

# CORPORATE FREEDOM AND STATE REGULATION

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*'Everything that is really great and inspiring is created by the individual who can labour in freedom.'* Albert Einstein

*'If a nation values anything more than freedom, it will lose its freedom; and the irony of it is that, if it is comfort or money it values more, it will lose that too.'* William Somerset Maugham

The current economic crisis confirms the suspicion of many that the market is unable to act as a moral agent because it is inevitably indifferent or hostile to virtue. Newspaper columnists, political pundits and other opinion formers have, in fact, gone further, vociferously claiming that the market appeals to some of the lowest human motives – greed, the quest for profit, and the service of self – all of which dissolve the moral fabric of society. It is, therefore, the duty of the state to impose ethical behaviour on business, by means of regulation. The state does indeed have a regulatory role – libertarianism is only alive in textbooks. As the leading Cambridge economist John Maynard Keynes (1883-1946) is famous for having argued, the invisible hand of the market needs assistance from the visible hand of the state. The state must, for instance, try to prevent certain markets emerging (such as those in dangerous drugs, prostitution and slavery), and to keep business away from those areas of human life in which it has neither legitimate role nor competence. Regulation is necessary for human beings to be able to exercise freedom, including the freedom the market brings.

There are good reasons, however, why regulation is unable to secure an ethical market economy, and why it is possible to look to business as a valid agent of the moral capital required to achieve and sustain prosperity. This article will summarise four of these reasons, before taking a look at one area in which the relationship between the commercial and political sphere is generally portrayed as most contentious – responsibility towards the environment. Hopefully this exercise will help stimulate the development of conceptual frameworks and practical models that will help bring greater clarity to the currently highly vexed and contorted issue of corporate freedom and state regulation.

The first reason for confidence in the moral identity of business is that the quest for profit, rather than disqualifying business from moral agency, is its first and foremost moral obligation. Business has a legitimate role to generate wealth, on which the whole of society turns. Indeed, it is only if this obligation is fulfilled that business can make any further contribution to moral capital, or to any other kind of capital. Whereas many virtues are recognised as such because the source of their authority is clearly based in moral or religious tradition, the

specific virtues necessary for good business success are no less moral because they have to do with satisfying customers, promoting innovation and generating new wealth, all with an eye to turning a profit. While profit is not an end in itself, it is a vitally important means of serving what is the end of all economic activity, which is the human person. It can therefore act as a valid measure of how well this end has been served. Profit is neither immoral nor amoral. Because it is gained through human relationships, results from certain choices, serves as a measure of stewardship, and has the potential to service human needs, it is intensely moral.

Enterprise, secondly, is capable of inculcating and promoting ethical behaviour. The market economy ought not to be regarded, as so often it is, as the key driver of rampant consumerism, environmental destruction and family breakdown. Such things merely reflect the fact that market freedom, like any other freedom, gives people opportunities both for virtue and for vice. As Lord Acton famously argued: 'Liberty is not the power of doing what we like, but the right of being able to do what we ought.' This is why not all young people exposed to tobacco advertising start smoking, or why, though the entertainment industry may constantly expose them to the glamour of sexual promiscuity, some decide on one partner for life. In other words, freedom, which is the very destiny of humanity, contains an inbuilt moral challenge. So too, by extension, does the so-called free market. Business faces this challenge on a daily basis, and needs to be inspired, incentivised and resourced in order to meet it. Substituting this for legal coercion is misguided not because it imposes too much on business, but too little. It also assumes that business cannot be a moral agent without such coercion. Whatever the failings of particular companies, business can and does provide a fertile context for people to acquire and convey moral competence. Such competence is more important than the law as a source of justice, reflected in the fact that businesses frequently will not do things which are legal but are not moral, even when this may not appear to serve their best financial interests.

The moral role of business is revealed, thirdly, in the relationship between economic growth and moral development. The Harvard economist Benjamin Friedman has recently provided a rigorous analysis of this relationship. A growing economy, he argues, has the potential to improve the environment, reduce poverty, and promote democracy, openness and tolerance.<sup>28</sup> The extent to which he considers this impact to be inevitable is, however, unclear. Surely it is only ethical business that is capable of such positive returns, which then raises the question of causation: which is prior, ethics or enterprise? Much more detailed research is needed to shed light on this issue. In the mean time, Friedman's core thesis is plausible and indeed has precedents in the work of the

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<sup>28</sup> Benjamin Friedman, *The Moral Consequences of Economic Growth* (Knopf, 2005).

Nobel Prize-winning economist Simon Kuznets. It may even find support in the encyclicals of Pope John Paul II, in which he wrote: 'The advancement of the poor constitutes a great opportunity for the moral, cultural and even economic growth of all humanity.'<sup>29</sup> The Pope's perspective represents not only a departure from the zero-sum economics that typifies ecclesiastic perspectives on economics but also a recognition that economic and moral growth go together.

This is borne out later in the same encyclical, where John Paul II makes clear that he sees 'the training of competent business leaders who are conscious of their responsibilities' as a way in which rich countries can help poor ones.<sup>30</sup> The Pope would have been gratified to see that the moral dimensions of operating in developing countries are attracting growing attention amongst business leaders, partly as a result of increased globalisation. This is indeed good news, for the pathway out of poverty for most of the world's people – private enterprise – is only likely to succeed if the thinking and actions of business leaders are infused with norms, values and virtue. A commercially successful company with such leaders at the helm is likely to be a company that is high in moral capital, with the potential to disseminate that capital within the communities in which it operates, while strengthening the moral capital that already resides there.

Trust, fourthly, is a virtue of particular importance to the ways in which business can contribute to the moral capital required for economic development. Indeed, this virtue helps explain why so many countries have failed to achieve a developed market economy. If trust is limited or confined to familial or tribal relationships, trading opportunities are lost and the need for state regulation increases, thus raising transaction costs. High levels of trust, on the other hand, which depend on a robust institutional framework, encourage strong private sectors in which large companies can grow. Such companies are often wary about doing business in low-trust societies, due to the associated risks and costs. The consequences for economic development are serious, given the important role played by private enterprise in tackling poverty. It is important, therefore, to gain a better understanding of the role of business in promoting trust. Communication methods must be central to this investigation, given that recent research indicates that the top performing companies are those that are most effective in communicating the company's moral values and guiding principles (Leslie et al., 2006).<sup>31</sup> It is also important to explore how a company can ensure its operations reinforce whatever indigenous networks of trust there are that extend beyond familial and tribal loyalties. What mechanisms can be put in

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<sup>29</sup> *Centesimus Annus*, #28.

<sup>30</sup> *Centesimus Annus*, #35.

<sup>31</sup> K. Leslie, M.A. Loch & W. Schaninger, 'Managing your organization by the evidence', *The McKinsey Quarterly*, 3 (2006).

place to ensure that infringements of ethical behaviour are met with the social disapproval and peer pressure that come from within the host community, rather than relying on legal pressure imposed from outside? Addressing such questions will help business live up to its potential as a purveyor of moral virtue through its core operations. The analysis has to shift, however, from the constraints ethical behaviour imposes to the market opportunities it creates. Where the opportunities are limited, due perhaps to pressure from shareholders or competitors, the possibilities companies have to cut the costs of ethical behaviour need to be explored.

Conserving the environment through a reduction in carbon emissions provides a good example of how both the reduced costs of ethical behaviour and a robust legislative framework can serve business interests by increasing competitive advantage. Energy prices are in a state of flux in the midst of the current economic turmoil. But over recent years they have been under upward pressure due to rising demand from the emerging economies. This means that there is an economic as well as a moral and environmental case for greater energy efficiency and for the development of alternative energy sources. By themselves, however, rising energy prices will not be enough to drive investment away from cheap, carbon intensive energy sources towards more sustainable alternatives, many of which, initially at least, will be more expensive. It appears, therefore, that the establishment of a meaningful price for carbon is necessary – one that will drive new investment into low carbon products and services.

The world's largest mechanism for delivering this is the European Emissions Trading System, which caps the overall level of emissions that are permitted, allowing participating companies to buy or sell emission allowances so that cuts can be achieved in the most cost efficient way. This major political achievement would not have been possible without companies and business associations such as the Confederation of British Industry (CBI) agitating for it. One of their aims in doing so has been to achieve greater certainty, for the sake of business planning. It has also been to show that emissions can be reduced without damaging competitiveness, and to support the growth of international carbon markets. For the business sector, the longer it takes for a carbon trading system to emerge, the costlier their environment-friendly investments will be.

Business has, therefore, a leadership role to play in this field. Not only can it provide innovative solutions and drive green change through its supply chains, it can also provide customers and employees with the information and incentives they need to make greener choices. Business can also reach out to policymakers to help develop rules and standards, and to support the investment in green technology. The Energy Technology Institute, a joint venture between public and private finance, is one example of what is possible. Likewise, developing carbon capture and storage appears to have caught the imagination of both policy makers and energy companies. The CBI has also

taken a lead in creating a Climate Change Board with a view to developing policy, promoting best business practice and holding both government and business to account. This Board will seek to collaborate with all main political parties to exchange ideas and information about the development of environmental policy. It aims thereby to green the current tax system; to provide a set of proposals to support new low carbon technologies coming to market; and to develop consensus on a standard methodology for reporting corporate carbon emissions.<sup>32</sup>

Many people, including many church leaders and theologians, respond to such demonstration of environmental concern on the part of business with cynicism or suspicion. Emboldened by the anti-business sentiments of the media, they tend to regard business only as part of the problem of climate change, rather than as part of the solution. The commitment of business to securing a sustainable future is dismissed as mere 'greenwash', motivated not by concern for the health of the planet but by naked profit. But those who turn to environmental campaigning often find that those they considered culprits are actually fighting on the same side. Three events during 2006 serve as examples:

- the chairman of the Virgin Group Sir Richard Branson declares that he will commit all the profits from his transport companies over the next ten years – a projected \$3 billion (£1.6 billion) – to develop renewable forms of energy.
- the former US President George W. Bush, once an oil magnate, challenges his country's 'addiction to oil' and pledged massive financial support for research into cleaner fuels.<sup>33</sup>
- a consortium of British big-business leaders sends an open letter to the Prime Minister urging tougher regulation of carbon emissions and the CBI significantly steps up its activism in this area.<sup>34</sup>

People with an understanding of the opportunities, rather than merely the constraints, of commercial enterprise are less likely to be bewildered by such developments, or to stigmatise such apparent changes of heart as attempts by wolves to don sheep's clothing. For many business leaders have been making the case, for some time now, that greater curbs on CO<sub>2</sub> emissions would

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<sup>32</sup> The CBI brought out a report on climate change towards the end of 2007, which called for urgent action to cut greenhouse gas emissions by means of a partnership between government, business and consumers. See *Climate Change: Everyone's Business*, available at [www.cbi.org.uk](http://www.cbi.org.uk).

<sup>33</sup> See George W Bush's State of the Union address in 2006, available at [www.whitehouse.gov](http://www.whitehouse.gov). The Climate Change Technology Programme (CCTP) was keenly supported by the Bush administration – see [www.climatechange.gov](http://www.climatechange.gov).

<sup>34</sup> This culminated the following year with a report published by the CBI that called for urgent action to cut greenhouse gas emissions by means of a partnership between government, business and consumers. See *Climate Change: Everyone's Business*, available at [www.cbi.org.uk](http://www.cbi.org.uk).

encourage innovation and increase their company's competitiveness in the global marketplace. There is a secret here that those who align themselves too uncritically with the green movement often fail to grasp: business is generally only too willing to change the way it operates in accordance with the social and environmental concerns of consumers, because doing so increases its market opportunities. That is, after all, how big business stays big.

It is also the reason why oil companies are no longer interested solely in oil. Hydrogen energy is a major concern for Shell, for instance, and BP now stands for 'beyond petroleum'. Car companies, similarly, are engaged in a frenetic race to develop cheap and reliable clean-fuel vehicles. It is not merely the depletion of oil reserves that motivates such companies. They want to get ahead of demand so that they can capture new markets. That is why they regard regulation as a guarantee that, in the long run, their investment in green technologies will pay off.

Richard Branson's putative \$3 billion is not, in fact, a donation. It is an investment in his renewable-energy enterprise, Virgin Fuel. That is why his announcement is good public relations (PR), even though it cannot be dismissed as *merely* good PR. Poachers are turning to game-keepers as they discover the vision and commitment to convert an inconvenient truth, as Al Gore would have it, into a convenient one.<sup>35</sup> At the deepest level – as Christians understand from a belief in the moral order of a created universe – what is good in ethical and environmental terms also turns out to be what is good for *us*. In this sense, there is a transformative power in enlightened self-interest and it is this that will help save our planet. Whatever truth there may be in the claim that the operations of business are largely responsible for the degradation of the environment, it would be foolhardy, in view of this transformative power, to assume that solutions can be found that ignore or disqualify business interests.

But the plea not to rule the interests of business out of the picture puts things too negatively by way of conclusion. If the argument of this short article has any validity, there is every reason to believe that business is well qualified to share some of the responsibilities that are often assumed only to be those of government or the 'third sector'. Should the profit motive really be a bar to social and environmental good, human beings would inhabit a strange moral universe, for most of the good that human beings can do for one another and for the world they inhabit is related in some way to the operation of that motive. Even such rudimentary elements as bread and wine are the work of human hands – hands that are animated by a mixture of impulses. Even if all the motives involved in producing such elements were to be entirely honourable,

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<sup>35</sup> Former US Vice President Al Gore has produced both a film and a book entitled *An Inconvenient Truth*. For an account of how Sir Richard Branson was 'converted' to environmentalism over a breakfast he had with Gore, see [www.abcnews.go.com](http://www.abcnews.go.com).

they would not necessarily be entirely altruistic. Self-interest, which is not the same as selfishness, is integral to human (and indeed animal) existence and cannot be assumed to be a part of what theologians have traditionally called the fall. Indeed, self-interest is so basic to earthly existence that it governs anatomical reflexes over which human beings have no control but which are essential for sustaining human life. While the profit motive occupies a central place in the sphere of commerce, the motive of self-interest is common to all institutions of society. All social institutions are thereby equally bound to operate morally, to ensure that this motive is counterbalanced by other-regarding motives. It is, therefore, entirely appropriate to expect business to operate morally and to encourage those within this sphere to work towards this goal, rather than assuming that another sphere – the state – needs to impose morality on it or implying that the not-for-profit norms of the third sector need to be made central to business.

As this article has argued, the state does have the privilege and duty, as the argument in Romans 13.1-7 appears to imply, to impose legislation on other spheres, including business. But the state, just as with business, needs to operate within the limitations and boundaries, as well as the obligations and duties, of its role. For government to meddle in the sphere of business is as problematic as business meddling in the sphere of government. While the credit crisis is widely thought to prove the case for the moral bankruptcy of the commercial sphere, it may in fact have at least as much to do with governmental pressure on the banking sector to extend home ownership opportunities to those on low incomes, in an effort to win votes and bolster social and political stability. Appropriate state interventions notwithstanding, the spheres of society require freedom to flourish, though each sphere is to avoid the danger faced by the early Church of using freedom as a licence for evil (1 Peter 2.16). The liberty enjoyed in free societies is, rather, a licence for virtue and it is to the determined effort to inspire the building of such virtue that the efforts of all Christian leaders need to be committed, not least in response to current economic downturn. The virtues, particularly the virtues that underlie trust, such as thrift, are the foundations on which the market economy was built. Whatever short-term fixes of the crisis are found, long-term economic prospects depend on a recovery of such virtues. Only with such a recovery will a healthy balance be found between corporate freedom and state regulation.

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## THE COLD RULES FOR NATIONAL SAFETY: THE NEW PROTECTIVE STATE

Peter Hennessy

Every generation has to formulate afresh what the great historians of Empire, Robinson and Gallagher, called 'the cold rules for national safety'. In the days between Christmas and New Year 2008-09, when the files for 1978 were declassified under the 30-year rule, children of the Cold War who grew up in the shadow of the bomb had their bones chilled retrospectively by an intelligence report which spelled out in graphic terms just how vulnerable the UK was in the late Seventies to both conventional and nuclear attack by the Soviet Union, with British air defence in an especially parlous state and the RAF's Phantoms and Lightnings reduced to 2½ to 3 days worth of armament.

The BBC1 news bulletins ran pictures all day of the Phantoms scrambling from RAF Leuchars near St Andrews in Fife to head off the giant Soviet strike/reconnaissance Bear bombers north of the Shetlands. They ran the horrified reaction of the then Prime Minister, Jim Callaghan, to both the intelligence assessment and the Chiefs of Staff paper for which he had called to explain its implications. 'I take it someone has worked out whether we can defend ourselves?' he scribbled on the original intelligence brief. The Defence Secretary, Fred Mulley, wrote to the Prime Minister explaining the corrosive effect of a decade of defence cuts. 'Heaven help us if there is a war!' scrawled Jim on his letter.

How long ago all that seems to those of us who remember Hungary '56, Cuba '62 and Prague '68. It's a near incomprehensible world for those growing up in the shadow of al Quaeda for, once more, and at considerable speed since 11 September 2001, 'the cold rules for national safety' have been rewritten and are still some way off their final draft.

A few of the 'cold' Cold War rules were of real use in the hours and days following the attacks on the twin towers and the Pentagon. For example, from 1961 until the early 1990s, there were always two cabinet ministers appointed to be the prime ministers' 'nuclear deputies' in case he or she was wiped out by a Soviet bolt-from-the-blue attack. To those deputies – or 'First Gravedigger' and 'Second Gravedigger' as Harold Macmillan in a macabre, Shakespearian touch, dubbed Rab Butler and Selwyn Lloyd when choosing them – would have fallen the task of authorising nuclear retaliation against the Soviet Union on the premier's demise. Or perhaps not. For as Denis Healey revealed in a BBC Radio 4 documentary, *The Human Button*, last December, he could not have brought himself to kill millions if deterrence failed when he was one of Wilson's nuclear