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Ethics and the Limited Liability Company¹

“By running up all the different virtues too to this one species of propriety, Epicurus indulged in a propensity which is natural to all men, but which philosophers in particular are apt to cultivate with a peculiar fondness, as the great means of displaying their ingenuity, the propensity to account for all appearances from as few principles as possible.”

Adam Smith, *The Theory of Moral Sentiments* p. 299

The attempt, began during the first half the XIXth century, to reclassify economics from its previous status as a moral science to one of the natural sciences has meant, that in place of the Aristotelian definition of the discipline as one of practical knowledge, it was thenceforth to be regarded as theoretical knowledge. This change is a profound, paradigmatic revolution, a genuine epistemic break in the sense developed by Michel Foucault,² although the break described below is quite different from the one set forth by Foucault. In essence, the reclassification rests on the claim that economics consists of a body of universal laws that govern a reality that is largely indifferent to the effects of time and space, the content of which consists of commensurable and numerically representable elements in full compliance with the requirements for theoretical knowledge. In contrast, practical knowledge involves the formation of judgments concerning incommensurate and indeterminate (*to aoriston*) particulars.

¹ This paper is currently under review for publication.

² Michel Foucault, *The Order of Things*, 1970 Random House

More or less contemporaneously with this development, the idea of the limited liability company – later to be called the corporation - came into being permitting the owners of an enterprise to limit their liability for their business activities to the amount of capital subscribed to it. Both concepts, - the idea that economics as a science may be elaborated without regard to the ethical content of its manifestations and the notion that one can limit one's responsibilities for economic pursuits to a specified sum – places ethics in economic life not only in a substantially reduced, but also in some respects in an entirely new domain. Wealth and its creation no longer occupies the space assigned to it by the author of *The Theory of Moral Sentiments*.³ Smith's protagonist, the butcher is transformed from a member of the community interested in his reputation as much as in his profit – using contemporary language in the cultivation of all human virtues - to the single minded utility maximiser – in Smith's view a typical Epicurean aberration - so dear to modern economics.⁴ Ethical considerations are expelled from the part of life that is directed at creating the material conditions of well being, and moral sentiments are henceforth seen as “exogeneous” to the laws governing its pursuit. They are, to use J.S. Mill's phrase, “disturbing causes” that obscure the underlying objective laws of this science. How did this happen? Do we miss what we so ruthlessly expunged? How are we coping with the consequences?

This paper will first explore how the reclassification of economics from practical to theoretical knowledge rendered the ethical content of actual economic life incompatible with economic theory. It will next show, that ethical theory is essentially based on the individual, and that its extension to a group faces some difficulties, with the result that groups are weak sources for the generation and upholding of ethical standards. Finally, it will show how the notion of limited liability, in creating an actor with a separate personality from those who act under its umbrella, created the vehicle without moral capacity for the realization of a set of doctrines without moral content by the group acting in its name under its umbrella.

By Aristotle's time it was the settled view that the hallmark of science is measurement and that, consequently, only commensurable components could be the subject of scientific knowledge (*episteme*).⁵ But Aristotle

³ Smith, A. *The Theory of Moral Sentiments*

⁴ Rothschild, E. *Economic Sentiments*

⁵ Nussbaum, M. C. Revised edition, 2001). *The Fragility of Goodness* (Revised edition, 2001) Cambridge University Press, p. 294

rejects the Platonic ambition to turn all of human experience into the proper subject of science by purportedly finding commensurability and generality where, in fact, none can be found. (EN1142a23-4).

Instead, he distinguishes between theoretical knowledge on the one hand, which concerns the relationship and interaction between and among commensurables, and practical knowledge, which deals with incommensurable ultimate particulars (*ta kath' hekasta*) that are apprehended not through the deductive processes of theoretical knowledge, but, rather, insight gained through experience.

(EN1142a11ff)⁶ Aristotle does not claim that components of that experience, taken in isolation cannot be the subject matter of theoretical knowledge, but rather, that the isolation is illegitimate, because it creates a reality which is at odds with actual experience. The illegitimacy of this operation is formulated with particular force by St. Thomas Aquinas who attributes to Plato the error of extracting from sensory experience one or more abstract concepts and then – and here come what is illegitimate – endows the abstraction with a life of its own, independent of the actual sensory experience.⁷

It is this lack of commensurability and indeterminacy, so characteristic of economic phenomena, that ultimately defeats the effort to represent it with numbers, to “mathematize” it. Two and half millennia after Aristotle, John Maynard Keynes writes about his frustration with the problem in a letter to Sir Roy Harrod, warning that one must be constantly on guard not to regard the material as either constant or homogeneous.⁸ And that, in essence, is why economics cannot be turned into a science: it cannot find for itself a subject matter that is fixed and homogeneous.

The major casualty of this process of isolation and abstraction, of course, is ethics, or more broadly, all those elements that make up and characterize Aristotelian practical knowledge. And this is a tragic paradox. How can a discipline, concerned with human welfare, turn its back to ethics, a discipline concerned with what makes for human flourishing (*eudaimonia*), to what makes human life admirable?

Whereas in real life economic decisions typically involve the resolution of conflicting values, interests and priorities, in economic theory these conflicts dissolve with the application of the Epicurean technique in the all embracing concept of utility maximization, without, of course an empirically verifiable content for “utility”. The ultimate modern economic concept, general equilibrium, rests on the Arrow Debreau proof of it, which relies on fourteen assumptions of which nine cannot be true in the

⁶ Cited and analysed in Nussbaum, p. 199

⁷ St Thomas Aquinas, *QDV:3*

⁸ Keynes J.M. (1938: XIV 300) *Collected Works of John Maynard Keynes*(Letter to Sir Roy Harrod, 10 July, 1938)

world as we know it.⁹ By transferring it from the domain of practical to theoretical knowledge, modern economics resolves the conflicts with which practical knowledge is called upon to deal by altogether denying the existence of conflicting considerations in economic decision making, ordering its selected components into a linear structure, and removes from contention those elements that are at odds with its ideology by assigning to them non-scientific, and therefore “exogenous” or, in Mill’s word “disturbing” status. On top of it, if need be, it inserts critically important assumptions without truth value. As Mill noted, “the conclusions of political economy, as in geometry... are true only in an abstract sense, that is to say they can be proven only on the basis of certain assumptions”.¹⁰ But is that science? The fact/value distinction is born where a “fact” is defined not as any empirical data, but as data consistent with a given axiom from which “value” is expurgated. But, apart from the requirements of the axiom, why is “utility” a “fact” and “good reputation” a “value”?¹¹

The success of the reclassification of economics from practical to theoretical knowledge, its enhanced ability to generate efficiency and wealth that resulted from this reclassification, its skill in refashioning human activity in its effort to provide the material means of well being cannot be gainsaid. But the results have not come without pain, controversy and even bloody strife. If modern economic theory contributed to human flourishing by enhancing its material foundations, it has also left in its wake destructive effects on fairness and justice, and acknowledging its success is not an admission that the expulsion of ethics from its purview was a necessary condition for that success. Not surprisingly, the principal means with which this reclassification was accomplished, is the limited liability company. Has not the admittedly very successful extraction of material well being from other human concerns, not resulted in a fracturing of *eudaimonia*, in the decomposition of human flourishing into components that can no longer form a coherent whole?

But the first question is whether either the group of people operating under the umbrella of the limited liability corporation, or the corporation itself has the capacity to form and follow ethical standards, and a perhaps even earlier question is what is meant by “ethical standards” in this context. If the answer to this question, having arrived at a meaning of ethical standards is in the affirmative, it follows that the road towards the more ethical corporation leads through the *internal* enhancement of its

⁹ Scarf, H. and Hansen, T. *Computation of Economic Equilibrium*, 1973 Yale University Press, New Haven CT

¹⁰ Mill J. S. (1967:vol 4 312) *Collected Works* Toronto; University of Toronto Press

¹¹ See generally Putnam, H. (2002) „*The Collapse of the Fact/Value Dichotomy*” Cambridge, Mass.; Harvard University Press

ethical capabilities. If the answer is in the negative, the solution lies in the *imposition* of standards as condition for doing business.

The assignment of moral responsibility makes no sense without the specification of those circumstances and capabilities that render action morally meaningful. Ethical theory is concerned with the life of the individual human being, and the extension of ethical theory to groups fails unless the group, *qua* group has ethical capability. This requires the formulation of the circumstances that provide a foundation for ethical capability of the group as distinct from the ethical responsibility of its individual members. Without it, the only ethical meaning that can be discerned from group action is the meaning of the action(s) of the individual group member(s). But what is the ethical content of action that is carried out not in an individual capacity, but in furtherance of the objectives of a group, that is to say, actions that the individual would not have carried out but for being a member of the group? So, is there a group identity that can be the foundation for group ethical capability, and even more fundamentally, what is a group, or to quote Georg Simmel 'What makes a collectivity out of a sum of living human beings'? Before these questions can be addressed, it should be noted, that, together with the removal of economics from the domain of ethics, the very meaning of ethics, at least insofar as it is conceived in the context of economic activity has been transformed from a concern about the "good life" of Socrates, Aristotle or St. Augustine into a notion of fairness. From a study of the virtues and their vulnerability, it has become a component of distributive justice. In the elaboration of the two major current notions of the ethical substance of corporations – the shareholder and the stakeholder theory respectively – the question is not one of the impact of the corporation as the vehicle on human flourishing (its legitimacy is not in question), but rather, the search for a theory that accounts for the interests of those affected by it, and, having accounted for it, provides for the distribution of the benefits and burdens it creates so that those with an interest seen as legitimate by the theory can be secured a voice in its governance. From an investigation of what sort of a life is worth living, ethics is transformed into a discipline concerned with the adjustment of competing interests. CSR, stakeholder theory and shareholder theory, regardless of their variety – of which there are quite a few – all shift the focus from the absolute world of the virtues to the prioritization of interests. It is a world of negotiated reasonable choices, a world very far removed from that of Agamemnon, and totally unknown to the one depicted in Greek tragedy.

In what sense, then, can a group, operating under a corporate umbrella, have a capacity to generate ethical values by which its actions may be

judged, and in what sense can a corporation, as distinct from the individuals and groups who operate or own it have an ethical capacity?

Rather famously, Mrs Thatcher, taking a simplified leaf from Max Weber announced that there is no such thing as 'society'. As Weber himself put it "...for sociological purposes there is no such thing as a collective personality which acts". Since only the individual human being can act, all action and inaction is a matter of individual responsibility. Accordingly, Weber maintains, concepts such as the state or an association must be reduced to "understandable" action, to wit, to the actions of individuals.¹² This view of collectivity necessarily means that no group, however organized, can have ethical capability. Whatever ethical capability is found in the group belongs to specific members of it. It would follow from the Weberian view, that, for example, courts could not impose any sort of a liability on a corporation in the absence of specific statutory provision, since the foundation for such a liability, some inherent capability for ethical responsibility residing in the corporation - as opposed individually to its members or owners - which is seen as having been breached, is lacking. There would be, under this view, no standards of, for example, reasonableness on which liability could be grounded.

The somewhat different view was formulated in modern times by Georg Simmel, although, as we shall see, it has important ancient and medieval roots. According to Simmel, a social group is an 'objective unit' that owes its existence to the shared consciousness of its members of the belief that they together constitute a unity due to a common tie that binds them together.¹³ The tie that binds the members of a Simmelian group is the same for all of its members, although that tie does not necessarily determine all of their actions. It is unlike the definition of the first person plural "we" set forth in the American Heritage Dictionary (1969 ed.) as "Used to represent the speaker and one or more others that share in the action of a verb" and a bit more like the attributive part of the one in The New Shorter Oxford Dictionary (1993 ed.): "Used by the speaker or writer referring to himself or herself and one or more other people considered together as the subject of predication or in attributive or predicative agreement with that subject."¹⁴ For Weber the definition revolves around shared action. For Simmel, it is not the action, but the consciousness of a binding tie that defines a group, so that, unlike in the Weberian view, a Simmel group can exist even if it is totally inactive as a group. Simmel

¹² Weber, M. (1978) *Economy and Society* ed. G. Roth and C. Wittich, University of California Press, Berkeley; p. 101-2; Quoted in M. Gilbert *On Social Facts* (1989) Princeton University Press, p. 7

¹³ Simmel, G. (1971) „How is Society Possible?“ in D.N: Levine (ed.) *Georg Simmel: On Individuality and Social Forms*, University of Chicago Press (First published in German, in 1908)

¹⁴ The third person plural „they“ has the same meaning except that it excludes the speaker or writer

then, would presumably view British aristocrats as a group regardless of the presence or absence of common action, but Weber would not. In the latter's view, aristocrats could be a group if and only if they an action common to the all could be shown; they would be a group while deliberating in the House of Lords, but not outside it.

There are serious problems with both hypotheses¹⁵ and these problems are indicative of a deeper one. In the search for ethical capacity in groups, we are disadvantaged by the fact that, whereas modern analytic philosophy since Descartes has been obsessed with the meaning of "I", the first person plural has been, with a few recent exceptions, largely ignored. (In a moment we will see that the same omission is not characteristic of classical or medieval philosophy.)¹⁶ The sociological definitions noted above struggle with this lacuna, and are more concerned with a definition of practical use, than with the exploration of the ontological and epistemological parameters of the concept. But without such an exploration it is difficult to build the bridge between ethics – largely built on notions of the "I" – and the collective "we". Economics, of course, is unqualifiedly Weberian; the collectivity as an economic agent, separate and distinct from the individual, is an unknown concept that, in any event, would not be compatible with utility maximization or Pareto optimality. It is, in short, the missing 'we' from both economic theory and ethics that makes the formulation of an ethical theory for a group so difficult. But was Weber totally wrong? Is there an ethically capable "we" that could build on?

St Thomas Aquinas, in his *Sententia Libri Ethicorum* examines the Aristotelian relationships between groups (*totum*) and activities (*operationes*).¹⁷ An activity may be an *action*, a self-determined doing, or a *factio*, a not self-determined event, but something that occurs as a result of forces outside the acting person's mind and will.¹⁸ Actions may be carried out by individuals (*suppositorum*) or groups (*totorum*), but he emphasizes, that a group is not a unity (*colligatio*) in the sense that a child *in utero* and its mother is a unity, but, rather, it is a unity of order.¹⁹ He demonstrates the point with the example of an army, the members of which do things that are a part of the action of the whole, but which none of the members can do alone – e.g. surround a town – as well as acts

¹⁵ See generally Gilbert, M. *On Social Facts* (1989), Princeton University Press. for a summary of the relevant literature.

¹⁶ Gilbert, M. *Ibid.* p.152-4 notes the problem, and proceeds with the development of her theory of 'plural facts' in partial reliance on the definition given in the American Heritage Dictionary. Gilbert, however, does not take into account any of the Aristotelian formulations, and her only reference to Aristotle concerns an unrelated point.

¹⁷ *Eth.* Prol II-II q 58 a. 2c

¹⁸ See. Finnis, J. *Aquinas* Oxford University Press 1998. p. 24-5 for a fuller explication

¹⁹ *Eth.* Prol. N. 1 (1). Quoted in Finnis, *Ibid.* p.25

that are solely the acts of the soldier that the whole cannot do, Consequently, the dissimilarities between organisms and societies are more important than the similarities, such as storming the wall at a particular point. It is therefore the unity of order, rather than some feature found in organisms that defines a group. That unity of order has two aspects. First, it is the ordering of the relationships between and among the members, and second, there is the relationship between the group so ordered and the purpose or end for which the association is formed.²⁰ Of the two, the latter, the Aristotelian *telos* is far the more important. In a sense, the former is nothing more than the means for carrying out the latter. Accordingly, for Aquinas, as Finnis puts it, "Societies as well as individual actions are subjects of *moralis philosophia* precisely because *moralis philosophia* considers human actions (operationes) in their relationship to each other and to purpose(s) (*ordinatae ad invicem et ad finem*), and human societies have their distinctive reality, as orders of intelligent, voluntary, purposive action."²¹

This theory, showing the moral capacity of groups, rests on the bedrock of Aristotelian epistemology.²² Capacities are understood by the acts that manifest them, and acts are understood by their objects. Groups are groups because they act in furtherance of a common object, a furtherance in which the members of the group choose to participate, and this participation in common in the furtherance of the common object is what endows the group with moral capacity.²³ Unlike in Weber, where acts stand on their own without any chance for commonality, or in Simmel, where commonality is based on a shared consciousness – notions that, as we have seen, cannot provide a foundation for moral capacity – Aquinas finds it *in the shared order in pursuit of the shared objective*.²⁴ What is that shared order?

The two components of the shared order are (i) the rules ordering coordination among the components or members of the group, and (ii) the relationship between that ordering and the end purpose of the group (*ordo in/ad finem*). The ultimate end (*ultimus finis*) may be preceded by a series of intermediate ends, and these intermediate ends may engage the *actio* of particular group members. The moral weight of these individual or sub-group actions rests on the moral weight of the ultimate end, and collective responsibility is derived from participation in the shared order. The shared order is made manifest through agreement, convention, directive from the leader or law, but the order so created has moral weight only if the choice is always open to every member of the

²⁰ See *Contra Impugnantes dei cultum et Religionem* II c. 2c (56); quoted in Finnis, *Ibid.* p. 27

²¹ Finnis, *Ibid.* p.27

²² Aristotle, *De Anima* 2. 4. 415a16-22

²³ See Aquinas *Sententia Libri De Anima* II 6nn. 6-10 (304-8), III. 14 n 9 (803)

²⁴ See Aquinas *Summa Theologica* I q. 87 a. 3c and *Sententia Libri De Anima* III d. 23 q. 1 a. 2 and 3

group to abandon the group, who at all times maintain mastery over their own action and act out of their free will (*seipsos per liberum arbitrium*)²⁵. And here we come back to that profound difference that separated Aristotelian and Thomist economics from the pseudo-science that it has become. The shared objective and the arrangements made in its pursuit – the shared order – is practical knowledge, (*scientia operativa*)²⁶ it is about ‘what to do’, ‘what is to be’, as opposed to the theoretical (*scientia speculativa*)²⁷ laws of modern economics, thought to rest on a reality external to those who are its protagonists, in short, on what is. It is this participation in a freely selected end and the equally freely selected modalities for its pursuit that endows the group with moral capacity as opposed to the modern view, which sees economic agents submitting to ‘objective’ laws not of their making.

Does either of the two major modern theories of the corporation – the shareholder or the stakeholder theory - attribute ethical capacity either to the group operating under the umbrella of the corporation, the shareholders of the corporation or to the corporation itself in the sense described above? Does limited liability affect whatever moral capacity may be found in the group, or, put the question differently, how does limited liability fit with moral capacity?

With the transformation of ethics from the cultivation of the virtuous life to a study of determining what social and individual interests are to be deemed legitimate, and, in the event of a conflict among them how they might be “prioritized”, the answer to these questions might equally be a yes and a no. Neither theory establishes an autonomous moral capacity in the corporation for judging the morality - in *any* sense of the term - of its decisions and actions, and, given the absence of this capacity, both theories can accommodate an exogenous legislative direction with regard to the duties and responsibilities of the corporation. The corporation can and does employ children unless told not to do so, commit war crimes in Iraq if contracted by the government to this end, engage in deceptive advertising, etc. unless exogenous forces prevent it from doing so. It, unlike Adam Smith’s butcher, the unincorporated business man, has no inner moral capacity.

²⁵ *Sententia* Ibid. II-II q. 50 a 2c

²⁶ *Sententia Libri Ethicorum* x. 16 n. 16 (2179)

²⁷ Finnis rightly points out (Ibid. p. 39) that „theoretical” is not a satisfactory translation of „speculativa”, and offers „descriptive-explanatory” in its stead, which does not seem to me to be much of an improvement. The point of the Aristotelian distinction, faithfully followed by Aquinas, is that the ‘speculativa’ is concerned with establishing what is, whereas practical knowledge is directed at what is to be. Moral capacity can be grounded in the latter to the extent, and only to the extent that what is to be is determined by free choice. Speculative or theoretical knowledge and free choice have nothing to do with each other because what is, is not a matter of choice.

J. Kaler notes,²⁸ that business ethics is concerned with determining what the objectives of a business ought to be, but as he also notes in an earlier writing,²⁹ “some form of claimant identification is required”, that is to say, a theory is needed as to who, and for what reason may participate in that determination. The difficulty is that in both shareholder and stakeholder theory, the answer to that question is based on interest rather than ethics, *because the limited liability of the corporation severs the connection between the action requiring moral analysis and the actor who commits the action. This is the fundamental purpose of the corporate shield.* The only difference between stakeholder and shareholder theory –as well as the variations in them – consists in the identification of the claimant(s), that is to say the determination of who has a legitimate interest in defining the objectives of the corporation. They are both interest based. When, for example Blair³⁰ identifies residual risk that cannot be mitigated by contractual safeguards as a foundation for “their *interests* in being able to exercise some control over corporations” (emphasis added) or Etzioni asserts³¹ that, because a stakeholder’s investment in some resource is not guaranteed, stakeholders “are entitled to form a relationship with the users of their resources to help ensure that the usage will be in line with their *interests* and values” the purportedly ‘ethical’ claim rests on an identification of some interest deemed worthy of corporate recognition. The same holds true for Marcoux³² in the shareholder camp who sees “asset specific investments” of employees and suppliers as a “legitimate vulnerability” that, however, does not amount to an interest of the kind that would support a participation in governance as opposed to the formulation of a claim against the firm. Neither theory is concerned with ethics independently of who might have a “stake” or a “share” in the operation of the firm. Both see ethics as a relational matter between the corporation and someone affected by its operations rather than as a matter of virtues to be cultivated by the corporation. Ethics in this context therefore becomes a simple exercise in looking for a foundation for legitimizing the one or the other interest of sufficient heft to justify participation in governance in sharp contrast with the disinterestedness – e.g. Adam Smith’s impartial observer - that is a foundational requirement of any ethical theory.

It would be quite possible, following Thomist thought, to see the shareholders as a group with the common purpose and a shared order,

²⁸ Kaler, J (2003) Differentiating stakeholder theories, *Journal of Business Ethics* 46(1): 71

²⁹ Kaler, J.(2002) Morality and strategy in stakeholder identification, *Journal of Business Ethics* 39:91-3

³⁰ Blair, M. (1995) *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century*. The Brookings Institute, Washington, DC

³¹ Etzioni, A. (1998) A communitarian note on stakeholder theory. *Business Ethics Quarterly* 8(4):679-91

³² Marcoux, A. (2003) . A fiduciary argument against stakeholder theory, *Business Ethics Quarterly* 13(1):1-24

and therefore, a group with moral capability, but incorporation and the consequent limitation of the effects of that capability to a sum certain destroys that moral capability and substitutes for it a pecuniary interest. Ethics is monetized and acquires a price tag. The cost of unethical conduct is capped at the amount of paid-in capital. Management and the various tiers of employees could also be seen as Thomist groups, but the responsibility for their common action belongs –except for criminal acts – not to them, but to the corporation, which, being a legal construct, lacks moral capacity. The corporation, therefore, disintegrates the unity between the action, the actor and the moral quality of the action, be that the action of the individual actor or of a group, Either the objectives of the business are set exogenously, that is to say by interest groups outside the groups comprising the corporation (stakeholder theory), or by one sub-group, to wit the shareholders, with limited pecuniary responsibility, and carried out by another, to wit management and employees whose moral responsibility (except for criminal acts) is borne not by them, but by the *non-moral* corporation.³³ It is a moral *tabula rasa*, a neutral mortar within which the competing interests associated with its activity are hammered into the intelligible purpose, the agreed business objective of the corporation. The extent to which a business corporation should meet social objectives therefore cannot be anchored to its fractured and vaporised moral capacity, but, rather, rests on an assessment of the relative strength of the forces affecting the corporation *regardless of whether such social objectives are or can be expressed in self-standing moral imperatives*.

The situation may be contrasted with the case of unincorporated businesses, where unlimited liability also means unlimited moral liability. No distinction can be made by the business and the person(s) conducting it because the reputation of the one is the same as the reputation of the other.³⁴ He, unlike the modern corporate manager, who stands behind the shield or veil of the corporation, cannot separate his own personal judgment from his 'business judgment', and cannot claim that he acted in pursuit of some objective – be it maximizing shareholder value, or some board selected social objective – that stands apart from his own. In short, he has a conscience, and he has to live with it.

³³ The term is borrowed from Goodpaster . See K. Goodpaster Business ethics and stakeholder analysis, 1991 *Business Ethics Quarterly* 1(1): 53-73

³⁴ In the early days of my career with a London merchant bank before its transformation from a partnership into a limited liability company I proposed an action that was deemed to be perfectly legal, gratifyingly lucrative, but „a bit sharp”. When I asked the senior partner why he scotched it, he answered: „Because my name is on the door”.

But what about the argument advanced by Harris and Freeman³⁵ to the effect that values and facts are inseparably entangled with the consequence that all corporate decisions have ethical values 'hidden beneath the surface'? This line of reasoning purportedly rests on impeccable philosophical foundations, - what with Dewey, Quine, Peirce, Mead and Putnam among its progenitors - but these foundations have little, if any relevance to the Harris – Freeman hypothesis, who fail to see the difference between epistemic and ethical values, and seem to think that any value carries ethical significance.³⁶ Essentially, Harris - Freeman inflate the requirement for a cognitively meaningful proposition, (which requires that the statement have a purpose) into an assumption that such purpose, being value based, thereby necessarily carries an ethical content. The value hidden beneath the surface may indeed be an ethical value, but it may simply be a value judgment assessing the relative clout of competing interests. Not every ought statement is an ethical statement, just as not all norms are ethical norms.³⁷ Moreover, the argument imports ethical content into corporate decision making as an inevitable necessity, resting as it does on the inseparable entanglement of fact and value, rather than being the fruit of free and conscious choice. But, as noted above, only decisions freely made can have ethical weight, and it is precisely the freedom of choice with which they are formulated that distinguishes ethical values from other values.

Harris and Freeman misconstrue the nature of the fact/value dichotomy by viewing facts and values as separate, but as having gotten somehow inextricably entangled with each other. But the point of the great American empiricist is not the entanglement – even though they frequently use this word, - but that conceiving of facts as being devoid of value removes facts into the world of metaphysics and renders them no longer subject, to use Hume's expression, to "sensible impression", without which, even for Hume, facts are no longer facts, but mere Epicurean conceits.

In short, the social acceptability of the corporation may be enhanced by broadening the base for 'claimant identification', that is to say enlarging and/or increasing the number of categories of those with a legitimate interest in shaping its purpose, but its 'non-moral' nature, its lack of moral capacity cannot be overcome. This should not be surprising; the very purpose of limited liability was to liberate business from the constraints of ethical scruples, and make it subject instead to legally defined requirements, that are hammered out in the struggle among competing

³⁵ Harris, J. and Freeman, R. (2008) The impossibility of the separation thesis: A response to Joakim Sandberg, 2008 *Business Ethics quarterly* 18(4)

³⁶ Putnam, H. (Third Printing, 2004) *The collapse of the Fact/Value Dichotomy*, Harvard University Press

³⁷ Putnam, H. Ibid. p. 15-16

interests. How that step undermined the ethical foundations of human existence is, of course, another story.