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Professionals, Business Practitioners, and Prudential Justice

Peter Madsen
Carnegie Mellon University

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Peter Madsen*

I. INTRODUCTION

In its 2006 annual survey of the public's perception of various occupations, *USA Today* and Gallup Poll reported that only eighteen percent of those surveyed found the standards for ethics and honesty held by business executives to be "very high" or "high."[1] Other occupations that are usually associated with the field of business did not fare much better. For example, stockbrokers scored seventeen percent, HMO managers twelve percent, advertising practitioners eleven percent, and car salespersons a mere seven percent.[2] In short, people in business and their ethics are not held in high regard, and there are a number of good reasons why this is so.

Yet it is revealing which occupations finished at the top of this survey and were rated favorably by the public. For the fifth year in a row, nursing was the most highly regarded occupation.[3] Nursing as an occupation was seen as having "very high" or "high" standards of ethics and honesty by eighty-four percent.[4] Next came pharmacists at seventy-three percent, followed by veterinarians at seventy-one percent, medical doctors at sixty-nine percent, and dentists at sixty-two percent.[5] Those from varying sectors of the health care delivery system find themselves in the most respected occupations, while those in business occupations are in the least respected.

These survey results prompt the obvious question: when it comes to ethics and honesty, what is it about health care delivery occupations that places them so far above business in the public's mind? What do the former have that the latter seemingly lack? In a word, the answer is "professionalism." Those in highly regarded health care occupations are professionals. Those in business are practitioners. So we need to ask: what is the difference between professionals and business practitioners.

The main difference between professionals and business practitioners is the way that they relate to society and view their social roles. Some might even argue that a very strict interpretation of the phrase "ethics in the professions" would automatically exclude business practitioners from consideration, and, strictly

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* Distinguished Service Professor for Ethics and Social Responsibility, Office of the Vice Provost for Education, Center for the Advancement of Applied Ethics and Political Philosophy and the H. J. Heinz School for Public Policy and Management, Carnegie Mellon University.

1. *Nursing Seen as Most Ethical Occupation*, USA TODAY, Dec. 12, 2006, at 8A, *available at* http://www.usatoday.com/printedition/news/20061212/a_honest_chart12.art.htm.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

speaking, they are probably right.[6] Most ethicists would not define business as a profession at all, since businesses are engaged in the accumulation of private profit and capital, while professionals are engaged in an occupation in which the creation of public good is paramount, or a contribution to the common good is the goal.[7] In other words, as is fairly clear, business practitioners are in private enterprise, whereas professionals are in public service—this is the demarcating difference between them.

Furthermore, other than those in such areas as auditing, accounting, or corporate law, most people in business are not like physicians, attorneys, architects, or engineers, who are usually identified at the beginning of any list of the professions. Business practitioners or managers do not have formal entrance tests on which they must demonstrate expertise in their field. They also do not have to be licensed by their states or have their practice overseen by a governing board. Likewise, business practitioners and managers do not have the same set of obligations as professionals have to their clients and others that they work with. This is why some might find it acceptable for a business executive to bluff during business negotiations, when we would be horrified to learn that a physician, for example, had used some deception in his or her explanations about the efficacy of a particular medical procedure with a patient.

However, it does not follow from all of this that business practitioners cannot act professionally or in ways that the public would call "professional" or "professional-like." This article argues that business practitioners can become more professional-like by promoting and practicing a form of corporate conduct that has some particular features in common with the general conduct that typifies the professions. Business practitioners need to embrace the tenets of the current global movement of corporate social responsibility (CSR) and to practice "prudential justice" in order to be more socially responsible. Like professionals, business executives and managers need to integrate some social purpose into their strategic business decision-making that stands above and beyond their own private business practices. What follows is a detailed outline of CSR and prudential justice and a discussion of how they might contribute to making business practitioners more professional in their conduct and, thereby, make businesses more respected.

II. CSR and Its Cognates

A. CSR

Defining CSR is, as the saying goes, like trying to nail Jell-O to the wall. There

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6. For an early discussion of business as a profession, see E.B. Wilson, *What is a Profession?*, 5 J. BUS. UNIV. CHI. 3 (1932).

7. Rakesh Khurana et al., Is Business Management a Profession?, http://hbswk.hbs.edu/item/4650.html (last visited Mar. 18, 2008) (on file with the *McGeorge Law Review*).

are a number of reasons why CSR is difficult to pinpoint. First, there are differing views of CSR among academics who advocate for it.[8] Second, there seems to be little agreement about what exactly should be included as a social responsibility of corporations.[9] Third, there is no end of disagreement about the very fundamental question of whether businesses even have any social responsibilities to speak of or, that instead, the only responsibility that they can have is to their shareholders.[10] Of these three, it is the last item that seems most important since it is such a basic question: Do corporations have any social responsibilities at all? The answer to this fundamental query will have much bearing upon the way one responds to the first two reasons mentioned for why CSR is difficult to define.

In an oft-quoted essay, Milton Friedman has said this about CSR: "[T]here is one and only one social responsibility of business–to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."[11] According to Friedman, if a business executive were to spend corporate revenue on a supposed social responsibility the corporation is said to have, that executive would be stealing from the rightful owners of that revenue or worse, if not stealing from them, that socially-minded executive would be taxing the owners.[12] For Friedman, the stockholders of a firm own the revenues generated by it, and those executives who promote a social responsibility agenda do no favors for the stockholders.[13] According to Friedman and the Friedmanites, it is the government's job to solve social problems because the only social responsibility of a corporation is to make a profit.[14]

CSR not only has detractors from the right, there are now also a set of objections to it emerging on the left. For example, in his new book *Supercapitalism*, former Clinton Administration Secretary of Labor Robert Reich argues that finding an acceptable definition is only part of the problem when it comes to CSR.[15] In his view, CSR is a dangerous diversion away from the real threats that contemporary corporations pose to the democratic process.[16] According to Reich, we are witness to an evolution of capitalism that has led to

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8. Justine Nolan, *Corporate Accountability and Triple Bottom Line Reporting: Determining the Material Issues for Disclosure* 1 (UNSW Law Research Paper No. 2007-15), http://ssrn.com/abstract=975414 (on file with the *McGeorge Law Review*) (noting corporate social responsibility lacks a commonly agreed definition).

9. *See, e.g.*, JOHN ELKINGTON, CANNIBALS WITH FORKS: THE TRIPLE BOTTOM LINE OF THE 21ST CENTURY BUSINESS (1997) (arguing that CSR includes social, environmental, and economic responsibilities).

10. *See, e.g.*, Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 33, 33 ("Only people can have [social] responsibilities.").

11. *Id.* at 124 (quoting MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962)).

12. *Id.* at 33, 122.

13. *Id.* at 33.

14. *Id.* at 122.

15. ROBERT B. REICH, SUPERCAPITALISM: THE TRANSFORMATION OF BUSINESS, DEMOCRACY, AND EVERYDAY LIFE 168-69 (2007).

16. *Id.* at 190-95.

the decline of democracy, where the latter has been eroded by the former through its successful march toward establishing global consumerism as a modern economic standard.[17]

One aspect of this erosion that Reich laments is that the law permits corporations to function like people when these organizations are not really individual citizens who can be said to possess certain inalienable rights that citizens do possess, such as the right to free speech.[18] Nonetheless, "corporate free speech" or "commercial speech" is a legally recognized right, and because corporations have such vast resources, their ability to persuade by the exercise of their free and well-heeled speech is much more pronounced than that of any single individual person.[19] Their resources make them freer to "speak their mind," as it were, and they have great influence upon democratic decision-making.[20] Witness the speech exercised by corporations in opposition to global warming or automobile safety measures that then became a formidable stumbling block on the way to rectifying these matters in a democracy heavily reliant upon accurate information.[21] Corporations chose to exercise their commercial free speech to lobby, stall, and use deceptive data and misleading statistics to forestall positive change in the democratic process of public policy regulation.[22]

For Reich, though, the very idea of CSR is also part of the corporate exercise of establishing stumbling blocks for democratic action.[23] He says that it is "counterproductive" and that the proponents of and the activists for CSR are creating diversions away from the central focus in this debate, namely, addressing the ills that confront society today, be they environmental problems, the safety of products, the growing gap between the rich and the poor, job creation, the affordable delivery of health care, etc.[24] Reich now believes that when it comes to such issues, the proper role for our democratically chosen government is to be the social problem-solver; a role that should not be held by corporate organizations.[25] On this, the left-leaning Reich and the Friedmanites would seem to agree. Nonetheless, even in the face of such critiques and objections to the very idea of CSR, it has still become a formidable theory in academia and a solid reality in the corporate world of work.

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17. *Id.* at 169-80.

18. *Id.* at 216-24.

19. Dean Ritz, *When Rights Collide: Free Speech, Corporations and Moral Rights*, *in* COMMUNICATION ETHICS TODAY 47, 47 (Richard Keeble ed., 2006); *see also* First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978) (holding that corporations have First Amendment rights to free speech).

20. REICH, *supra* note 15, at 180-86.

21. *Id.* at 160, 222-23.

22. *Id.* at 47-61.

23. *Id.* at 168-69.

24. *Id.* at 195-97.

25. *Id.* at 207-08.

B. Stakeholder Theory, Corporate Citizenship, and the Triple Bottom Line

Indeed, there are a number of CSR-like cognates that one can find flourishing in the scholarly study of business ethics, as well as having been implemented in a number of real world corporate strategies. We can list items that have been closely associated to CSR or aspire to play a role similar to it, such as "stakeholder theory,"[26] the idea of "corporate citizenship,"[27] and "the triple bottom line,"[28] which has been practiced and is most popular in Europe.[29] Each of these can be described as based firmly upon the idea that not only are there corporate social responsibilities, but those responsibilities can also be identified and businesses can attempt to fulfill them. So stakeholder theory offers the claim that, in addition to the financial responsibilities that corporations have to their shareholders and their interests in the corporation as investors, there are others who also have an interest in the decision-making of corporations. The theory states that corporations have responsibilities to these others, who are known as "stakeholders," and that such obligations can be identified and should be met.[30] R. Edward Freeman can be cited as the first to expound a stakeholder theory in business ethics, although there have been variations made on his original.[31] Now there are questions and debates around such matters as what constitutes a legitimate stakeholder, the distinction between direct and indirect stakeholders, and how corporations can be successful in "stakeholder engagement."[32]

Simply put, stakeholder theory says that since stakeholders have a stake in how a corporation will conduct itself and they will be affected either directly or indirectly by corporate business strategies and decisions, corporations must recognize these interests and include them when they strategize and make decisions.[33] It is clear that stakeholder theory is a normative approach to the idea of CSR since it identifies the interests of groups other than just those of investors to whom a corporation is likewise responsible. According to the stakeholder

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26. *See generally* R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (1984).

27. *See generally* Note, *Finding Strategic Corporate Citizenship: A New Game Theoretic View*, 117 HARV. L. REV. 1957 (2004).

28. *See generally* ELKINGTON, *supra* note 9.

29. *See, e.g.*, DAHLE SUGGETT & BEN GOODSIR, TRIPLE BOTTOM LINE MEASUREMENT AND REPORTING IN AUSTRALIA: MAKING IT TANGIBLE (2000); Nolan, *supra* note 8, at 4 (noting a "number of jurisdictions have begun to make inroads in regulating reporting on social and environmental issues," including France and the United Kingdom, as well as Australia and South Africa).

30. FREEMAN, *supra* note 26, at 46.

31. *See generally id.*

32. *See generally* Bryan Horrigan, *Fault Lines in the Intersection Between Corporate Governance and Social Responsibility*, 25 UNSW L.J. 515 (2002). For example, stakeholder engagements would include transactions such as marketing to consumers, reporting financials to the government, building reputation with suppliers, etc. *See* Bus. for Social Responsibility, Stakeholder Engagement Issue Brief, Apr. 2003, http://www.bsr.org/insight/issue-brief-details.cfm?DocumentID=48813 (on file with the *McGeorge Law Review*).

33. FREEMAN, *supra* note 26, at 46.

theory, groups such as employees, suppliers, local communities in which the corporation does its business, governments, etc.—these are the kinds of groups whose interests and stakes should be important to corporations, according to stakeholder theory.[34]

"Corporate citizenship" is a CSR cognate that puts the way that corporations conduct themselves in the community as the primary focus of its attention. The analogy to individual persons who are citizens of their community should not be lost. Just as individual citizens have responsibilities to other citizens, so too, this argument goes, do corporate citizens have similar responsibilities. Being a "good corporate citizen" is the banner cry of those who are proponents of this CSR approach, and they will often define what being a good corporate citizen is in terms of proactive and concrete business practices in such areas as legal compliance, engaging in philanthropic activities, contributing to the management of social issues, and building relationships of trust with their communities.[35] It is clear that the idea of corporate citizenship is another form in which CSR can play itself out since citizens have a major social role to play in communities, and this role is defined primarily by appeal to the various responsibilities that can be ascribed to being a good citizen.[36]

The final CSR cognate that I have identified—keeping in mind that there are others not being highlighted here—is that of "the triple bottom line." U.K. business maven John Elkington, in his book titled *Cannibals with Forks*, first offered the term "triple bottom line" in 1998.[37] In short, the phrase, identifying three bottom lines rather than just one, means to suggest that there is more to business than just financial results. Corporations need to take stock of how they also fare in two additional realms, namely, the effect that they have on the environment and their performance as a member of society.[38] This phrase is sometimes also rendered as "people, planet and profit."[39] Elkington, followed by others in Europe and also Australia, waved the triple bottom line banner and transformed it into a very powerful tool by which to measure the financial, environmental, and social activities of corporations.[40] Thus, this CSR approach emphasizes the transparency of a corporation's conduct, since it will require a fair measuring and an honest reporting of the results achieved in the three areas concerned. Moreover, the European Union, the Australian government, and the United Nations have each taken notice of the idea of the triple bottom line, and, in certain theatres, it may become something more than a form of corporate self-

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34. Michael Bradley et al., *The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads*, 62 LAW & CONTEMP. PROBS. 9, 11 (1999).

35. MICHAEL B. GOODMAN, CORPORATE COMMUNICATIONS FOR EXECUTIVES 112 (1998).

36. *See generally* MALCOLM MCINTOSH ET AL., CORPORATE CITIZENSHIP: SUCCESSFUL STRATEGIES FOR RESPONSIBLE COMPANIES (1998).

37. *See generally* ELKINGTON, *supra* note 9.

38. *Id.* at xiii.

39. COLIN GILLIGAN & RICHARD M.S. WILSON, STRATEGIC MARKETING PLANNING 318 (2003).

40. *See generally* SUGGETT & GOODSIR, *supra* note 29; Nolan, *supra* note 8.

regulation, where a formal reporting mechanism may be required by governmental regulation having to do with not only corporate profits, as is now the case, but as well with a business' effect on people and the planet.[41]

Returning to the thesis about how business practitioners can be more professional-like by embracing the tenets of CSR and practicing prudential justice, it would follow from this brief overview of CSR that those in business need to recognize that they have more responsibilities than just that of increasing the corporate financial bottom line. They need to recognize that, like professionals, there is a social dimension to their work. This dimension presents itself as a set of different responsibilities having to do with the stakeholders that corporations will be engaged with in doing business, functioning like a good citizen, and making their activities transparent through a reporting of how their business treats people and the planet, as well as how they have made their profits.

III. THE GOLIATH SYNDROME

At this juncture in the analysis, however, there is a problem. Many would say that it seems the majority of people in business and the majority of business scholars in academia do not hold a favorable view of CSR and would more likely embrace the thesis of the Friedmanites that says that the only responsibility a corporation has is to its shareholders to make a profit.[42] "The business of business is business"[43] would be one way to encapsulate this attitude. Further, many would point out that this unfavorable view of CSR, and the thesis of Freidman, is the predominant view that business schools profess to their undergraduate and M.B.A. students.[44] In other words, it might seem that furthering the interest of business is the predominate practice of business management, and the interests of others get short shrift. There are even some anti-business critics who have argued that corporations are essentially self-interested to the extent of having accumulated much power for themselves and much individual wealth for their CEOs and other top managers while causing great inequalities of power and wealth among the peoples of the world through the process of globalization.[45] On this account, corporations deserve blame for many social ills and are taken as creators of evil in the world.

And yet, there is much about corporate institutions, especially the large multinational corporations (MNCs) that have become the backbone of our current

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41. Nolan, *supra* note 8, at 4-8 (discussing "emerging initiatives in Australia, the United Kingdom, France, and South Africa regulating various forms of triple bottom line reporting").

42. Friedman, *supra* note 10, at 33.

43. THE NEW BUSINESS OF BUSINESS: SHARING RESPONSIBILITY FOR A POSITIVE GLOBAL FUTURE 1 (Willis Harmon & Maya Porter eds., 1997) (attributing the maxim to General Motors President, Alfred T. Sloan, Jr.).

44. *See generally* Warren G. Bennis & James O'Toole, *How Business Schools Lost Their Way*, 83 HARV. BUS. REV. 96 (2005).

45. *See generally* JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (2003).

global web of institutions, which is deserving of praise. These organizations are the main reason why there is so much material wealth in the more economically-developed nations and why the material needs of so many in the world are being met more now than ever before.[46] Major strides in living conditions, nutrition, the distribution of life's necessities, and great increases in average life expectancies—these and many other benefits can be attributed to the efficiencies of modern, Goliath-like corporations.[47] Hence, it appears that MNCs are at bottom contradictory, since they function within a dualism of opposing dispositions wherein these organizations create benefits and burdens—both good and evil—for the peoples of the world. If one takes these massive organizations to be functional persons, as U.S. law treats them[48] and to which Robert Reich has offered his recent objections,[49] then it follows that MNCs have split personalities resulting in erratic and contradictory behavior. Over the course of several years, I have been studying this phenomenon and have begun work on a book that bears the working title *The Goliath Syndrome*, a phrase designed to capture the observational evidence about corporations being both good and evil, making them appear to be both responsible and irresponsible actors.

This syndrome began with the business conduct of the Vereenigde Landsche Ge-Oktroyeerde Oostindische Compagnie—the Dutch East India Company or the VOC—the first publicly held corporation founded in 1602 (and it can also be seen in the behavior of its rival, the British East India Company that was started in 1600 as an "imperial corporation").[50] The first shareholders had invested their money in an enterprise formed from the merger of a set of Dutch spice trading and marketing companies that came together in the late sixteenth century.[51] The VOC was very successful in bringing spices such as nutmeg, cloves, cinnamon, pepper, tea, silk, foodstuffs, and Chinese porcelain from the far off lands to be sold to wealthy Europeans who could afford the exotic offerings from the Orient.[52] As the first MNC, the VOC thus created some social good with its new global market exchange practices and its creation of wealth that could be shared among the company's owners.[53]

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46. *See generally* JEROME C. GLENN & THEODORE J. GORDON, 2007 STATE OF THE FUTURE (2007).

47. *Id.*

48. Santa Clara County v. S. Pac. R.R. Co., 118 U.S. 394 (1886); *see also* First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978) (holding that corporations have First Amendment rights to free speech); Covington & L. Turnpike Road Co. v. Sandford, 164 U.S. 578, 592 (1896) (noting that corporations are "persons" for purposes of due process and equal protection).

49. REICH, *supra* note 15, at 216-24.

50. Reinhild Tschöpe, The Oldest Share: VOC 1606, http:/www.oldest-share.com (last visited Mar. 18, 2008) (on file with the *McGeorge Law Review*); Nick Robins, *The World's First Multinational*, NEW STATESMAN, Dec. 13, 2004, http://www.newstatesman.com/200412130016.htm (on file with the *McGeorge Law Review*).

51. Tschöpe, *supra* note 50.

52. *Id.*

53. *Id.*

Unfortunately, the VOC set lower standards for itself when it came to its corporate conduct and its management practices.[54] While it had a long history, that history was not so illustrious. The VOC actively leveled competitors, sometimes by sheer brute force, and it became an occupier of lands in Indonesia, making war on its indigenous people.[55] It held a monopoly in the world spice market until 1799, when it was liquidated due to mismanagement.[56] As a result of its unethical practices, the Dutch called the VOC's experiment in international business "V(ergaan) O(nder) C(orruptie)," which roughly translates into English as "sinking under corruption."[57] The conduct to exhibit behaviors that are sometimes good and other times evil can be readily observed in the history of the first MNCs and those that have followed, and they now typify the contemporary MNC. What was started over 400 years ago and which persists yet today as a defining behavior of corporations is their propensity to display erratic and unbalanced behavior that produces both social benefits and social burdens.[58]

So there is a real problem in trying to offer the thesis that business practitioners need to become more professional-like by recognizing that there is a social dimension to their work and that they need to engage their stakeholders responsibly, be good citizens, and act transparently in regards to their dealings with people and their effect on the planet while they make a profit. The problem is that the corporate structures within which they practice business have been in the grip of the Goliath Syndrome—at least that symptom of it which disposes corporations to engage in the creation of social burdens and evil in the world. We have witnessed this disposition of business practice in such case examples as Enron, Arthur Andersen, Parmalat, WorldCom, Tyco, Haliburton, ExxonMobil, WalMart, BP, etc.[59] What is thus needed is a remedy for the Goliath Syndrome, and, then, perhaps business practitioners will have the opportunity to be more professional-like. The idea of "prudential justice" is one such remedy and is a managerial practice that, if applied in corporate and business decision-making and if raised to the level of a constant "best practice," could have the effect of reducing the problem of the Goliath Syndrome, if not eliminating it. Prudential justice is exactly the right sort of ethical framework that managers and business practitioners need and will find useful in order to take those steps necessary to allow them to be more professional-like. The remainder of this article is an attempt to lay bare the foundation of prudential justice and then detail what practical applications it can have.

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54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. For an account of the influence of the British East India Company on modern corporations, see NICK ROBINS, THE CORPORATION THAT CHANGED THE WORLD: HOW THE EAST INDIA COMPANY SHAPED THE MODERN MULTINATIONAL (2006).

59. *See* Newman S. Peery, Jr., *Corporate Social Performance: Ethics and Corporate Conduct*, 39 MCGEORGE L. REV. 813 (2008) (discussing these corporations in detail).

IV. PRUDENTIAL JUSTICE

Both of the concepts in the idea of "prudential justice" have long and rich histories in the field of ethics. There is a kind of multiplicity of meaning in each of these concepts that provides their depth and richness. First of all, "prudence" refers to the possession of a practical wisdom defined by Aristotle as an intellectual virtue that assists one to deliberate effectively between goods that promote self-interest, as well as between ends that are good and those that are not.[60] In the *Nicomachean Ethics*, he wrote:

> Now it is held to be the mark of a prudent man [phrónimos] to be able to deliberate well about what is good and advantageous for himself, not in some one department, for instance what is good for his health or strength, but what is advantageous as a means to the good life in general.[61]

The practice of prudence is the practice of a particular kind of rational decision-making that requires skill, calculation, and insight into what is "good and advantageous" for the self in attaining the "good life in general."[62] In other words, this ancient understanding of prudence is something like what we might call the art of enlightened self-interest.

It may be surprising to some to learn that Adam Smith, the so-called Father of Capitalism, made prudence a central issue in his work titled *The Theory of the Moral Sentiments* written in 1759.[63] There he says:

> The care of the health, of the fortune, of the rank and reputation of the individual, the objects upon which his comfort and happiness in this life are supposed principally to depend, is considered as the proper business of that virtue which is commonly called prudence.[64]

For Smith, being prudent may be conveyed by our phrase "taking care of business," meaning that there are certain individual and social goods that need our tending and attention if we are to achieve comfort and happiness in our lives. It is instructive that both Aristotle and Smith hold prudence out to be a virtue that is related to self-interest and how self-interest plays a major role in the achievement of individual happiness. We need to keep in mind this central role of prudence, as the virtue promoting self-interest, during our closing discussion about corporate prudential justice. We should also note at this juncture that prudence has been understood more recently as having a relationship to the

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60. ARISTOTLE, NICOMACHEAN ETHICS 149 (Harris Rackham trans., Wordsworth Classics of World Literature 1996) (1926).

61. *Id.*

62. *Id.*

63. ADAM SMITH, THE THEORY OF MORAL SENTIMENTS (Arlington House 1969) (1759).

64. *Id.* at 311.

practice of management and the economy, thereby making it even more appropriate in this context of business ethics as a descriptive qualifier for the idea of justice.[65]

It is also clearly the case that the concept of justice has a multiplicity of meanings that need to be unpacked in order to appreciate the complexity of this notion. One of the most prominent theories of the day about justice has been promulgated by the philosopher John Rawls. Rawls believed that there are general principles of distributive justice that can be identified once people overcome their biases toward their own special needs and positions in life.[66] He devised a "thought experiment," the goal of which was to uncover these principles of justice, and, in so doing, he arrived at two fundamental principles of justice as fairness.[67] The upshot of this theory, when we combine his two justice principles, is the belief that social goods "are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favored."[68]

Another contemporary theory about justice involves the idea of human capabilities. Here, justice gets defined as the creation of conditions that allow people to actualize and expand their human capabilities, and to flourish as humans by having and enjoying the freedom to pursue their own life's projects.[69] In this view, justice occurs when people are treated with an eye toward what they may be capable of and how they may achieve it.[70] In this "human capabilities approach to justice," an action can be considered right when it provides the conditions necessary for the enhancement and expansion of human capabilities and wrong when it hinders such conditions.[71] Hence, poverty would count as a human capability deprivation and, as such, an injustice where it occurs.[72] Among the propounders of this theory of justice, we can include Nobel prize-winning economist Amartya Sen[73] and the University of Chicago philosopher Martha Nussbaum.[74]

While there certainly are a number of other theories of justice that can be pointed to and detailed, such as those developed by Plato, Aristotle, Kant, or Mill, I will not offer an exhaustive analysis of all such theories of justice here. The reason for sharing the theories of distributive justice as developed by Rawls

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65. *See, e.g.*, David W. Lutz, *Beyond Business Ethics*, 2003, http://www.pust edu/oikonomia/pages/2003/2003_giugno/pdf/studi_2.pdf (on file with the *McGeorge Law Review*).

66. *See* JOHN RAWLS, A THEORY OF JUSTICE 303 (1971).

67. *Id.* at 302.

68. *Id.* at 303.

69. *See, e.g.*, AMARTYA KUMAR SEN, DEVELOPMENT AS FREEDOM xii (2001).

70. *Id.*

71. *Id.*

72. *Id.* at 20.

73. *See generally id.*

74. *See generally* MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (2000).

and by Sen and Nussbaum is that these two more contemporary theories are very useful in an application to the global marketplace where today's business practitioners operate. To put the matter another way, these two would seem to provide the best examples of justice theories that have an appropriate application to corporate globalization and capitalism as it exists worldwide. In addition, they also are best suited for use in the new corporate conceptual framework that is being introduced here under the phrase "prudential justice." In turn, the embrace by business managers and practitioners of prudential justice as a way to implement CSR will do much to make them more professional-like, which is a main objective of this article.

But how should we now understand the idea of prudential justice in light of the multiple meanings of its two main concepts? How should it be defined, and how should it be employed as a tool in business ethics decision-making? There are several important features of prudential justice that can be listed in summary fashion:

1. Prudential justice recognizes the role that both corporate self-interest and the interests of others play in corporate conduct.
2. Prudential justice allows a corporation to merge success in achieving organizational objectives with social responsibility.
3. Prudential justice is a form of "stakeholder analysis" and "stakeholder engagement."
4. Prudential justice should be seen as an aspect of CSR, which can serve as a remedy to the Goliath Syndrome.
5. Prudential justice is a business practitioner/managerial ethical decision-making skill and form of moral reasoning that can and should rise to the level of a business "best practice."

Critics of corporations often times find fault with corporate conduct and attribute their poor ethics to the realities of corporate self-interest. According to this critique, corporations act unethically because they are only concerned with their own self-regarding interest that is equivalent to (1) making continued profits, (2) expanding their business in each quarter, and (3) becoming their market sector leader—and achieving all of these at any cost. Critics will claim that unethical corporate conduct is often due to an abnormal focus upon these three items, such that any strategy that achieves these goals—even an unethical one—will likely be implemented so that these self-interested goals will be met. We can call this sort of criticism of corporate conduct the anti-business argument to corporate self-interest.

Prudential justice is a useful framework in this context, since it already includes self-interest and other-regarding interest in its fundamental conception, but does so as a form of enlightened self-interest. Since prudence is a form of wisdom that involves a skill of judgment, wherein an individual rationally calculates what is good and advantageous by seeking those ends or goals in life that will further one's self-interest, as Aristotle sees it,[75] it is a desirable virtue for the business practitioner. Prudence would assist business decision-makers in recognizing business objectives and the means to achieve them as either "good and advantageous" or not.[76] The prudent business decision-maker would also recognize what Adam Smith says about prudence and its relationship to reputation.[77] Choosing wisely among business objectives and the means to achieve them will have a bearing upon corporate reputation and should form an important reflective moment in a business practitioner's decision-making.

In other words, prudence can and should be a primary virtue in business. It is an excellent way for business decision-making to proceed in the identification of business objectives and the best means to achieve them. It is, thereby, an enlightened form of rational business self-interest. Thanks to this feature of prudence, those who believe that business is inherently an activity that has self-interest at its core, and that it should be understood as such, can embrace the idea of prudential justice as a framework for ethical decision-making because it is a framework that does not ignore the realities of the marketplace, where the need for profit, business expansion, and success seem to mold business decisions in terms of a self-serving interest, which might make John Galt happy.[78] Thanks to the prudence in prudential justice, business decisions can be made that are good and advantageous to the self but, at the same time, are made rationally in an enlightened way that will preserve the reputation of the business practitioner and the corporation in which they work.

IV. CONCLUSION

Prudential justice, therefore, is a good way to implement CSR. If we understand CSR as the set of responsibilities that a corporation has with respect to its role in society, then prudential justice is a good way to begin the task of how a corporation can identify these social responsibilities by means of a stakeholder analysis and stakeholder engagement. The justice component of this framework would require that corporations include a decision rubric or rule that requires them to gauge their conduct according to whether or not the dictates of justice would be fulfilled. This asks the fundamental question of whether the corporate conduct being considered—which will produce social goods or social burdens—treats all stakeholders fairly and equally, unless an inequality in the distribution of benefits and burdens must by necessity be realized. In the case of

75. *See supra* note 60 and accompanying text.

76. ARISTOTLE, *supra* note 60, at 149.

77. *See supra* note 63 and accompanying text.

78. John Galt is the protagonist in Ayn Rand's *Atlas Shrugged* (1957), which explores the morality of self-interest.

such an inequality, that corporate conduct will be considered best when it is to the advantage of the least favored and does not further the disadvantages of those who have traditionally been the least favored members of a local or the global society wherein the corporation conducts its business.

Furthermore, this rubric or rule of justice requires that ethical corporate conduct also be just in the sense that the business activity in question creates conditions that allow for the members of their stakeholder groups to actualize and expand their human capabilities and to flourish as humans by having and enjoying the freedom to pursue their own life's project. Any corporate conduct or behavior that hinders the creation of such conditions should be deemed unethical and should be avoided as creating injustice. In short, the justice in prudential justice requires that corporations act fairly and create the conditions necessary for humans to flourish. Acting otherwise is tantamount to creating injustice.

So prudential justice is a desirable framework within which businesses and their practitioners can make their corporate decisions. Business practitioners and managers can become more professional-like by practicing and implementing the decision rules that make up the framework of prudential justice. By employing the standards of prudential justice, business can become more socially responsible, and business practitioners and mangers can introduce a social purpose into their strategic business decision-making that stands above and beyond their own private business practices. Prudential justice will assist business practitioners to rise above petty, self-serving business decision-making that focuses only upon profits, business expansion, and market success and, instead, recognize the value of rational and enlightened business decision-making that has as its standard the achievement of business objectives and the means to reach them that are "good and advantageous," and which will thereby enhance the individual manager's and their business' reputation. Further, the decision rule of prudential justice would require that only those business decisions should be implemented that treat stakeholder groups and their members fairly and increase the conditions in which they can flourish as human beings. In other words, prudential justice requires that the business practitioner take care of business interests and take care of the interests of society, as expressed by the various stakeholders with which they must engage and work. By introducing this social dimension into business, business practitioners become more professional-like since they too will be serving society through the practice of the decision-making skills of prudential justice. In short, prudential justice is the route through which business practitioners can become more like professionals.

In closing, it should be said that Adam Smith further defined and deepened his understanding of prudence and came very close to the idea of prudential justice as a form of wisdom combined with virtue when, in his *A Theory of Moral Sentiments*, he wrote the following:

> Wise and judicious conduct, when directed to greater and nobler purposes than the care of the health, the fortune, the rank, and reputation,

of the individual, is frequently and very properly called Prudence. We talk of the prudence of the great general, of the great statesman, of the great legislator. Prudence is, in all these cases, combined with many greater and more splendid virtues; with valour, with extensive and strong benevolence, with a sacred regard to the rules of justice, and all these supported by a proper degree of self-command. This superior prudence, when carried to the highest degree of perfection, necessarily supposes the art, the talent, and the habit or disposition of acting with the most perfect propriety in every possible circumstance and situation. It necessarily supposes the utmost perfection of all the intellectual and of all the moral virtues. It is the best head joined to the best heart. It is the most perfect wisdom combined with the most perfect virtue.[79]

79. SMITH, *supra* note 63, at 316.

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