Cambridge University Press
978-0-521-86298-1 — Business, Integrity, and Peace
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1 The times and seasons of corporate responsibility

There is a time for everything, and a season
for every activity under heaven:
A time to be born and a time to die,
A time to plant and a time to uproot,
A time to kill and a time to heal,
A time to tear down and a time to build,
A time to weep and a time to laugh,
A time to mourn and a time to dance,
A time to scatter stones and a time to
gather them,
A time to embrace and a time to refrain,
A time to search and a time to give up,
A time to keep and a time to throw away,
A time to tear and a time to mend,
A time to be silent and a time to speak,
A time to love and a time to hate,
A time for war and a time for peace.[1]

In 2001, less than two months after the September 11 attacks, I co-hosted the first conference on Corporate Governance and Sustainable Peace at the University of Michigan's William Davidson Institute. In the two years preceding that conference, I had been developing ideas about how businesses might contribute to reduced violence and my ruminations were met, generally, with polite bemusement. The idea of business contributing to peace seemed to be a stretch for most people. It sounded like something more likely to come from the mouth of a leftover sixties peace activist or a contender for Miss Universe (neither of which I am) than from a business ethics scholar. A few fellow adventurous academics were willing to try thinking about the idea, perhaps because they didn't want me to fail completely, but for the most part, peace through commerce had a tilting with windmills aura.

Yet in the days and weeks following 9–11, people from just about everywhere wanted to do *something* to try to contribute to peace. Those who lived far away from New York and from my current home in Washington, DC felt shock at the attacks and wanted to contribute something to prevent a similar catastrophe. Yes, they could console those who had been directly affected and support government leaders, but there was a yearning to do more. A conference on how one's daily work might make such a contribution caught people's attention. And so, we had quite a good conference. The focus wasn't the connection between business and terrorism *per se*; governance and sustainable peace were a set of broader topics pre-dating 9–11. But the events of 9–11 certainly impacted the conference significantly.

Many interesting themes came out of that conference, some of which will appear in this book. One of the more noteworthy themes was the conviction that no one had the power to do anything about issues of global violence. Government leaders felt constrained by the limits of sovereign power, particularly in an age of globalization where the Internet, transportation, and other communications made borders harder to control. Today, countries have trouble protecting borders from external content, including not only Internet information but also the trafficking of illicit goods, and in controlling national currencies. Non-governmental organizations (NGOs) felt constrained because they simply had the power of ideas, and some limited power through courts of law and through public opinion. Businesses felt constrained because issues of violence were of government concern, not of business. Thus, while all the parties agreed that the goal of peace through commerce was worthy, none of them believed that it was within their reach to actually do anything to achieve it.

They have a point. After all, what can one person or one company, even a large multinational enterprise, do to thwart violence? What can a single NGO do? Or even, perhaps, one country? Yet, given what we have seen in the world, given terrorism, changing borders, a proliferation of weapons of all kinds of different levels of destruction, given ethnic warfare and given the ecological damage wrought by war, how can we not try to think through how we might create conditions of peace – politically, religiously, and economically?

The good news is that this effort has already started. The United Nations, the World Bank, and many NGOs, such as the Prince of Wales Business Leadership Forum, have already thought through and set out ways for businesses to contribute to a lessening of violence in "zones of conflict". Conceptual frameworks demonstrating how business can contribute to peace have been articulated by the William Davidson Institute (WDI) Conferences at the University of Michigan from 2001 to 2003. The WDI conferences were published by the *Vanderbilt Journal of Transnational Law*, and follow-up conferences at George Washington University's Institute for Corporate Responsibility Program on Peace Through Commerce were published by the *American Business Law Journal*. Cindy Schipani and I synthesized a good deal of this work with our own in our book, *The Role of Business in Fostering Peaceful Societies*. The University of Notre Dame, in partnership with the UN, held a 2006 conference, and published the work of those participants in a book by Notre Dame Press. The *Journal of Corporate Citizenship* has published a special issue on the topic. So too has the United States Institute of Peace and International Alert.

We are not, then, starting from scratch. Moreover, the field of corporate responsibility has reached a stage of maturity so that some comprehensive integration can be undertaken. In this book, I want to show how an integration of contemporary approaches to business ethics contributes to sustainable peace. This approach, which I call *Total Integrity Management*, pulls together legal, managerial, and aesthetic/spiritual approaches to business ethics. These approaches are well-developed but rarely interact with each other. Total Integrity Management integrates them, showing how they can be more effective by building on each other. As I will argue in this book, they also arise directly out of what has been separately identified as contributions businesses can make to sustainable peace as well as our biologically rooted impulses that arise, when integrated, in a way that help to resolve conflict. In other words, we may have a chance for a more peaceful world by aligning our biological propensities with extant, disparate contemporary thinking. Thus, the central aim of this book is to show the historical and theoretical realities of the opportunities businesses have to create Peace Through Commerce and then to demonstrate how existing practices can make that happen.

Achieving that focus *does not* require a wholesale transformation of corporate governance. It does require a stronger focus on commonly accepted understandings of ethical business practices. Many businesses already endorse these practices and implement them to some degree. But if they realized that in doing so they might reduce violence, my sense is that the corporations and the individuals who comprise them, might find additional incentives for taking these ethical practices seriously. Put a different way, ethical business behavior is an achievable goal with an unexpected payoff. It may be too much to think that one's daily work could achieve peace, but one's daily work can be ethical. But by being aware that ethical business behavior could make peace more likely, ethical business behavior itself becomes a more valuable goal and a more meaningful one.

Adopting this goal and this mindset may also require a recognition that a shareholder-only model of corporate governance may not be the optimal approach to achieving sustainable peace. In fact, companies have set out to contribute to peace already. When they do so in Afghanistan, Bosnia, Burundi, Columbia, El Salvador, Guatemala, Israel, Kosovo, Nepal, Nigeria, Northern Ireland, Palestine, Philippines, Sierra Leone, Somalia, South Africa, and Sri Lanka, they *do not* embrace the short-term pursuit of profitability. They may believe that a concern for peace will have long-term beneficial impacts on shareholder profitability, but to get to that goal, they need to engage non-economic values. At the same time, the shareholder paradigm is not a bad place to start.

Corporate governance, shareholder priority, and shareholders' priorities

In the twenty-first century, economic globalization will continue to increase the power of corporations vis-à-vis the nation-state. If this results in a breakdown of archaic bureaucracies and oppressive authoritarian regimes, globalization may yield great benefits. Yet, if the state is the primary check on business, the continued weakening of the state may also lead to the increased vulnerability of individuals and societies, undermining a social fabric that previously held a society together. People in marginalized circumstances (or those who wish to exploit the marginalized's plight for their own political objectives) may well react, perhaps violently, to the loss of protections and the transformations of their cultures. That poses a quandary for businesses: how do they pursue their quest for profitability if their practices sow the seeds of instability? Businesses generally thrive on stability. Businesses best pursue profitability single-mindedly when there is a state that can enforce legal norms and protect (or rectify) the excesses of greed.

As Colin Powell once said, "money is a coward".[2] Most businesses prefer stability, reliable rules of law, and non-corrupt governments. They do not thrive in corrupt, unstable markets. The interesting test will be how businesses will secure stability, rule of law, and transparency as they simultaneously augment their ability to make geopolitical boundaries irrelevant.

The answer, I believe, lies in the understanding that, in the twenty-first century, businesses will best ensure their profitability if they also mindfully contribute to the public good. History shows how this is possible, although learning from history is difficult to do because of the current polarization of the debate over the "shareholder vs. stakeholder" models of corporate governance.

The free market model is well-established in many countries and its results have been spectacular. Under any metric, the level of economic expansion and wealth creation in the last one hundred years eclipses anything previously known in human history.[3] There are more material goods, more jobs, more infrastructures, more technology, better hygiene, better medicines, and more conveniences than have ever been known. This phenomenal growth does not simply create opulence – although there is that – but also provides personal freedom. A person who can use their earnings to feed, clothe, and educate a family enables family members to develop talents and interests that would otherwise be submerged in a daily quest for sustenance.[4] Parents are able to educate their children, and the educational value-added in a society tends to create the kind of economic differentiation that leads away from violent, destructive civil wars. Economically vibrant countries are less violent than moribund ones.[5] With such a record, and in the wake of communism's downfall in 1989, optimistic assessments of free market capitalism and liberal democracy claimed the "end of history";[6] that is, it won the argument as to the best way to organize society. The liberal, capitalist model has performed spectacularly, albeit selfishly, over the past one hundred years with visible benefits.

One version of the free market model is the "value-maximization model". It takes capitalism in a particular direction, one that measures effectiveness in quantifiably ascertainable metrics obtained when managers focus on shareholder profitability. This approach is not solely justified by profitability, however. The ability to conduct such measurements provides definable accountability of managerial actions. It hems in managers who want to use shareholder assets for their own benefit. This model has been seized upon and impressively developed by scholars residing in schools of management and in many law schools. In fact, it is not an exaggeration to argue that the value-maximization approach has become the entrenched paradigm in business schools.

Today, however, that governance "paradigm" is being challenged in a most unexpected way. The challenge comes from another group of scholars residing in, of all things, schools of management, who favor notions of "corporate social responsibility" (CSR) as opposed to an economic system based on a single-minded focus on profit. Although it is dangerous to simplify what any one "school" of thought says, CSR advocates believe that corporations have obligations to the greater society as well as to shareholders, whereas the shareholder advocates believe that managers should focus solely on the interests of the shareholders and to enhance their profits. While the so-called shareholder school is diverse, perhaps the seminal statement of the position was in the *New York Times Magazine*, where Milton Friedman argued that businesses do the most social good by focusing on attention to shareholder value rather than trying to engage in social concerns. In his article, which is not quite as polemic as its title, "The Social Responsibility of Business Is to Increase Its Profits", Friedman does acknowledge that corporations can engage in a variety of social contributions and initiatives as long as it is related to a business strategy, an argument that might well be made by many "stakeholder activists". Further, Friedman also argues that businesses should be attentive to rules of law. Nevertheless, Friedman's article does emphatically argue that managers using corporate funds to contribute to their own conception of good works (a) commit theft (because the money belongs to the shareholders, not the manager) and (b) attempt to realize social goods that they are unable to attain through legitimate political processes.[7]

The peculiar thing is that CSR advocates typically present themselves as challenging the entrenched shareholder paradigm whereas, in reality, it is very difficult to find a time and place where the shareholder paradigm actually represents the legal duties of managers. In the United States, arguably one of the most shareholder-focused countries, the legal duty of managers in a public corporation is not to maximize profitability *per se*, but to carry out the lawful directives of the shareholders. The famous 1919 case, *Dodge vs. Ford*, did hold that even an

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executive as powerful as Henry Ford could not simply decree that extraordinary dividends could be diverted from shareholders (including the Dodge Brothers) to his favored stakeholder groups (employees and customers).[8] But the more prevailing rule is that managers *do* have a great deal of latitude to sacrifice immediate profit in favor of a reasonable good. This was true in *Shlensky vs. Wrigley*, where the court held that the Chicago Cubs could refuse to undertake the profitable strategy of playing night baseball as long as there was some sensible strategy for not doing so.[9] A later case, *Paramount Communications vs. Time Warner*, said that boards of directors could decline a higher bid price for a company takeover and consider the bid's impact on the corporate culture of the company as a reason to decline the bid.[10]

In a similar vein, profitability may always be a shareholder interest, but so too, for example, may the *New York Times*' interest in adhering to standards of journalistic excellence,[11] or Johnson & Johnson's commitment to its *Credo* (where obligations to shareholders come last after those of other stakeholders), or Timberland's commitment to giving its employees forty hours a year to do volunteer work. More than half the states in the United States have corporate constituency statutes where managers may take into account non-shareholder constituents; the most influential state for incorporation, Delaware, allows much of the same through judicial opinions. In Europe and Asia, companies more typically have a greater focus on social and national goods.[12]

Thus, we are in the bizarre position of shareholder advocates holding onto an "entrenched" paradigm that does not legally exist, while CSR advocates struggle to articulate a position against the paradigm when, in fact, the neoclassical model has never really had full sway. Why this strange juxtaposition?

First, value-maximizing theorists have good reason to want to protect shareholders. Shareholders aren't necessarily big, bad, rich people. In many ways, they are vulnerable themselves. A distressed shareholder has little ability to challenge management. A small number of large shareholders or institutional shareholders (such as pension or mutual funds) may be able to force changes in the executive suite. So too can the market as a whole. But managers abuse shareholders too, especially minority shareholders. And so, one way to look at those advocating shareholder protection is to see them as speaking out for another stakeholder group that needs protection from managers. Such theorists do have concerns, however, that managers given the discretion to consider non-shareholder constituents will always be able to find a stakeholder group that would be happy with a particular course of action. Thus, a shrewd manager, seeking only self-interest, could play one stakeholder group off against the other, guided only by who supports the manager's position of the moment. For that reason, value-maximizing theorists view "stakeholder theory" as a framework that has the potential to marginalize a shareholder, who has then even less ability to hold management accountable for its actions.

Second, the argument between the shareholder-only conception of corporate governance and the stakeholder-too model is largely an academic and civil society struggle. This does not mean that the argument is not important. Academic and civil society issues influence political and legal ones, but the battle for primacy more frequently occurs in the press and in academia than it does in the courts. More importantly, it is hard to deny the increasing influence of the value-maximization variation of capitalism. In their seminal article on today's corporate governance, Michael Bradley, Cindy Schipani, Anand Sudnanram, and James Walsh argue that more traditionally communitarian governance systems, such as Germany and Japan, are moving toward the contractarian (i.e. value-maximization) model.[13] While I think Bradley *et al* overstate the case for this shift, it is hard to dispute the basic truth of their claim. Value-maximization's success in business and law schools has influenced the way courts and legislatures analyze corporate responsibility.

Third, there is a psychological argument that remains unsettled. That argument goes to the heart of capitalism, the genius (or bane) of which is that by being selfish, the world gets better. Morally, this is a deeply unsettling position and it is one that has been at the heart of debates about capitalism for centuries. No matter how successful capitalism and value-maximization might be quantitatively, the notion that good is done via selfishness runs hard against the grain of most philosophies and religions, and also against human instincts. That argument will *never* be settled and so whenever there is a claim to have settled it, which value-maximization attempts to do, a contrary reaction will be triggered.

Fourth, although the *law* is more than willing to have corporations act philanthropically, responsibly, and ethically, the *market* may have a different set of standards. That is, the capability of being able to move in and out of a stock position of a company a dozen times *a day* means that executives banking on a strategy that good citizenship will pay off in the long run (because goodwill and reputation matter) have no long-run strategy to ensure their plan. If the market doesn't like next month's financials, shareholders can and will sell the company's stock and perhaps fire the CEO. This pressure virtually mandates that corporations manage for the short term and further mandates that corporations attend to concrete financial performance to the detriment of soft, less-measurable aims of citizenship. It is this governance mechanism, not that of the law, that is making the debate over what a manager should do so contentious. The law permits more socially engaged corporate strategies as well as a more shareholder-focused one; it does not mandate either. Moreover, when managers do prioritize interests of non-shareholders over those of shareholders, as many bad things can happen as good. The scandals of, for example, Enron and Worldcom were, after all, not those of employing sweatshop labor to increase profits, but of managers prioritizing *themselves* over *both* shareholders and employee interests.

Because the market governance mechanism is financial, when issues of corporate responsibility are raised, attention is understandably paid to finding ways to link good ethics with good business. Thus, as described in Part Two of this book, a good deal of scholarship is directed toward the establishment of links between corporate social performance and corporate financial performance. Yet, as long as the metric is financial, the justifications will be financial, and that then begs the question as to whether the financial justification of behavior, economic or otherwise, is sufficient to fully account for moral virtue. In other words, can moral virtue, journalistic excellence, volunteerism, meaningful work, or sustainable peace, really be captured by stock valuations on the New York Stock Exchange or NASDAQ? Or, even more importantly, given the times and seasons of our lives in the opening years of this millennium, does the exclusive focus on profitability serve us well in creating sustainable peace and security?

Today's time and season

The message of this book is that an exclusive focus on profitability does not serve us well. Rather than repeating the traditional moral claims

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about the deficiencies of value-maximization – concerns that I do share – I want to suggest that regardless of the moral propriety of focusing only on profitability, the risk for the twenty-first century is that such an approach imperils us all, including businesses and the free market.

When Khalid Sheikh Mohammed, the mastermind of the 9–11 attacks, selected the targets for hijacked planes to crash into, he focused equally on government targets in Washington and on economically prominent centers in Manhattan and California.[14] Some of the emphasis on economic sites was undoubtedly psychological and symbolic. At the same time, disrupting economic, commercial vibrancy was seen by terrorists as a way to bring America to its knees. Economics has, of course, always been a central underpinning of political power. In a global economy, economics provides the wherewithal to build "hard power" in terms of military capability as well as "soft power" through the projection of capitalist – frequently American – values across the globe.[15]

The difficulty is that these expansions of values, even if well-intended, can raise antagonisms in countries as traditional ways of life are challenged. Indeed, researchers have suggested that one of the causes of terrorism is that in recoiling from the intrusion of external ways of life, including ways of doing business, parts of a society can attempt to reclaim their identity by focusing on a select strand of a religious tradition, investing it with a prominence new to the religion itself.[16] In that recoiling, charismatic leaders can rally a portion of the society against western ways of life, sometimes non-violently but sometimes quiet violently, because the very survival of traditions are deemed to be at stake. In such dire, extreme times, terrorism becomes a mechanism to preserve the perception of the tradition to be maintained. The militant fundamentalists who follow this path may not do justice to their own tradition, but the phenomenon does become a reality. This in turn affects business, because businesses are part of the globalization phenomena against which the tradition is being protected.

Business interests may believe that the protection of society from violence is the responsibility of government. They would be right. But businesses, like it or not, are in the midst of today's wars of terrorism both in terms of responsibilities to keep employees and material resources safe and also to reduce the disaffection that can breed or give refuge to and support for those trying to attack the free market