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**MORAL CAPITAL AND COMMERCIAL SOCIETY**

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# MORAL CAPITAL AND COMMERCIAL SOCIETY

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## **Abstract.**

This paper examines the idea of moral capital in relation to commerce. Moral capital is found in the form of justice, beneficence and temperance. These concepts are explained and distinguished from related ideas of social capital and human capital. Following Hume, Smith and Hayek, the author treats justice and commerce as aspects of the same evolutionary process and challenges the traditional mistrust of commerce on moral grounds. The paper discusses the ways in which commerce strengthens morality and explains why the state can enforce justice but cannot practice or enforce beneficence without harm to justice. The discussion is concluded with some thoughts about the depletion of moral capital in rich and poor countries.

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## 1. INTRODUCTION

Modern civilization is based on laws and other institutions that enable individuals a large measure of freedom to seek profit through voluntary exchange. Indeed, but for the prospect of making profits, many transactions simply would not occur and we would be denied, most of the goods and services that we take for granted. There is not much argument these days about the role of profits in the production of goods and services. Yet, the notion of profiting from dealings with others seems intuitively wrong to many people even when profits are gained by perfectly legal transactions. Greeks had their own pejorative term for money making - 'chrematistics'. Cicero thought that those who buy from merchants in order to resell immediately make no profit 'without much outright lying'. (Finley, 1988: 1, 421) Some religions still condemn usury and philosophers still pursue the quest begun by Aristotle for the 'just price'. In the present age, the bias against commerce persists, evidenced by constant pressures in democracies to restrain profit seeking and to redistribute wealth. There is an inarticulate assumption in such thinking that entrepreneurship is a necessary evil whose consequences need to be mitigated.

There is another way of looking at human affairs that regards commerce as not only morally unimpeachable but also unsustainable without moral capital. This viewpoint is closely but not exclusively associated with the evolutionary tradition in social science that sees both markets and morals as aspects of the spontaneous order of society. My aim is to examine the connections among moral capital, commerce and economic performance from this theoretical perspective. I argue following Adam Smith, David Hume and later evolutionist thinkers that commerce co-evolves with moral rules and leads not only to prosperity but also to the accumulation of moral capital. Conversely depletion of moral capital can result in economic deterioration causing further moral decline. I do not undertake the tasks of devising ways to measure moral capital or of empirically testing the theory, but set myself the more modest aim of explaining the theory by clarifying some of the conceptual issues relevant to its understanding. The discussion intends to provoke thoughts on what societies can do to enhance their stocks of moral capital.

Part 2 of this paper is a discussion of the concept of moral capital. It explains the sense in which the disposition to moral conduct represents a type of capital and distinguishes the concept of moral capital from the related ideas of social capital and

human capital. The main forms of morality are identified as justice and beneficence and temperance and it is argued that while morality in all forms is conducive to commerce, justice is of special significance. A discussion of the abstract qualities of justice is followed by an inquiry concerning the rules of justice that are indispensable for commerce. The part concludes with observations on the role of institutions in the accumulation of moral capital. Part 3 of the paper makes a closer examination of the interconnection of commerce and morals. Moral rules and commerce are presented as aspects of the same evolutionary phenomenon. The dependence of commerce on moral capital is examined against the converse proposition that commerce promotes greed and hence causes moral decline. Part 4 discusses the competence of the state with respect to the accumulation of moral capital and proposes that the state is effective mainly in the promotion of justice and that attempts to promote beneficence and other virtues invariably results in the erosion of justice. Part 5 summarises the principle conclusions of this study and presents some thoughts about ways to build moral capital.

## **2. THE CONCEPT OF MORAL CAPITAL**

Morality as a factor in production may be counter-intuitive but it is both real and substantial. The most obvious ways in which morality helps production and exchange is by enhancing the security of person and property and by promoting the keeping of contracts. Laws that protect person and property and enforce contracts are based on ubiquitous moral rules whose origins are lost in the mists of time. Legal re-enactment strengthens these rules but obscures their origins. Such re-enactments are of limited value unless most members of the community live voluntarily by the morals that they encapsulate.

Capital generally understood consists of resources owned by individuals or firms that are applied in the production of goods and services. These include incorporeal assets such as goodwill, trade reputation and training. More recently, the concept of capital has been extended to conditions that help production by facilitating coordination among parties to transactions. This form of capital may or may not be 'owned' by individuals or firms but it provides them with clear advantages. Morality falls within this extended meaning of capital.

Morality as capital may be seen from the viewpoints of the individual and of society

generally. It can take two forms from the individual standpoint. A person who is habitually moral in conduct may gain a reputation of trustworthiness that induces others to deal with her. This form of capital may increase in value where institutions have become unreliable and people seek reliable trading partners. Again a person living in a community of individuals who habitually observe a common set of known moral rules will have reduced costs of transacting with others. These costs include costs of finding reliable trading partners and costs of enforcement through self-help or third party intervention, in the event of breach of obligation. On the contrary, a person living among rule breakers needs to take costly precautions and will have to limit his transactions to a minimum. The cost saving that accrues to a person as a result of the moral conduct of others represents part of the moral capital of that person.

In what sense does a group possess moral capital? The number and types of transactions that occur are influenced by transaction costs (Coase, 1960; Calabresi, 1968). The extent to which the moral rules of a group reduce transaction costs and hence facilitate mutually advantageous dealings between group members and between group members and outsiders represents the community's moral capital. It simply means that members of the group have an economic advantage resulting from the objective prevalence of certain moral rules. As explained presently, these rules owe their existence to the moral conduct of individuals.

If capital is taken to mean a factor in the production of goods and services, those moral rules that increase transaction costs do not generate moral capital. Thus, the rule against usury will not constitute moral capital. In our tribal past it was considered perfectly moral to treat strangers harshly and to take forcibly their belongings and even their lives. Coincidentally, it was a time when we were very poor and our own lives were, as Hobbes famously described, 'nasty brutish and short'. Fortunately, we learned to extend to countless strangers some of the consideration that previously we accorded only to our own and thereby made civilization possible.

**Moral capital distinguished from social capital**

The concept of social capital refers to informal or voluntary social organisations and networks that engage in charitable activities or the production of public goods. The term 'social capital' in this sense is aligned to the concept of civil society, the base structure of society that is distinguishable from the coercive order imposed by the state. It is widely used in the analysis of social factors that help or hinder communities in achieving prosperity. Among the better known studies of social capital are those of Robert Putnam on the role of civic tradition in Italian democracy (Putnam 1993); Glenn Loury and Ivan Light on racial income differences (Loury 1977, Light 1972); James Coleman on the creation of human capital (Coleman 1988); and Jane Jacobs on the role of community networks in crime prevention (Jacobs 1961). In contrast, moral capital refers to individual conduct. Clearly individuals make up social networks and hence moral capital is required for social capital formation. Conversely, social networks place constraints on individual behaviour and hence contribute to moral capital. However, it is useful to distinguish these concepts not only because they are not co-extensive but also because moral capital raises distinct issues the discussion of which would not be helped by its confusion with social capital.

**Human capital, work ethics and moral capital**

Moral capital and human capital overlap at margins but the concepts are clearly and usefully distinguished. Human capital is regarded as the stock of skills and knowledge gained by education, training and experience that enhance a person's earning powers and which increases the efficiency of economic decision-making. (Rosen 1998: 2, 682) Earning power arises through improved employability specific to oneself (as in self-employment), a firm or on the more general scale. (Becker 1964) Sound professional education encompasses the ethical norms relevant to the profession, such as legal ethics and medical ethics. Membership of certain guilds and tradesmen's associations also require competencies that include knowledge of relevant ethics. Thus, training can generate moral capital. Yet, moral capital is a wider concept. Its reaches beyond the needs of specific professions or occupations and its accumulation depends on many more factors than education. Work ethics also overlaps with moral capital to the extent that it translates to just conduct or beneficence. Thus, diligence in the discharge of contractual obligations is

just conduct and delivering more than what is bargained for amounts to beneficence.

### **Moral capital consists of justice, beneficence and temperance**

Morality is conceived in both negative and positive terms. In simple terms morality consists of ‘dos and don’ts’. It consists on the negative side of the observance of rules forbidding certain types of action and on the positive side of exhortations to engage in virtuous acts. The more important rules on the negative side have been termed rules of justice (Hume 1964: II, 180; Smith 1976: 79), rules of just conduct (Hayek 1982: II, 31-33), and the morality of duty (Fuller 1964: 5-6). These are rules that guide conduct of persons in relation to others. Many of them are formally recognised as laws and are often coercively enforced. Some rules like those against unjustified killing, wilful or negligent harm to person and property, and the breaking of promises are ubiquitous. It seems logically impossible to achieve harmonious coordination of the lives of a multitude without these rules.

There is also a category of negative norms that commend self-restraint even when conduct does not directly harm others. These may be categorised as rules of temperance. Temperance here is not used in Plato’s sense of cardinal virtue, but in the sense of the social unacceptability of excessive indulgence in pleasurable activities that are perfectly legal. Social disapprobation of conduct such as immodesty, alcoholism, and promiscuity offer evidence of such rules. The types of conduct that these rules seek to curb may be mildly offensive to others but they do not harm them in the way unjust acts do. Temperance as moral capital is difficult to assess because it is a very relative concept. One man’s moderation in drink may be another man’s excess. Conduct appropriate to one circumstance may be intemperate in another. Sometimes calculated intemperance may be an advantage as when disorderly conduct on stage enhances the entertainment value of a rock concert. Yet, it is apparent that in the commercial world where agents seek reliable trading partners, reputation for temperance will count for something.

Apart from these negative constraints, morality in the traditional sense also encompasses positive virtue that Hume and Smith called beneficence (Smith 1976: 78-79) and Fuller termed the morality of aspiration (Fuller 1964: 5-6). Justice or morality of duty is expected of us. We will be condemned if we murder, rape or steal, but will not be praised if

we don't. On the contrary, beneficence or morality of aspiration is not mandatory. We are not condemned if we fail to perform acts of great charity or make heroic sacrifices, but will be praised if we do. Beneficence, by this definition, consists of voluntary acts where both the giver and the beneficiary are not compelled to give or to receive. One can be just without being beneficent. As Smith wrote 'we may often fulfil all the rules of justice by sitting still and doing nothing'. (Smith 1976: 82) This is not to say that beneficence carries no reward. Its payoff can be in the form of psychological fulfilment, reciprocal beneficence, and enhanced reputation that fosters trust in future dealings. Society also benefits from beneficence to the extent that it promotes trust and eases dependence on the state.

### **Justice as moral capital excludes distributive justice**

The term 'justice' is used in a specific sense. Following a long tradition in moral philosophy, I regard justice as pertinent not to states of affairs but to the conduct of responsible agents that affect others. It is justice in this sense that constitutes moral capital. There are other conceptions of justice including that of distributive or social justice. Since words have no transcendently true meanings but only meanings that they acquire by convention or definition, it is not possible to deny the term 'justice' to such notions. However, as presently explained distributive or social justice does not form moral capital in the economic sense.

Moral capital excludes Aristotle's distributive justice that requires the division riches, honours and burdens in proportion to each person's merit such as freeman status, nobility or excellence. (Aristotle, 1980: Bk 5 Ch 2, 3) It also excludes the modern concept of social justice. Aristotle's distributive justice arises among persons who have claims to a particular good or who have suffered a particular loss, the question being how the benefit or loss must be apportioned. Modern social justice in contrast, is regarded as 'an attribute which "actions" of society, or the "treatment" of individuals and groups by society, ought to possess'. (Hayek 1982: 2, 62. In my view there is no better explanation of the notion of justice as used herein than Hayek's profound exposition in chapter 8 of this work.) In this conception, responsibility is attached to society as a whole to produce 'just' distributions of wealth where necessary overcoming conditions for which no individual, group or

government is directly responsible. It is the old idea of distributive justice applied on the social scale.

There are a number of considerations for excluding these two notions of justice from the concept of moral capital. It is well to remember why morality is considered as capital at all. The prevalence of moral conduct on the part of members of a community reduces the costs of transacting in that community. The critical factor here is the conduct of agents, not their material resources. Wealth distribution may create capital in some at the expense of others, but that is not moral capital. Distributive or social justice does not pre-announce rules that guide future conduct. This form of justice is achieved by retrospective adjustment of the material positions of individuals according to criteria such as strict equality, resource equality, utilitarianism and just desert. They are all what Robert Nozick calls end-state principles of justice. (Nozick 1988: 155) Authorities who determine particular distributions of utilities have no way of knowing whether the distributions are just without knowing the circumstances of every individual affected by the scheme, which circumstances, of course, are ever changing. As John Rawls puts it, ‘the principles of justice do not select specific distributions of desired things as just, given the wants of particular persons. This task is abandoned as mistaken in principle, and it is, in any case, not capable of a definite answer’. (Rawls: 1963: 202)

But I exclude Rawls’ own theory for much the same reasons. Rawls opts for a conception of justice that lays down the ground rules of a just political order, with justice being equated to fairness. He seeks to elevate distributive justice to a higher level of abstraction by proposing that ‘social and economic inequalities are to satisfy two conditions: They are to attach to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society’. (Rawls 1993: 5-6) This so-called ‘difference principle’ remains one that demands retrospective adjustment of material conditions not only to uphold the second limb of the principle but also to ensure that persons have ‘fair equality of opportunity’ to seek positions and offices. Rawl’s difference principle does not inform individuals, groups and firms beforehand how they should conduct themselves or more accurately how they should not. It simply tells them that if they get too far ahead of the least advantaged, they will suffer some unspecified deprivation. In Rawles’ scheme, the

state can discharge its responsibility for justice fully only by reactive measures as ‘impermissible’ inequalities come to light. Justice in this sense may equate to morality in some people’s judgment. But that is not the point at issue. It is not the kind of morality that can form capital in an economic sense.

### **The general, negative and interpersonal character of the rules of justice**

What then is the concept of justice that is relevant to moral capital? Justice in this sense cannot be exhaustively defined. It is not possible to know in advance all the possible sets of circumstances that will raise a moral question. As the universe both in its physical and cultural dimensions is an evolving process we cannot even imagine all the kinds of situations that in future may call for our moral judgment. Some situations may never arise and there are others that arise so rarely that our established moral codes do not reveal a time-tested rule of conduct that we can rely upon. (For a clear example see Sen, 1999: 54-55) Fortunately most people intuitively grasp the most important rules of moral conduct upon which civilised life depends. These moral rules are inseparable from civilisation as they are constitutive of it. From the evolutionary viewpoint, they were winnowed by the winds of experience. As Hume observed, ‘rules of justice, like other conventional things, such as language and currency, arise gradually, and acquire force by a slow progression, and by our repeated experience of the inconvenience of transgressing it’. (Hume, 1975: 490)

Distillation through experience is a process of generalisation or abstraction. The fruits of experience are preserved ‘not as a recollection of particular events, or explicit knowledge of the kind of situation likely to occur, but as a sense of the importance of observing certain rules’. (Hayek, 1982: 2, 4) A rule of conduct can be universalised only in the negative form unless the rule relates to a very narrow type of circumstance. It is impossible to express the rules against murder, rape, theft, trespass, and non-performance of contracts in positive terms if they are to protect all persons currently living and yet to be born. Universality can be achieved only by the ‘Thou shall not ...’ formula. Even when it appears that a rule requires positive action, it will be seen on closer examination to be capable of negative formulation. The rule that requires contracts to be performed is a rule that prohibits actions contrary contract. The rule that requires a surgeon to provide post-

surgical care to a patient is actually an application of the rule against negligence measured by the standard of care expected of a surgeon. Even in the rare cases where the common law imposes positive duties such as the seafarer's duty of rescue at sea, there is a special relationship at play where the duty bearer is in a unique, hence quasi-fiduciary position in relation to the beneficiary. The law can be generalised into the injunction: 'Do not abandon a person whose life uniquely depends on you, if can save him without endangering your own life'.

The test of justice is not state recognition and enforcement. Evolutionists and social anthropologists regard the rules of justice as pre-dating the emergence of the state. Smith finds the rules of justice originating in the instinct of sympathy and disapprobation of acts that offend this instinct. Whereas absence of beneficence and of justice evokes disapprobation, it is only unjust conduct that brings forth the stronger feeling for retribution. Retribution may occur without state intervention through social or religious pressure as in the case of ostracism, social shunning, expulsion from associations, commercial blacklisting, excommunication, admonishment and in some cases through self-help measures.

Only norms that can be universalised become recognised as rules of justice but not all such norms are so recognised. As Hayek notes Kant's categorical imperative, to act only by rules that you will apply to all (Kant, 1948) is a necessary but not sufficient condition of justice. (Hayek, 1982: 2, 43) The difference between justice and beneficence is rooted in the very structure of the evolved complex order that is society. The rules of justice are the coordinating principles of social life without which the social structure collapses. They are determined by the nature of the spontaneous order of society. The difference between rules of justice and norms of beneficence may be seen from another angle. Rules of justice forming the same system are generally accommodated to each other and hence may be enforced without violence to one another. Rules of justice also can be enforced without violence to beneficence but as discussed presently beneficence cannot be enforced without violence to justice.

Rules of justice concern a person's relations with others. A rule that is concerned with a thing will be a rule of justice insofar as it also concerns some other person. Thus, the rules against pollution are rules of justice where they prevent harm to others. However, the

state has a history of legislating rules that prohibit conduct where the harm to others is not clear. Examples include prohibitions of pornography and alcohol consumption. Strictly speaking, these are attempts to enforce temperance than justice.

### **Substantive content of justice**

Justice has two aspects, but like the sides of a coin they are inseparable. One aspect is the presence of a rule and the other its observance. Rules of justice are not corporeal things. Even the fact that a 'rule' is written in a book does not make it a rule. A rule owes its objective existence to its observance as an obligatory norm by a group of interacting persons. Rules of justice that pre-date legislative authority may be regarded as spontaneously formed out of coincidence of behaviour. Once a rule begins to crystallise, reliance upon it increases, causing it to be stabilised as part of the overall social structure. Though the genesis of a rule is in the conduct of individuals, it may be some time before the members of the society are able to articulate the rule clearly. (Hume, 1978: 490, Smith, 1976: 159; Ferguson, 1966: 34, 122, Campbell, 1965: 32-33; Hayek, 1982: 1, 17-19)

As society evolves, so does its stock of moral and legal rules. Yet we notice that all societies that extend beyond the small family group share a set of basic rules of just conduct. An extended society without these rules is difficult to conceive and there is no historical evidence that any have existed without them. Functioning societies display what Hume termed 'the three fundamental laws concerning the stability of possession, translation by consent and the performance of promises' (Hume 1975: 541) In legal terms, they are the laws that confer the right to hold property, the liberty to deal with property as the owner pleases and the right to have contracts performed. We must add to this list, the rule of justice that prohibits violence to person. Hume considered this presupposed in the rules concerning property and contract. Rights are meaningless without self-ownership as they exist in relation to persons. The first requirement of personhood is personal integrity.

The basic rules that secure personal security, property and contractual freedom are simple and few. (Epstein, 1995) Yet, their maintenance depends on many other rules and sub-rules. The rule that contracts must be observed cannot be sustained without subsidiary rules concerning misrepresentation and fraud, mistakes, frustration, quantification of damages and importantly, the rule of justice that in disputes one does not judge one's own

cause but accepts the judgment of an impartial arbiter. J S Mill considered impartiality as a distinguishing characteristic of justice. (Mill, 1998: 90) Contracts are unlikely to take place where these complimentary rules of justice are unobserved. Similarly property is secured by the rules against theft, trespass and other willful and negligent acts that cause damage to property. Thus, it is evident that rules of justice do not exist in isolation but only as parts of an interlocking and interacting system of rules. They include rules that secure just conduct on the part of parties to disputes and those who assist in the resolution of disputes such as judges and police (public or private) and lawyers. What is critical for justice is that the rules are complimentary and in harmony. Thus, just conduct on the part of a judge qua judge would consist of upholding the rules of justice as they apply to the case. A judge who seeks to decree contrary to such rules undermines the system. Likewise legislators who, in the name of justice, create powers to adjust arbitrarily the consequences that result from the application of the rules of justice, in fact act unjustly.

### **Institutions and moral capital**

Institutions are important in several ways to the accumulation and retention of moral capital. Value of morality as capital depends on reputation for moral conduct. Since people cannot read minds they predict behaviour through observation. In granting a loan, a banker relies more on the customer's credit history than on her moral convictions. Even this kind of knowledge is unavailable in most commercial transactions. People live in societies of many millions of individuals and of this multitude they have direct and personal knowledge of only very few persons. Yet their daily activities depend on the co-ordination of the actions of vast numbers of strangers. This coordination is made possible not by personal knowledge of others but by reliance on observable constraints on unjust conduct. These constraints are 'institutions', a term used by economists to encompass all the constraints that give structure to social life including laws and less formal rules such as customs, social practices, moral rules and all forms of self-restraints that people voluntarily assume. (North 1990: 3) Institutions are not corporeal. They consist of patterns of action arising from the coincidence of the behaviour of individuals. These patterns, in turn, are counted upon by individuals in the conduct of their own affairs. Not all institutions are humanly devised. Some are, to use Adam Ferguson's memorable epigram, 'the result of human action but not

the execution of any human design'. (Ferguson 1966: 122) Institutions are not independent and self-sustaining but exist as parts of a complex web of interacting constraints.

Moral rules are institutions but not all institutions constitute moral rules. Some institutions are morally neutral such as the rule in England that motorists must drive on the left side of the road or the rule that a contract by postal communication is concluded when the acceptance of the offer is put in the post rather than when it is received. They are moral only in the sense that they supply a rule that allows people to coordinate their actions and avoid conflict. In continental Europe opposite rules apply with equally beneficial effects. Some institutions, though regarded as moral may actually increase transaction costs by regulating or prohibiting particular kinds of transactions altogether (bans on alcohol, Sunday shopping, etc.) and hence do not help build moral capital.

Institutions encapsulate moral capital to the extent that they represent rules of justice or standards of beneficence. Morality is constitutive of these institutions for it is the coincidence of moral conduct of individuals that creates and sustains them. Institutions once formed shape conduct by providing moral guidance and by signalling more clearly the cost and benefits of the choices we make. A rule can exist despite its violation by individuals. Unlike physical laws, it is in the nature of human rules that they are violated from time to time. However, normative rules require a critical level of observance to persist. We cannot foretell what this level is, but we know when it is reached.

In early society, institutions were closely aligned with moral rules. What was legally wrongful was practically indistinguishable from what was morally wrongful. Traces of this fusion are found in many languages where one word continues to refer to both kinds of right. The Latin '*ius*', the English '*right*', the German '*Recht*', the Italian '*diritto*', the Spanish '*derecho*' and the Slavonic '*pravo*' are few of the examples. (Vinogradoff, 1913: 61; Mill, 1998: 91-92) As Fritz Kern observes, 'The medieval world was filled with theoretical respect for the sanctity of the law - not the prosaic, dry, flexible, technical, positive law of today, dependent as it is upon the State, but for a law which was identified with the sanctity of the moral law. (Kern 1968: 155) In times of absolute monarchy, rulers claimed the power to make law and did make law in derogation of the common law of the land. Yet, law making did not happen on the modern scale.

In modern democracies many laws reflect distributional outcomes that result from

complex public choice processes. They are moral only in the dubious sense that they satisfy the demands of particular interest groups. In fact many such laws directly violate Humean justice concerning the security of property and the sanctity of contract. Yet even leading legal positivists concede that a legal system is unsustainable unless it embodies a minimum content of morality. (Hart 1994: 193) The economic cost of maintaining the legal system grows in proportion to the extent that its rules deviate from the community's morals. Laws that give expression to the rules that members of a society observe as part of their traditional modes of conduct need little enforcement. On the contrary, state laws that that are inconsistent with such morality entail high enforcement costs.

### **3. INTERDEPENDENCE OF MORALS AND COMMERCE**

The discussion of morality as capital revealed the dependence of commerce on morality. The converse proposition that morality is strengthened by commerce requires further examination. In this section I argue that commerce was a major force in the emergence of the rules of justice and reject on logical and empirical grounds the common claim that commerce corrupts morals.

#### **Co-evolution of justice and commerce**

The critical role of commerce in shaping justice was first clearly perceived by the eighteenth century evolutionist thinkers. This breakthrough resulted from their sceptical investigation of the nature of human knowledge and institutions which led to the conclusion that accumulated experience, not reason was the source of moral rules. Given the premises that man has no foresight of the future, Hume argued that reason alone could never give rise to any original idea. (Hume 1978: 157) Adam Smith found the idea that we can derive from reason the first principles of right and wrong to be 'altogether absurd and unintelligible'. (Smith 1976: 320) Adam Ferguson memorably declared that 'every step and every movement of the multitude ... are made with equal blindness to the future; and nations stumble upon establishments, which are the result of human action, but not the execution of any human design. (Ferguson 1966: 122) Morality, from this perspective, is seen to emerge spontaneously and unintentionally through the coincidences of behaviour and the retention by communities of practices that conferred upon them advantages.

(Campbell 1965: 32-33) As Hume wrote, rules of justice ‘arise gradually, and acquire force by a slow progression and by our repeated experience of the inconvenience of transgressing it’. (Hume 1975: 490)

How does experience come about? Smith maintained that human beings have ‘original passions’ that lead to moral conduct. Among these is sympathy or fellow feeling. He said that ‘we derive nothing from it except the pleasure of seeing it’. (Smith 1976: 9) Yet, it is not a wholly unselfish passion. We have sympathy for others because we need sympathy of others and hence we try to judge others as we like them to judge us - as impartial spectators. (Otteson 2002: 84-85) Whatever is the nature of sympathy, it cannot of its own force translate to moral rules. Rules of conduct can only result from the experience of inter-action with others. This experience is caused by two other instincts. One is ‘the desire for bettering our condition’ which ‘comes with us from the womb, and never leaves us till we go into the grave’. (Smith 1976: 341) The instinct of self-advancement is accompanied by another, the ‘propensity to truck, barter and exchange one thing for another’. The division of labor arises ‘as the necessary, though very slow and gradual consequence’ of this propensity and as not the product of human wisdom that foresees their great advantages. (Smith, 1981: 1, 25) Men learn the rules of justice through experience of barter and exchange. (Otteson 2002: 20) It does not mean that people discovered already existing rules of justice in the course of exchanging, for that too is unintelligible from the evolutionary standpoint. Rather, the rules were formed by practice and their existence and value dawned on people even as the rules emerged in consequence of their practice. It is only the action of exchanging that reveals what exchange is like and what conditions make it work.

What would the first fumbling attempts at exchange reveal? The first lesson must be that it is hard for a person to exchange anything that is not acknowledged by others as belonging to him. It is in the interest of the party giving and of the party receiving that the giver has title. Thus exchange requires the stability of possessions that Hume saw as a necessary condition of civil society. John Locke considered the proposition ‘where there is no property there is no justice’ as certain as any demonstration in Euclid. (Locke, 1924: 18) The second lesson is that exchange is possible only when promises are kept. Early trade was seriously constrained by lack of trust as evident from practices such as hostage taking

as insurance and face-to-face exchanges, the latter still surviving in town bazaars and the village fairs. In order to break out of these constraints and to transform themselves into civilisations, early communities had to acquire new moral capital in the form of just treatment of strangers. (Hayek 1982: 2, 88) Commercial societies eventually comprised many millions of individuals linked by common rules of justice but with no personal knowledge of each other. For this to happen justice had to be institutionalised and commerce was the driving force of this process. As Smith wrote, commerce can seldom flourish long in any state which does not enjoy regular administration of justice, ‘in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay’. (Smith, 1976: 910)

Once established, rules of justice continue to gain strength from commerce. Smith was convinced of the moral superiority of the commercial class over the landholding feudal aristocracy. (Smith 1978: 538) He claimed that feudal landlords who enjoyed wealth and security by birthright had little interest in industry or commerce and sought aggrandizement through plunder and warfare thus ‘interrupting the regular execution of justice’. (id: 421) In contrast, ‘Whenever commerce is introduced into any country, probity and punctuality always accompanied it’. (Smith 1978: 538) His explanation of the cause of this propensity anticipated later theory of how the problem of defection from rules is overcome. ‘Where people seldom deal with one another, we find that they are somewhat disposed to cheat because they can gain more by a smart trick than they can lose by the injury which it does to their character ... wherever dealings are more frequent, a man does not expect to gain so much by any one contract as by probity and punctuality’. (ibid)

### **Does commerce corrupt justice?**

The fact that commerce co-evolved with justice suggests that each facilitated the growth of the other in a quasi-symbiotic manner. Yet, the charge is often heard that commerce creates a culture of greed and bestows on some the bargaining power to corrupt the institutions of justice. The argument implies that commerce carries the seeds of its own destruction. If it is true, it means that commerce has become independent of justice. This is not possible

because property rights and contractual freedom are essential to commerce and can be secured only by justice. If justice dies, commerce dies with it.

If commerce has an effect on the way people behave, it is through cultural rather than biological change. If evolutionary psychology has any credence, commerce has not been around long enough to make changes to our adapted minds. (Barkow *et al*, 1992: 3-15) Hence commerce could not have implanted greed in the human psyche as some contend. (See for example, Booth 1994: 658) What is not at issue is the capacity of commerce to shape customs and institutions of people. It has also made the pursuit of profits whether out of greed or other impulse an acceptable form of behaviour. It does not follow necessarily that commerce made it acceptable to profit by unjust conduct.

The Humean notion of justice concerning the security of person, property and contract appears more stable in societies that have achieved high levels of prosperity through commerce than in societies that are biased against commerce. Strong evidence of this co-relation is provided by surveys such as *The Index of Economic Freedom*. (Heritage Foundation/Wall Street Journal, 2003) This is hardly surprising given that commerce expands the range of opportunities available for persons to satisfy their needs and desires by just means. Commerce allows me to obtain through trade things I could only have gained by plunder in pre-commercial society. There is no reason to think that wealth increases incentives for unjust conduct, particularly if the costs of unjust conduct are high owing to effective law enforcement. It is more often the inability of persons to satisfy their needs and desires through just conduct that drives them to injustice. Unjust behaviour may occur in times of extreme scarcity. Here too commercial society has a better record of responding to catastrophic shortages than command economies. (Sen, 1999) Injustice in the Humean sense is much more likely to result directly or indirectly from state action. The state directly outlaws just conduct and sanctions injustice by legislation that abrogates property rights, limits contractual freedom and displaces the principle of fault-based liability. In weakening justice, the state weakens commerce and further erodes justice.

Economic studies of crime tend to attribute rising crime rates (a useful yardstick of injustice as herein understood) to combinations of causes such as economic decline, demographic factors, weakening deterrence and social disruptions. (Becker, 1968, Deadman and MacDonald, 2002: 13; Wynarczyk, 2002: 34-35; Fukuyama, 1999: 80-85)

The state bears primary responsibility for weakening deterrence. Official policy in many countries even rejects deterrence as an aim of criminal justice. Social disruption (of which drug abuse, family break ups, single parenting, truancy, falling school standards and welfare dependency are symptoms) is attributable to combinations of reasons. Yet there are persuasive studies that identify as major causes, the perverse incentives and moral hazard created by the welfare state itself (Becker, 1981; Murray, 1984).

### **Does commerce hinder beneficence?**

In contrast to his conviction that commerce was unambiguously favourable to justice and temperance, Adam Smith was pessimistic about its effect on beneficence. (See discussion of Smith's position on this question in Rosenberg, 1990) Smith's pessimism was based on what he thought were the direct and indirect negative consequences of commerce on beneficence. The direct harm he feared was in regard to the effect of specialisation on the education of the working class. The indirect consequence concerned the diminishing opportunities for beneficence that resulted from the strengthening of justice.

Smith thought that the division of labour had the tendency to make some classes 'stupid and ignorant' as their working lives become confined to 'a few simple operations'. Of the man of labour, he wrote: 'The torpor of his mind renders him, not only incapable of relishing or bearing a part in any rational conversation, but of conceiving any generous, noble, or tender sentiment, and consequently of forming any just judgment concerning many even of the ordinary duties of private life.' (Smith 1976: 782) In contrast, a member of pre-commercial society was versatile, 'capable of doing, almost every thing which any other man does or is capable of doing'. (id: 783) Smith's point was that in pre-commercial society a person had wider but shallower knowledge while the person in the age of specialisation had deeper knowledge over a much narrower field. Although this specialisation conferred tremendous advantages on human civilisation, he feared that 'all the nobler parts of the human character may be, in a great measure, obliterated and extinguished in the great body of the people'. (id: 783-784) Smith advocated universal education 'for reward so moderate that even a common labourer can afford it'. (id: 785) The pay-off for government was that an educated electorate would make more mature political judgment and be less prone to manipulation by interested faction. (id: 788)

History has shown that Smith's fear was misplaced. To be fair to Smith, it is most unlikely that when he suggested that the 'nobler parts of the human character' will be debased by the type of work people do, he was thinking of changes in human nature. Smith believed that human nature was made up of certain 'original passions' of which one was sympathy. (Smith, 1976: 9) As mentioned before, human psychology is not malleable over the relatively short period of time in which commercial society has existed. Smith had in mind the weakening of the capacity for moral judgment as a result of lessening life experience. Smith was mistaken on this count. The division of labour has distributed wealth in ways that no one anticipated and the typical unskilled person today has much more knowledge than the typical peasant of pre-industrial society. This knowledge is imparted not only by formal education but also by the incessant transmission of information that characterises technologically advanced economies. Smith also did not foresee that modes of production that he rightly or wrongly associated with the moral decline of the working class, the large factory, the labour intensive mine and such like, would themselves be only transitory. The acute specialisation that these modes engendered are being superseded by the more general and multi-skilled attributes demanded by manufacturing, trading and service sectors of modern economies. What was missing from Smith's calculations was the role of technological change in institutional development.

As regards the indirect effects of commerce on beneficence, Smith's reasoning was that when justice prevails and security from violence improves, the need for communal solidarity is lessened. He thought that the decline of this interdependence would reduce opportunities for beneficence. Smith is closer to the mark here. Opportunities for beneficence are diminished when people become prosperous and secure in their personal liberties and possessions. In prosperous welfare states, this inter-dependence has been reduced by a combination of private wealth generated by commerce and state provided welfare. These conditions may make people less aware of the opportunities and needs for beneficence but it is improbable that the human capacity and propensity for beneficence has declined as a result of economic independence. Certainly, no one has produced reliable data that indicates it does. On the contrary, everything that we know about evolution tells us that if beneficence was part of human nature two hundred years ago, it must be still part of human nature. It takes much more time for environmental changes to alter human

psychology. (Mithen 1996: 223) The upsurges in private aid in times of catastrophe and the large scale of private charity flowing from the rich to poor countries contradict the view that prosperity diminishes beneficence as a human quality.

#### 4. THE STATE AND MORAL CAPITAL

##### **Can the state be beneficent?**

The state can be just by observing and the rules of justice and by maintaining the institutions for the administration of justice. Can it be beneficent? The question needs to be separated from the question whether the state can enforce beneficence on the part of its citizens. It must also be distinguished from the capacity of rulers to be beneficent with their private wealth or wealth at their disposal by virtue of constitutional prerogative. The capacity of the state to engage in beneficence in its own right depends on the resources that belong to it. I cannot be beneficent by giving away your money. Similarly it is misleading to say that the state can be beneficent by taking one person's wealth to give another.

The state can be beneficent in a meaningful sense only if it has wealth that it has not taken coercively from citizens and does not hold as the agent or fiduciary of the citizens. The modern state has very little, if any, such wealth. When the state provides public goods out of tax revenue it acts more like a party to a contract to provide public goods. Where the citizens agree unanimously or according to an agreed constitutional process to authorise the state to carry out some beneficent act on their behalf, the state simply acts as the agent of the public. When the state gives away public lands, it is granting lands that it holds in trust for the people. Even when the state acquires wealth through commercial enterprise, it does so with capital taken from citizens. Hence, it is not very useful to talk of the beneficence of the state in its own right. More pertinent is the question whether it can make the citizens beneficent.

##### **Can the state enforce beneficence?**

Adam Smith argued that although the absence of beneficence excites disapprobation, attempts to extort it would be even more improper. (Smith, 1976: 79) He wrote: 'To neglect it altogether exposes the commonwealth to many gross disorders and shocking

enormities, and to push it too far is destructive of all liberty, security, and justice.’ (id: 81) Smith realised that while beneficence is highly desirable, it couldn’t be exacted without jeopardising the more fundamental morality that is justice. Beneficence is the ‘ornament which embellishes’ the building whereas justice ‘is the main pillar that upholds the whole edifice.’ (id: 86) While both justice and beneficence form the moral capital of society, the state is effective only in the promotion of justice. Beneficence can only be promoted by ‘advice and persuasion’. (id: 81)

The modern democracy typified by the OECD countries is a welfare state that has assumed a wide range of social security functions. It is also characterised by direct and indirect wealth transfers through taxation and regulation of economic activity. Coercive wealth transfers do not constitute acts of beneficence on the part of the state or the persons from whom the wealth is transferred. It can hardly be said that I engage in a beneficent act when I give that which I am forced to giving. If I choose to distribute my wealth I will be beneficent but only because the rules of justice do not require me to do so. A private citizen who coerces me to give away my wealth commits a serious crime. When the state compels me to part with my wealth, it may be acting lawfully but contrary to the rules of justice.

Most members of a society are likely to agree that every member should have an economic safety net for coping with misfortune. There is an element of beneficence in such an arrangement though it is also in everyone’s self interest as a form of universal insurance against catastrophe. However, in the age of democracy, the welfare state has extended itself far beyond this objective. Elected governments, particularly those whose powers are not carefully circumscribed by constitutional rules, cannot ignore the distributional claims of critical sections of the voting public on whom its fate depends. As Hayek wrote, ‘an omnipotent democratic government simply cannot confine itself to servicing the agreed views of the majority of the electorate’ but will be forced ‘to bring together and keep together a majority by satisfying the demands of a multitude of special interests, each of which will consent to the special benefits granted to other groups only at the price of their own special interests being equally considered’. (Hayek 1982: 3, 99) The argument that wealth transfers resulting from the electoral process and the discretionary powers of government have little to do with genuine collective choice is well supported by public

choice studies. (Buchanan 1962, 1975, 1986; Tullock 1962, 1976; Olsen 1965, 1982) Even if it is conceded that such transfers deserve the name beneficence on the occasions that they benefit the genuinely destitute, there is no way of determining accurately, the winners and losers in the overall political scramble. It is hard to disagree with Wilhelm Ropke's comment that the welfare state has degenerated 'into an absurd two-way pumping of money when the state robs nearly everybody and pays nearly everybody, so that no one knows in the end whether he has gained or lost in the game'. (Ropke 1971: 164-5) Indeed Brennan and Buchanan reminds, 'the implementation of political transfers will always be such that the direction of transfer is away from the minority and toward the decisive majority, and the poorest cannot be expected to be in the decisive majority any more often than anyone else.' (Brennan and Buchanan 1985: 128) In the absence of genuine community consensus, the coercive redistributions effected in the name of social welfare transgress the rules of justice.

These observations are not meant to understate the value of beneficence as a moral good or as moral capital. Acts of beneficence as herein understood benefit both giver and recipient. They rarely have externalities if performed in accordance with rules of justice. As previously stated, beneficence increases trust and reduces transaction costs. A society without beneficence will also be one where all those in need are dependant on the state. In such a society, justice will be in increasing jeopardy from the continual interventions of state. A society rich in beneficence will be more than likely a society rich in justice because beneficence requires stability of possessions that is only secured by justice.

### **State and temperance**

Temperance is traditionally promoted by social disapprobation, religious beliefs and commonsense adoption out of self-interest. However, the modern state has a record of attempting to compel temperance by law. Restrictions on alcohol and tobacco sales and consumption, prohibition of many recreational drugs, regulation of prostitution, censorship of erotica are more prominent examples of temperance related limits on liberty. Legislators seek to justify these laws on grounds that they protect not only the consumer but also others. Yet they deviate radically from traditional tort principles. Tort law allows freedom of action but compels reparation if harm results from intentional or negligent conduct. It does not ban activities beforehand but lays down duties of care towards others. Modern laws that are designed to enforce temperance or abstinence prohibit activities that may never harm another. They erode justice by diminishing self-ownership, property rights and contractual freedom and impose significant costs by limiting choice. Admittedly, there are difficult issues at the edges. Pre-emptive action is necessary in the face of clear and present danger to the public but intemperance rarely poses such danger. This explains perhaps the notorious ineffectiveness of such laws.

### **5. CONCLUSIONS**

This theoretical study has revealed that there is no tension between morality and commerce when morality is understood as pertaining to the conduct of human agents as distinguished from end states. On the contrary just conduct is a necessary condition for commerce. Justice is the foundation of beneficence for justice alone secures personhood, property and contractual freedom that make true beneficence possible. The argument that commerce *per se* promotes a culture of greed and hence corrupts morals is rejected on logical grounds. It is also rejected, as Peter Bauer would say, on the evidence of the senses that suggests endemic corruption to be associated mostly with poorer societies where economic and political freedoms are severely curtailed by state action. (Bauer, 2000:20)

There is, however, much tension between commerce and justice when justice is understood as an end state. Social justice is an end state conception of justice that departs from the idea of morality as an attribute of conduct. Social justice demands particular patterns of wealth distribution that can be achieved only through coercive wealth transfers.

It contradicts justice as just conduct and unsettles the institutional framework of commerce. End state justice is only possible through an agent with power to continually to make adjustments in the material condition of persons – in a word the state. Thus, a principal conclusion from this discussion is that the state in its present interventionist form is a major source of injustice.

The state can contribute to the accumulation of moral capital by nurturing and strengthening the institutions of justice. Again, as commerce and justice are interdependent, the removal of obstacles to commerce is a logical means of promoting justice. However, justice cannot be maintained solely by force of law. It needs to take root in the culture of the people. In industrialised democracies, there has been a weakening of the culture of ‘playing by the rules’ and as Becker, Murray, Fukuyama and others have pointed out, much of this is the result of misguided social re-engineering efforts. The weakening of property rights, the undermining of contractual certainty and the fault basis of liability through numerous legislative interventions and discretionary powers have not only directly distorted rules of justice but have also lead to a general decline of the culture of responsibility for one’s conduct. The extension of the welfare state beyond the safety net paradigm has been disruptive of the traditional institutions that nurtured the culture of justice and beneficence such as family, church and school. Fukuyama sees in late twentieth century statistics, an encouraging process of social and moral re-norming. (Fukuyama, 2000: 271). Such re-norming may prove unsustainable without the withdrawal of the state to a much narrower province.

The problem of moral capital depletion is more acute in poorer nations. The institutions of justice are weak in these countries and commerce is greatly hampered by arbitrariness of government, nepotism, cronyism, state patronage, excessive regulation, lack of transparency and accountability of public authorities, and inherited cultural constraints on market processes. These problems will not be overcome without the liberalisation of their political and economic systems. As the success of the so-called Asian Tiger nations and more recently China have shown, commerce can drive political and legal reform. This process can be catalysed by the industrialised democracies through the removal of barriers to trade. Trade barriers limit property rights and contractual freedom of those living at home and abroad and hence their elimination will promote justice everywhere.

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