
Moral Capital and Commercial Society

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Modern civilization is based on laws and other institutions that allow 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 find ourselves without most of the goods and services that we now 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 the profits are gained by perfectly legal transactions. The ancient 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” (qtd. in Finley 1987, 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. Such thinking contains the unspoken assumption that entrepreneurship is a necessary evil whose consequences need to be mitigated.

Another way of looking at human affairs 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. In this article, I examine from this theoretical perspective the connections among moral capital, commerce, and economic performance. Following Adam Smith, David Hume, and later evolutionist thinkers, I argue that commerce coevolves with moral rules and

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The Independent Review, v. VIII, n. 2, Fall 2003, ISSN 1086-1653, Copyright © 2003, pp. 213–233.

leads not only to prosperity but also to the accumulation of moral capital. Conversely, depletion of moral capital can result in economic deterioration that causes further moral decline. I do not attempt here to devise ways to measure moral capital or to test the theory empirically. My aim is the more modest one of explaining the theory by clarifying some of the conceptual issues relevant to its understanding. I hope to provoke thought about what societies can do to enhance their stocks of moral capital.

The first part of this article contains a discussion of the concept of moral capital. I explain the sense in which the disposition to moral conduct represents a type of capital, and I distinguish the concept of moral capital from the related ideas of social capital and human capital. The main forms of morality are identified as justice, beneficence, and temperance. Whereas morality in all forms is conducive to commerce, justice has special significance. I follow a discussion of the abstract qualities of justice with an inquiry concerning the rules of justice that are indispensable for commerce. I conclude this part of the article with observations on the role of institutions in the accumulation of moral capital.

The second part presents a closer examination of the connection between commerce and morals. I present morals rules and commerce as aspects of the same evolutionary phenomenon and examine the dependence of commerce on moral capital against the converse proposition that commerce promotes greed and hence causes moral decline.

In the third part, I discuss the competence of the state with respect to the accumulation of moral capital and propose that the state is effective mainly in the promotion of justice and that its attempts to promote beneficence and other virtues invariably result in the erosion of justice.

I end with a summary of my principal conclusions and some ideas about ways to build moral capital.

The Concept of Moral Capital

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

Capital generally understood consists of resources owned by individuals or firms and applied in the production of goods and services. These resources include incorporeal assets such as goodwill, trade reputation, and training. The concept of capital has more recently 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 in general. It can take two forms from the individual standpoint. Persons who are habitually moral in conduct may gain a reputation for trustworthiness that induces others to deal with them. This form of capital may increase in value where institutions have become unreliable and people seek reliable trading partners. Again, habitual observation of a common set of known moral rules within a community of individuals will reduce costs of transacting with others. These costs include the costs of finding reliable trading partners and the costs of enforcement through self-help or third-party intervention in the event of breach of obligation. In contrast, persons living among rule breakers need to take costly precautions and will have to limit their transactions to a minimum. The transaction-cost saving that accrues to a person as a result of others’ moral conduct represents part of that person’s moral capital.

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 a group’s moral rules reduce transaction costs and hence facilitate mutually advantageous dealings between group members as well as between group members and outsiders represents the community’s moral capital: members of the group have an economic advantage that results from the objective prevalence of the observance 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 use force to take 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 them, “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 we made civilization possible.

Moral Capital Distinguished from Social Capital

The concept of *social capital* refers to informal or voluntary social organizations 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 the state imposes. The term is used widely in the analysis of social factors that help or hinder communities in achieving prosperity. Among the better-known studies of social capital are Robert Putnam’s (1993) on the role of civic tradition in Italian democracy; Glenn Loury’s (1977) and Ivan Light’s (1972) on racial income differences; James Coleman’s (2000) on the creation of human capital; and Jane Jacobs’s (1961) on the role of

community networks in crime prevention. 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 behavior and hence contribute to moral capital. However, it is useful to distinguish these concepts not only because they are not coextensive, but also because moral capital raises distinct issues whose discussion would be hindered by confusing it with social capital.

Human Capital, Work Ethics, and Moral Capital

Moral capital and human capital overlap at the 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 enhances a person's earning powers and that increases the efficiency of economic decision making (Rosen 1997, 2: 682). Earning power arises through improved productivity of value to oneself (as in self-employment), to 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 requires competencies that include knowledge of relevant ethics. Thus, training can generate moral capital. Yet moral capital is a wider concept. It reaches beyond the needs of specific professions or occupations, and its accumulation depends on many more factors than education. Work ethics also overlap with moral capital to the extent that they translate 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 do's and don'ts. On the positive side, it consists of exhortations to engage in virtuous acts, and on the negative side it consists of the observance of rules forbidding certain types of action. The more important rules on the negative side have been termed *rules of justice* (Hume [1777] 1964, 2: 180; Smith [1759] 1976, 79), *rules of just conduct* (Hayek 1982, 2: 31–33), and the *morality of duty* (Fuller 1964, 5–6). These rules guide a person's conduct in relation to others. Many of them are formally recognized as laws and are often coercively enforced. Some rules are ubiquitous, such as those against unjustified killing, willful or negligent harm to person and property, and the breaking of promises. It seems logically impossible to achieve harmonious coordination of the lives of a multitude without these rules.

Rules of temperance comprise negative norms that commend self-restraint even when conduct does not directly harm others. *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 legal. Social disapprobation of conduct such as immodesty, alcoholism, and promiscuity offers evidence of such rules. The conduct that these rules seek to curb may be mildly offensive to some, but it does not harm others as unjust acts do. Temperance as moral capital is difficult to assess because it is a relative concept. One man's moderation in drink, for example, may be another man's excess. Conduct appropriate in 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, a reputation for temperance counts for something.

Apart from these negative constraints, morality in the traditional sense also encompasses the positive virtue that Hume and Smith called *beneficence* (Smith [1759] 1976, 78–79) and that 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 we 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 to make heroic sacrifices, but we will be praised if we do. Beneficence, by this definition, consists of voluntary acts that 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" ([1759] 1976, 82). Not that beneficence carries no reward, however. Its payoff can take the form of psychological fulfillment, 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 here in a specific sense. Following a long tradition in moral philosophy, I regard justice as pertinent not to states of affairs but to responsible agents' conduct that affects others. Justice in this sense constitutes moral capital. There are other conceptions of justice, including that of *distributive* or *social justice*. Because words have no transcendently true meanings, but only meanings they acquire by convention or definition, it is not possible to deny the term *justice* to such notions. As presently explained, however, distributive or social justice does not form moral capital in the economic sense.

Moral capital excludes Aristotle's distributive justice that requires the division of riches, honors, and burdens in proportion to each person's merit, such as freeman status, nobility, or excellence (Aristotle 1980, bk. 5, chaps. 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 con-

trast, 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 this conception, responsibility is attached to society as a whole to produce “just” distributions of wealth, overcoming where necessary certain 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 reasons 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 agents’ conduct, not their material resources. Wealth distribution may create capital for some at the expense of others, but that capital is not moral capital. Distributive or social justice does not preannounce 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, which are all what Robert Nozick calls end-state principles of justice (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—circumstances that, 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” (1963, 202).

I exclude Rawls’s own theory, however, 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 . . . they are to be to the greatest benefit of the least advantaged members of society” (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. Rawls’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 Rawls’s scheme, the state can fully discharge its responsibility for justice only by reactive measures as “impermissible” inequalities come to light. Justice in this sense may equate to morality in some people’s judgment, but the point at issue here is different. Such morality is not the kind that can form capital in an economic sense.

*General, Negative, and Interpersonal Character
of the Rules of Justice*

The concept of justice relevant to moral capital cannot be defined exhaustively. It is not possible to know in advance all the possible circumstances that will raise a moral question. Because the universe is an evolving process both in its physical and its cultural dimensions, we cannot even imagine all the kinds of situations that may call for our moral judgment. Some situations may never arise, and others may arise so rarely that our established moral codes do not reveal a time-tested rule of conduct on which we can rely (for a clear example, see Sen 1999, 54–55). Fortunately, most people grasp intuitively the most important rules of moral conduct on which civilized life depends. These moral rules are inseparable from civilization because 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 [*sic*]” ([1748] 1975, 490).

Distillation through experience is a process of generalization or abstraction. The fruits of experience are preserved “not as a recollection of particular events, or [as] 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 universalized 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 nonperformance 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 shalt not” formula. Even when a rule appears to require positive action, it will be seen on closer examination to be capable of negative formulation. The rule that requires performance of contracts, for example, is a rule that prohibits actions contrary to contract. The rule that requires a surgeon to provide postsurgical 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 in which the common law imposes positive duties, such as the seafarer’s duty of rescue at sea, the duty bearer occupies a unique, hence quasi-fiduciary position in relation to the beneficiary. The law can be generalized into the injunction: “Do not abandon a person whose life uniquely depends on you, if you 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 preceding the emergence of the state. Smith finds the rules of justice originating in the instinct of sympathy and in the disapprobation of acts that offend this instinct. Whereas absence of beneficence and of justice evokes disapprobation, only unjust conduct brings forth the stronger feeling for retribution. Retribution may occur without state intervention, through social

or religious pressure—including ostracism, social shunning, expulsion from associations, commercial blacklisting, excommunication, and admonishment—and in some cases through self-help measures.

Only norms that can be universalized become recognized as rules of justice, but not all such norms are so recognized. As Hayek notes, Kant’s categorical imperative—to act only by rules that you will apply to all (Kant [1785] 1948)—is a necessary but not a 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 also from another angle. Rules of justice forming the same system are generally accommodated to each other, and hence they 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 pertains to a thing will be a rule of justice insofar as it also involves 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 prohibitions are attempts to enforce temperance rather 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 precede legislative authorization may be regarded as spontaneously formed out of coincidence of behavior. Once a rule begins to crystallize, reliance on it increases, causing it to be stabilized as part of the overall social structure. Although the genesis of a rule is in the conduct of individuals, considerable time may pass before the members of the society can articulate the rule clearly (Campbell 1965, 32–33; Ferguson [1767] 1966, 34, 122; Smith [1759] 1976, 159; Hume [1739–40] 1978, 490; 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 society has 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" ([1748] 1975, 541). In legal terms, these laws 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 rule presupposed in the rules concerning property and contract. Rights are meaningless without self-ownership because they exist in relation to persons, and 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 subrules. The rule that contracts must be observed cannot be sustained without subsidiary rules concerning misrepresentation and fraud, mistakes, frustration, and quantification of damages, as well as the important 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 a distinguishing characteristic of justice ([1863] 1998, 90). Contracts are unlikely to be made where these complementary 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 by parties to disputes and by those who assist in the resolution of disputes, such as police (public or private), lawyers, and judges. What is critical for justice is that the rules are complementary and harmonious. Thus, just conduct by a judge qua judge consists in upholding the rules of justice as they apply to the case. A judge who issues a decree contrary to such rules undermines the system. Likewise, legislators act unjustly when, in the name of justice, they create powers to adjust arbitrarily the consequences that result from the application of the rules of justice.

Institutions and Moral Capital

Institutions are important in several ways to the accumulation and retention of moral capital. The value of morality as capital depends on reputation for moral conduct. Because people cannot read minds, they predict behavior through observation. In granting a loan, for example, bankers rely more on the customer's credit history than on their moral convictions. Even this kind of knowledge is unavailable in most commercial transactions. People live in societies of many millions of individuals, and they have direct and personal knowledge of only a few persons within this multitude. Yet their daily activities depend on the coordination of the actions of vast numbers of strangers. This coordination is made possible not by personal knowledge of others, but rather by reliance on observable constraints on unjust conduct. These constraints are *institutions*, a term economists use to signify 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-restraint that people voluntarily assume (North

1990, 3). Institutions are not corporeal. They consist of patterns of action that arise from the coincidence of individuals' behavior. Individuals, in turn, rely on these patterns of action 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" ([1767] 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 to avoid conflict. In continental Europe, opposite rules apply with equally beneficial effects. Though regarded as moral, some institutions may actually increase transaction costs by regulating or prohibiting particular kinds of transactions altogether (for example, bans on alcohol consumption and sales or on Sunday shopping), and hence they do not help to 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 because the coincidence of individuals' moral conduct creates and sustains the institutions. Once formed, institutions shape conduct by providing moral guidance and by signaling more clearly the costs and benefits of the choices we make. A rule can exist despite its violation by individuals. Unlike physical laws, human rules by their very nature 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 recognize 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 in which 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 a few examples (Vino-gradoff 1913, 61; Mill [1863] 1999, 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" (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 occur 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 con-

tract. Even leading legal positivists concede, however, 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. State laws that are inconsistent with such morality, in contrast, entail high enforcement costs.

Interdependence of Morals and Commerce

The preceding discussion of morality as capital has 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 I reject on logical and empirical grounds the common claim that commerce corrupts morals.

Coevolution 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 skeptical investigation of the nature of human knowledge and institutions, which led them to the conclusion that accumulated experience, not reason, was the source of moral rules. Given the premise that man has no foresight of the future, Hume argued that reason alone could never give rise to any original idea ([1739–40] 1978, 157). Adam Smith found “altogether absurd and unintelligible” the idea that we can derive from reason the first principles of right and wrong ([1759] 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” ([1767] 1966, 122). Morality, from this perspective, is seen to emerge spontaneously and unintentionally through the coincidences of behavior and the retention by communities of practices that conferred advantages on them (Campbell 1965, 32–33).

How does this experience come about? Smith maintained that human beings have “original passions” that lead to moral conduct, including sympathy or fellow feeling, about which he wrote that “we derive nothing from it except the pleasure of seeing it” ([1759] 1976, 9), yet it is not a wholly unselfish passion. We have sympathy for others because we need the sympathy of others; hence, we try to judge others as we like them to judge us—as impartial spectators (Otteson 2002, 84–85). Whatever the nature of sympathy, it cannot of its own force translate into moral rules. Rules of conduct can result only from the experience of interaction with others. This experience springs from 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 [1759] 1976, 341); the other is 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 not as the product of human wisdom that foresees the great advantages (Smith [1776] 1981, 1: 25). People learn the rules of justice through the experience of barter and exchange (Otterson 2002, 20). People do not discover already existing rules of justice in the course of exchanging, for that process, too, is unintelligible from the evolutionary standpoint. Rather, the rules are formed by practice, and their existence and value dawn on people even as the rules emerge in consequence of their practice. Only the action of exchanging 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 difficult 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 have 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 ([1690] 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 is evident from practices such as hostage taking as insurance and face-to-face exchanges, the latter still surviving in town bazaars and village fairs. In order to break out of these constraints and to transform themselves into civilizations, 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 development to happen, justice had to be institutionalized, and commerce was the driving force of the process. As Smith wrote, commerce can seldom flourish long in any state that does not enjoy a regular administration of justice—a state “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” ([1759] 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 ([1763] 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” (421). In contrast, “Whenever commerce is introduced into any country, probity and punctuality always accompanied it” (538). His explanation of the cause of this propensity anticipated a much 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” (538).

Does Commerce Corrupt Justice?

That commerce coevolved 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 people the bargaining power to corrupt the institutions of justice. The argument implies that commerce carries the seeds of its own destruction. If so, commerce has become independent of justice. Such independence is not possible, however, because property rights and contractual freedom are essential to commerce, and only justice can secure them. If justice dies, commerce dies with it.

If commerce has an effect on how people behave, it does so through cultural rather than biological change. If evolutionary psychology has any credence, commerce has not been around long enough to change our adapted minds (Barkow, Cosmides, and Tooby 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 people’s customs and institutions. It has also made the pursuit of profits, whether out of greed or other impulse, an acceptable form of behavior. 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 relation is provided by surveys such as the *2003 Index of Economic Freedom* (Heritage Foundation and *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 those things I could have gained only by plunder in precommercial society. There is no reason to think that wealth increases incentives for unjust conduct, especially if the costs of unjust conduct are high as a result of effective law enforcement. It is more often people’s inability to satisfy their needs and desires through just conduct that drives them to injustice. Unjust behavior 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. By weakening justice, the state weakens commerce and thereby further erodes justice even more.

Economic studies of crime tend to attribute rising crime rates (a useful yardstick of injustice as understood here) to combinations of causes, such as economic decline,

demographic factors, weakening deterrence, and social disruptions (Becker 1968; Fukuyama 2000, 80–85; Deadman and MacDonald 2002, 13; Wynarczyk 2002, 34–35). 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 breakups, single parenting, truancy, falling school standards, and welfare dependency are symptoms) is attributable to combinations of factors, yet persuasive studies identify as major causes the perverse incentives and moral hazard created by the welfare state itself (Becker 1981; Murray 1984).

Does Commerce Hinder Beneficence?

Whereas Adam Smith believed that commerce unambiguously favors justice and temperance, he was pessimistic about its effect on beneficence (Rosenberg 1990). His pessimism arose from what he believed to be the direct and indirect negative consequences of commerce on beneficence. The direct harm he feared sprang from the effect of specialization on the education of the working class. The indirect consequence had to do with the diminishing opportunities for beneficence that result from the strengthening of justice.

Smith thought that the growing division of labor has a tendency to make some classes “stupid and ignorant” as their working lives become confined to “a few simple operations.” Of the man of labor, 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” ([1759] 1976, 782). In contrast, a member of precommercial society was versatile, “capable of doing, almost every thing which any other man does or is capable of doing (783). Smith’s point was that in precommercial society a person had wider but shallower knowledge, whereas the person in the age of specialization has deeper knowledge over a much narrower field. Although this specialization confers tremendous advantages on human civilization, 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” (783–84). He advocated universal education “for reward so moderate that even a common labourer can afford it” (785). The payoff for government was that an educated electorate would make more mature political judgments and be less prone to manipulation by interested factions (788).

History has shown that Smith’s fear was misplaced. In fairness 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. He believed that human nature consists of certain “original passions,” of which sympathy is one ([1759] 1976, 9). As mentioned earlier, human psychology is not malleable over the relatively short period 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. He was mistaken on this count. The division of labor has distributed wealth in ways that no one anticipated, and the typical unskilled person today has much more and broader knowledge than the typical peasant of preindustrial society. This knowledge is imparted not only by formal education but also by the incessant transmission of information that characterizes technologically advanced economies. Smith also did not foresee that the modes of production that he rightly or wrongly associated with the moral decline of the working class—the large factory, the labor-intensive mine, and so forth—would be themselves only transitory. The extreme specialization that those modes engendered are being superseded by the more general and multiskilled attributes demanded by manufacturing, trading, and service sectors of modern economies. Missing from Smith's calculations was the role of technological change in institutional development.

As regards the indirect effects of commerce on beneficence, Smith reasoned that when justice prevails and security from violence improves, the need for communal solidarity is lessened, and he thought that the decline of this interdependence would reduce opportunities for beneficence. Here he is closer to the mark. Opportunities for beneficence are diminished when people become prosperous and secure in their personal liberties and possessions. In prosperous welfare states, this interdependence 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 have declined as a result of economic independence. Certainly, no one has produced reliable data that indicates they have. 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 still be part of human nature now simply because much more time is required 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 the poor countries contradict the view that prosperity diminishes beneficence as a human quality.

The State and Moral Capital

Can the State Be Beneficent?

The state can be just by observing the rules of justice and by maintaining institutions for the administration of justice. Can it also be beneficent, however? This question needs to be separated from the question of whether the state can enforce beneficence on the part of its citizens. It must be distinguished also from the capacity of rulers to be beneficent with their private wealth or the 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 it to 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 citizens' agent or fiduciary. 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 authorize the state to carry out some beneficent act on their behalf, the state simply acts as their agent. When the state gives away public lands, for example, 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 of whether it can make the citizens themselves 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: "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" ([1759] 1976, 79, 81). Smith realized that although beneficence is highly desirable, it cannot be exacted without jeopardizing 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" (86). Although both justice and beneficence contribute to society's moral capital, the state can be effective only in the promotion of justice. It can promote beneficence only by "advice and persuasion" (81).

The modern democracy, typified by the member states of the Organization for Economic Cooperation and Development (OECD), is a welfare state that has assumed a wide range of social security functions. It is also characterized by direct and indirect wealth transfers through taxation and regulation of economic activity. Coercive wealth transfers do not constitute acts of beneficence by the state or by 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 give. 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 it is still acting 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, although 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, in particular 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 (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 and Tullock 1962; Olsen 1965, 1982; Buchanan 1975, 1986; Tullock 1976). Even if it is conceded that such transfers deserve to be called beneficence on the occasions that they benefit the genuinely destitute, there is no way to determine accurately the winners and losers in the overall political scramble. It is difficult 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” (1971, 164–65). Indeed, as Brennan and Buchanan remind us, “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” (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 understood here 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 in which all those in need are dependent on the state. In such a society, justice will be in increasing jeopardy from the continual interventions of state. A society rich in beneficence more than likely will be a society rich in justice because beneficence requires a stability of possessions that only justice secures.

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, and censorship of erotica are prominent examples of temperance-related limits on liberty. Legislators seek to justify these laws on the grounds that such laws protect not only the consumer but also others. Yet these laws 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 rather lays down duties of care toward others. Modern laws 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 they impose significant costs by limiting choice. Admittedly, there are difficult issues at the edges. Preemptive action is necessary in the face of clear and present danger to the public, but intemperance rarely poses such danger—thus, the notorious ineffectiveness of such laws.

Conclusions

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 the 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 I reject on logical grounds. I also reject it, as Peter Bauer would say, on the evidence of the senses that suggests endemic corruption is associated for the greater part with poorer societies in which state action severely curtails economic and political freedoms (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 that departs from the idea of morality as an attribute of conduct. It demands particular patterns of wealth distribution that can be achieved only through coercive wealth transfers. It contradicts the notion of justice as just conduct and unsettles the institutional framework of commerce. End-state justice requires an agent with power—in a word, the state—to make adjustments continually in people's material condition. Thus, 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 industrialized democracies, the culture of "playing by the rules" has been weakened. As Becker, Murray, Fukuyama, and others have pointed out, much of this weakening has resulted from misguided social engineering. The weakening of property rights, the undermining of contractual certainty, and the abandonment of the fault basis of liability through numerous legislative interventions and discretionary powers have not only distorted rules of justice directly but have also led to a general decline of the culture of responsibility for one's own conduct. The extension of the welfare state beyond the provision of a safety net has disrupted 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 rebuilding (2000, 271). Such revitalization of norms may prove unsustainable, however, without the withdrawal of the state to a much narrower province.

The problem of depletion of moral capital is more acute in poorer nations. The institutions of justice are weak in these countries, and commerce is greatly hampered by the 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 liberalization of their political and economic systems. As the success of the so-called Asian Tiger nations and more recently of China have shown, commerce can drive political and legal reform. This process can be catalyzed by the industrialized democracies through the removal of barriers to trade. Trade barriers limit the property rights and contractual freedom of those living at home and abroad; hence, their elimination will promote justice everywhere.

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Acknowledgments: This paper was researched and completed during the author's fellowship at the International Center for Economic Research, Turin, Italy. The author gratefully acknowledges the contributions of Professor Enrico Colombatto, Stefano Chiadò, and the editor and anonymous referees of *The Independent Review*.

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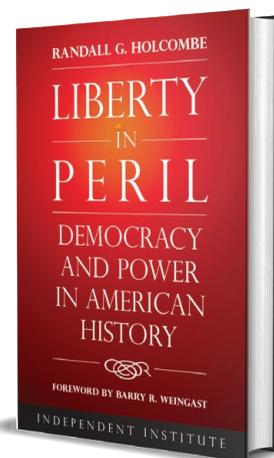
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