

THEOCOSOPHY

**FAIRFIELD UNIVERSITY – ETHICS CLASS
DECEMBER 1, 2006**

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I. INTRODUCTION – ETHICS AND CAPITALISM
COMPATIBLE?

- **St. Thomas Aquinas** – Justice without mercy is cruelty, mercy without justice goes out into waste.
 - Justice – “While other virtues perfect a man’s own personal state, justice stands out as rendering another man his due. What is correct in their activity is measured by reference to the doer, but what is correct in justice leaves aside this consideration and is measured by what is owing to another. Justice squarely meets this obligation, for instance a fair wage for work done.” p. 341
 - Law – “Mind is the primary authority and so the first emphasis is on the reasonableness of law. It is not a dictate of desire enjoying the might to take advantage of opportunity, but an intelligent plan directing human activity to happiness.” p. 353
 - The Common Good – “The proper effect of law is to make its subjects good, if the law’s essential purpose is the true good; namely, the common good ruled by divine justice, it will follow that those who observe it will be good men. But if the purpose is merely the lawmakers own profit or pleasure (think Elliot Spitzer) or is repugnant to divine justice, then the effect of the enactment will not be to make men to be simply good, but to be good in a certain kind of way, namely subservient to the regime (think Kinawaku for the NY Giants).” p. 388

*From Saint Thomas Aquinas philosophical tests
by Thomas Gilby, 1951*

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- **Baron De Montesquieu** (real name: Charles Louis de Secondat) – “The Spirit of Laws”
 - “Liberty is the right to do whatever the law permits”
 - Query: What happens when the law gets too onerous? – American and French Revolution. (See also Thomas Aquinas and the “Common Good” (p. 1))
 - See “Spirit of Laws” table of contents attached.

- **Pope Leo XIII** – “Rerum Novarum” (In our Time) – 1891

- **Pope Pius XI** – “Quadragesimo Anno” – forty years from “Rerum Novarum” - 1931

- **Pope John Paul II** – “Centesimus Annus” (Centenary of “Rerum Novarum” – 1991

- **Dean of Notre Dame Law School Clarence Manion** writing in – “The Key to Peace”, 1951 states:
 - “Any shrinkage in the area of personal responsibility tends to frustrate the purpose for which man was created. Man is here to be tested for his free compliance with the moral law of God”. (From: Catholicism and Capitalism, Murray N. Rothbard, May 1960, p. 15 of 25)
 - “If you take the first bribe you may as well take the rest” (Christopher Manson quoting his father)

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- **Michael Novak** – Six books on capitalism and Catholicism (from Journal of Markets and Morality – Edward W. Younkins, Professor of Accounting and Business Administration Wheeling Jesuit University, Vol 2, Number 1, spring 1999).
 - The Spirit of Democratic Capitalism.
 - Free Persons and the Common Good.
 - This Hemisphere of Liberty.
 - The Catholic Ethic and the Spirit of Capitalism.
 - Business as a Calling: Work and the Examined Life.
 - The Fire of Invention: Civil Society and the Future of the Corporation.

- **Thomas J. Reese S.J.** – “The Politics of Taxation” - 1980

- **Michael J. Knight, CPA, CFE, CVA** – B.S. Fairfield University, 1973
 - “The Ethics Conundrum” – Tax Analysis, 2004
 - “Oops There you go again” – Daily Tax Report, 2006
 - “When the Fraud gets Personal and Dangerous” – unpublished.

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II. MORAL COMPASS – KEY TO ETHICAL BEHAVIOR

- Why it is after they are caught are they so remorseful?
- Why can't they think about the consequences and be remorseful before they get into trouble?
- What produced the disconnect between before and after?

III. DISCUSSION QUESTIONS

- **MUST ONE MAN'S VISION OF OPPORTUNITY CONFLICT WITH ANOTHER MAN'S ETHICS?**
- **WILL WHAT YOU DO PASS THE "GRANDMOTHER" TEST?**
- **IS MAXIMIZING PROFITS FOR ITS SHAREHOLDERS OR ONE'S SELF IMMORAL OR UNETHICAL?**
 - Situation 1 – Channel stuffing p. 7
 - Situation 2 – Incentive payments p. 9
 - Situation 5 – Plaintiffs bar abuse p. 12
 - Situation 6 – Regulatory burden p. 13
- **IS MINIMIZING TAXES IMMORAL OR UNETHICAL?**
 - Situation 6 – Regulatory burden p. 13
 - Situation 8 – Selective prosecution p. 15
- **IS IMMATERIAL OVERPRICING IMMORAL OR UNETHICAL?**
- **IS SELLING SOPHISTICATED FINANCIAL PRODUCTS TO VULNERABLE AND UNSOPHISTICATED SENIORS IMMORAL OR UNETHICAL?**
 - Situation 11 p. 20
- **IS HIGH CEO COMPENSATION IMMORAL OR UNETHICAL?**
 - Situation 10 – Executive compensation p. 18
- **IF THE ACTION DOESN'T HARM ANYONE, IS IT A CRIME? IS IT UNETHICAL? IS IT WRONG?**
 - Situation 3 – Referral fees p. 10
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 - Situation 9 – Prosecutorial abuse p. 17

IV. CASE STUDIES

A. THE EASY ONES, OR ARE THEY?

- Rounding up mileage on your expense sheet.
- Taking a writing pad from the office to be used at home.
- Macedonia – Stealing produce off the back of the truck.
- Father’s thermos story the “gray paint saga”.
- Cop found drunk on the side of the road in a car crash – report? ticket? ignore? take home?
- Item in a grocery cart is missed and you don’t tell the cashier.

B. Situation #1 – Channel Stuffing

• **Item #1A – Car Mfg & Car Dealerships:**

- Company A sells product to Distributor B. As condition of exclusive geographical distributorship – Distributor must buy all products from company A. Because distributor cannot pay for the product, Distributor receives 100% financing from Company A. Distributor also has right to give back product purchased if not sold after x period of time. Company A is able to record profits as a result of their having as an outlet – Distributor who must buy product.

• **Query:**

- Is Company A really entitled to their boast of record profits?
- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

Situation 1 –continued...

- Item 1B - : Food Companies & Supermarkets Drug Companies, Hospitals, and Doctors
 - Company A gets Distributor to buy product. There is no geographical exclusivity but to stay competitive and ensure future product. Distributor buys excess product from Company A. Distributor does not need to pay for product for x period of time. Distributor also has the right to give back product if not sold after x period of time.

Query:

- Is Company A really entitled to profits based on above sales?
- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

C. Situation #2 – Incentive payments

• Item #2A – Media & Radio:

- Station ABC is given incentives to play certain recordings more than others.

• Item #2B – Media & Radio:

- Not for profit station DEF is given sponsorship money to play certain recordings.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

D. Situation #3 – Referral Fees

• Item # 3A – Insurance & Advisory Fees:

- Advisor A is paid 150% of x for selling Product 1. 120% of x for product 2 and 110% of x for product 3. The customer does not know this.

Query:

- Is this legal?
- Is this ethical?
- Is this fair?
- Is it just?

• Item #3B – Commission Sales:

- Advisor A pays Sub-Advisor B a commission for referring a customer. The customer does not know this.

Query:

- Is this legal?
- Is this ethical?
- Is this fair?
- Is it just?

E. Situation #4 – Front Running

• Item – Stock Selling:

- Advisor A is hired to sell your stock. Advisor A likes the idea and sells ahead of you. The harm you suffer is inconsequential (pennies per share).

Query:

- Is this legal?
- Is this ethical?
- Is it fair?
- Is it just?

F. Situation #5 – Plaintiffs bar abuse

• Item – Ravenous plaintiffs attorneys:

- Advisor A convinces you to sue – along with others. The result is a non-monetary settlement of coupons made available by the company to consumers. The value of the coupons is 100 million. The Advisor gets 33 million – you get -0- except for a coupon.

Query:

- Is this legal?
- Is this ethical?
- Is it fair?
- Is it just?

G. Situation #6 – Regulatory Burden

• Item – Corporate estimates vs. fraud:

- Individual A has engaged in international currency transactions for a number of years. The transactions involve estimates. Subsequently, Individual has pangs of guilt about whether these estimates are correct or have they improperly overestimated profits of the company. Individual and the press make big accusations and headlines. Individual receives multi million dollar settlement. Meanwhile, Investor value is destroyed and stellar reputations are ruined.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

H. Situation #7 – Trial by Public Opinion

- Item - Risks of becoming a public servant:
 - Individual A has successful business for many years. Individual becomes public servant. An organization and the press make accusations and headlines that Individual A's former business violated the law. Hundreds of millions???? Individual is exonerated – He asks “Where do I go to get my reputation back?”

Query:

- Was it legal?
- Was it ethical?
- Is it fair?
- Is it just?

I. Situation #8 – Selective Prosecution

• Item #8A – Professional firms

- Individual is part of organization that interprets complex rules and issues an opinion on the disposition of these complex transactions in accordance with the rules. Regulatory body disagrees and forces individual from his business. Individual cannot fight decision – too costly.

Query:

- Is this legal?
- Is this ethical?
- Is this fair?
- Is it just?

• Item #8B – Professional firms:

- Individuals are part of an organization that interprets complex rules and issues an opinion on transactions conducted under those rules. Regulatory body disagrees and forces organization and individuals who are not part of the team rendering an opinion.

Query:

- Is this legal?
- Is this ethical?
- Is this fair?
- Is it just?

Situation #8 continued...

- Item #8C – Professional firms:
 - Individuals are part of an organization selling services and products that save taxes. Products and services are legal. Regulatory body says products that saved taxes are not proper. Organization does not pay to defend individuals accused by regulatory body in order to ensure its survival.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

J. Situation #9 – Prosecutorial Abuse

• **Item – Small Business, Big Rules:**

- Company has been in business for 40 years. Owner believes he is selling product according to the law - which is complex and contradictory regulatory body begins criminal inquiry. Individual/Company prepare to fight. But that would cause business to cease and 50 employees to be out of work.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

K. Situation #10 – Executive Compensation

• **Item #10A – CEO Salary**

- CEO paid hundreds of millions of dollars in salary and options. While shareholders have seen stock rise from pennies to \$50 per share.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

• **Item #10B – CEO Retirement**

- CEO receives hundreds of millions of dollars in compensation and benefits. Compensation has been approved by a sophisticated board of directors. Including a former Controller for the State of New York was a Board Chairman.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

Situation 10 continued...

• Item #10C – CEO

- CEO has made hundreds of millions for himself and shareholders. Corporation is engaged in complex transactions between related party insurance companies. The practice is standard in the industry. This practice can create significant income shifts from year to year. Does complexity equal illegality?

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

• Item #10D – CEO Double Standards

- Politically connected CEO receives hundreds of millions in compensation from fraudulent profits. Not prosecuted due to political connections and racial overtones.

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

L. Situation #11 - Sophisticated financial products

- Professional offer reverse mortgages on their houses or viatical settlements on their life insurance. Is this immoral? Is it unethical?

Query:

- Is it legal?
- Is it ethical?
- Is it fair?
- Is it just?

REFERENCES

1. “Adam’s Fallacy: A guide to Economic Theology” –
Duncan K. Foley, Harvard University Press. 2006.
 - a. “Economists all along Have Been Writing
About Theology”
 - b. “At its most abstract and interesting level,
economics is a speculative philosophical
discourse, not a deductive or inductive science.
Economics is not only about how a capitalist
market system works it has also suggested what
attitudes people should take about those
workings and about The Moral Conflicts
accompanying them.”
2. “Consequences: Reading in Criminal Justice” –
Professor David Wedlickits – 2005
3. “The Spirit of Laws” – Charles de Montesquieu – 1748
31 books

Montesquieu (continued)

Book I	Of laws in general
Book II	Of laws directly derived from the nature of government
Book III	Of the principles of the three kinds of government

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Book IV	That the laws of education ought To be in relation to the principles of government
Book V	That the laws given by the legislator ought to be in relation to the principle of government
Book VI	Consequences of the principles of different governments with respect to the <u>simplicity of civil and criminal laws, the form of judgments, and the inflicting of punishments.</u>
Book VII	Consequences of the different principles of the three governments with respect to sumptuary laws, luxury, and the condition of women
Book VIII	Of the corruption of the principles of the three governments
Book IX	Of laws in the relation they bear to a defensive force
Book X	Of laws in the relation they bear to offensive force
Book XI	Of the laws which establish political liberty, with regard to the constitution
Book XII	Of the laws that form political liberty in relation to the subject

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Montesquieu (continued)

- | | |
|------------|--|
| Book XIII | Of the relation which the <u>levying of taxes and the greatness of the public revenues bear to liberty</u> |
| Book XIV | Of laws in relation to the nature of the climate |
| Book XV | In what manner the laws of civil slavery relate to the nature of the climate |
| Book XVI | How the laws of domestic slavery bear a relation to the nature of the climate |
| Book XVII | How the laws of political servitude bear a relation to the nature of the climate |
| Book XVIII | Of laws in the relation they bear to the nature of the soil |
| Book XIX | Of laws in relation to the principles which form the general spirit, morals, and customs of a nation |
| Book XX | Of laws in relation to commerce, considered in its nature and distinctions |
| Book XXI | Of laws in relation to commerce, considered in the revolutions it has met within the world |
| Book XXII | <u>Of laws in relation to the use of money</u> |

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