

The moral foundation of collective action against economic crimes

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1. Introduction

Economic and financial crimes, defined generally as crimes against property, have been increasing rapidly in recent years. In the 2014 *Global Economic Crime Survey* it is noted that among the 5,000 business organisations across the world responding, 37 percent report being victims of economic crime, up from 30 percent in 2009.¹ No country, society, culture or community has been immune. The financial crisis focused attention on elite white-collar crimes while empirical research was pointing to another alarming development: “the everyday crimes of the middle class”, committed by those “[...] at the very core of contemporary society” (Karstedt and Farrall, 2007).

Much of the research into the growth of economic and financial crimes has focused on the impact of globalization and the resulting economic changes including the accelerating pace of global expansion in information technology.² Little attention has been paid to what a number of observers consider as the most fundamental change – the erosion of morality.³ To be sure, there are theoretical and empirical classes of sociological, political and psychological studies that focus on ‘market

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¹ For details see PWC (2014).

² See Serio (1998) and United Nations (2006).

³ See Holloway (1999), Porpora (2001) and Kateb (2011).



anomie', meaning the weakening 'market morality' or 'normlessness'.⁴ To our knowledge, however, there have been very few studies that examine the relationship between economic and financial crimes and the erosion of morality at the global level, even in societies where the 'market' does not have a dominant role in the economy.⁵ Some have focused their sights on the rapid weakening of general moral standards and admit that humanity is facing a 'particularly acute' moral confusion. Richard Holloway, the Bishop of Edinburgh, thought it to be caused by the rapid social and cultural changes accompanying 'unfettered' globalization, changes that have undermined institutions or traditions that previously constrained criminal behaviour. He believes that conservative governments of the United Kingdom in the 1980s and 1990s set loose previously fettered market economies, releasing the forces of greed and self-centred behaviour that challenged traditional approaches to human relations.⁶ In other words, there is no erosion in the moral standard of humans but only 'acute moral confusion'. Holloway (1999) argues, "[t]here can be little doubt that our confusions are particularly acute [...] not because we are less interested in or committed to the moral life than we used to be", but presumably because of an unfettered globalised market and its accompanying social/cultural changes. For a long time, however, a causal direction from erosion of morality to crime has been assumed, as weak ethics were considered the cause of crime.⁷ Moreover, concern with white-collar crimes has been preceded by decades of strengthening globalisation and deregulation of the markets.

Whatever the causes of the erosion of morality across cultures, the 'demand' for international cooperation to combat these crimes has not elicited the desired results because of the absence of a well-articulated, globally shared moral basis for collective action against economic crimes. Our basic premise is that such a moral foundation is urgently

⁴ See Durkheim (1960), Merton (1938; 1964), Dean (1961; 1968), Marx (1966), Lukes (1967), Lee and Clyde (1974), Sirico (2001), Calabrese (2005), Karstedt and Farrall (2007), Berkatzki (2008) and Adriaenssens and Maes (2008).

⁵ See Akinbo (2009).

⁶ See Holloway (1999, p. 188).

⁷ See Sah (1991), Conley and Wang (2006), Berman (2007) and Shavell (2002).

needed. Given the deep pluralism that characterises contemporary humanity, this is a daunting challenge. Holloway is helpful in proposing two characteristics for any “emerging morality”. First, “the principle of harm [...] is a useful guide in steering our way through the currents of debate about what is or is not allowable or moral behaviour” and, second, that the “[...] emerging morality must be characterised by the principle of consent” (Holloway, 1999). The most explicit precedent to the principle of harm among earlier scholars is found in J.S. Mill’s *On Liberty* ([1859] 1978), in which he first declares the principle that “the only legitimate ground for social coercion is to prevent someone from doing harm to others”. He then modifies this principle by clarifying that the harm he has in mind is a violation of a “distinct and assignable obligation to any other person or persons”.⁸

We argue that unlike other complex moral issues facing human societies, no one would deny the enormous, clear and unambiguous ‘harm’ caused by economic and financial crimes. The outrage against these crimes are so strong that at least one observer refers to them as “crimes against humanity” (Zuboff, 2009). The extent, intensity and depth of the ‘harm’ these crimes cause are well-described by their

⁸ One of the foundational concepts for the central thesis of this paper is a shared moral commitment to human dignity. In this context, Richard Rorty, a ‘non-foundationalist’ philosopher who considered his own moral position as ‘postmodern’ in the sense of being ‘rationally groundless’, shared this commitment and considered human dignity as a crucial dimension of egalitarian social justice (1983). Given the orientation of this paper towards humanity in its entirety, overall it is in accordance with Rorty’s original conception of justice as “loyalty to a larger group” (1997). Another common ground with Rorty (and Adam Smith) is the belief that the enormous harm done by economic and financial crimes (including money laundering and the financing of terrorism) should generate strong ‘empathy’ to motivate the search for a moral foundation with significantly strong consensus the world over to spur cooperation and collective action against these crimes. Rorty claimed that human capacity for empathy is a basic moral capacity. Humans, he believed, do not need a philosophical foundation to undertake political action on democracy, equal rights and respect for others. These are built into social conventions. They are embedded in their languages and traditions. All that is needed is to affirm them by empathy and sympathy (1979). Finally, it is hoped that our paper will achieve what Rorty considers a type of ‘inquiry’ with the purpose of achieving “agreement among human beings about what to do to bring consensus on the end to be achieved and the means to be used to achieve those ends” (1999, p. xxv).

victims as assaults upon human dignity, trust, contract and property, all of which constitute fundamental elements of the institutional infrastructure of societies. Without these, no social cohesion or continuity would be possible leading to what Hobbes ([1651] 2002) envisioned as a “war of all against all”. We believe that the first requirement suggested by Holloway is already met. We further argue that Holloway’s second requirement, integrally related to the first, can also be met. A moral principle that can meet the requirement is the ‘golden rule’ with its long history, in one form or another, in all known systems of thought, societies, cultures and religions.

Accordingly, in the next section we discuss the clear and unambiguous principle of ‘harm’ as it pertains to the devastating damage caused by economic and financial crimes to human dignity, trust, contract and property. In the third section, we argue that the changes brought about by globalisation and technical progress in our time are not too dissimilar to those in the seventeenth and eighteenth centuries that also changed moral perception. The thinkers of the Enlightenment responded by envisioning a new ‘moral sense’. We believe that humanity can respond to the present state of moral confusion by redefining the prevailing moral sense in terms of the golden rule. In the fourth section, we discuss the golden rule as a universal moral principle that could be adopted given the consent of a broad representation of humanity who would not want others ‘harmed’ by economic crimes. We also take up the history of the golden rule, its presence in all cultures and religions, and its attribute of ‘universalisability’ and potential for attracting global ‘consent’. Finally, we present our summary and conclusions.

2. The extent and intensity of harm caused by economic crime: many broken windows

Analytic thinking about economic and financial crimes has evolved since the 1970s. The most important dimension of this evolution has been the changing focus from economic crimes as ‘victimless’ to the recognition of their far-reaching and adverse impact on a broad spectrum

of victims. In 1982 the political scientist J.Q. Wilson advanced an idea that became known as the ‘broken windows theory’. The metaphor argued that if a broken window in a vacant building were left unrepaired, soon most of the other windows of that building would be broken. The first unrepaired broken window signals that no one really cares about the building.⁹ Generalised, the idea suggests that tolerating crimes leads to crime epidemics and, eventually, to social disintegration. Recently, William Black, the author of *The Best Way to Rob a Bank is to Own One*, has contextualised ‘the broken windows theory’ to the 2007/2008 financial crisis arguing that “epidemics of elite white collar crime” have driven the recurrent financial crises and are likely to grow the more they are tolerated (Black, 2012).

In the same year that Wilson advanced his theory of broken windows, Tomlin (1982) suggested five basic typologies of victims of white-collar crime: the individual, corporate or business enterprise, governments, society and “international order”. Tomlin suggested that inability to deal with white-collar crimes would damage the moral fabric of society, reduce trust in government and institutions and rationalise the existence of traditional crimes. More than two decades later, the Governor of the Bank of Thailand echoed these words when he stated:

“[...] what is more important than economic well-being is the feeling of living in a fair and just society. If drug lords continue to live well on their ill-gotten wealth, corrupt politicians continue to exert influence in the political arena, fraudulent bank executives continue to go unpunished with no loss of status, and stock price manipulators continue to get wealthier at the expense of other shareholders, people would ultimately feel that the society in which they live is unfair and unjust” (Devakula, 2005).

Despite the plea over decades by many developing countries that they were victims of economic and financial crimes, no serious attempts were made to address these concerns. Over a number of years smaller countries pleaded, to no avail, for an international convention against illegal ‘capital flight’. This stands in sharp contrast to the intense post-9/11 efforts by the United Nations and the multilateral financial

⁹ See Wilson and Kelling (1982) and *The Economist* (2008).

institutions to address crimes such as money laundering and the financing of terrorism. In short order, these institutions, with their asymmetric representation and power structure, promulgated strong standards, codes and conventions designed in rich, advanced countries and imposed them, often without much debate, on their entire membership. The language of these standards and that of their administrators, such as the Financial Action Task Force (FATF), was that of power, displaying one-sided concern with the crime of their choice.

The language of threats and demand for ‘international cooperation’ characterised much of the post-9/11 efforts to combat money laundering and the financing of terrorism. Any failure, for whatever reason, to respond quickly to these demands to ‘cooperate’ meant, at a minimum, ‘naming and shaming’ and eventually sanctions including loss of membership rights in multilateral institutions. Here is some typical language:

“[g]overnments also have to address the problem of countries and jurisdictions that are not cooperating in the combat against financial crime and abuses. Jurisdictions that are unwilling or unable to adhere to international standards for supervision and regulation, for transparency, and for international cooperation and information sharing constitute risk to other countries and a potential threat to global financial stability. These serious concerns have led governments to undertake a number of actions to encourage/pressure these jurisdictions. Recent experience has shown that public statements of concern listing of non-cooperating jurisdictions can bring strong pressure to bear” (Witherell, 2004).

Concurrent with this thinly veiled threat ‘to cooperate or else’, the same statement calls for development of a new “values-based system”, a new morality: “The challenges presented by the global economy are great and will require our being strongly-committed to maintaining and further developing a rules-and-values based system” (Witherell, 2004). The earlier part of the statement leaves little doubt whose rules, whose values and whose morality are to be developed as the fundamental basis of the proposed morality needed for international collective action against economic crimes. Recall the statement of the Governor of the Bank of Thailand complaining that the ‘international community’ has for decades turned a deaf ear to the pleas of the poorer, less powerful nations for

international standards, codes and conventions that mobilise international collective action against economic and financial crimes that harm their people, their economy and their society (Devakula, 2005). These concerns also resonate in the statements of other countries in various international fora (Chunwang, 2002).

There is no denying the devastating consequences of money laundering and terrorism financing. However the prevailing approach based on the language of power is not likely to elicit the kind of cooperation of equals that would allow all countries to take ownership of efforts to combat these crimes. We believe that a 'new values-based system', a new morality along the lines suggested by Holloway and others could be developed. Such a view would rely on the 'prerogative of global citizenship' to develop a moral principle based on 'consent' rather than on the language of power imperatives.¹⁰ With this, a call for

¹⁰ The notion of 'consent' as a ground for generating obligation to comply with political authority is hotly contested in political philosophy at least since Hobbes who, in chapter 14 of his book *Leviathan* ([1651] 2012), argued that 'consent' to a social contract creates an obligation to comply with the authority that results from the contract, and identified consent as either explicit ('express') or tacit ('by inference'). The doctrine of consent that the legitimacy of a government depends on the consent of the governed and that no one is obligated to comply with any political power without personal consent found its classical articulation in John Locke's *Second Treaties of Government* ([1690] 1980). There is intentionality in genuine consent in that, as is interpreted based on Locke's formulation, it authorises actions by others on behalf of the consenter, thus creating obligation for the latter. There are, however, known difficulties in the doctrine of consent approach to the problem of political obligation since Hume's scathing critique of Locke's idea of a social contract. In his *Treatise of Human Nature* ([1739] 1978), Hume refers to the idea of social contract as a "philosophical fiction, which never had and never could have any reality". Despite its high importance in political philosophy, a detailed treatment of 'consent' as a ground for political obligation is beyond the scope and intent of our paper. In this context, a distinguished philosopher asserts that "though the idea of consent is of highest importance in political philosophy, it is out of place in moral thought [...] people do not validate by their consent any moral precept [...] morality in every day life is not an option. People must recognize and respect moral precepts in every day life – if not the golden rule then at least the principle of reciprocity or fairness" (Kateb, 2011, p. 70). Be that as it may, it is noted that the notion of 'consent' as used in this sentence is intended to suggest that respect for human dignity dictates that all humans should have the opportunity to accept or reject actions that affect them. In the context of the entire paragraph wherein the sentence appears, 'consent' is meant to relay the principle of 'parity of participation' according to which justice requires participation and consent of

international cooperation would be more effective based on the principle that harm from economic and financial crimes would be morally unacceptable and must be prevented. Developing a universal moral principle to underlie global collective action against these crimes is an imperative. Such a principle would allow the development of uniform legislation, law, standards and codes within nation states across the globe.

2.1. The victims

Eight years after Tomlin had focused on the victims of white-collar crime, Moore and Mills complained that there had been little research on the social impact of these crimes (Moore and Mills, 1990). In the 1990s the focus was mostly on criminology, prosecution and retributive justice for the offenders. Concern for the victims of economic and financial crimes did not manifest itself either in research or in judicial proceedings until later when the victims' rights advocacy movement became active (Eaton, 1990). Even then, while progress was made on the rights of victims of violent crimes, the rights of victims of financial and economic

all as peers in rule-making processes. There is no intention to address the justice of governance structures of non-state, trans-state institutions that design and implement rules that structure trade, economic and financial relations and interactions of transnational populations, such as the World Trade Organization (WTO) and the International Monetary Fund (IMF), among others (for a treatment of the democratic deficit in the governance of the IMF, see Mirakhor and Zaidi, 2006). Nevertheless, it may be argued that these institutions' executive boards represent all countries. The boards of these institutions 'consent' to policy decisions. Therefore, this consent is sufficient to generate obligation to comply. Rawls, in *A Theory of Justice* (1971, p. 343), argues that "acquiescence in, or even consent to, clearly unjust institutions does not give rise to obligations", and that "obligatory ties presuppose just institutions". With their present governance configuration, in non-state, trans-state institutions power is narrowly concentrated, 'consent' and 'consensus' are 'manufactured' and boards are there to ratify decisions made elsewhere. In this sense, 'consent' and 'consensus' in the rule-making processes in these institutions represent "a tradition of Nietzsche and Foucault, where it is more plainly stated that the rules of engagement, including discursive engagement, are usually set by dominant groups in any society, and their domination is the result of their power, not of the validity or rational consistency of their arguments" (Miller and Walzer, 1995, p. 31).

crimes did not fare as well. In the U.S., the victims' rights movement turned attention to this problem only as recently as 1999.¹¹ Even so, it is as yet uncertain whether the victims of economic and financial crimes have a clear and unambiguous right to be heard in court proceedings against their offenders.¹² In the U.S., where there have been efforts to document the harm that economic criminals perpetrate on their victims, it is reported that many of the victims "[...] lose their entire savings and are devastated by the psychological and social impact. They feel robbed of not only their money, but also of their security, their self-esteem, and their dignity" (Commonwealth's Attorney, 2012). Additionally, victims of economic and financial crimes suffer, *inter alia*, shame, guilt, a sense of betrayal and of violation, social stigma, loss of trust in "the system that was supposed to protect them" and from health problems (Commonwealth's Attorney, 2012).

This is the harm done to individual victims. Other crimes such as corruption victimise whole societies. They harm the legitimacy of government and societal trust in government and public service. The World Bank has conducted extensive research over decades on the harm and damage caused by corruption and other economic crimes. It has concluded, in part, that these crimes "[...] have devastating impact on the capacity of government to function properly; on the private sector to grow and create employment; on the talents and energies of people to add value in productive ways and ultimately on societies to lift themselves out of poverty" (Folsom, 2007).¹³

Not long ago, it was assumed by social scientists and politicians that some economic and financial crimes, such as corruption, were 'developing country' phenomena.¹⁴ Researchers often considered corruption as a deterrent to the economic development of poor and middle-income countries in that it was thought that corruption

¹¹ See Croall (2007). For detailed data on the victims, see the sources mentioned in note 1 above.

¹² See Moore and Mills (1990), Bernard (2001), Croall (2001; 2007), Dingan (2005), Levi (2005), Kenny and O'Brian (2007) and Commonwealth's Attorney (2012).

¹³ See also McCarthy (2011) and Banuri and Eckel (2012).

¹⁴ See Folsom (2006) and also Akinbo (2009) and Krishnan (2011).

conditioned development and good governance. As a result, indices of corruption were designed within this axiomatic framework.¹⁵ As Ales and Di Tella note, no society is immune to corruption: “Governments of all political colors in countries of all levels of wealth are affected by corruption scandals with a frequency and intensity that seem to be always on the increase” (1997, pp. 496-497). Specifically, they argue, Western democracies can no longer have pretensions of immunity to corruption they view as ‘aberrant’ deviation from Western norms.¹⁶ Corruption, in its broadest sense of abuse of public office, is an economic crime and as such afflicts all societies.¹⁷

2.2. Banality of economic crimes: ‘at the very core of contemporary society’

As mentioned in the introduction, even before the recent global financial crisis, evidence had emerged pointing to “[...] crime and unfair practices committed at the kitchen table, on the settee and from home computers, from desks and call centers, at cash points, in supermarkets and restaurants, and in interaction with builders and trades people [...] by people who think of themselves as respectable citizens”. Karstedt and Farrall (2007) refer to these as “[...] every day crimes taking place in the centre of society, not at its margins”. Their research in England and Wales and in East Germany showed that in that ‘respectable’ core of society, there is widespread offending and victimisation. This is demonstrated by survey data showing that in these regions, “[...] a total of 75 percent of respondents reported at least one victimisation (during their lifetime) while 64 percent had engaged in illegal or ‘shady’ practices. More than half of the total sample (54 percent) reported experiences as both victims of small and large businesses and private

¹⁵ See Doig (1995), Gupta (1995), Rothstein and Uslander (2005), Thompson and Shah (2005), Azra (2007), Andersson and Haywood (2009) and Arvate *et al.* (2010).

¹⁶ See Karstedt and Farrall (2006; 2007).

¹⁷ See Benson and Cullen (1998), Pearce and Tombs (1998), Gilbert and Russell (2002) and Croall (2005).

transactions, and as offenders in such exchanges”. They attributed these phenomena of “crimes of everyday” to rapid economic changes that have resulted in the appearance of “[...] a syndrome of market anomie comprising distrust, fear and cynical attitude toward law”. In turn, such an attitude “[...] increases the willingness of respectable citizens to engage in illegal and unfair practices in the marketplace”. These crimes, according to Karstedt and Farrall, “[...] are indicative of the moral state of society, much more so than violent and street crimes” (2007). And they are widespread enough to point to massive moral failure.¹⁸

2.3. *Banality of economic crimes ‘against humanity’: moral panic*

In addition to economic and financial crimes at the ‘very core’ of society, financial institutions and other businesses perpetrate crimes that can have a devastating impact on individuals and society. The aftermath of the global financial crisis revealed the extent of fraud and other economic and financial crimes committed by financial institutions. The revelation of these crimes created intense moral outrage. Zuboff, for example, was so affected that in a 2009 *Business Week* article she called them “crimes against humanity”. She argued that while the reasons usually given for the crisis have merit, “the terrifying human breakdown at the heart of the crisis” is ignored. At its “heart” what drove the crisis was a sense of “[...] remoteness and thoughtlessness, compounded by a widespread abrogation of individual moral judgment [...] the self-centered business model [...] made it easier to operate in one’s own narrow interests, without the usual feelings of empathy that alert us to the pain of others and define us as human”. She characterised the post-crisis public outrage as “[...] a rebellion against this banal evil [...] [t]he call now is [...] to return to a place where people are capable of telling right from wrong because they recognize themselves in one another”. The moral failure of the “narcissistic business model” is a serious violation of human rights. She argues that the “[...]crisis has demonstrated that the

¹⁸ See Zuboff (2009) and Black (2012).

banality of evil concealed within a widely accepted business model can put the entire world and its people at risk” (Zuboff, 2009). Some quarter century before, Hirschman had already raised concern with the lack of “moral dimension” in the “economic approach” that is the foundation of what Zuboff was to call the “narcissistic business model”, a concern that was echoed by Sen, Stiglitz and many others.¹⁹

3. Recovering a moral sense: ‘the return to where we can tell right from wrong’

The writings of Zuboff, Black, Stiglitz and others point to a perception of a nexus between the growth of economic and financial crimes and moral failure. This perception points to a need for a global moral sense that would motivate strong international cooperation and coordination to lead to collective action to motivate the development of unified legislative, judicial, legal and other ways and means of preventing economic and financial crimes. The new moral sense would have to be based on the ‘consent’ of humanity in adopting the principle of ‘harm’ prevention. In the balance of this paper, we address these issues.

3.1. Enlightenment and the moral sense

The eighteenth century may be seen as similar to the latter decades of the twentieth century. As Seligman has observed, the developing opposition in the eighteenth century between “[...] the individual and the social, the private and the public, egoism and altruism, as well as between a life governed by reason and one governed by passion, have in fact become constitutive of our existence in the modern world” (Seligman, 1992, pp. 25-26). Change from feudal to market society “posed a new set of problems for the conception of the social order”. A

¹⁹ For Hirschman’s view, see Adelman (2013), pp. 331-344. For Sen, see his (1977) paper on “Rational Fools”.

new moral vision was being articulated based on rational self-interest rather than on “a shared vision of cosmic order” (Seligman, 1992).²⁰

Accordingly, the new “moral sense” a term first coined by Francis Hutcheson, was based on moral sentiments, self-love and natural sympathy. Fundamental to this moral sense is the idea of benevolence that, according to Hutcheson, was the object of moral sense and is what drives individuals to “[...] seek the natural good or happiness of others” (Hutcheson, 1997; see also Turco, 2003). Human nature inherently contained a moral sense acknowledging benevolence as the core of moral action. The moral life of the individual and perfection of moral community in tandem is a possibility and, hence, a duty for humanity.

In *The Theory of Moral Sentiments*, Adam Smith argued that humans have an innate need for mutual sympathy and recognition that constituted the foundation of morals for individuals and motivated their economic activity. After Adam Smith, an important contributor to the emergence of a new moral sense in the eighteenth century was Kant. His emphasis on developing a universal law is relevant to our premise in this paper. The universal law he developed was the categorical imperative he formulated in three versions. The first formulation, his universal law, states: “act only according to that maxim whereby you can at the same time will that it should become a universal law” (Kant, [1785] 1993, pp. 421-438). The second formulation, concerning respect of the dignity of persons, states: “act in such a way that you treat humanity, whether in your own person or in the person of another, always at the same time as an end and never simply as means” (Kant, [1785] 1993). His third formulation, the kingdom of ends, states: “every rational being must so act as if he were through his maxim always a legislative member of the universal kingdom of ends”.²¹

²⁰ See also Turco (2003, pp. 138-141).

²¹ See Smith ([1759] 1982, p. 50); Seligman (1992, pp. 27-28); Evensky (2005a; 2005b), Weinstein (2007), Butler ([1792] 1961) and Beisner (2012).

3.2. *The contemporary conception of moral sense*

Kant developed the three formulations of his categorical imperative, which he claimed are equivalent ways of stating the same principle, assuming that rational beings would accept them. In spite of (or perhaps because of) the evolution of the conception of morality over the past two centuries, the moral sense developed in the eighteenth century has found resonance in contemporary thought. Wilson, whose theory of broken windows was mentioned earlier, makes a compelling, spirited and articulate case in his book *The Moral Sense* that humans have an innate capacity to make moral judgments. Wilson contends that “people have a natural moral sense” composed of sympathy, fairness, self-control, and duty. These, he argues, make the moral sense universal because they exist to various degrees in every culture. Humanity “has a moral sense, but much of the time its reach is short and its effect uncertain” (Wilson, 1993). He warns that humans take centuries to create a new culture of commitment to morality, but once created, such a culture can be destroyed in “[...] a few generations. And once destroyed, those who suddenly realize what they have lost will also realize that political action cannot, except at a very great price, restore it” (Wilson, 1993).²²

George Kateb, another contemporary scholar, echoes Wilson in his book *Human Dignity*, arguing that there is “sufficient continuity throughout recorded history in what counts as fundamentally right or moral, despite differences in interpretation and application [...] Pain and suffering are the central moral concern, and that efforts to prevent or reduce it preoccupy moral agents” (Kateb, 2011, p. 43). As we indicated earlier, enormous pain and suffering are perpetrated upon victims of economic and financial crimes. The moral principle advocated by Kateb, Holloway and others is to prevent harm, pain and suffering as much as possible and to remedy their effects whenever necessary. Kateb argues that this is such a self-evident principle that it needs no justification and requires no proof. It is a moral precept, which is quite common and

²² See also Kimball (1993) and Raksin (1993).

acceptable by people in all cultures all over the world. Kateb's own candidate for such a moral precept is the negative form of the golden rule. Does this principle meet the two requirements advocated by Holloway, those being an exclusive focus on 'harm' and its acceptance by consent? We now turn to this question.

4. A universal moral principle

Although on moral grounds there are many issues and subjects of disagreement, there should be little doubt about the moral clarity of the harm, pain and suffering caused by economic and financial crimes and on the need to prevent them. Moreover, it should not be beyond the realm of possibility to expect the emergence of a universal moral principle, which could serve as the moral foundation of global collective action against these crimes. Simply stated, these crimes are harmful on so many levels that they pose a threat to all societies. Motivating concerted, coordinated collective action on both a national and global level – aimed at their prevention and their successful prosecution (when they occur), as well as taking remedial, restorative action to assist the victims – requires a universal principle that would attract the consent of moral plurality. Our goal is to establish a single moral principle that can be forged with the participation of representatives of all cultures and all moral persuasions, as members of humanity facing an ever-increasing and ever-strengthening threat. Up to now, all attempts to create a strong basis for international cooperation to combat these crimes have not embodied a well-articulated universal moral foundation. Perhaps the assumption has been that one was not needed since the issues are clear. However, as reflected in the statement of the Governor of the Bank of Thailand, and echoed in many statements by representatives of other governments on the necessity of international cooperation in combating economic crimes, much of the effort towards international cooperation has targeted crimes identified by a small segment of the international community.

Representatives of less influential governments also support the need for international cooperation in combating money laundering and

terrorism financing, but they object to the selectivity and the self-serving character of standards, codes and conventions pushed on the rest of the world by international institutions with a democratic deficit in their governance. In essence, what is questioned is the moral basis of international cooperation that gives priority to the interests of the rich and powerful members of the international community while ignoring the economic and financial crimes perpetrated against the poorer, weaker and under-represented members. There is an urgent need for a universally accepted moral foundation to facilitate a global, coordinated action program to combat economic crimes.

4.1. The deep beauty of the golden rule

In the early 1950s, after humanity had experienced yet another devastating world war and had established the United Nations, it was a time to dream that humans could think of themselves as members of single community “on the basis of a *single ethical system*, while retaining cultural pluralism and individuality” (Anshen, 1952, p. xi). In an essay published in 1952 entitled “The Deep Beauty of the Golden Rule”, Robert MacIver argued:

“[t]here is one universal rule, and only one, that can be laid down, on ethical grounds—that is, apart from the creeds of particular religions and apart from the ways of the tribe that falsely and arrogantly universalize themselves. *Do to others as you would have others do to you*. This is the only rule that stands by itself in the light of its own reason, the only rule that can stand by itself in the naked, warring universe, in the face of the contending values of men and groups” (MacIver, 1952, italics in original).

MacIver argued that the word “universal”, as he used it, “[...] is one of procedure. It describes a mode of behaving, not a goal of action. On the level of goals, of final values, there is irreconcilable conflict”. Humans hold different principles, which they wish to become universal and try to “convert” others.

“Others will certainly resist and some will seek to persuade us in turn – why shouldn’t they? Then we go no further except by resort to force and fraud. We can, if we are strong, dominate some and we can bribe others. We compromise our own values in doing so and we do not in the end

succeed; even if we were masters of the whole world we could never succeed in making our principle universal. We could only make it falsely tyrannous” (MacIver, 1952).

How prophetic when one considers the imposition of standards, codes and conventions designed unilaterally by the rich and powerful who then ‘encourage’ the rest of humanity to sign on through sheer power, bribes, threats and intimidation. MacIver appeals for the adoption of a different strategy:

“[s]o if we look for a principle in the name of which we can appeal to all men, one to which their reason can respond in spite of their differences, we must follow another road. When we try to make our values prevail over those cherished by others, we attack their values, their dynamic of behavior, and their living will. If we go far enough we assault their very being. For the will is simply valuation in action. Now the deep beauty of the golden rule is that instead of attacking the will that is in other men, it offers their will a new dimension. ‘Do as you *would* have others...’ As you would will others do. It bids you expand your vision, see yourself in new relationships. It bids you transcend your insulation, see yourself in the place of others, see others in your place. It bids you test your values or at least your way of pursuing them. If you would disapprove that another should treat you as you treat him, the situations being reversed, is not that a sign that, by the standard of your own values, you are mistreating him? This principle makes for a vastly greater harmony in the social scheme. At the same time, it is the only universal of ethics that does not take sides with or contend with contending values. It contains no dogma. It bids everyone follow his own rule, as it would apply apart from the accident of his particular fortune... our sole concern is to show that the golden rule is the *only* ethical principle, as already defined, that can have clear right of way everywhere in the kind of world we have inherited. It is the only principle that allows every man to follow his own intrinsic values while nevertheless it transforms the chaos of warring codes into a reasonably well-ordered universe” (MacIver, 1952, pp. 41-47).

MacIver ends by citing Jesus: “All things therefore whatsoever ye would that men should do unto you, even so ye also unto them; for this is the law and the prophets” (MacIver, 1952).²³

²³ The quote is from Matthew 7:12.

4.2. *The golden rule*

Certainly much has been written on the golden rule both before and after MacIver's essay, but nothing quite so succinct, clear and forceful a defence of the rule as a universal moral principle as his. There have been a number of credible theses on the history of the golden rule dating back to the Babylonians. Others have investigated the philosophical, psychological, sociological, theological and political implications of the rule across cultures throughout history. Intense debate has taken place between opponents and proponents of the rule as a moral principle applied to issues such as abortion, euthanasia, sexual orientation and a host of other issues with moral implications. There is also a growing literature on the application of the rule in legal and judicial proceedings. In the preface to his book *The Golden Rule*, Jeffrey Wattles asks:

“[h]ow is one to move beyond shock and cynicism as one confronts the evidence of moral decline in society? What reaction comes more easily than to blame *them*? We may be driven to act on the tendency to separate humankind into two camps – those who are the problem and those of us with higher standards – but such is not the ultimate solution. I believe that we can learn to relate more humanely and reach out more effectively by discovering the golden rule” (Wattles, 1996, pp. v-vi, p. 3).

Wattles argues that the rule is intuitively easy to grasp, it has immediate intelligibility, is obvious and self-evident. He reviews the historical development of the golden rule from Confucius, ancient Greece and Rome, the Jewish Tradition, the New Testament, the European Middle Ages and through to twentieth century writings. He concludes:

“[T]he golden rule is, from the first, intuitively accessible, easy to understand; its simplicity communicates confidence that the agent can find the right way [...] the rule is a principle in a full sense. Even before it is formulated, its logic operates in the human mind. Once formulated, it shows itself to be contagious and quickly rises to prominence. It functions as a distillation of the wisdom of human experience and of scriptural tradition [...] The rule is an expression of human kinship, the most fundamental truth underlying morality [...] ‘Do to others as you want others to do to you’ is part of our planet's common language, shared by persons with differing but overlapping conception of morality. Only a

principle so flexible can serve as a moral ladder for all humankind” (Wattles, 1996, pp. 188-189).

Once a universal principle is agreed upon to serve as the moral foundation of collective action against economic and financial crimes, legislative, legal and judicial processes and procedures to prevent and prosecute those crimes would be based on that same moral principle as well. Legislative and legal history of the Golden Rule has been reviewed by Duxbury who suggests:

“[c]ourts have appealed to the Golden Rule, among other things, as a benchmark of good advocacy and legal probity, a principle of judicial (and inter-jurisdictional) comity, a means of determining whether a claimant deserves an equitable remedy, as a rationale for limiting certain forms of speech and expression, for the judicial review of legislative action, and as a basis for principles of equitable fair-dealing, restitution for unjust enrichment, general trusteeship, proprietary estoppel, specific performance (compelling the defendant to do to the claimant as he would have had the claimant do to him had their positions been reversed), and the duty of care in negligence” (Duxbury, 2009, pp. 1531-1532).

In addition to analysing some court cases based on the golden rule, a number of issues with significant moral implications, such as abortion and euthanasia, have been presented and analysed by Duxbury. In each of these, Duxbury considers the moral debate on the basis of the golden rule (Duxbury, 2009, pp. 1604-1605).

4.3. The golden rule: moral foundation of collective action

Either in its positive or negative form, the golden rule provides the moral foundation of collective action against economic crime. Its selection as the universal principle of morality would mean that since these crimes do harm to everyone, each member of the global community has a reciprocal duty to ensure that no other member of the community is harmed as a result of these crimes. Some of the important characteristics of the golden rule are its simplicity, impartiality, consistency, reciprocity and fairness. As Wattles suggests, the golden rule “[...] interpreted by moral reason requires an even-handed consistency” that “[...] blocks hypocrisy and promotes harmony of thought, word and deed. In modern

rational ethics, the special point of consistency is to be impartial in application of principles". Echoing Kant, he argues that impartiality can only be important and matter if the "equal basic" worth of each person has been a priori affirmed. The golden rule "equates the value of the self and other" (Wattles, 2003, p. 180, p. 80, pp. 122-140, p. 7).

The characteristics of consistency, impartiality, reciprocity and fairness become the foundation of moral reason and the justification for claims that the golden rule is the only moral principle that can attract universal adherence, as argued by MacIver. Richard Hare is credited with being the first contemporary philosopher to interpret the golden rule as a principle of consistency. He applied the rule to issues of abortion and euthanasia arguing that the golden rule possesses two logical features of moral language: universalisability and prescriptivity. The former implies that by making a moral judgment, one gives another person the right to do the same thing in a similar situation. The latter means that one's action is consistent with one's moral judgment meaning that by "[...] prescribing to myself, I commit myself to doing what my judgment requires. If no obstacle prevents me, I must act in conformity with my prescription, if I am to be a moral participant in the language of morals" (Hare, 1963, pp. 127-133, pp. 89-90).²⁴

The above arguments would suggest a moral principle for international cooperation for collective action against economic crimes. The reasoning of the golden rule could be formulated as: A nation would not want other nations harmed by economic and financial crimes. Just as one nation would be pleased that it is not a victim of a particular economic crime, it should want to participate in international efforts to prevent other nations from being harmed by that same crime. Given this moral foundation, domestic and international legislation, law, standards, codes and conventions can be created that stipulate how specific crimes are to be treated, prevented and prosecuted.

²⁴ See also Wattles (1996, pp. 127-133); Duxbury (2009, pp. 1569-1574) and King (1928).

4.4. *The golden rule and economic crimes*

A number of scholars have developed dimensions of behaviour that could be subjected to the golden rule. For example, the rule could be applied to specify the 'rights of personhood'. There are basic rights associated with the dignity of the human person according to the capabilities approach of Sen and Nussbaum. Alan Gewirth (1978) suggests that the golden rule could be interpreted as: "Do unto others as you have a right that they do unto you". He defines a set of "generic rights" that include "life and physical integrity" and prohibition against "lying, stealing, and promise-breaking". In the context of generic rights, Gewirth's formulation of the golden rule becomes: "Act in accord with the generic rights of your recipient as well as of yourself" (Gewirth, 1978, pp. 133-147).²⁵ John Finnis (1999) goes further in specifying rights in terms of what he calls "basic human goods" that are "irreducible" aspects "of the fulfilment of human person". These are "substantive" basic goods which "correspond to the inherent complexities of human nature, as is manifested both in individual and in various forms of community". The important function of moral norms is to identify these basic goods. Moral norms being "prohibitions on killing, theft, acts of dishonesty, and other similar negative and positive precepts the capricious contravention of which anyone would consider immoral". One category of such basic goods is human "[...] life in itself, in its maintenance and transmission, health and safety". There are other basic goods Finnis calls "reflexive basic goods". These goods allow humans to become "[...] active persons, acting through deliberation and choice". They include goods that are various forms of harmony and peace. In turn, these include "peace of conscious", which allows one to create consistency between "one's self and its expression", inner peace, peace with others and "peace with whatever more-than-human source of reality, meaning, and values one can discover". These two types of basic goods constitute the "[...] integral human fulfilment". Finnis formulates a

²⁵ See also Duxbury (2009, pp. 1565-1568).

version of the golden rule which he calls “[...] the first and most abstract principle of morality” as follows: “In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with integral human fulfillment”. He argues that to “do evil” is “[...] to destroy, damage, or impede a basic human good”. To intentionally harm a basic human good is “[...] never acceptable for God or man” (Finnis, 1999, pp. 42-55, pp. 74-75). In the present context, “generic rights” and “basic goods” that specify the rights of the human person would be violated by economic crimes through assault upon human dignity, trust, contract and property. The right of protection against these violations would define the ‘generic rights’ and the ‘basic goods’ that constitute “the integral human fulfilment”.

The same degree of universality inherent in the golden rules exists for these ‘basic human goods’ and ‘generic rights’. Every system of thought, ancient or contemporary, religious or secular, contains moral norms prohibiting their violation. In one form or another, in one degree or another, their sanctity is affirmed by all cultures and societies constituting humanity. A study of prophecy in ancient Israel reveals the intense concern of the prophets with harm to human dignity, trust, contract and property.²⁶ Teachings by rabbis reinforced and further explained the concerns of the prophets. The teachings of Jesus transcended ‘not doing harm’ to one’s neighbour to extending ‘love’ to that neighbour.²⁷ Just as in other Abrahamic traditions, Islam, clearly and unambiguously considers violations of these four ‘basic goods’ as transgressions against moral norms, laws and prohibitions ordained by the Creator.²⁸ Similar positions on the non-violability of these rights are discernible in Hinduism,²⁹ Buddhism,³⁰ Zoroastrian³¹ and in ancient

²⁶ See Lindblom (1967), Unterman (1959), Tamari (1987) and Sacks (2001).

²⁷ See Dodd (1952), Neibur (1952), Ricoeur (1990), Finnis (1991), Ricoeur (1995), Ricoeur (2000), Kirk (2003), Donders (2005) and Chilton (2008).

²⁸ See Khan (1952), Hakim (1952), Rahman (1985), Fakhry (1991), Al-Attas (1992), Zaroug (1999), Naqvi (2003), Oh (2007) and Abuarqub (2009).

²⁹ See Nikhilananda (1952).

³⁰ See Suzuki (1952), Hummel (1952), Hallisey (2008) and Scheible (2008).

Greek, Roman³² and Egyptian³³ thought. Earlier, references were made to non-religious, secular thought where ‘harm’ and its avoidance was the crucial pivot of universalisation of moral principles.

Whatever the intensity of disagreements and debates regarding issues of deep moral conflicts, such as abortion, euthanasia and the like, it is not difficult to envision a globally unified position on the acceptability of the golden rule as the universal moral foundation of collective action against violations of human dignity, trust, contract and property. These are, after all, how the victims of economic and financial crimes define the ‘harm’ done to them.

5. Summary and conclusions

Economic and financial crimes are growing and globalising at a rate that calls for urgent global action. A case has been made in this paper for a clearly articulated foundation based on a universally agreed moral principle that, in turn, would provide a strong basis for the promulgation of laws and standards that have traditionally appealed to moral foundations. We have presented the views of those who argue that in the environment of moral pluralism characterising today’s world, finding one unique moral principle acceptable to the plurality of moral persuasions is a challenge. We then presented the view that poses two conditions for such a universal moral principle: first, it must be primarily concerned with ‘harm’ and its prevention, and second, it must attract universal ‘consent’. We have outlined the views of those who argue that the only moral principle that has the full potential of ‘universalisability’ and attracting consent is the golden rule. To give the rule greater specificity in the context of economic and financial crimes, we followed the guidelines suggested by two scholars who specified ‘generic rights’ and

³¹ See Moazami (2008), Rost (1986) and Homerin (2008).

³² See Dewald (2008) and Berchman (2008).

³³ See Northrop (1952), Sachs (1952), Linton (1952), Von Fritz (1952), Maritain (1952), Baier (1958), Gellner (1992), Holloway (1999), Epstein (2010) and Kateb (2011).

‘basic goods’ that constituted the rights that define ‘integral human fulfilment’. As a result, we have suggested four categories of ‘generic rights’ and ‘basic goods’, which include the spectrum of harm and violations of ‘rights’ that the victims of economic and financial crimes have identified. Based on these, we have presented a formulation of the golden rule as the avoidance of harm to any and all of the four categories.

We conclude by saying that mobilising effective international cooperation and coordination for collective action against economic and financial crimes requires a global convention where all systems of thought have equal representation. In such setting, the rule of ‘no harm’ buttressed by the specificity of the four categories of ‘generic rights’ and ‘basic goods’, i.e. human dignity, trust, contract and property, could emerge as a consensual global moral principle and allow the development of legislation, laws, standards, codes and conventions that would be accepted and respected by the entire international community.

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