic action faces two serious problems, which will be considered next.

The first of these two problems arises against the background of *methodological individualist ethics*. As outlined in Section 1.1.6, *methodological individualist ethics* implies that all phenomena, to which we can attribute a moral dimension, must be retraceable to actions of individuals. As indicated in that very section, we hold this approach to be more fruitful than approaches that presuppose additional acting entities (groups, collectives, etc.). Business ethicists do not consent when it comes to the question of whether the firm is a moral actor *sui generis* or only an epiphenomenon of individual moral actions.¹⁶ Alleging that enterprises have an own status as actor, and narrowing business ethical questions to the moral dimension that can be attributed to it, ousts those business ethical issues that relate to the individual actors (and their interests) within and around a company (owners, managers, employees, clients, victualers, *et al.*).

For instance, isn't it worth comparing the different individual actors in a company and their possibilities to keep the *triad of moral action* intact? Why is it easier for some groups, but less easy for others? Which factors ease it, which hamper it? Do cultural, age or gender differences exist? Inter-generational, religious or institutional differences? The gentle reader might recall some of the problems related to an incomplete triad, and discussed in Section 1.1.9.1. As outlined in that section, intention, action, and consequence of an action form a triad. If the triadic band shows ruptures, it becomes difficult to attribute a moral dimension to the action in question. In short: It is simple to talk of the morality of an action (and of an action in general) if the band is intact, but difficult, if it is not.

Against this background, the moral intentions of a manager, executing or directing measures in terms of CSR, face the same problems of identifiability as the actions of a physician, police officer, or priest. Representatives of those professions perform their actions not necessarily out of moral motives, though they might do. In the first place, they do what they do because it is their job, don't they? Using an example out of a different corner, we can argue that the moral intentions of a contract killer can be identical with those of a murderer, but usually they are not. Given a manager has no moral intention concerning the respective action he has to perform in terms of CSR. In this case it is more difficult to talk of a *moral*

action as it is when the moral intention is present on his side. However, assignment problems of that sort are not only related to managers and other employees of a company. They occur also when we look at the economic activities of customers.

Be this as it may, the second of the two problems roots in another assumption, one that many business ethicists seem to share, at least tacitly, namely that actions that serve environmental and social concerns would have a moral status *per se*. Moral economic action, as defined in the previous chapters, does not imply that conclusion. In Section 2.2.1, we came to the result that an economic action is moral if it sufficiently causes a party a good or an evil, regarding her private feasible options, and calls for our approval or disapproval. Actions that serve (or, at least, should serve) environmental or social aims not necessarily sufficient to cause a party a good or an evil, regarding her private feasible options. Neither ‘the environment’ nor ‘the society’ is a party that would have private feasible options. Only if the addressee of the ecological or social concern is an individual, and only if the action in question sufficiently causes the individual addressee a good or an evil, only then can the action be a moral economic action. These clauses raise high barriers for actions meant to express ‘*Corporate Social Responsibility*’. According to our definition, a donation to maintain the stock of trees in private ownership would clear at least one of these hurdles on its way to become rubricated as a moral economic action (here: sufficient reason for a good affecting the private feasible options of the recipient). Giving money to maintain free goods (whales in the sea, wild animals in the bushes, etc.) would not clear that hurdle. (It goes without saying that a donation that does not qualify as moral cannot be morally just or unjust either.) A generalizing conclusion, of what has been said, is that pointing to the intended social or ecological consequence is not enough to prove that an action has a moral economic dimension.

4.1.3 Sustainability and ecological ethics

Discussing the concept of sustainability brings us to an intersection, namely that of business ethics and ecological ethics and, thus, to questions of the sort we have already addressed in the previous section. This cut set results from the fact that economic actions have recourse to natural resources, while the use of these resources has an impact on the living conditions of our environment. In many cases, the use of the term ‘sustainability’ implicitly implies a normative assumption, for instance, to allow the use of natural resources only in as far as they enhance, maintain, or at least not worsen, significantly the natural living conditions on earth (for present and/or future generations).¹⁷ That testability and commensurability of

measures on behalf of ‘sustainability’ includes many problems is clear to both advocates and skeptics of ‘sustainability’. However serious those problems are is of marginal interest for our topic. Regarding the question of moral economic action, other aspects are more significant. For example, it needs to be pointed out, similarly as in the previous section, that measures on behalf of ‘sustainability’ do *not* imply a moral dimension per se, but only, in so far as the measure sufficiently causes a party a good or an evil, regarding her private feasible options.

It should be pointed out also that ‘sustainable’ measures face assignment problems if the triad of moral action is not intact. In respect of this, the moral intention of any manager, who directs or exerts actions in terms of sustainability, is confronted with the same problems of identification as the moral intention of police officer, physician, or priest during the exercise of occupation.

As indicated in the previous section, discussing *sustainability and ecological ethics*, gives the opportunity also to illustrate assignment problems regarding the moral economic quality of actions by customers. The thesis, shared by some business ethicists, that the customer could pursue ecological aims, and enrich its buying for a moral dimension by performing the respective purchasing behavior, is a typical example. An instance, often used, is the purchase of ‘fair trade coffee’. Let us assume, for the sake of discussion, that we could distinguish ‘fair trade coffee’ from regular traded coffee by the above current share of revenue that employees and workers in the long chain of the production of coffee are supposed to receive, in comparison to their colleagues in regular production chains, and that the above current share could be measured by some decreed standards of ‘fairness’. These conditions provided, we have to ask whether that implies that customers, buying ‘fair trade coffee’, according to the decreed standard, act morally because of the expressed product preference.

Such a conclusion is premature for at least two obvious reasons: (a) whether or not a customer has moral economic aims cannot be concluded by his purchasing behavior alone, the purchasing behavior can pursue different aims as well; (b) even if the assumption *that* the customer pursues moral economic aims would be justified, we could not go on and conclude *which* moral economic aims he pursued. Of course, the same holds if the customer would buy ‘unfair trade coffee’. However, premature conclusions seem to be not totally absent among business ethicists, in particular among non-academic representatives. For instance, Tanja Busse writes the following:

The consumers in industrial countries know that the production of consumer goods is not all the way legal, and that things are taken sometimes airily with respect to morals. Often, social and ecological

standards are disregarded. The correlations are known to most of them: fuel consumption, global climate, cheap textiles, exploitation of people in low-wage countries, meat consumption and logging of rain forests for soy fields and cattle farms. Though that does not change their behavior much.¹⁸

Busse's statement entails a couple of hypotheses that need clarification.¹⁹ This clarification cannot be delivered here. For our concern, it is not necessary either.

What is of interest to our concern is the additional assignment problem to which Busse's position provides a bridge. This assignment problem originates in the fact that moral economic ambitions can be pleaded in order to achieve different aims. This phenomenon is well known in the social sciences, described as 'soft incentives'.²⁰ Within the sociological explanation sketch, one would try to explain the purchasing behavior by the advantages that can emanate from a particular moral economic attitude, for instance, integration into favorite ideological communities. To put it simply, buying free-range eggs instead of eggs from a battery farm, 'fair trade coffee' instead of regular coffee, does not necessarily express moral economic preferences. It may well express the motive of becoming included in particular circles or showing to which preferred 'weltanschauung' one adheres, or both. (Analogously, buying a red Ferrari may explain the purchaser's wish to belong to the exclusive 'ferraristi'.)

The three assignment problems, only just discussed, foreshadow to the triad of moral action. If the intention of an action is unclear, its rubrication as moral economic action is placed under reserve. When it comes to individual purchasing behavior, an additional proviso shows up. When buying mass-produced items (coffee, eggs, textiles, etc.), the individual purchase is an insufficient condition for the aimed result. Going back to our example, we notice that the triad has two cracks, one between intention and action, and another between action and consequence. This being said, the triad may have further cracks too. An almost predetermined breaking point results from the phenomenon that actions in the pursuit of 'ecological just' aims can lead to the opposite.

To illustrate the unintended consequence, one may have a look at boycott actions. Boycotting particular products from so called 'third world countries', motivated by the wish to abolish certain production standards (usually rubricated as 'child labor', 'sweat shops', etc.), and promoted by the assumption that the boycott sooner or later would lead third world countries to accept 'politically correct' consumer preferences concerning production standards, may well cause the reverse. Many critics point out that the expected effect fails to appear because the boycott causes price

reductions, which, in turn, shove the production standards even further away from the wished ones.²¹ Given the criticism is correct, we have to assume that boycotting achieves the opposite of what was intended. Therefore, the possibility to attribute a moral dimension to boycotting would face a supplementary assignment problem.

4.1.4 Exploitation and discrimination

The reserves against products from certain third world countries are often correlated to assumptions regarding ‘exploitation’. However, dealing with ‘exploitation’ in this treatise is not caused by this correlation, in the first place. The prime reason is a different one. The concept of exploitation illustrates, in an impressive way, the difficulties that come up for empirical or normative aims if the respective key concept is not defined sufficiently precise and unambiguous. In the case of ‘exploitation’ one also can show the consequences which appear if the respective concept is defined such that it is useless for empirical testing. The possibility to show these consequences we owe to Karl Marx and his definition of exploitation.

The starting point for the Marxian definition of exploitation is the question about the nature of profits. Following Marx, profit cannot come about by selling products at a price over and above their value. He argues that absurd consequences would result, given that each consumer is a producer at the same time. If A produces goods, consumed by B, while consuming goods, produced by B, neither of them would win by putting a markup on top of the production costs.²² If profit is not identical with markup, what is it, then? Marx provides his answer by making an analogy between worker and machine. The employer (capitalist, in Marx’ diction) can use a machine more or less intensely, costs remaining (almost) equal.²³ When it comes to the use of labor, provided by the worker or peon, similar things hold. Labor, too, can be used more or less intensely. According to Marx, the value of labor power is to be determined in the same way as the value of other wares, namely, by the quantities of labor, necessary for their production. Therefore, we have to ask what it takes to deliver that labor power day by day. Marx concludes, that the ‘*value of labouring power* is determined by the *value of the necessaries* required to produce, develop, maintain, and perpetuate the labouring power’.²⁴ Marx goes on, asking what happens to a spinner (who, supposedly, needs to work six hours per day to produce, develop, maintain, and perpetuate his labor power) if he has to sell his labor power to a capitalist. As Marx puts it:

Take the example of our spinner. We have seen that, to daily reproduce his labouring power, he must daily reproduce a value of three

shillings, which he will do by working six hours daily. But this does not disable him from working ten or twelve or more hours a day. But by paying the daily or weekly *value* of the spinner's labouring power the capitalist has acquired the right of using that labouring power during *the whole day or week*. He will, therefore, make him work say, daily, *twelve hours*. *Over and above* the six hours required to replace his wages, or the value of his labouring power, he will, therefore, have to work *six other hours*, which I shall call hours of *surplus labour*, which surplus labour will realize itself in a *surplus value* and a *surplus produce*. If our spinner, for example, by his daily labour of six hours, added three shillings' value to the cotton, a value forming an exact equivalent to his wages, he will, in twelve hours, add six shillings' worth to the cotton, and produce a *proportional surplus of yarn*. As he has sold his labouring power to the capitalist, the whole value of produce created by him belongs to the capitalist, the owner *pro tem.* of his labouring power. By advancing three shillings, the capitalist will, therefore, realize a value of six shillings, because, advancing a value in which six hours of labour are crystallized, he will receive in return a value in which twelve hours of labour are crystallized.²⁵

Moments later, Marx defines profit: 'The *surplus value*, or that part of the total value of the commodity in which the *surplus labour* or *unpaid labour* of the working man is realized, I call *profit*.'²⁶ Consequently to Marx' thinking, profit equals surplus value, ladled by the capitalist out of the unpaid labor of the worker. The more unpaid labor he ladles, the higher the capitalist's profit. Marx uses the term 'rate of profit' as an indicator for the amount of surplus value. As he puts it: 'The first mode of expressing the rate of profit is the only one which shows you the real ratio between paid and unpaid labour, the real degree of the *exploitation* (you must allow me this French word) *of labour*.'²⁷ At this point, Marx' definition of exploitation comes to an end. Exploitation is a synonym for profit, and the rate of profit synonymic to the degree of exploitation, following Marx. Consequently, the question if and, if so, under which conditions exploitation can take place, is to Marx not an empirical question, but rather an analytic one. The same holds to the degree of exploitation. It is not an empirical question, but rather an analytic one: The higher the rate of profit, the higher the degree of exploitation.²⁸

Marx knew that the factory owner, being an industrial capitalist, had to use the profit to pay the rates and interest to the lender of capital and the property owner, on whose land the factory was build. He knew also that

the capitalist could not exist without profit. However, he condemned it because it implied the acquisition of unpaid labor, and viewed it as increasingly unjust if rates of profit grew.²⁹ According to Marx' definition of exploitation, we are to decide purely analytically on the moral dimension of economic action. Following that definition, the capitalist manufacturer as an economic actor cannot but act morally unjust, by definition. The only choice he has is regards the degree of his 'injustice'.

It is plain to see that Marx' definition of exploitation is in conflict with our reflections, not only because we came to the conclusion that freely consented and conformed agreements between economic actors are morally just economic actions (labor contracts between capitalist and worker, for instance), rather than unjust ones, as Marx concluded; but also because in Marx the constitutive characteristic of economic action becomes the constitutive characteristic of moral economic action at the same time.

For the social scientist in general, and for business ethicist in particular, who both want to find out under which conditions economic actions make exploitation possible, who both want to test empirically whether or not exploitation takes place under the assumed conditions, the Marxian definition of exploitation is useless. The definition is also useless if we want to determine other forms of exploitation (exploitation of the manufacturer by the worker, for example) or test theories about these versions of exploitation. Hence, the Marxian definition entails a couple of difficulties. One particular and sufficiently well known difficulty is the use of analytic concepts for scientific purposes, once they are claimed to be normative as well. Especially social scientists, who work empirically and feel committed to the Weberian 'freedom from value judgments' (Weberian 'Werturteilsfreiheit') when building and testing theories, find it difficult (or impossible) to accept normative concepts for scientific purposes.³⁰

Although a definition of exploitation, free of the Marxian problems, is not an easy undertaking, it might be worth the effort. One could try and present a draft definition that is not normatively laden, hence only descriptive, value-free. One could suggest to look first at exploitation in labor relations and define this form of exploitation initially as the scale for the use of labor provided by the employee for the employer. In this sense, the term could be used in empirical theories and questions, say for comparisons of exploitation rates in different epochs (given the eras are comparable, in principle). What it takes for such a comparison are useful parameters in order to measure the degree of exploitation. Generating those parameters, takes a creative act. A scientist can hope for his ingenuity, or take his inspiration from existing empirical studies. For example, if a scientist wants to find out whether the degree of exploitation grew during

so called ‘Manchester capitalism’, he can either before or after studying empirical data think about useful criteria to determine what turns economic action in labor relations into exploitation. The following example should illustrate how, via inspiration from existing empirical studies, useful parameters can be generated. For this purpose we examine a study by Richard Reichel on ‘German Manchester capitalism’.³¹

According to Reichel, German Manchester capitalism starts with German industrialization in 1840 and ends approximately in 1880 with the advent of Bismarck’s social policy. Empirical data for this period allow for conclusions about the development of real wages, weekly working hours, and unemployment rates. These conclusions are interesting as far as they can be used as parameters and the exploitation rate can be defined in dependence of them. The reason for this can be reconstructed as follows: If in the observed time span real wages fall, while working hours and unemployment numbers grow, the exploitation rate goes up. If in the observed time span real wages go up, while working hours and unemployment numbers shrink, the exploitation rate falls.

The usefulness of those parameters is plain to see. He who works longer, while getting paid less, is – *ceteris paribus* – subject to higher exploitation. If he works less, while getting paid better, he is – *ceteris paribus* – subject to lower exploitation. Unemployment rates function as complement to the first parameters. Its significance is less. Changes or stagnation of unemployment rates allow only conclusions under reserve, following the idea, that a rise in unemployment eases exploitation because workers have more reason to fear job losses.³²

The topic ‘discrimination’ is often connected with the topic ‘exploitation’. One reason for this link might be seen in the thesis that wage discrimination is a means to increase the profit rate. According to that thesis, employers exploit lower paid workers more than higher paid workers, given they pay for the same job different wages (for instance, in dependence of qualification, age, sex, origin, etc.). If we view the thesis as an empirical one, we, first of all, have to check whether or not the job performances are indeed identical. If they are, the thesis can be falsified or corroborated, simply by checking whether the payments are equal or different. This being rather easy, it does not influence our moral topic. The theory does not tell us anything about the moral justness or unjustness of discrimination. In using his liberty, the employer can discriminate among wages, as he likes. The same holds for the employee. In using his liberty, he can discriminate the price for his labor among employers as he wishes. As the gentle reader will recall, important alone for the moral dimension of the closed contracts is the lack of any violation of contract conformity, non-creative prioritization, and implications compliance.³³

‘Discrimination’ is not only an interesting concept in business ethics because, similar to ‘exploitation’, it is accompanied by tacit normative assumptions and, hence, lugs a heavy normative burden around. ‘Discrimination’ is also a telling concept because it describes an economic action, again similar to ‘exploitation’, that cannot be avoided at all when contracting. If one has to choose among equal or equally qualified applicants, one cannot but discriminate. In this respect, the situation is the same as choosing among unequal or unequally qualified applicants. If one has to choose among equally good restaurants, one cannot but discriminate. Again, that does not change if one has to choose among restaurants with different qualities. In short, discrimination is part of economic actions, unavoidable.

4.1.5 Organ trade and abortion

The business ethical concepts in the previous sections have in common that they describe business transactions among economic actors who exchange *acquired* economic goods. When it comes to ‘organ trade’, things are different, because economic goods are included that are *innate*. Going through the relevant literature, one notices, on the one hand, a rather broad consent that a person whose organs are under consideration should not be excluded when a decision about the future use of her organs is to be taken, despite all reasons against self-disposal that authors bring into the debate. On the other hand, there seems to be a broad dissent when it comes to the reasons for limitations of self-disposal. Self-ownership, restricted or unlimited, so it seems, is a universal normative assumption.

As outlined in Section 2.2.5, self-ownership can be viewed as a subcategory of original appropriation. Accordingly, it holds for self-ownership, as it does with all other economic goods that become property, that claims to change the status quo are up to the claimant. Self-ownership and self-disposal, in opposition, do not ask for justification. Against this background, organ trade is a transaction with an economic good – an innate economic good, so to speak. Hence, it is possible to ask in this case, as in all homologous cases of exchanges of economic goods, whether or not the exchange has a moral dimension. There is no obvious reason why different criteria, to answer this question, should be used in this case. Hence, if someone would claim that other criteria were needed, one would like to know, what makes him demanding a ‘special treatment’ in the case of organ trade.

‘Organ trade’ is a revealing topic in business ethics,³⁴ in as much as the requests for ‘special treatment’ seem to predominate the calls for ‘business as usual’. Only a few authors, so it seems, are interested solely in clarifying whether or not it has a moral dimension and which one, if so; whether it is morally just or unjust to trade organs.

When the issue of moral economic justice of organ trade is picked up, for instance, as a subject of freedom of contract, it is soon followed by what presumably is viewed as the more relevant issue, namely, how the topic is to be seen from a particular school of morals (utilitarianism, virtue ethics, contract ethics, etc.). As an example, we look at a paper by Christian Aumann and Wulf Gaertner on 'organ trade'.³⁵ Aumann and Gaertner start by announcing to argue for a market solution of organ trade. The announcement is followed by a discussion of mainly consequentialist arguments and the results of a questionnaire. In the middle, they present their model of a controlled and regulated market. Whether or not the presented 'market' solution is a result of the moral philosophical arguments, discussed before, is left to the reader's fancy. The authors are silent on this issue. However, eventual value judgments in-between raise the impression that other motives were crucial for preferring the proposed model. For instance, we learn that the suggested solution would be the second best, while the ideal solution would be a sufficient number of organ donations.³⁶ On top of that, the authors instruct the reader that their solution would be an alternative 'to the morally completely unacceptable black market'.³⁷ It goes without saying, that many readers may share the authors' view about the ideal solution of organ trade (while others may not); and that many readers may agree with discrediting the black market of organ trade (again, while others may not). However, neither of the two value judgments is self-evident. Adhering to freedom of value judgment, especially if the discussed topic is socially charged, is probably a difficult job. Nonetheless, moral judgments are the subject of any ethics, business ethics included, and not part of its heuristics. Hence, one should expect in studies on business ethics not (or not only) the announcement of value judgments, which are the force behind the generation of decision models, but (also) a scientific dispute of these judgments.

A preemptive remark to obviate eventual misunderstandings might be useful here. Discussing organ trade from all possible angles that result from the broad variety of schools of morals, is nothing that would be unjustified or need justification. It is the scientist's liberty to choose as a subject of study what he wants. Nonetheless, amazing is the fact that in comparison to the said practice only little attention is paid to questions which emanate when looking at the moral economic justice and injustice of organ trade. For example, it would be interesting to study cases in which closed organ trade contracts are not fulfilled for moral reasons of any kind, and to argue the resulting moral tensions.

Not only is 'abortion' an unusual topic in business ethics because intuitively we would rubricate it as part of medical ethics or bioethics (where it is intensively discussed as well), but also, because there are no obvious

direct links to business ethics. Instead, there are many conceivable indirect links because abortions are costly and covered by insurances (certain agreed conditions met), and follow up costs and cases of moral hazard may occur. Though an abortion has undoubted economic consequences (among other consequences) for the person who is going to have an abortion, it is commonly viewed that she does not pursue direct or primarily economic ambitions, in terms of trading economic goods. When it comes to the physician who aborts, things might be viewed differently. However, a direct and, at the same time, significant link between abortion and business ethics is obvious if we consider the good that is annihilated in the course of abortion. Self-ownership assumed, the embryo has to experience the biggest possible economic damage.³⁸

At this point, if not earlier, the objection comes up that abortion can hardly be discussed unless an agreement exists upon when individual life begins. The author does not pretend to have a good answer to the question about the beginning of individual life. Nevertheless, he hopes that the following reflections prove to be helpful in analyzing the topic. One of the reflections derives from what was said about self-ownership in Section 2.2.5. There, we have argued that the performance of life presupposes the appropriation of the body. Consequently, each abortion (no matter when procured), willy-nilly violates the idea of non-creative prioritization. Hence we should expect the individual, aiming at abortion, to lay open her reasons for a change of preference prioritization.

Following some business ethicists, one can take the perspective that each individual has an embryonic prehistory, but not each embryo is (yet) an individual, meaning that not from the moment of conception on individual life starts, but from some later point on, between conception and birth. Some take the position that from gastrulation on (the melting of ovum and sperm cell, approximately 16 days after conception) the individual life comes into existence.³⁹ However, not dating the beginning of individual life to the earliest possible moment (namely conception) raises the question of ownership of the ovum and sperm cells. It is obvious to think of the mother first. However, since pregnancies usually result from begetting, it is reasonable to consider partial ownership of the father as well. If the (potential) mother is viewed to be the owner, then abortion is nothing more than her use of her liberties. Hence, dating the beginning of individual life after the first possible moment implies the admittance of temporary ownership to the mother.

Considering our reflections on some basics of business ethics, a couple more consequences can be derived with regard to 'abortion'. In order to illustrate those consequences, let us compare the following fictitious case with that of pregnancy. Assumed, Stella and John live in a world in which

self-ownership and self-disposal are not questioned. Stella invites John to share a romantic evening. They exchange endearments. After a while, Stella runs out of steam. She asks John to stop and to leave her house. John stops endearments and leaves the place, admitting her full sovereignty over her body and house. Of course, Stella could have made use of other means to stop the romance, but she did not. It is conceivable that she had taken a knife to kill John or threw him out of the window, both actions having the same effect as what she did, with respect to the aim of stopping the romance. She refrains from those options because she knows of John's stable respect for private property, and she shares this respect with him.

Suppose, John would have to expect a serious danger to life and limb outside (a wild beast, a thunderstorm, a serial killer, etc.). In such a case, one still would admit Stella to insist in stopping endearments, yet expect her to provide shelter for John in her house, until the threat is over and given that he respected her first wish.

Confronting this scenario with a voluntary initiated pregnancy, we can draw some instructive parallels. As a result of symmetric reasoning, one would admit the mother to abort, given that the fetus endangered her life. Also a symmetric conclusion would be that ending hospitality to the fetus would be only unproblematic if this would not endanger the 'guest's' life, i.e. the fetus' life. As soon as the end of hospitality would no longer endanger the fetus' life, 'abortion' would be unproblematic and each inhibition a violation of the self-ownership of the mother. That is to say, in case of voluntary pregnancies one would have reasons to expect late abortions (not before the fetus can live outside the mother), or carries to full term, rather than early abortions – in particular, if adoption would face no obstacles.

The above said applies to voluntary pregnancies. Involuntary pregnancies, caused by rape, represent a different category. From the perspective of business ethics, it is an unjustified interference into a woman's self-ownership and asks for complete restitution of the economic consequences caused.

However, the results of our business ethical reflections concerning abortion may inspire the reader in pondering about the beginning of individual life, but are not the answer to this question itself.

4.1.6 Insider trading and data protection

If the reader recalls Chapter 2, he certainly will remember the difficulties we had, correlating intellectual property to our reflections. In so far, we have good reason to fear this section to be not completely free of those difficulties, because information represents intellectual property, rather than material property. However, such fears are unjustified to the extent

that the concepts of this section relate to the handling of information, and not to the ontological character of information itself. Consequently, in respect of agreed transactions, what matters is the dispersion of the rights and obligations that result from the agreement. If A, by closing a contract with B, warrants not to transfer certain goods to a third party, it does not matter in view of moral economic justice whether these goods are material or immaterial (information, for instance), as long as they are identifiable. *It is the contract that obliges, not its content.* Consequently, ‘insider trading’ and ‘espionage’ are not special cases regarding moral economic justice, but rather, against the background of Section 4.1.1, violations of the agreement to keep silent concerning certain themes and ideas. The content of an agreement does not matter, unless, of course, it would imply a violation of contract conformity, non-creative prioritization, or implications compliance. Therefore, a good, I have sold once, I cannot sell again because it would violate the criterion of *implications compliance*. In this respect, it is irrelevant whether the good is material or intellectual.

At this point, the author should expect a particular objection, namely, that information can be sold more than once. (Is not the book, you are reading right now, an information good, that is sold multiple times if the author is lucky?) The objection, if raised at all, misses the point, nonetheless. Item of the purchase agreement is the copy of the book. In spite of this, it is very possible to sell information exclusively. If the purchaser, afterwards, has doubts regarding contract fulfillment, he can try to prove the alleged breach of contract with the help of his contract and the evidence that makes him entertain his doubts. In a nutshell, exchanges of economic goods, implying intellectual property, do not cause special conditions regarding the moral dimension that can be attributed to the respective actions.

A special case of intellectual property is created by data about people. Usually, the topic is subsumed under *data protection*, assuming that the people to whom the data relate would have a title to the data, respectively to a discrete handling of these. The standard argument implies that those data were part of the privacy of the respective people, in a sense part of their self-ownership.⁴⁰ It is noteworthy that this point is made, without distinguishing whether the data have been collected by the person to which they relate (D) or by another collector (C). If the data have been collected by C, it is hard to see how they could become the property of somebody else (including D), without the collector’s consent. If C’s data collection implies no violation of contract conformity, non-creative prioritization or implications compliance, data collection and its use as economic goods is a just moral economic action. In turn, assuming a right in data collected by another would imply property titles that cannot be logically deduced from

self-ownership. In short, collecting data about people is a just moral economic action if the relevant criteria of moral economic justice are met. The same holds for the trade of those data, while inhibiting collecting and trading data would be an unjust moral economic action.

4.1.7 *Bribery and corruption*

With this section we come to the end of our casuistic examination of key concepts in business ethics. The ordering of our contemplations was less guided by the idea to rush over all topics in business ethics and ‘decline’ them, or analyze them, with the help of our criteria of moral economic justice, than by the idea to illustrate some surprising peculiarities of business ethics, whereby it is not surprising that the ordering of the topics followed in most cases the ordering in Chapter 2. The aim of the exercise was, among others, to illustrate the relevance of our reflections on *economics* for the *ethics of economics*. Alas, up to now we have no example that would illustrate what happens if political action interferes in economic action. What we lack is, in a sense, a counterpart to the section on money in Chapter 2.

‘Bribery’ and ‘corruption’ (which, henceforth, we use synonymously) are apt to fill that gap because they (can) happen in the private sector as well as in the political arena. Whether business or politics, in both cases, bribery and corruption aim at the improvement of two parties on the cost of a third party: A wangles an advantage for B, so that B procures one for A in return, while C pays the costs (of the latter, which usually compensates A for the costs of his bribe). In comparison to most other economic transactions, we have discussed up till now, more than two parties are included, whereby, typically, the third party is not informed.

In respect of the moral economic dimension of corruption, it is insignificant whether the victualer greases the purchasing manager of a company, or an enterpriser, who applies for a public contract, bribes the relevant head of the department. Purchasing manager or department head: in case of successful corruption, both receive an economic advantage for a service, which has to be paid either by the company owner or the taxpayer.

However, with regard to moral economic justice, it is worth noting that the two actors, performing corruption, have to be judged differently. Strictly speaking, A, who offers the bribe, does not act unjustly from a moral economic view because he uses only his liberty by making an offer to B, that B is free to decline. A’s bribe is not sufficient to cause the damage for C. Moreover, it is not necessary to cause the damage for C, in the sense that B can harm C without the bribe (for instance, by accepting an alternative bribe by X, Y, Z).⁴¹ That it to say, the briber is not the

accomplice of the bribee. An accomplice is an actor, who is necessary to cause the consequence of a joint action, but not sufficient to cause the effect. A is just constitutive for the option that B can damage C, by accepting the bribe of A. (In a similar way, C is constitutive for the option that B can damage C.) In respect to constitutive conditions of an action, A's bribe is not distinct from the offer of a shopkeeper from whom a killer buys a baseball bat for his next killing. In fact, what distinguishes the briber from the shopkeeper is the intention. The briber has the intention that the bribee will act unjustly in moral economic terms. The shopkeeper does not intend his client to act unjustly. Nevertheless, we have to distinguish between the intention to act morally unjust, and the intention to have another act morally unjust. In short: With respect to the triad of moral action, there is little leeway to attribute a moral dimension to the briber's act. The act of the bribee is much easier to see in the light of morals. What he does is clearly an unjust moral economic action, since it is a sufficient cause for C's damage.

In spite of all that, corruption is a telling case for business ethics because it is apt to illustrate that a moral economic action, which is unjust, taken by itself, can become just (or include just elements) if a rupture in the accumulation chain occurs.⁴² What does that mean? Assume, not only B is corrupt, but C also. Assume further, A has a competitor D. D bribes C, causing C to imprison A for the time of competition. If A bribes B to be set free again, while B accepts the bribe, we have additional clauses that do not hold for the case of bribery, discussed above. These clauses have an effect on the moral judgment of B's acceptance of the bribe. On the one hand, B acts unjust against C, from the moral economic perspective. On the other hand, doing so he helps A to limit the damage unjustly caused by C, and restores the status quo, which was moral economically unencumbered. Cases, like this one, may well be daily practice in corrupt regimes.⁴³

5 Concluding remarks

There is hardly a scientist, who does not marvel at his own discipline, from time to time. Scientific disciplines often take different courses than those expected by its representatives. Which factors influence the development of a science and how they relate to each other is a subject, methodologists love to ponder and discuss. The present treatise is not a methodological study, although, occasionally, it strikes methodology a glancing blow. It is rather the result of correlating reflections on phenomena, resulting from an intersection of ethics, economy and political philosophy, which is usually rubricated under *business ethics*. It was originated by the question why (so many) business ethicists view particular questions as theirs, while ignoring others; why accepting some assumptions unquestioned, while treating others as questionable. The author realized rather early that he would not be equipped to deal with this problem in a sufficiently systematic way, let alone answer them sufficiently systematic.

This book serves a different purpose. It lays bare reasons, insights and reflections, which confirm the author's belief that many themes in business ethics are discussed either unduly intensely, unbalanced or rarely, measured against what business ethics as a science should deliver. The criteria for what business ethics as discipline should accomplish are discussed controversially, of course. The book is supposed to contribute its mite to the debate. It does so by offering an answer to (in the author's view) one of the most crucial questions in business ethics, namely that of justice in moral economic actions. The core element of that answer is the definition of moral economic justice. It is developed in the course of three chapters and subsequently used as a yardstick, from which, in Chapter 4, we read which of the relevant topics in business ethics receive unduly intense, unbalanced or rare attention.

Whatever resonance the theses of this book may bring about: if the present treatise gives an impulse to deepened reflections on the foundations of business ethics, it has achieved what the author hopes for, and much more than he expects.

Notes

Introduction

- 1 Note that ‘acting morally’ includes both possibilities, namely ‘good’ and ‘bad’; see Section 1.1.1.
- 2 The spontaneous dispersion of goods in the free market is probably the most well known example given by Hayek, all the more because he himself mentions it prominently in conjunction with his thesis that the result of the free market can be called neither ‘just’ nor ‘unjust’; see Section 3.5.

1 Ethical preliminaries

- 1 As will be shown at some later stage, the fact that ethics, from its very beginning in ancient Greece, meant an academic discipline as well as certain schools of morals, without clearly separating these two functions, still leads to much confusion. This disarray manifests itself in many disputes in business ethics. Some authors seem to convey the impression (or at least to approve the impression) that questions belonging to ethics as science could be answered if the standpoint of a certain moral school is shared, and vice versa, that questions of moral deliberation could be answered by the professional ethicist. Several of the reflections in this treatise are to demonstrate that neither of the two inferences can be drawn. Several others lead to the proposal to reserve the name ‘business ethics’ for the academic discipline and to rubricate the various moral schools that deal with economic actions under the term ‘schools of business morals’; see Section 1.1.11.
- 2 Compare Harald Delius, ‘Ethik’, *Fischer Lexikon Philosophie*, edited by Alwin Diemer and Ivo Frenzel, Frankfurt/Main: Fischer, 1974, p. 45.
- 3 Or ‘*unethical*’ behavior, here ‘unethical’ and ‘immoral’, meaning the same. Similarly, it is common parlance to talk of ‘unethical’ actions and ‘immoral’ actions.
- 4 It is even more difficult if it is not obvious whether or not the statement is meant descriptively and, hence, if it also can be assumed it was meant empirically or normatively. See also Sections 1.1.3ff. on distinctions between analytic, empirical and normative propositions in ethics.
- 5 See Section 1.1.8.
- 6 The reader may be reminded of what Hans Albert has coined ‘immunization strategy’, i.e. the strategy to protect one’s theories from criticism by using confusing formulations. See Hans Albert, *Treatise on Critical Reason*, Princeton: Princeton University Press, 1985, p. 122ff.

- 7 See Anthony de Jasay, *Liberale Vernunft, soziale Verwirrung*, Colombo: Meridiana, 2008, p. XI.
- 8 To these also tautologies belong.
- 9 ‘Junggeselle’ das gleiche bedeutet wie ‘unverheirateter Mann’, dann ist der Satz, der diese Bedeutungs-gleichheit behauptet, der Satz: ‘Ein Junggeselle ist ein unverheirateter Mann’ (D), *analytisch in S*. Das heißt: D hat keinen empirischen Gehalt, seine Wahrheit verdankt D nicht seiner logischen Form, sondern ausschließlich dem Umstand, daß die Definition, die ‘Junggeselle’ als Abkürzung für ‘unverheirateter Mann’ einführt, im Sprachgebrauch der Sprache S akzeptiert ist, gilt.
(Radnitzky, 1989, p. 29 translation by the author)
- 10 See also lemma ‘analytisch’ by Friedrich Kambartel in *Enzyklopädie Philosophie und Wissenschaftstheorie*, edited by Jürgen Mittelstraß, Mannheim, Vienna and Zurich: B.I.-Wissenschaftsverlag, 1980, vol. 1, p. 105. See also Georges Rey, ‘The Analytic/Synthetic Distinction’. Online, available at: <http://plato.stanford.edu/entries/analytic-synthetic/> (first published August 14, 2003; substantive revision August 15, 2008): “‘Analytic’ sentences, such as ‘Ophthalmologists are doctors’”, are those whose truth seems to be knowable by knowing the meanings of the constituent words alone’ (accessed June 11, 2010).
- 11 Hence it would be absurd if one would try to falsify analytic propositions, for instance by searching for an unmarried man who is not a bachelor. To hint at the mutual independence of analytic propositions and reality is important also because sometimes so called ‘real definitions’ are interpreted as definitions, though they are not. Talking of ‘real definitions’ raises the idea that one could construe a proposition that could determine the *essence* of an entity or phenomenon to be defined; that would represent a ‘true’ definition of the entity or phenomenon; that not only would say *something* about reality, but also *something true* about reality. See also Gerard Radnitzky, ‘Definition’, *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, p. 30.
- 12 To this and to the criteria of adequacy, which abbreviative definitions should fulfill, see Gerard Radnitzky, ‘Definition’, *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, p. 27ff. Radnitzky explains the second form a definition can have, namely *meaning analysis*. As a *meaning analysis*, a definition names the meaning that is attributed to a concept in the language community, in which the concept is used. Thereby, the definiens is the means that helps us identify the meaning of the definiendum. According to Radnitzky, *real definitions*, *explications*, *ostentative referitions*, *persuasive definitions*, etc. are failed definitions, to which the term ‘definition’ is attributed inappropriately.
- 13 See Gunnar Andersson, *Criticism and the History of Science. Kuhn’s, Lakatos’s and Feysabend’s Criticisms of Critical Rationalism*, Leiden, New York, Cologne: Brill, 1994.
- 14 Einen vorhandenen Begriff – sei es ein Begriff der Umgangssprache oder ein Begriff, der ein bestimmtes Stadium der Wissenschaftsentwicklung repräsentiert – für die Arbeit an bestimmten theoretischen Problemen durch eine verbesserte Version, d.h. durch einen ‘neuen’ aber dem ‘alten’ doch verwandten Begriff (das Explikatum) zu ersetzen.
(Radnitzky, 1989, p. 75)

- 15 See Chapter 3, *Justice*. Misexplications cause costs not only for empirical propositions. Normative propositions that rely on them face changes and costs too. This fact poses business morals that recourse on misexplications additional problems.
- 16 See Gerard Radnitzky, 'Explikation', *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, pp. 76ff., and Anthony de Jasay, 'Freedoms, "rights" and rights', *Il Politico LXVI.3*, pp. 370f.
- 17 See Section 1.1.5.2.
- 18 See Gunnar Andersson, 'Wahr und falsch; Wahrheit', *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, pp. 369ff.

Well-known and telling examples for the inadmissibility of direct conclusions among analytic and empirical propositions are the addition of drops of quicksilver and of bunnies. In arithmetic-analytical terms, one drop of quicksilver and one drop of quicksilver makes two drops. Analogously, one bunny plus one bunny makes two bunnies. However, from this arithmetic relation one cannot infer that these additions are the same in reality. Place two drops of quicksilver next to each other, and they will attract each other. A similar phenomenon can be observed when two bunnies (fertile and of different sex) are placed in a stable, though the result of the mutual attraction among bunnies is observable less quickly.

Generally speaking, the truth/falsehood of an analytic proposition is not indicative of the truth/falsehood of that proposition when applied to reality – and vice versa.

Despite all that, analytic propositions can be subjects of empirical hypotheses. The proposition, 'in language community S "bachelor" means "unmarried man"', is an empirical one, and fallible as all other empirical propositions. Whether it is true or false depends on the fact whether it is the case that language community S defines 'bachelor' as 'unmarried man'.

- 19 The reader interested in the details of this logical impossibility is kindly asked to look it up in the writings of David Hume and George Edward Moore. It is usually named the Humean *is-ought distinction* (or Moore's *naturalistic fallacy*).
- 20 The same holds for the relation of analytic and normative propositions. Analytic propositions do not allow inferences to normative propositions. They do so for the same reason, namely that at least one element of the conclusion is not included in the premises. That correlation comes as no surprise. However, it deserves special mention here because 'real definitions' (although improper connections between the analytic and the empirical realm themselves; see Section 1.1.3.2) occasionally are used to come to normative conclusions. See Section 2.2.4 on Hoppe.)
- 21 See Section 3.1ff.
- 22 It belongs to the common fallacies of normal speech to assume that the offer price is identical with the 'price' of a good, although the first only tells us at which 'price' the good is offered, whereas the latter indicates to which price the good has changed its owner.
- 23 It is an insight we owe to our wealth of experience that rational grounds (Vernunftgründe) can be motives (Beweggründe). If we want x, and if we are convinced by the reason of the hypothesis, that norm y leads to aim x, then we usually follow the norm y. We have 'good reasons', so to speak. Many authors, this one included, overtly or implicitly hope that the hypothetical imperatives

they suggest will lead to this effect, i.e. not only make themselves to decide in accordance to the proposed hypothetical imperative, but also others.

- 24 Hans Albert calls that rule ‘a *bridge principle* – a maxim to bridge the gap between ethics and science – which has the function of rendering scientific criticism of normative statements possible’. See Hans Albert, *Treatise on Critical Reason*, Princeton: Princeton University Press, 1985, p. 98.
- 25 Although at first sight it appears counter-intuitive in our example, the wet street is a necessary condition for the case that it rains (in a temporal postcedentic sense). To put it simply, a wet street is a temporal necessary sequitur of the rain.
- 26 For the sake of completeness, we should note that conditions can be sufficient and necessary at the same time. The example ‘if and only if the student answers all questions correctly, he receives an ‘A+’ illustrates such a condition that is sufficient *and* necessary at the same time. The student always will get an ‘A+’ if he answers all questions correctly, and there is no other way for him to get that mark. That is what the statement says. It also illustrates what many logicians call ‘logical equivalence’, meaning that the *if-clause* and the *then-clause* have the same truth value despite the difference of their (material) contents. They are always either true at the same time or false at the same time. On this see Hans-Georg Lichtenberg, ‘Logik’, *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, p. 192.
- 27 See Hartmut Kliemt and Bernd Lahno, *Modelle der Moralwissenschaften*, unpublished manuscript.
- 28 Perhaps we would not argue in this compressed language, but to the same effect. Things become clearer as we move on to Section 2.2.5. There, we look at the original appropriation of free goods that follows the idea of non-priority of competing utility preferences.
- 29 It goes without saying that utilitarianism too brings about an asymmetry because it demands a worsening of some for the benefit of others. It is also obvious, that the utilitarian request is an inequitable one.
- 30 Several methodologists would object that the division into these two alternatives would ignore that within justificationist philosophy many methodologies coexist, having important differences. This is not to be denied here. However, for our reflections, these differences do not matter. In so far as we can forego a closer look into them. For a critical appraisal of justificationist philosophy, see Gerard Radnitzky, ‘In Defense of Self-applicable Critical Rationalism’, *Evolutionary Epistemology, Theory of Rationality, and the Sociology of Knowledge*, edited by Gerard Radnitzky and William Warren Bartley, LaSalle, IL: Open Court, 1987, pp. 279–312.
- 31 Ein Satz (oder eine Theorie) ist nach Popper falsifizierbar dann und nur dann, wenn es wenigstens einen Basissatz gibt, der mit ihr in logischem Widerspruch steht.... die Klasse der Basissätze ist dadurch gekennzeichnet, daß ein Basissatz ein logisch mögliches Ereignis (einen möglichen Sachverhalt) beschreibt, von dem es seinerseits logisch möglich ist, daß es beobachtet werden könnte.

(Popper, 1989, p. 83; translation by the author)

- 32 In order to avoid confusion about the two levels (the logical level and the methodological one), Popper suggested to talk of falsifiability if the logical relation

of propositions (classes of propositions) is meant, and reserve ‘falsification’ to denote the methodological relation; see *ibid.*, p. 82ff.

- 33 ‘Und sie hat nichts zu tun mit der Frage, ob eine vorgeschlagene experimentelle Falsifikation als solche anerkannt wird oder nicht.’ (*ibid.*, p. 82; translation by the author).
- 34 In order to preempt a trivial objection, by white swans we mean naturally white swans, not swans dyed white.
- 35 See Gunnar Andersson, ‘Kritischer Rationalismus und Wissenschaftsgeschichte’, *Wissenschaftstheorie und Wissenschaften. Festschrift für Gerard Radnitzky aus Anlaß seines 70. Geburtstages*, edited by Hardy Bouillon and Gunnar Andersson, Berlin: Duncker & Humblot, 1991, p. 24. Andersson adopted the term from Popper. For a more general outline of Andersson’s position, see Gunnar Andersson, *Criticism and the History of Science*, Leyden: Brill, 1994.
- 36 The abbreviations serve as indicators of the semantic status of the respective components of the conjunction.
- 37 See Section 3.1ff.
- 38 At this point, we spare, intentionally, to distinguish between implicit and explicit agreements more clearly, without putting this distinction in question. The distinction mainly has practical relevance. Hence, the identification of explicit agreements usually is much easier than that of implicit arrangements. However, in this context we merely discuss some relevant logical and analytic aspects of the relation between agreements and the criteria, necessary to decide whether or not they are given in the case in question. The *methodological* question, namely, by which *method of identification* we decide on the validity or nullity of an agreement, has no immediate effect on our reflections and, hence, will not be considered here.
- 39 See Section 3.6.
- 40 Strictly speaking, omitted actions are not actions at all. We concede this. Using that term, nonetheless, is only for didactic reasons; i.e. to stress the difference between actions and non-actions.
- 41 To say it in advance, this correlation will prove quite important when we examine if, and if so to which extent, the concept of ‘social justice’ is a misleading one. Regarding ‘social justice’, moral judgments are made concerning economic actions *and* omissions in at least *two* ways: (a) it is debated if, and if so to which extent, economic actions and omissions contribute to ‘social injustice’, and (b) if, and if so to which extent, economic actions and omissions hamper the restitution of ‘social justice’. In short, actions and omissions are debated regarding the *genesis* of the market results and as to the *redistribution* of the results.
- 42 This difficulty will be treated in Section 3.6.
- 43 What is the consequence of this? To ask those who omitted an action although they could have executed it, to explain why they omitted it, or, to be more specific, to verify that it was not reasonable for them to execute it, means to ask more of them than they logically and practically can do, meaning, they have to show for all cases, logically possible, that the fulfillment of the request was not reasonable for them. As will be shown in Section 2.2.5.1, along the *argumentum pro libertate* we can identify good reasons not to ask someone for a service he principally cannot deliver; see also 1.1.3.5.
- 44 ‘das Phänomen der Moral historisch und kulturell uneinheitlich, wandelbar und

oft auch umstritten ist.’ (Kurt Bayertz, *Warum überhaupt moralisch sein?*, Munich: Beck, 2004, p. 33; translation by the author).

- 45 See Dieter Birnbacher, *Analytische Einführung in die Ethik*, Berlin: Walter de Gruyter, 2007, second edition, p. 12ff.
- 46 On the importance of action for morality, see also Geoff Sayre-McCord, ‘Metaethics’, *Stanford Encyclopedia of Philosophy*. Online, available at: <http://plato.stanford.edu/entries/metaethics/> (accessed June 14, 2010): ‘Among morality’s distinctive features, all agree, is its apparently intimate connection to action.’
- 47 ‘Denn es sind ohne Zweifel Normen (Regeln, Prinzipien), die im Zentrum der Moral stehen.’ (see Norbert Hoerster, *Was ist Moral?*, Stuttgart: Reclam, 2008, p. 8; translation by the author).
- 48 See, for instance, Kurt Bayertz, *Warum überhaupt moralisch sein?*, Munich: Beck, 2004, p. 37f. However, norms do not necessarily need to be universal. Some of them are not universal, *expressis verbis*, for instance ‘amnesty’ – as opposed to general amnesty.
- 49 A careful appraisal of this *modus operandi* and a systematic comparison with the definition method proposed here need to remain subjects for a future study. To refrain from a closer look at this point has several reasons. Be this as it may, an account of all these reasons would not be on target, keeping in mind what our subject is in this treatise.
- 50 See Dieter Birnbacher:

In the center of morals are judgments, whereby a human action is valued positively or negative, is approved or disapproved [Im Mittelpunkt der Moral stehen Urteile, durch die ein menschliches Handeln positiv oder negativ bewertet wird, gebilligt oder missbilligt wird].

(Birnbacher, 2007, p. 13; translation by the author)

- 51 We should stress here, that we do not use the adjectives ‘*precise*’ and ‘*unambiguous*’ synonymously. Here, ‘*precise*’, plainly, stands for a formal quality of an interpretation of a term, a description of a fact, or any other activity of communication to ease the identification of what is to be interpreted or described. ‘*Unambiguous*’ also stands for such a quality. Nevertheless, the direction of impact is mainly the content of the term or fact, which are to be interpreted or described. Let us illustrate this distinction by an example. The description of the culprit, given in the course of a criminal investigation, is unambiguous if it leads to the identification of the perpetrator. In order to bring about this result, the description does not need to be very precise. Under certain circumstances, a brief comment, ‘he was rather tall’, will do the job, for instance, if the remaining suspects are rather small. Conversely, a description might be very precise, but yet not helpful in identifying the object in question. Take an angler, for instance. Unfortunately, the fish, he has just angled, has landed inadvertently in the landing net of his fellow angler, from where he wants to get it out. He gives his neighbor a very detailed characterization of the fish. ‘The fish is one foot long, has a blunt head, a wide oral fissure, his body is strung-out, sidewise flattened, black, covered with red spots, framed light blue, and has seven fins.’ Although his description is very precise, it is not very helpful for a positive identification because the brown trout fell among lookalike trouts in the neighbor’s landing net.

Abstracting from the example mentioned above, we call verbal as well as non-verbal means of communication (concepts, interpretations, descriptions,

gestures, etc.), which serve the identification of the communicated object, 'precise' if they determine the characteristics of the category, to which the communicated object belongs; 'unambiguous' if they determine the representative (of the related category) one is looking for (the trout that fell in the neighbor's landing net).

It is useful for the identification of a communicated object if the means of communication used are precise as well as unambiguous.

- 52 See also Section 1.1.3.2. Such an 'intellectual mortgage' also presses on Hume's observation, that moral actions cause pleasure or pain, as mentioned before. Even the first additional characteristic, we are going to present, is not free from such a burden. However, the load of the second additional characteristic outweighs that of the first. He who claims *that* a moral action evokes pleasure or pain is less vulnerable than he who claims above that not *any*, but rather a *particular* sentiment will be caused.
- 53 I leave it to the reader to ponder on the possible combinations in face of the various dualities given, namely, (a) the moral actions can be executed by us or by others; (b) the moral actions can cause either pleasure or pain; (c) pain as well as pleasure can affect us or others; (d) the additional good or evil can affect us or others.
- 54 We assume this universal voluntary consent. If we would not, then our reaction would be indignant, rather than relaxed.
- 55 We assume the universal voluntary consent in this case too. If we would not, then, again, our reaction would be indignant, rather than relaxed.
- 56 The author takes the same line.
- 57 Misleading are the terms 'pleasure' and 'pain', at least their German equivalents 'Lust' and 'Leid', because in that language not only do they denote particular sentiments, but also they connote a high degree of intensity of these sentiments. Hence, when we talk of 'lustvoll [sensual]', the word connotes that a high degree of pleasure is sensed. A similar connotation might be perceptible if we replace 'sensual' by 'exciting'. Be that as it may, I leave this to the native speakers among the readers of this book.
- 58 It should be noted, to high-speed readers in particular, that it would include a gross misinterpretation to read the first draft definition as a plea for utilitarianism.
- 59 For the relevance of these forms of order for human life, see my *Ordnung, Evolution und Erkenntnis*, Tübingen: Mohr, 1991.
- 60 See volume two of Hayek's trilogy *Law, Legislation and Liberty: The Mirage of Social Justice*, Chicago: University Press, 1976.
- 61 See Chapter 4.
- 62 See Dieter Birnbacher, *Analytische Einführung in die Ethik*, Berlin: De Gruyter, 2003, pp. 122ff.
- 63 It is subject to a different systematic study to present the modes and consequences that turn up when an attempt is made to categorize the existing schools of morals along the lines sketched here.
- 64 Other parts of practical philosophy are political philosophy and economics in terms of household management, following the Aristotelian tradition. However, some authors hold that Aristotle reserved the latter not merely to private business. On this, see, for instance, Ricardo Crespo, 'Freedom and Coordination in Economics', *Journal of Markets and Morality* 7.1, 2004, p. 49.
- 65 See also Section 1.1.3.5. The *hypothetical imperative*, which plays a decisive

role in empirical sciences, is not, as already mentioned in that very section, a norm, but rather an *if-then-statement*.

- 66 Several studies of this sort can be found in the series of the *Verein für Socialpolitik*, ‘*Wirtschaftsethische Perspektiven*’.
- 67 The lemma on business ethics, to be found in a leading German encyclopedia of business ethics, may illustrate this. The author, Wilhelm Vossenkuhl, professor of philosophy at the University of Munich, puts it as follows:

Business ethics determines the aims and norms of individual and governmental economic acting and the relation between both. These aims and norms are superordinated to formal and material purposes of economic action and cannot be deduced from these [Die Wirtschaftsethik bestimmt die Ziele und Normen des individuellen und staatlichen wirtschaftlichen Handelns und des Verhältnisses zwischen beiden. Diese Ziele und Normen sind den formalen und materialen Zwecken des ökonomischen Handelns übergeordnet und lassen sich nicht aus diesen ableiten.].

(Vossenkuhl, 2002, p. 295; translation by the author)

2 Economics

- 1 From what was said, we might deduce that within business ethics we find many cases that deal with small segments only, out of the rather huge intersection of moral and economic actions; and doing so, apply only a small range of the methodological instruments available. On top of that, themes, belonging to other disciplines or even non-academic undertakings, according to the author’s opinion, come unduly into the firing line of business ethics. In face of that it seems inappropriate to assume that the said initial assumptions were unproblematic.
- 2 See Carl Menger, *Principles of Economics*, Auburn: Ludwig von Mises Institute, 2007 [1871]. We quote according to this online version. It contains corrections to the 1976 New York University edition; the manuscript is otherwise the same. (German original: *Grundsätze der Volkswirtschaftslehre*, Vienna: Braumüller, 1871.) When it comes to style, but also to terminology, the translation deviates partially from the original, for good reasons (for instance, see note 3 on p. 52 of the translation). In order to keep the likelihood of misunderstandings, resulting from these deviations, as low as possible, we have added the German quotations from the original for comparison. Of course, the German quotations are taken from the original hereinafter.
- 3 Utility is the capacity of a thing to serve for the satisfaction of human needs, and hence ... it is a general prerequisite of goods-character [Nützlichkeit ist die Tauglichkeit eines Dinges, der Befriedigung menschlicher Bedürfnisse zu dienen, und demnach ... eine allgemeine Voraussetzung der Güterqualität].
(*Ibid.*, p. 84)

- 4 *Ibid.*, p. 52.

(Damit ein Ding ein Gut werde, oder mit andern Worten, damit es die Güterqualität erlange, ist demnach das Zusammentreffen folgender vier Voraussetzungen erforderlich: 1. Ein menschliches Bedürfniss. 2. Solche Eigenschaften des Dinges, welche es tauglich machen, in ursächlichen Zusammenhang mit der Befriedigung dieses Bedürfnisses gesetzt zu

werden. 3. Die Erkenntniss dieses Causal-Zusammenhanges Seitens der Menschen. 4. Die Verfügung über dies Ding, so zwar, dass es zur Befriedigung jenes Bedürfnisses thatsächlich herangezogen werden kann.)

(Ibid., p. 2f.)

5 See Section 2.2.7.2.

6 One should note here that Menger saw things differently. He believed that the goods-character of a thing would get lost if only one condition got astray. As he put it in his *Principles*:

Hence a thing loses its goods-character: (1) if, owing to a change in human needs, the particular needs disappear that the thing is capable of satisfying, (2) whenever the capacity of the thing to be placed in a causal connection with the satisfaction of human needs is lost as the result of a change in its own properties, (3) if knowledge of the causal connection between the thing and the satisfaction of human needs disappears, or (4) if men lose command of it so completely that they can no longer apply it directly to the satisfaction of their needs and have no means of reestablishing their power to do so [Nur wo diese Voraussetzungen zusammentreffen, kann ein Ding zum Gute werden, wo immer aber auch nur eine derselben mangelt, kann kein Ding die Güterqualität erlangen; besässe es aber bereits dieselbe, so müsste sie doch sofort verloren gehen, wenn auch nur eine jener vier Voraussetzungen entfallen würde. Es verliert demnach ein Ding seine Güterqualität, erstens, wenn durch eine Veränderung im Bereiche der menschlichen Bedürfnisse der Erfolg herbeigeführt wird, dass kein Bedürfniss, zu dessen Befriedigung jenes Ding die Tauglichkeit hat, vorhanden ist. Der gleiche Erfolg tritt, zweitens, überall dort ein, wo durch eine Veränderung in den Eigenschaften eines Dinges die Tauglichkeit desselben, in ursächlichen Zusammenhang mit der Befriedigung menschlicher Bedürfnisse gesetzt zu werden, verloren geht. Die Güterqualität eines Dinges geht, drittens, dadurch verloren, dass die Erkenntniss des ursächlichen Zusammenhanges zwischen demselben und der Befriedigung menschlicher Bedürfnisse untergeht. Viertens büsst endlich ein Gut seine Güterqualität ein, wenn die Menschen die Verfügung über dasselbe verlieren, so zwar, dass sie es zur Befriedigung ihrer Bedürfnisse weder unmittelbar heranziehen können, noch auch die Mittel besitzen, um dasselbe wieder in ihre Gewalt zu bringen].

(*Principles*, p. 52f. *Grundsätze*, p. 3)

7 At this point, Menger comes to a conclusion which is very important for our future reflections, namely that the 'value' of a good is not inherent in the good, but only in the utility it provides to the consumer:

From this it is evident that goods-character is nothing inherent in goods and not a property of goods, but merely a relationship between certain things and men, the things obviously ceasing to be goods with the disappearance of this relationship [Aus dem Obigen ist ersichtlich, dass die Güterqualität nichts den Gütern Anhaftendes, das ist keine Eigenschaft derselben ist, sondern sich uns lediglich als eine Beziehung darstellt, in welcher sich gewisse Dinge zu den Menschen befinden, eine Beziehung, mit deren Verschwinden dieselben selbstverständlich auch aufhören, Güter zu sein].

(*Principles*, p. 52f. *Grundsätze*, p. 3)

8 See *Principles*, p. 58.

9 As Menger has put it:

Non-economic goods have utility as well as economic goods, since they are just as capable of satisfying our needs. With these goods also, their capacity to satisfy needs must be *recognized* by men, since they could not otherwise acquire goods-character. But what distinguishes a non-economic good from a good subject to the quantitative relationship responsible for economic character is the circumstance that the satisfaction of human needs does not depend upon the availability of concrete quantities of the former but does depend upon the availability of concrete quantities of the latter. For this reason the former possesses utility, but only the latter, in addition to utility, possesses also that significance for us that we call value [Was aber ein nicht ökonomisches Gut von einem solchen unterscheidet, welches in dem den ökonomischen Charakter begründenden Quantitätenverhältnisse steht, das ist der Umstand, dass nicht von der Verfügung über concrete Quantitäten des erstern, wohl aber von einer solchen über concrete Quantitäten des letztern die Befriedigung menschlicher Bedürfnisse abhängig ist, und somit die ersteren wohl Nützlichkeit, nur die letzteren aber neben ihrer Nützlichkeit auch jene Bedeutung für uns haben, die wir Werth nennen].

(*Principles*, p. 119; *Grundsätze*, p. 84)

10 In his *Principles*, Menger does not deal explicitly with intellectual goods, but with services that are not material. On these, Menger wrote:

Of special scientific interest are the goods that have been treated by some writers in our discipline as a special class of goods called 'relationships' In this category are firms, good-will, monopolies, copyrights, patents, trade licenses, authors' rights, and also, according to some writers, family connections, friendship, love, religious and scientific fellowships, etc. [Von einem eigenthümlichen wissenschaftlichen Interesse sind noch jene Güter, welche von einigen Bearbeitern unserer Wissenschaft unter der Bezeichnung 'Verhältnisse' als eine besondere Güter-Kategorie zusammengefasst werden. Es werden hiezu Firmen, Kundschaften, Monopole, Verlagsrechte, Patente, Realgewerberechte, Autorrechte, von einigen Schriftstellern auch die Verhältnisse der Familie, der Freundschaft, der Liebe, kirchliche und wissenschaftliche Gemeinschaften u.s.f. gerechnet].

(*Principles*, p. 54; *Grundsätze*, p. 5)

11 Compare Section 2.2.7.

12 See his *Principles*:

The value of goods arises from their relationship to our needs, and is not inherent in the goods themselves [Der Güterwerth ist in der Beziehung der Güter zu unseren Bedürfnissen begründet, nicht in den Gütern selbst].

(*Principles*, p. 120; *Grundsätze*, p. 85)

And further:

Value is therefore nothing inherent in goods, no property of them, but merely the importance that we first attribute to the satisfaction of our needs, that is, to our lives and well-being, and in consequence carry over to economic goods as the exclusive causes of the satisfaction of our needs [Der Werth ist demnach nichts den Gütern Anhaftendes, keine Eigenschaft derselben, sondern vielmehr lediglich jene Bedeutung, welche wir zunächst

der Befriedigung unserer Bedürfnisse, beziehungsweise unserem Leben und unserer Wohlfahrt beilegen und in weiterer Folge auf die ökonomischen Güter, als die ausschliessenden Ursachen derselben, übertragen].

(*Principles*, p. 116; *Grundsätze*, p. 81)

- 13 See Section 3.2ff.
- 14 The addendum 'should form it' hints to the author's impression that many business ethicists back away from the prime subject of business ethics.
- 15 The gentle reader probably has noticed already that we use the terms 'business action' and 'economic action' synonymously, though this does not necessarily reflect the standard and is open to criticism. One might object that many actions taken in business have no economic property. This conceded, we maintain our practice, keeping in mind that the objection concerns mainly an accidental feature of business action.
- 16 See Hardy Bouillon, *Freiheit, Liberalismus und Wohlfahrtsstaat*, Baden-Baden: Nomos, 1997, chapter 3. In that chapter, we introduce an explication, strictly speaking. (On 'explications' see Section 1.1.3.3.) The concept of 'individual liberty' is a key concept in *Classical Liberalism*. Consequently, the determination of this concept, provided in chapter 3 of that book, has to be seen against the background of scientific progress. Right now, the concept of 'economic moral action' hardly exemplifies a key concept in business ethics. Otherwise it would be appropriate to do the necessary adjustments and introduce it as an explication.
- 17 See, for instance, Friedrich A. Hayek, *The Constitution of Liberty*, Chicago: University Press, 1960, p. 12: 'The time-honored phrase by which this freedom has often been described is therefore, "independence of the arbitrary will of another."'
- 18 See Section 2.2.2ff.
- 19 Refusing someone a favor, which would be easy to render (by stepping aside, in this case), can be seen as an indication of disfavor or spite. Some might even point out that disfavor and spite cause a mental cruelty and, thereby, an evil to self-ownership, mind and body being the property of a person. This being so, one could argue that using a free good could imply a moral dimension, irrespective of the aforementioned objection. Although there is some logic behind this reasoning, it leads to a self-contradiction and related problems that I have analyzed elsewhere; see my *Freiheit, Liberalismus und Wohlfahrtsstaat*, Baden-Baden: Nomos, 1997, p. 86, footnote 17. On top of that, even if the argument was sound, it would not affect our definition of economic moral action because this type of action refers exclusively to tradeable goods, a type of goods to which free goods do not belong. At all events, moral actions that are *not* economic would be affected by this argument.
- 20 Regarding problems of circularity in definitions, see Gerard Radnitzky, 'Definition', *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, p. 30.
- 21 The adjective 'artificial' should point out that the restriction is neither natural nor spontaneous. Otherwise, Alexander was at best a contributor to that limitation, but not a sufficient causer of it.
- 22 Ulysses and the Sirens is a homologous case. Ulysses commands his crew to tie him to the mast, so he can listen to the seductive singing of the Sirens without becoming a victim of it. What the crew does is not coercion. It was Ulysses himself who gave the order to restrict his private feasible options.

- 23 It should go without saying that consent by definition cannot, but be voluntary. For what else would we mean by consent, if not that the consenting parties decide without being determined from outside? It would miss the very meaning of consent if we admitted coerced consent as a subcategory to consent.
- 24 Whether these costs really have to be met in consequence of a negative meta-decision, is irrelevant in the end. Our common understanding of coercion does not require that coercion is given only if the coercer acts on his threats. We would call Joe's threat coercion, even if he would not knock the bottle on Nicks' head while Nick continues not reacting.
- 25 Regarding performative speech acts, see John Langshaw Austin, *How to Do Things with Words*, Cambridge, MA: Harvard University Press, 1962.
- 26 Double decision cases also can be illustrated in matrices. I did so elsewhere. See Hardy Bouillon, *Freiheit, Liberalismus und Wohlfahrtsstaat*, Baden-Baden: Nomos, 1997, chapter 3.
- 27 On this, see Section 1.1.3.3, or Gerard Radnitzky, 'Definition', *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, p. 27ff.
- 28 In this treatise, the concepts 'property' and 'private property' are used synonymously, unless significant reasons require deviating from the rule. Synonymity is justified also, we think, because collective property and many concepts of property, pairing an adjective with property, ignore the fact that property presupposes sovereignty. To this, see also Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, (Hobart Paperback 30), London: Institute of Economic Affairs, 1991, p. 75: 'Collective ownership defeats the very purpose of property, which is to vest individuals the sovereignty over employment of scarce resources. Sovereignty over certain types of decisions may be delegated revocably, or transferred for good, but it cannot be shared.'
- 29 See Section 2.2.7.
- 30 See Section 2.2.5.
- 31 See Section 3.5ff.
- 32 See John Locke, *Two Treatises of Government*, edited with an introduction and notes by Peter Laslett, Cambridge: Cambridge University Press, 1960.
- 33 Symbols in brackets refer to the book and paragraph respectively.
- 34 For a detailed critical appraisal of Locke's theory of property, see my *John Locke. Denker der Freiheit I*, edited by the Liberal Institute of the Friedrich-Naumann-Foundation, Sankt Augustin: Academia Verlag, 1997. (From it many arguments are taken and presented here.)
- 35 The last sentence of the quote entails a problem regards the logical consistency of Locke's theory of property, to which we turn in Section 2.2.4.
- 36 See Section 1.1.3ff.
- 37 Interestingly, already Kant has noticed Locke's violation of the *implications compliance rule*. As he put it in his *Metaphysics of Morals (Metaphysik der Sitten, 1797)*:

To work on something that is not already my property, hence, does not lead to ownership in it (its substance), but only to the possession of its accidents. If I plow and seed an acre, which is not already my property, I do not acquire the acre through my labor. Through my acting I am in the possession of the labour, diligence, and effort, alone [Die Arbeit an einer Sache, die nicht bereits mein Eigentum ist, führt also nicht zum Eigentum an ihr

(ihrer Substanz), sondern nur zum Besitz ihrer Accidenzen. Wenn ich z.B. auf einem Acker pflüge und säe, der nicht bereits mein Eigentum ist, erwerbe ich den Acker nicht durch meine Arbeit. Durch meine Tun bin ich lediglich im Besitz der Arbeit, des Fleißes und der Mühe].

(Kant 1797, p. 268f.)

- 38 See Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, (Hobart Paperback 30) London: Institute of Economic Affairs, 1991, p. 72.
- 39 See Andrew Skinner, 'An Economic Interpretation of History', *Essays on Adam Smith*, edited by Andrew Skinner and Thomas Wilson, Oxford: Oxford University Press, 1976, p. 154.
- 40 For a critical appraisal of libertarian anarchism, see my 'Libertärer Anarchismus – eine kritische Würdigung', *Aufklärung und Kritik. Sondernummer*, 1998, pp. 28–40.
- 41 See Murray Rothbard, *For a New Liberty, the Libertarian Manifesto*, New York: Collier Macmillan, 1973. In this book, Rothbard names his position 'new libertarianism', his intention being to restate libertarian thinking and to make a contribution to the libertarian movement at that time.
- 42 *Ibid.*, p. 8.
- 43 *Ibid.*, p. 27.
- 44 See Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism: Economics, Politics, and Ethics*, Boston: Kluwer Academic Publishers, 1989. (German original: Hans-Hermann Hoppe, *Eigentum, Anarchie und Staat*, Opladen, 1987.)
- 45 *Ibid.*, p. 133.
- 46 *Ibid.*, p. 135.
- 47 We do not think that it is, for the reasons mentioned in Sections 1.1.3ff. and 3.1.
- 48 See Section 1.1.3ff.
- 49 See Section 2.2.3.
- 50 See Hans-Hermann Hoppe, *A Theory of Socialism and Capitalism*, Boston: Kluwer, 1989, p. 17.
- 51 Compare last paragraph of Section 2.2.3.
- 52 In fact, the peaceful option has sub-options. Apart from cooperation via negotiation, system competition is an option, meaning that the most attractive modes make members of the rival society to migrate.
- 53 See Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, (Hobart Paperback 30), London: Institute of Economic Affairs, 1991, p. 72ff.
- 54 Jasay believes that there

Is one clear case where the obligor can be placed under an unrequited obligation without unjustly harming his interests: when the obligation in question does not deprive him of any liberty, nor of any right, that *he would otherwise have had*. The obligation to respect the property of another acquired by 'finders keepers' would be of this kind; the wider obligation to respect the status quo can be derived along the same lines (though there are alternative ways of deriving it, too).

(Jasay, 1991, p. 92)

To me, it is misleading to talk of an obligation in this context. On this, see my 'Rights, Liberties, and Obligations', *Ordered Anarchy: Jasay and his*

Surroundings, edited by Hardy Bouillon and Hartmut Kliemt, Aldershot: Ashgate, 2007, pp. 7–12. Compare also Section 3.2.2.

- 55 To put it differently: The first possessor *does not require* from another to give up acquired property (which acquisition would not have been an unjustified one while taking place). The claim to refrain from using a good, because otherwise it would not be at the disposition for another, *does require* from the appropriator to give up property (which acquisition has not been an unjustified one during its execution).
- 56 See Section 3.1.
- 57 In correlation to the first acquisition by ‘finders keepers’, one could talk of secondary acquisition, in this case. See also Anthony de Jasay, ‘Justice, Luck, Liberty’, *Liberty and Justice*, edited by Tibor Machan, Stanford: Hoover Institution Press, 2006, p. 10.
- 58 Organ trade, for instance, will be discussed in Section 4.1.5.
- 59 Jasay scraps the idea of self-ownership by saying, ‘it is outlandish to talk of a relation between a person and his self’. See Anthony de Jasay, ‘Justice, Luck, Liberty’, *Liberty and Justice*, edited by Tibor Machan, Stanford: Hoover Institution Press, 2006, p. 11.
- 60 See Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, (Hobart Paperback 30), London: Institute of Economic Affairs, 1991, p. 69ff.
- 61 See Anthony de Jasay, *Liberale Vernunft, soziale Verwirrung. Gesammelte Essays*, Colombo: Meridiana Publishers, 2008, p. 130ff.
- 62 See Section 1.1.3.5.
- 63 More precisely, what it takes for a falsification is a singular existential statement that contradicts the theory and is viewed as less problematic than it. The statement ‘on May 16, 1934, between 10 and 11 in the morning, a black swan was standing in the Volksgarten in front of the monument of the Empress Elisabeth’ would be such a statement. See Karl Popper, ‘Falsifizierbarkeit, zwei Bedeutungen von’, *Handlexikon zur Wissenschaftstheorie*, edited by Helmut Seiffert and Gerard Radnitzky, Munich: Ehrenwirth, 1989, p. 83.
- 64 Die Beweislast liegt bei demjenigen, der verneint, dass A – oder eine beliebige Person – eine bestimmte Grundfreiheit habe, der verneint, dass eine x-beliebige Person frei sei zu handeln, solange gegen diese Art von Handlung keine in der relevanten Sozialordnung gültigen Einwände vorliegen. Der Gegenredner hat die Aufgabe, gegebenenfalls solche Einwände vorzubringen. Damit kann er seine Behauptung verifizieren. Der Handlungswillige dagegen kann den Einwand des Gegenredners nicht falsifizieren, wenn – wie es normalerweise der Fall ist – die Liste der gültigen Einwände offen und daher abzählbar unendlich ist. Denn dann ist es logisch unmöglich, B’s Einwand zu falsifizieren. Deshalb muß ein rationaler Gesetzgeber die Beweislast dem Gegenredner auferlegen.
(Radnitzky, 2006, pp. 330f.; translation by the author)

For a detailed elaboration of Radnitzky’s *argumentum pro libertate* see Gerard Radnitzky, ‘Die Wissenschaftstheorie des kritischen Rationalismus und das Argument zugunsten der Freiheit’, *Realismus – Disziplin – Interdisziplinarität*, edited by Dariusz Aleksandrowicz and Hans Günther Ruß, Amsterdam/Atlanta: Rodopi, 2001, pp. 260–75. A shorter version can be found in Gerard Radnitzky, ‘Argument in favor of liberty, property, and innocence. Pre-summary’, *Rights, Risk and Regulation*, Brussels: Centre for the New Europe, 2000, pp. 85–7.

- 65 On this, see Anthony de Jasay, *Liberale Vernunft, soziale Verwirrung. Gesamtelte Essays*, Colombo: Meridiana Publishers, 2008, p. 200.
- 66 See Karl Popper, *Objective Knowledge*, Oxford: Clarendon Press, 1972.
- 67 John Locke, for instance, mentions several other ‘primary qualities’ in his *Essay Concerning Human Understanding* (1690) (book 2, chapter 9), namely solidity, figure, motion or rest, and number.
- 68 In connection with this, anarcho-capitalists argue that it is scarcity alone that causes interpersonal conflicts over goods and, hence, that property rights are instruments to resolve these conflicts. Consequently, granting rights to intellectual property is superfluous, due to non-scarcity of intellectual goods. On this, see Stephan Kinsella, ‘Against Intellectual Property’, *Journal of Libertarian Studies* 15.2, Spring 2001, p. 20: ‘The function of property rights is to prevent interpersonal conflict over scarce resources, ...’ (italics mine.)
- 69 Even upon a closer look, it is not evident why this case should differ, in principle, from regular cases of business undertakings. No producer knows whether the expected quantity of sales can be met. The fact that generic producers have an advantage, shortly after the launch of the novelty, is a peculiarity that goes along with particularities of the product, but not with those of the market. There are many side constraints that withhold potential novelties from the market, some are technological, some financial, some of a different nature. All of them may reduce the incentive to be developed beneath the threshold, all of them may cause the absence of consumers’ improvements.
- 70 It goes without saying that RBPC and IC can be one and the same company or part of the same trust.
- 71 I discussed this in more detail elsewhere, see ‘Gut zu wissen’, online, available at: www.hayek-institut.at/index.php?popup=0&id=0&item=news&news=41.
- 72 See Carl Menger, *Principles of Economics* [1871], Auburn: Ludwig von Mises Institute, 2007, p. 52f.
- 73 Friedrich A. von Hayek, *The Sensory Order*, London: Routledge and Kegan Paul, 1952. A detailed analysis of mine of Hayek’s idea of the sensory order can be found in my *Ordnung, Evolution und Erkenntnis. Hayeks Sozialphilosophie und ihre erkenntnistheoretische Grundlage*, Tübingen: Mohr Siebeck, 1991.
- 74 See Ludwig von Mises, *The Theory of Money and Credit*, New Haven: Yale University Press, 1953, p. 29: ‘The function of money is to facilitate the business of the market by acting as a common medium of exchange.’ (German original, Ludwig von Mises, *Theorie des Geldes und der Umlaufmittel*, Munich and Leipzig: Duncker & Humblot, 1912, p. 3: ‘Im Tauschverkehr des Marktes nimmt das Geld seine Stellung als allgemein gebräuchliches Tauschmittel ein.’) For reasons, similar to those mentioned in the case of Menger (see 2.1.1.), we add the original German quotes of Mises in brackets.
- 75 *Ibid.*, p. 69. (‘Wenn gegenwärtige Güter gegen zukünftige getauscht werden, ist der Fall möglich, daß der eine Teil mit der Erfüllung der ihm obliegenden Verpflichtung zurückhält, trotzdem der andere Teil seinerseits den Bedingungen des Vertrages nachgekommen ist.’ *Ibid.*, p. 57.)
- 76 *Ibid.*, p. 69. (‘Das, was die Rechtsordnung unter Geld versteht, ist ja nicht das allgemeine Tauschmittel, sondern das gesetzliche Zahlungsmittel.’ *Ibid.*, p. 58.)
- 77 *Ibid.*, p. 70. (‘Allgemeines Tauschmittel kann ein Gut nur durch die Gewohnheit der am Tauschverkehre Beteiligten werden, und ihre Wertschätzung allein bestimmt die Austauschverhältnisse des Marktes.’ *Ibid.*, p. 59.)

- 78 For stylistic reasons, we use the terms ‘state’ or ‘government’, though knowing that, following methodological individualism, neither of the two name real actors. The gentle reader is kindly asked to adjust the wording to its proper meaning in this context, keeping in mind that ‘state’ and ‘government’ are phenomena only, reducible to interacting individuals, according to distinct schemes of political organization.
- 79 Wenn der Staat ein Objekt zum gesetzlichen Zahlungsmittel für obschwebende Verbindlichkeiten erklärt, dann sind drei Fälle möglich: Das Zahlungsmittel kann mit dem Tauschgute, das die Parteien beim Abschlusse ihres Vertrages im Auge hatten, identisch sein oder ihm im Tauschwert im Augenblicke der Solution gleichkommen; z.B. der Staat erklärt Gold als gesetzliches Zahlungsmittel für auf Gold lautende Verbindlichkeiten oder er erklärt in einer Periode, in der das Verhältnis zwischen Gold und Silber wie 1:15½ ist, daß jede auf Gold lautende Verbindlichkeit durch Hingabe des 15½ fachen Silberquantums getilgt werden könne. Eine derartige Anordnung enthält lediglich die juristische Formulierung des vermutlichen Inhaltes der Parteienabrede; wirtschaftspolitisch ist sie neutral. Anders, wenn der Staat ein Objekt zum Zahlungsmittel erklärt, welches einen höheren oder geringeren Tauschwert hat als das der Parteienverabredung gemäß zu liefernde. Der erste Fall kommt praktisch nicht vor; für den zweiten können zahlreiche historische Beispiele herangezogen werden. Vom Standpunkte der Privatrechtsordnung, welche den Schutz erworbener Rechte als obersten Grundsatz aufstellt, kann ein derartiges Vorgehen des Staates niemals gebilligt werden; ... Immer ... handelt es sich nicht um eine Erfüllung von Verbindlichkeiten, sondern um ihre gänzliche oder teilweise Aufhebung. Wenn Papierscheine, welchen im Verkehre nur der halbe Wert jener Geldsumme, deren Bezeichnung sie tragen, beigelegt wird, zum gesetzlichen Zahlungsmittel erklärt werden, so ist dies im Grunde nichts anderes, als wenn dem Schuldner von Gesetzeswegen die Hälfte seiner Verpflichtungen nachgesehen würde.

(Ibid., p. 59f.)

- 80 Of course, it is not the state as such, determining the exchange-ratio and interest rates of money. Central banks, or similar institutions, do the job on behalf of the state.

3 Justice

- 1 The trilemma was already known to the Greeks and is often referred to as the *Agrippa Trilemma*, after Agrippa, the skeptic. Hans Albert used it in order to show the fundamental weakness of every justificationist philosophy. He named it Münchhausen-Trilemma, alluding to the famous liar, Baron von Münchhausen, who allegedly pulled himself out of a swamp by his own hair. According to Albert, justificationist philosophies use the same strategy to get out of their misery. This misery results from the impossibility to found a conviction ‘by referring it back to secure and indubitable grounds by logical means, i.e. with the help of logical inferences’ (Hans Albert, *Treatise on Critical Reason*, Princeton: Princeton University Press, 1985, p. 18.);

If one demands a justification for *everything*, one must also demand a justification for the knowledge to which one has referred back the views

initially requiring foundation. This leads to a situation with three alternatives, all of which appear unacceptable: in other words, to a trilemma which ... I should call the *Münchhausen trilemma*. For, obviously, one must choose here between 1. an *infinite regress*, which seems to arise from the necessity to go further and further back in search for foundations, and which, since it is in practice impossible, affords no secure basis; 2. a *logical circle* in the deduction, which arises because, in the process of justification, statements are used which were characterized before as in need of foundation, so that they can provide no secure basis; and, finally, 3. the *breaking-off of the process* at a particular point, which, admittedly, can always be done in principle, but involves an arbitrary suspension of the principle of sufficient justification.

(Ibid., p. 18)

- 2 Joseph Heller, *Catch-22*, London: Vintage, 1994 (1961). In this novel, John Yossarian, a bombardier of the US Army Air Force, and his squadron are based on the island of Pianosa, in the Mediterranean Sea west of Italy during World War II. To avoid the risk of dying, Yossarian wants to be sent home. But all pilots are required to fly before being sent home, so that no one is ever sent home. As a result, he spends a great deal of his time in the hospital, faking various illnesses to avoid the war. He discovers that it is possible to be discharged from military service because of insanity. Hence, Yossarian claims that he is insane, only to find out that, by claiming that he is insane, he has proved that he is obviously sane because any sane person would claim that he is insane in order to avoid flying bombing missions.
- 3 Here, at the latest, the gentle reader will ask himself, how can the author deny that any of the presented options to deduce a norm is a valid mode of derivation, and, nevertheless, come to several suggestions, in the course of his reflections, that at least seem to be norms or rules, to which a rational actor 'ought' adhere, be it the *implications compliance rule*, the avoidance of *asymmetric preference prioritizations*, etc. Obviously, this asks for an explanation. Of course, the problems relating the derivation of norms apply to all norms, including those presumably attributable to the author. However, the author does not claim that within the reasoning of his reflections the derivation of any norms would be possible. His conclusions, without exemption, are meant as recommendations in terms of a *hypothetical imperative* (which, by the way, is not an imperative at all). For instance, regarding the idea of non-prioritization, the recommendation reads as follows: 'If you do not want to end up in self-contradictions, then do not infer to any prioritization of utility preferences, unless you can present identifiable and, hence, criticisable reasons.' The reader will have noticed that the author, in order to avoid the impression of deducing norms improperly, made an attempt to adjust his wordings in accordance with his intentions. We do not speak of the non-prioritization *command* or non-prioritization *norm*, but rather of the non-prioritization idea or the rule of non-prioritization (whereas 'rule' is used descriptively, meaning 'practice' or 'habit'). In case the author eventually fails to provide expressions that are formulated carefully enough for his purposes, he kindly asks the reader to interpret the respective phrases according to the understanding and intention of the author, as expressed here.
- 4 See also Section 1.1.3ff.
- 5 See Section 2.2.5ff.

- 6 See Anthony de Jasay, 'Freedoms, "Rights" and Rights', *Il Politico* LXVI.3, 2001, p. 378: 'In the first prototype, a person can choose to perform a certain act because the act is feasible for him, and is not a wrong (i.e. is not made inadmissible by convention).'
- 7 *Ibid.*, p. 378f.: 'In the second, a person can choose to require another person to perform a certain act whereupon the other person is obliged to perform it. The first is a prototype of a freedom, the second the prototype of a right.'
- 8 *Ibid.*, p. 392:

Rights are part of a relation between two persons and an act which one person, the obligor, must perform if so required by the other person, the right holder. A right without the matching obligation would be only one half of the relation and could not be exercised; and a 'right' that cannot be exercised is no more a right than an empty water glass is a glass of water. If this is the sole logically defensible concept of the right-obligation relation, the statement that a right exists entails the statement that an obligation exists, – rights imply obligations and vice versa.

- 9 See Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, p. 91: 'Contract is their obvious, self-evident source, because only contracts provide proof that the correlative obligation has been *agreed to* by the obligor, hence its existence does not depend on controversial claims.'
- 10 This is not to say that they would not exist. To the contrary, several people believe that they 'owe' something to society, although society does not know anything of that debt and its alleged 'right' to sue for it.
- 11 Contracts can be faked and interpretations can be controversial. This is neither to deny, nor a problem typical to contracts. It is a general problem, related to *all* methods of identifying and testing assertions. The means of these methods can be faked and the results controversially disputed.
- 12 See again Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, p. 91: 'Only contracts provide proof that the correlative obligation has been *agreed to* by the obligor.'
- 13 See Section 3.1.
- 14 See Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, p. 82: 'A convention is only metaphorically a contract because it involves no explicit nor even implicit undertakings to perform.'
- 15 *Ibid.*, p. 81: 'A convention is best understood as an informally tacit contract loosely binding a large number of people.'
- 16 The concept of *formal justice* will be explained in Section 3.2.3.
- 17 See Anthony de Jasay, *Choice, Contract, Consent: A Restatement of Liberalism*, p. 92.
- 18 An unjustified prioritization of utility preferences would be given if either A or B would try to withhold the other from first acquisition, under the condition that both show up at one place at the same time.
- 19 A valid objection would be the proof that the alleged unowned good is already owned by someone else.
- 20 See Section 3.2.1.
- 21 See Aristotle, *The Nicomachean Ethics*, translated by W.D. Ross, online, available at: <http://classics.mit.edu/Aristotle/nicomachaen.5.v.html>:

Of particular justice and that which is just in the corresponding sense, (A) one kind is that which is manifested in distributions of honour or money or

the other things that fall to be divided among those who have a share in the constitution (for in these it is possible for one man to have a share either unequal or equal to that of another), and (B) one is that which plays a rectifying part in transactions between man and man. Of this there are two divisions; of transactions (1) some are voluntary and (2) others involuntary.

(Ibid., 1130f.)

It is well known that Aristotle's conception of justice follows a teleological aim. He viewed it detrimental to *eudaimonia* (human flourishing) to strive for goods beyond a certain level of wealth. This and other normative recommendations are reason enough to suspect difficulties in using Aristotle's conception of justice as an unproblematic starting point.

- 22 It should be noted that we are going to use the term 'formal justice' in moral contexts alone. Hence our understanding of the term should not be confused with the meaning of the juridical term 'formal justice'. In the legal sense, formal justice means impartiality. Though there are obvious links between the two meanings, they are not identical, due to the different contexts in which they are embedded. To formal justice in legal terms, see Otfried Höffe, 'Gerechtigkeit', *Lexikon der Ethik*, edited by Otfried Höffe, sixth edition, Munich: Beck, 2002, p. 82.) Formal justice in the legal context implies conformity to law alone, while formal justice in the moral sense means moral conformity with the rights initiated by contracts. (Economic) actions can conform to formal justice in the legal as well as in the moral sense, but do not have to. In the first case, actions are judged according to valid legal norms of whichever legal order, in the second according to the criteria of moral action, outlined here. That includes the possibilities that economic actions can be legally just and morally unjust, against the respective standards of formal justice; and vice versa, of course. In spite of this, formal justice in both contexts is characterized by impartiality. In the moral context, impartiality is expressed via non-prioritization of utility preferences, whereas in the legal context it is given expression by the principle to judge without distinction of person. (After all that is the reason why the justitia wears a blindfold.)
- 23 See Section 1.1.8.1.
- 24 Plato, *Republic* (Book II, 366f.), quoted after *The Dialogues of Plato*, translated into English with Analyses and Introductions by B. Jowett, M.A. in 5 Volumes, third edition revised and corrected, Oxford: University Press, 1892.
- 25 Jasay raises the point that

The concept 'social justice' would be a pleonasm, like 'old doter' or 'burning fire'. Each form of justice, the legal order aims for (in civil, criminal or administrative law), is 'social' in as much as it imposes certain rules on the distribution of possessions, income, status, reward, and punishment in society [Jede Art von Gerechtigkeit, wie sie durch unsere Rechtsordnung (im Zivil-, Straf-, oder Verwaltungsrecht) angestrebt wird, ist insofern 'sozial', als sie die Verteilung von Besitz, Einkommen und Status, Belohnung und Strafe in einer Gesellschaft gewissen Regeln unterwirft].

(Jasay, 2008, p. 172; translation by the author)

A similar argument is made by Friedrich A. Hayek; see his *Law, Legislation and Liberty, Vol. II: The Mirage of Social Justice*, Chicago: University Press, 1976, p. 78.

- 26 As long as not misleading, and if recommendable from a stylistic view, we use the concepts ‘social justice’, ‘material justice’, and ‘distributive justice’ synonymously.
- 27 See Aristotle, *The Nicomachean Ethics*, translated by W.D. Ross, online, available at: <http://classics.mit.edu/Aristotle/nicomachaen.5.v.html> (1130f.)
- 28 *Ibid.*, (1132a).
- 29 *Ibid.*, (1131a).
- 30 Yet, he certainly was aware of those tensions. He knew that ‘this is the origin of quarrels and complaints – when either equals have and are awarded unequal shares, or unequals equal shares’ and that ‘not all specify the same sort of merit, but democrats identify it with the status of freeman, supporters of oligarchy with wealth (or with noble birth), and supporters of aristocracy with excellence’ (1131a).
- 31 See Section 3.7.
- 32 Again, how else could we explain that it does not irritate the public if undeserved luck is treated as an incidence of injustice? The fact that A has achieved fortune with great luck rather than with great effort does not imply that it would not be morally his. It seems to belong to the great intellectual burdens of Aristotle’s conception of justice that property, which had not fallen to a person if the idea of ‘merit-based justice’ alone would reign, is suspected to be not just in the full sense of the word, despite the fact that the acquisition of it entailed no violation of commutative justice. On this, see also Anthony de Jasay, ‘Justice, Luck, Liberty’, *Liberty and Justice*, edited by Tibor Machan, Stanford: Hoover Institution Press, 2006, p. 27: ‘It is grossly mistaken to imply that something that is not deserved must be undeserved. Lack of argument why a person should have or get some good does not imply that he ought not to have or get it.’
- 33 On this, see Antony Flew, ‘Social Democracy and the Myth of Social Justice’, *Libertarians and Liberalism*, edited by Hardy Bouillon, Aldershot: Avebury, 1996, pp. 170–83.
- 34 See Friedrich A. Hayek, *Law, Legislation and Liberty, Vol. II: The Mirage of Social Justice*, Chicago: University Press, 1976, p. 63, where Hayek traces this idea back to John Stuart Mill.
- 35 On this, see Gerard Radnitzky, ‘Die ungeplante Gesellschaft. Friedrich von Hayeks Theorie der spontanen Ordnungen und selbstorganisierenden Systeme’, *Hamburger Jahrbuch für Wirtschafts- und Sozialpolitik* 29, 1984, pp. 9–33. Radnitzky believes that this time period was too short for a phylogenetic embedding. See also my ‘Hayeks Theory of Cultural Evolution in the Light of Lorenzian Ethological Epistemology’, *Evolution and Cognition* 1, 1992, pp. 131–45.
- 36 See Friedrich A. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, London: Routledge and Kegan Paul, 1978, p. 57ff. At least these practices were not detrimental to the existence of the group, one should add.
- 37 Against the background of what was said in Section 1.1.5 on negative selection, it deems more appropriate to put it somewhat differently, namely that compassion was not detrimental to the maintenance of the group.
- 38 Compare Friedrich A. Hayek, *New Studies in Philosophy, Politics, Economics and the History of Ideas*, London: Routledge and Kegan Paul, 1978, p. 61f.
- 39 See also Section 1.1.9. In addition, compare the second volume of Friedrich A. Hayek, *Law, Legislation and Liberty, Vol. II: The Mirage of Social Justice*, Chicago: University Press, 1976, p. 67ff.

40 *Ibid.*, p. 70:

It [justice] clearly has no application to the manner in which the impersonal process of the market allocates command over goods and services to particular people: this can be neither just nor unjust, because the results are not intended and foreseen, and depend on a multitude of circumstances not known in their totality to anybody.

41 See Section 3.6.

42 See Sections 3.5.1, 3.6, and 3.7.

43 See Alfred Müller-Armack, 'Soziale Irenik', *Weltwirtschaftliches Archiv* 64, 1950, pp. 181–203, and Christian Watrin, 'Alfred Müller-Armack (1901 bis 1978)', *Kölner Volkswirte und Sozialwissenschaftler*, edited by Friedrich-Wilhelm Henning, Köln, 1988, pp. 39–68.

44 Some 30 years after World War II, things had changed. Now the redistribution of wealth attracted more attention. In 1978, Müller-Armack warned against too much redistribution as a cause of continuous intervention; see Alfred Müller-Armack, 'Die fünf großen Themen der künftigen Wirtschaftspolitik', *Wirtschaftspolitische Chronik* 27.1, 1978, p. 9ff.

45 See Christian Watrin, 'Marktwirtschaft', *Handwörterbuch der Volkswirtschaftslehre*, Wiesbaden, 1978, pp. 806–26.

46 In the German original, Müller-Armack wanted 'keine sich selbst überlassene, liberale Marktwirtschaft, sondern eine bewußt gesteuerte, und zwar sozial gesteuerte Marktwirtschaft' (Müller-Armack, 1946, p. 86; translation by the author). See also *ibid.*, p. 88.

47 I am grateful to Hartmut Kliemt, who has made me aware of what comes close to such a conception, yet is distinct from it, namely Peter Unger's reflections on failure to render assistance. See Unger's book, *Living High and Letting Die: Our Illusion of Innocence*, Oxford: University Press, 1996. Unger does not argue that unfulfilled promises or other unredeemed commitments lead to social injustice, but he asserts that the poverty in so called underdeveloped countries was the result of a failure to render assistance to those countries.

48 On the advent of the idea of global justice, see Friedrich A. Hayek, *Law, Legislation and Liberty: The Mirage of Social Justice*, Chicago: University Press, 1976, p. 80, and footnote 27, p. 180.

49 Da die Umlagefinanzierung der sozialen Sicherungssysteme oft als Ausdruck eines Generationenvertrags bezeichnet wird, würde ein nahe liegendes Kriterium für Generationengerechtigkeit darin bestehen, zu fragen, ob alle Mitglieder aller (zum Zeitpunkt der Einführung lebenden) Generationen der Einführung des Sozialversicherungssystems zustimmen würden. Dadurch nähert sich das Kriterium für Generationengerechtigkeit vertragstheoretischen Gerechtigkeitstheorien und effizienztheoretischen Überlegungen.

(Fuest, 2007, p. 18; translation by the author)

50 Wilfried Hinsch, 'Rawls' Differenzprinzip und seine sozialpolitischen Implikationen', *Sozialpolitik und Gerechtigkeit*, edited by Siegfried Blasche and Dieter Döring, Frankfurt a.M., New York: Campus, 1998, pp. 17–74. However, this is not the position of Hinsch. In his conception of justice, the question of causality is unimportant, unless it is a case of self-induced emergency, he declares (in a personal note, dated June 12, 2009).

- 51 In the German original, Fuest refers to Hirsch's undertaking as attempt, 'ausgehend von der Rawls'schen Gerechtigkeitstheorie sozialpolitische Implikationen vertragstheoretisch begründeter Gerechtigkeitsskriterien herauszuarbeiten. Er kommt zu dem Ergebnis, dass bestimmte Formen von Lohnsubventionen mit dem Rawls'schen Differenzprinzip zu rechtfertigen sind' (Clemens Fuest, *Sind unsere sozialen Systeme generationengerecht? Freiburger Diskussionspapiere zur Ordnungsökonomik 07/3*, hg. vom Walter Eucken Institut, Freiburg, 2007, p. 18; translation by the author).
- 52 See Section 3.2f.
- 53 On this, see Anthony de Jasay, 'Justice, Luck, Liberty', *Liberty and Justice*, edited by Tibor Machan, Stanford: Hoover Institution Press, 2006, p. 9:

This fiction, supported by the argument that everybody has the same 'right' to these resources than everybody else, leads to the conclusion that resources ought not to be taken out of the universal joint tenancy except with everybody's unanimous agreement.

The assumption that free goods are common goods seems to be quite popular among political philosophers. See, for instance, Gerald A. Cohen, *Freedom and Equality*, Cambridge: Cambridge University Press, 1995, and compare Anthony de Jasay, 'Property and its Enemies', *Philosophy* 79 (Royal Institute of Philosophy), 2004, p. 60f.

- 54 The author is aware of the fact that his wordings are metaphoric, giving the reader relief from stylistic monotony, hopefully. Of course, theories cannot assume, meet, run risks, etc.; only individuals can.
- 55 See Friedrich A. Hayek, *Law, Legislation and Liberty: The Mirage of Social Justice*, Chicago: University Press, 1976, p. 67:

It seems to be widely believed that 'social justice' is just a new moral value which we must add to those that were recognized in the past, and that it can be fitted within the existing framework of moral rules.

- 56 Herewith, we take up again an idea, elaborated by James Buchanan and Loren Lomasky in 1984. See James Buchanan and Loren Lomasky, 'The Matrix of Contractarian Justice', *Social Philosophy and Policy* 2 (1984), pp. 12–32. I am grateful to Hartmut Kliemt who drew my attention to that essay. However, there are good reasons to assume that the Paretian interpretation of Rawls is incorrect. On this, see Hartmut Kliemt, *Sozialphilosophie*, unpublished manuscript, 2009, chapter 4. Kliemt argues that the inclusion of the maximin principle would reveal Rawls agreement even to those changes that do not conform to Pareto improvements.
- 57 Of course, by 'some' we mean 'at least one'. It is for stylistic reasons only that we occasionally deviate from common practice, clarity permitting.
- 58 Strictly speaking, the Pareto principle allows to name only alternatives, which are 'dominated' in every case, not those, which dominate all others (since, in general, situations are not in each respect Pareto comparable, due to the impossibility of interpersonal utility comparisons).
- 59 See Hartmut Kliemt, Bernd Lahno, *Modelle der Moralwissenschaften*, unpublished manuscript.
- 60 Redistribution of goods, causing some to benefit on cost of others, could also meet the consent of all parties involved (voluntary socialism) and, hence, be compatible with formal justice (otherwise gifts would be unjust moral

economic actions), but conform not to the strict Pareto principle. We need not consider this sort of consented redistribution separately, since it is in accordance with formal justice anyway. It does not imply anything beside the unhindered use of liberties.

- 61 See Gunnar Andersson, *Criticism and the History of Science*, Leyden: Brill, 1994, p. 70:

There is no logical contradiction between 'In the space-time-region *k* there is a white swan' and 'In the space-time-region *k* there is a non-white swan'. (From a logical point of view there might well be two swans in the space-time-region, a white, and a non-white.)

- 62 John Rawls, 'Distributive Justice', *Philosophy, Politics and Society. Third Series*, edited by Peter Laslett and Walter G. Runciman, Oxford: Basil Blackwell, 1967, p. 64.

- 63 One reason for such a benevolent interpretation is that Rawls compares only two unequal alternatives. Consequently, he is right to call the alternative, which is at least as good as the second, better or best. An additional reason is that Rawls uses this argument for introductory purposes, in order to derive criteria for choices among different Pareto optima; see *ibid.*, p. 64, where he says, with respect to the Pareto criterion, that it 'admittedly does not identify the best distribution [of goods], but rather a class of optimal, or efficient, distributions.'

- 64 *Ibid.*, p. 66. As Kliemt, justly, points out, the assumption of the maximin principle faces several problems; see Hartmut Kliemt, *Sozialphilosophie*, chapter 4, unpublished manuscript.

See also James Buchanan and Loren Lomasky, 'The Matrix of Contractarian Justice', *Social Philosophy and Policy* 2 (1984), pp. 12–32.

- 65 Compare Anthony de Jasay, 'Justice as Something Else', *Cato Journal* 16.2 (1996), p. 163:

Scanlon's contractualist theory, in sharp contrast to Rawls, agreement need not yield mutual advantage in order to be reached. It may yield it accessorially, but people do not seek it to make themselves better off in the ordinary narrow sense. They seek it because they are motivated by a common desire for agreement that is inherent in morality.

See also Thomas Scanlon, 'Contractualism and Utilitarianism', *Utilitarianism and Beyond*, edited by Amartya Sen and Bernard Williams, Cambridge: University Press, 1999, p. 128.

- 66 An argument, along the line, is made by Liam Murphy and Thomas Nagel in their book, *The Myth of Ownership*, Oxford: Oxford University Press, 1995. They argue that the state has a partnership in the property of his citizens, who acquired the property under his protection, because he provides security to property. Even more strongly, they argue that without the state there would be no property, or enforcement of property rights. Therefore, the state antecedes property. As they put it, 'there are no property rights antecedent to the tax system' (p. 74). In the light of the earlier discussed problems that derivations of normative statements from empirical ones face, a critical examination of that position seems to be unnecessary. Also, little pondering on the implicit assumptions of that theory should quickly show its untenability. The facility to provide security does neither imply the factual provision itself, nor that other potential providers of security could not do the same job, and perhaps even better. In

addition to that, one logical implication of the theory by Nagel and Murphy would be that no property rights existed before the state appeared, an assumption that is neither logical compatible with the conception of rights, propagated in this treatise, nor without dispute among historians of property rights.

- 67 See Anthony de Jasay, 'Your Dog Owns your House', online, available at: www.econlib.org/library/Columns/Jasaydog.html. A more detailed criticism of his is to be found in chapter 7 of Anthony de Jasay, *Justice and Its Surroundings*, Indianapolis: Liberty Fund, 2002, pp. 84–117.
- 68 See Anthony de Jasay, 'Your Dog Owns your House', online, available at: www.econlib.org/library/Columns/Jasaydog.html.
- 69 James Griffin, *Well-Being, Its Meaning, Measurement and Moral Importance*, Oxford: Clarendon Press, 1986, p. 288.
- 70 See Joel Feinberg, *Harm to Others*, Oxford: University Press, 1984, p. 14.
- 71 A similar argument can be found in Vittorio Hösle. Hösle argues that each generation takes over goods from the previous generations, which oblige them to hand over these goods (or equivalents) to the following one; see Vittorio Hösle, *Moral und Politik. Grundlagen einer politischen Ethik für das 21. Jahrhundert*, Munich: Beck, 1997, p. 809.
- 72 See Anthony de Jasay, 'Your Dog Owns your House', online, available at: www.econlib.org/library/Columns/Jasaydog.html.
- 73 Ibid.
- 74 On toll goods, see Charles Blankart, *Öffentliche Finanzen in der Demokratie. Eine Einführung in die Finanzwissenschaft*, Munich: Vahlen, 1991, p. 51ff.
- 75 Jasay characterizes the pool of positive externalities as the positive sum of originally unintended externalities, generated by useful processes of cooperation, such as the production of goods, knowledge, or conventions, which, in turn, cause easements for further social cooperation. Another class of pool goods is represented by public goods, according to Jasay. See Anthony de Jasay, *Liberale Vernunft, soziale Verwirrung. Gesammelte Essays*, Colombo: Meridiana Publishers, 2008, p. 76.
- 76 Of course, our statement holds only for the value on balance. This is not denying that with the increase of language community, the language has losses in terms of sophistications regarding grammar, style, syntax, etc. (Pidgin English).
- 77 One does not need to be a clairvoyant to predict that this result hardly would be welcomed by redistributionist representatives of the pool good theory.
- 78 See also Anthony de Jasay, 'Justice, Luck, Liberty', *Liberty and Justice*, edited by Tibor Machan, Stanford: Hoover Institution Press, 2006, p. 15: '[a] concept of justice worthy of the name must not be dependent on moral claims because any such claim can be contradicted by rival moral claims and is condemned to be inconclusive.'

4 Business ethics

- 1 Being amazed by certain developments, especially certain omissions and partial intensifications, within business ethics, is not a quality that denotes the present author alone. It is pointed out in the literature that business ethics is mainly concerned with publicly traded companies and looks only rarely at smaller firms; see Andrew Stark, 'What's Wrong with Business Ethics?', *Harvard Business Review* 71(3), 1993, pp. 38–48. It has also been observed that

- normative implications of particular political philosophies replace moral philosophical arguments, and explorations explanations; see Nicholas Capaldi, 'What Philosophy can and cannot Contribute to Business Ethics', *Journal of Private Enterprise* 22.1, 2006, pp. 68–86. Note: By 'explication' Capaldi means to make a norm explicit. As the reader probably has noticed, the term 'explication', used in Section 1.1.3.3, has a different meaning due to its methodological connotation.
- 2 See Section 2.1.1.
 - 3 See Alexei Marcoux (Alexei Marcoux, 'Business Ethics', *Stanford Encyclopedia of Philosophy*, online, available at: <http://plato.stanford.edu/entries/ethics-business/>, p. 4/16). As he puts it, 'Stakeholder theory is widely regarded among academic business ethicists as the most significant theoretical construct in their discipline.' (Fundamental to stakeholder theory is R. Edward Freeman's book, *Strategic Management: A Stakeholder Approach*, Boston: Pitman, 1984.) Marcoux goes on to mention that the shareholder theory, which one could view as its main theoretical counterpart, receives much less attention. He points out that in one of the leading encyclopedias to business ethics, i.e. the *Blackwell Encyclopedic Dictionary of Business Ethics*, edited by Patricia Werhane and R. Edward Freeman, Malden, MA: Blackwell, 1997, the shareholder value, different to the stakeholder value, was not even given a separate lemma.
 - 4 See Section 1.1.9.
 - 5 See Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits', *New York Times Magazine*, September 13, 1970, pp. 122–5.
 - 6 These cases play an important role in US employment legislation and its application as well as in US business ethics literature. Subject of controversy is whether 'at-will employment terms' should be permitted or replaced by 'just cause employment terms'. Note that the second concept, namely 'just cause employment terms' by making use of the ordinary language term 'just cause' already includes an inclination to interpret 'just' in a nonconformist way to formal justice; and insinuates that 'at-will employment terms' would include an injustice. Compare also Alexei Marcoux (Alexei Marcoux, 'Business Ethics', *Stanford Encyclopedia of Philosophy*, online, available at: <http://plato.stanford.edu/entries/ethics-business/>, pp. 7ff./16.
 - 7 See also Sections 2.2.5 and 2.2.5.1.
 - 8 See Section 2.2.2.1.
 - 9 The reader can be spared a detailed analysis of the symmetry of the two claims. Such an analysis would, more or less, end in paraphrasing and building of analogies of what we have already shown in Section 3.8.2. The gentle reader is asked to return to the respective paragraphs, if in need.
 - 10 Compare Andrew Stark, 'What's Wrong with Business Ethics?', *Harvard Business Review* 71.3, 1993, pp. 38–48.
 - 11 On this, see R. Edward Freeman and William M. Evan, 'Corporate Governance: A Stakeholder Interpretation', *Journal of Behavioral Economics* 19.4, 1990, pp. 337–59; Christopher McMahon, *Authority and Democracy: A General Theory of Government and Management*, Princeton: Princeton University Press, 1994; Jeffrey Moriarty, 'On the Relevance of Political Philosophy to Business Ethics', *Business Ethics Quarterly* 15.3, 2005, pp. 453–71.
 - 12 See Guido Hülsmann, 'The Production of Business Ethics', *Journal of Markets and Morality* 11.2, 2008, pp. 275–99. Hülsmann confronts the spontaneously evolving business morale with that enacted by the state. For the latter he reserves the name 'fiat ethics', which is apt to evoke analogies to 'fiat money'.

- 13 See, for instance, R.V. Aguilera, C. Williams, J. Conley, and D. Rupp, 'Corporate Governance and Corporate Social Responsibility. A Comparative Analysis of the UK and the US Corporate Governance', *An International Review* 14.3, 2006. pp. 147–57.
- 14 See Commission of the European Communities, *Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee – Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*, COM(2006)136/FINAL, Brussels, March 22, 2006, p. 2.
- 15 However, some business ethicists think that studying such questions is worth the afford; see, for instance, Alexei Marcoux, 'A Fiduciary Argument against Stakeholder Theory', *Business Ethics Quarterly* 13.1, 2003, pp. 1–24.
- 16 For a defense of the thesis that companies are moral actors *sui generis*, see Peter French, 'The Corporation as a Moral Person', *American Philosophical Quarterly* 16, 1979, pp. 207–15. Against that thesis argues Manuel Velasquez, 'Why Corporations are Not Morally Responsible for Anything They Do', *Business and Professional Ethics Journal* 2, 1983, pp. 1–18.
- 17 On this topic see, for example, *Justice in Time. Responding to Historical Injustice*, edited by Lukas H. Meyer, Baden-Baden: Nomos, 2004.
- 18 Die Verbraucher in den Industrieländern wissen, dass es bei der Herstellung von Konsumgütern nicht immer rechtens und gelegentlich auch moralisch sorglos zugeht. Oft werden soziale und ökologische Standards leichtfertig missachtet. Die Zusammenhänge sind den meisten bekannt: Benzinverbrauch und Weltklima, billige Textilien und Ausbeutung von Menschen in Billiglohnländern, Fleischkonsum und Abholzung von Regenwaldflächen für Sojafelder oder Rinderfarmen. Doch ihr Verhalten beeinflusst das kaum.

(Busse, 2007, p. 32; translation by the author)

Whereupon the publicist rests her assumption, she does not tell.

- 19 It looks, as if Busse would ascribe to the 'unpolitical' consumer a morally dubious purchasing behavior. Whether or not the alleged knowledge of the consumer mirrors the true state of his information is not evident, as it is not evident whether or not the state of information has an impact on the customer's purchasing behavior. Perhaps the customers do not assume 'that the production of consumer goods is not all the way legal, and that things are taken sometimes airily with respect to morals'. Perhaps they have different ecological and social standards than the ones proposed by Busse. Perhaps they do not see those often disregarded. And perhaps has the state of information an impact on their purchasing behavior. For a more detailed examination of Busse's position, see my 'Marktmechanismen als Politikersatz?', *Orientierungen* 113.3, 2007, pp. 37–41.
- 20 See Karl-Dieter Opp, 'Soft Incentives and Collective Action: Participation in the Anti-Nuclear Movement', *British Journal of Political Science* 16, 1986, pp. 87–112. As the title of the paper indicates, Opp refers to empirical studies which examine the rationality of participating in political protest rallies.
- 21 On this, see Jagdish N. Bhagwati, *In Defense of Globalization*. Oxford: Oxford University Press, 2007.
- 22 See Karl Marx, *Value, Price and Profit (1865)*, New York: International Co., Inc, 1969:

The absurdity of this notion becomes evident if it is generalized. What a man would constantly win as a seller he would constantly lose as a purchaser. It would not do to say that there are men who are buyers without being sellers, or consumers without being producers. What these people pay to the producers, they must first get from them for nothing. If a man first takes your money and afterwards returns that money in buying your commodities, you will never enrich yourselves by selling your commodities too dear to that same man. This sort of transaction might diminish a loss, but would never help in realizing a profit.

(Quoted from www.marxists.org/archive/marx/works/1865/value-price-profit/ch02.htm#c6)

- 23 Strictly speaking, intensifying the use of machines creates supplementary cost, but those might have been marginal in the days of Marx. Be that as it may, those extra costs can be neglected, since they do not have an effect on the argument discussed here.
- 24 Karl Marx, *Value, Price and Profit (1865)*, New York: Int. Co., Inc, 1969; online, available at: www.marxists.org/archive/marx/works/1865/value-price-profit/ch02.htm#c6.
- 25 Ibid.
- 26 Ibid.
- 27 Ibid.
- 28 It goes without saying that not much is gained by replacing a term by a synonym, apart from a stylistic variation.
- 29 Ibid.: ‘It is the employing capitalist who immediately extracts from the labourer this surplus value, whatever part of it he may ultimately be able to keep for himself.’
- 30 See Max Weber, ‘“Objectivity” in Social Science and Social Policy’, *The Methodology of the Social Sciences*, edited by Edward A. Shils and Henry A. Finch, New York: The Free Press, 1949, pp. 49–112. See also Werturteilsstreit, edited by Hans Albert and Ernst Topitsch, *Darmstadt: Wissenschaftliche Buchgesellschaft*, 1971.
- 31 Richard Reichel, ‘Der deutsche Manchesterliberalismus – Mythos und Realität’, *liberal* 38.2, 1996, pp. 107–18. Reichel prefers the term ‘Manchester liberalism’ to ‘Manchester capitalism’. However, he addresses one and the same historical phenomenon and challenges the traditional view that German Manchester liberalism failed to solve the ‘social question’.
- 32 For the gentle reader, interested in Reichel’s findings, the most important ones are summarized here: Real wages raised continuously during 1840 and 1880 (between 1850 and 1880 by 22 percent), working hours fell (from 85 to 65 hours per week); see *ibid.*, p. 112f. Unemployment fell from 15–20 percent in 1830 down to 8–2 percent between 1840 and 1912 (privately communicated to the author). Consequently, the exploitation rate in German Manchester capitalism fell, rather than rose, as still commonly believed.
- 33 Against this background, a couple of interesting business ethical questions come up, for instance: Which criteria of testing and which methods are apt to examine labor relations with respect to moral economic justice or injustice of the respective exploitation? Which conditions promote just, which unjust exploitation? Similar questions could be addressed to the following topics of ‘organ trade’ and ‘abortion’.

- 34 Similar things can be said with respect to other instances of self-disposal.
- 35 See Christian Aumann and Wulf Gaertner, 'Das Organ-Dilemma. Ein Plädoyer für eine Marktlösung', *Wirtschaftsethische Perspektiven VII*, edited by Volker Arnold, Berlin: Duncker & Humblot, 2005, pp. 205–24.
- 36 Ibid., p. 216.
- 37 Ibid., p. 215.
- 38 This statement is not meant to be cynical at all. It is only meant to be an 'if-then statement'.
- 39 See Ulrich Steinvorth, 'Forschung an Embryonen', *Wirtschaftsethische Perspektiven VII*, edited by Volker Arnold, Berlin: Duncker & Humblot, 2005, p. 153. Steinvorth is probably mistaken in claiming that among embryologists and bioethicists there was no dissent about the thesis that individual life starts in the moment of gastrulation. See Scott F. Gilbert, 'When Does Human Life Begin', *Development Biology*, eighth edition, Sunderland, MA: Sinauer, 2006, chapter 2.1.
- 40 See, for instance, Peter Schaar, *Das Ende der Privatsphäre – Der Weg in die Überwachungsgesellschaft*, second edition, Munich: Bertelsmann, 2007.
- 41 Compare Section 1.1.4.
- 42 On ruptures in the accumulation chain and its consequences, see Section 2.2.6.
- 43 On the economic consequences of political corruption, see the regularly updated *Index of Economic Freedom*, edited by the Heritage Foundation, online, available at: www.heritage.org/Index/; *Wall Street Journal*; and Transparency International, *Global Corruption Report 2009: Corruption and Private Sector*, Cambridge: Cambridge University Press, 2009.

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