[Vanderbilt Journal of Transnational Law](https://scholarship.law.vanderbilt.edu/vjtl)

Volume 36
Issue 2 *March 2003*

Article 7

2003

Corporate Hypergoals, Sustainable Peace, and the Adapted Firm

Thomas W. Dunfee

Timothy L. Fort

Recommended Citation

Thomas W. Dunfee and Timothy L. Fort, Corporate Hypergoals, Sustainable Peace, and the Adapted Firm, 36 *Vanderbilt Law Review* 563 (2021)
Available at: https://scholarship.law.vanderbilt.edu/vjtl/vol36/iss2/7

Corporate Hypergoals, Sustainable Peace, and the Adapted Firm

*Thomas W. Dunfee**
*Timothy L. Fort***

ABSTRACT

Hypergoals are a set of specifiable goals applicable to all publicly-owned, for-profit corporations independent of their purpose, type, business, or legal governance. The identification of hypergoals should be limited to those factors for which a plausible empirical case can be made concerning their role as essential foundations for efficient business interaction. In the context of hypergoals, corporations have a role to play in working toward global, sustainable peace. In working toward the hypergoal of sustainable peace, corporations must attend to two tiers: an immediate, short-term orientation to foster solidarity with local populations in which the corporation works and a longer-term orientation to abide by the specific norms that have been linked to sustainable peace. A framework of corporate decision strategies for dealing with issues such as the violence associated with the distribution of conflict diamonds is presented. Traditional strategies include the Corporate Imperalist, the Corporate Chameleon, the Corporate Nationalist, and the Corporate Opportunist. The model of the Adapted Firm, which would pursue certain identified hypergoals, would better face the challenges posed by conflict diamonds than would other models.

TABLE OF CONTENTS

---

* Vice Dean, The Wharton School, Kolodny Professor of Social Responsibility in Business. We thank Rosemarie Monge for her able research assistance.

** Associate Professor, Business Law & Business Ethics, The University of Michigan Business School.

I. INTRODUCTION

The ultimate survival of humanity depends on controlling a strong propensity toward the use of violence to resolve conflicts. Similarly, an environment conducive for business transactions requires certainty, minimized violence and maximized human choice. This Article explores the role of corporations in contributing to sustainable peace. It begins by analyzing the potential for identifying "hypergoals" applicable to all publicly-owned, for-profit corporations, independent of their purpose, type, business, or legal governance. Second, candidate hypergoals of transparency and contributing to sustainable peace are identified and discussed. Third, the specific role of business corporations in contributing to sustainable peace is explored and a decision framework is presented that helps to identify strategies corporations may follow in resolving conflicts and minimizing violence. The application of the framework is demonstrated through an analysis of the current controversy surrounding the marketing and distribution of conflict diamonds. Finally, the Article presents the aspirational Adapted Firm as a model of how business firms may best contribute to the hypergoal of sustainable peace.

The central point of this Article is that in identifying sustainable peace as a teleological end for corporate practice, a series of empirically grounded obligations becomes relevant. Given the scope of this Article, it will be beneficial to bear in mind the characteristics of the Adapted Firm, our model for how corporations can best contribute to peace. In many important respects, the Adapted Firm is simply a firm practicing good citizenship as advocated by others in the field of business ethics. However, by linking such behavior to a quest for peace, the motivations for being ethical become clearer. The Adapted Firm survives because it is attentive to the immediate, local emotions and sentiments of the stakeholders affected by corporate action. The Adapted Firm also contributes to a longer-term survival by insisting on certain practices correlated to peace, to wit: providing economic development, being open to external evaluation of actions (including transparency and support for the rule of law), and pro-actively practicing good citizenship—particularly with respect to strengthening the voice of corporate stakeholders. The Adapted Firm thus consciously commits itself to two levels of decision-making analysis: (1) a commitment to a hypergoal of sustainable peace and the practices associated with sustainable peace, and (2) a commitment to attending to the immediate sentiments of local constituents, including those of shareholders.

II. HYPERGOALS AND CORPORATE GOVERNANCE

Is it possible to identify a set of specifiable goals applicable to all publicly owned, for-profit corporations independent of their purpose, type, business, or legal governance? We coin the term, "hypergoals," to reflect the extensive authority and reach of such principles. If corporate hypergoals can be identified, the implications are far-reaching. Given emerging evidence of practices that appear to correlate to peace, the acceptance of hypergoals would imply that all corporations share a core set of fundamental obligations. In this Section we examine the possibility of identifying plausible hypergoals.

The extraordinary diversity of types and forms of corporations surely seems to constrain the search for hypergoals. National approaches to corporate governance vary widely and allow a veritable garden of corporate forms to bloom. In spite of recent tendencies toward greater commonality, the unique attributes of German, Japanese, and U.S. corporations demonstrate the considerable range of extant variations.[1] These national differences have a major impact on the goals of the corporations formed under their regimes. On the face of it, the diversity of forms of corporate law seems to counter any claim that a set of hypergoals standing independently of a legal regime can be identified. Yet this diversity has not prevented scholars from attempting to articulate universal norms applicable to all corporations; in this study nor do we shy away from proposing universal goals underlying those norms.

Research on universality in the field of business ethics has focused on the question of identifying moral responsibilities obligating all corporations. This topic has attracted considerable interest resulting in commentators developing concepts of "moral minimums,"[2] "hypernorms,"[3] and "guidelines"[4] that establish moral obligations that are considered binding for global corporations.

In general, those searching for universal moral obligations ground their principles in established moral and ethical theory. Thomas Donaldson bases his moral minimums in social contract theory[5] while Richard DeGeorge employs a pluralistic, ecumenical approach reflecting multiple ethical theories.[6] In their search for moral universals, commentators have often found it necessary to limit their analysis to only certain types of corporations and contexts. Thus, DeGeorge makes it clear that his Guidelines apply only to U.S. and European corporations doing business in less-developed countries.[7] Donaldson limits his analysis to global or multinational corporations.[8] The fact that these thoughtful commentators find it necessary to limit their analysis to certain types of corporations implies that it is impossible to develop more-generalized standards

---

1. *See* Timothy L. Fort & Cindy A. Schipani, *Corporate Governance in a Global Environment: The Search for the Best of All Worlds*, 33 VAND. J. TRANSNAT'L L. 829 (2000); Michael Bradley et al., *The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads*, 62 LAW & CONTEMP. PROBS. 9 (1999).
2. *See, e.g.*, JURGEN HABERMAS, MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION (C. Lenhardt & S.W. Nicholsen trans., 1990) (establishing the argument for basic minimums upon which thicker notions of morality might later be derived).
3. THOMAS DONALDSON & THOMAS W. DUNFEE, TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS 49-82 (1999)
4. RICHARD T. DEGEORGE, COMPETING WITH INTEGRITY IN INTERNATIONAL BUSINESS (1993).
5. THOMAS DONALDSON, THE ETHICS OF INTERNATIONAL BUSINESS (1989).
6. DEGEORGE, *supra* note 4, at 23-41.
7. *Id.* at 43-45.
8. DONALDSON, *supra* note 5, at 65-94.

that would, for example, also apply with equal force to corporations from less-developed or communist countries.

The pragmatic limitations recognized by Donaldson and DeGeorge are not based on facts or assumptions that exclude the possibility of identifying hypergoals. Instead, they are explicitly offering guidance to a designated set of decisionmakers. Their primary analysis appears extendable to all types of corporations, and we see no reason to severely constrain the search for hypergoals. As a consequence, we impose only a minor limit on our analysis. We focus solely on profit-making corporations with public ownership. Non-profit organizations bring in too many variables for a focused analysis because their missions may relate to non-business activities carried on in furtherance of non-economic goals.[9] The use of the corporate form in such circumstances is a legal formality designed to provide the promoters with limited liability or tax benefits. Similarly, we exclude privately-owned firms. Although all corporations have certain obligations under typical regimes of corporate governance and are subject to public criminal and regulatory laws, privately owned firms are unique in the aspect of our core focus—the goals of the organization. Privately-held firms are operated in furtherance of the goals of the owner(s), which may involve unique personal commitments. Thus, private firms are in direct contrast to publicly-held firms that are understood to have certain generic goals pertaining to the assumed interests of their shareholders and the needs of the state.[10] Finally, we exclude government or state-owned corporations.[11] State-owned corporations must be seen as instruments whose goals correlate with states' public and foreign policy objectives.[12] These exclusions are not meant to suggest that hypergoals do not apply to these organizations; instead, we simply wish to address our attention to the ways in which hypergoals are applicable to for-profit corporations.

---

9. For example, many professional academic organizations are incorporated as non-profits. Their primary goals may be only to publish journals and to hold annual meetings of their membership. The focus of some associations is inward on the needs of their membership, with only limited consideration of those outside of the organization.

10. This dichotomy is captured in seemingly contradictory language in the 1994 Company Law of China. Article 102 of the statute provides that shareholders "shall be the organ of authority of the company," while Article 14 provides that "companies must . . . strengthen the establishment of a socialist spiritual civilization, and accept the supervision of the government and the public." Thomas W. Dunfee & Danielle Warren, *Is Guanxi Ethical? A Normative Analysis of Doing Business in China*, J. BUS. ETHICS, Aug. 2001, at 191 (citing the Company Law of China, articles 14 and 102).

11. *See* Cindy A. Schipani & Junhai Liu, *Corporate Governance in China: Then and Now*, 2002 COLUM. BUS. L. REV. 1 (analyzing the dimensions of state-owned corporations within the context of China).

12. *Id.*

A. *The Case for Hypergoals*

This Article first explores the case for the identification of hypergoals by engaging in a pragmatic normative analysis. That is, it first considers whether there are rational and moral arguments supporting the existence or identification of manifest, universal hypergoals. This Article then considers whether hypergoals are compatible with existing legal and economic regimes.

1. The Rational, Instrumental Argument

Business activity requires a sustaining environment. It cannot reach its full potential in repressive circumstances, such as those that existed for "blackmarket" entrepreneurial activities in the Union of Soviet Socialist Republics.[13] Political institutions can be used to prohibit business operations through aggressive criminalization. In order to thrive, business demands more than a merely-neutral state. Efficient background institutions must enforce contracts and minimal property rights while policing fraud and theft.[14] In addition, a nurturing business environment requires that its practitioners hold compatible values, particularly those associated with fundamental honesty and promise-keeping.[15] Francis Fukuyama recognizes the importance of societal social capital and extends that recognition to the claim that economic "[c]ommunities depend on mutual trust and will not arise spontaneously without it."[16]

Fukayama and others argue that in order to thrive, an economy requires the structures of liberal democracy.[17] It is true that many of the most successful economies have been found in democratic, capitalist countries. Yet, there are counterexamples; China is a non-

---

13. *See* R.T. NAYLOR, WAGES OF CRIME: BLACK MARKETS, ILLEGAL FINANCE, AND THE UNDERWORLD ECONOMY 38 (2002) (explaining how the emergence of Russia's mafia came from the dysfunctions of communist society).

14. *See generally* F.A. HAYEK, THE FATAL CONCEIT (W.W. Bartley ed., 1988). Background institutions include courts and police forces, regulatory agencies, executive branch bureaus with responsibility for business regulation, and NGOs such as the Red Cross and Red Crescent. For a provocative argument connecting property rights and sustainable peace, see O. Lee Reed, *Nationbuilding 101: Reductionism in Property, Liberty, and Corporate Governance,* 36 VAND. J. TRANSNAT'L L. 673 (2003).

15. *See* DEGEORGE, *supra* note 4, at 26-27 (discussing the importance of background institutions).

16. FRANCIS FUKAYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 25 (1995).

17. *Id.*

democratic nation that has had economic success,[18] while India, a practicing democracy, is a mediocre economic performer.[19] For our purposes, we assume that no case been made that a particular form of government is a prerequisite for a successful business environment. Thus following Fukuyama, Hayek and others, we focus on the following twin pillars as the keys for a nurturing business environment: (1) sufficient social capital in the form of individual values conducive to exchange, and (2) efficient background institutions necessary to develop and maintain sufficient levels of essential social capital. Business firms may act in ways that either support or weaken these pillars. The Enron case is instructive. The company aggressively lobbied to exempt itself from regulation by the Commodities Futures Trading Commission and from certain energy regulation oversight.[20] Thus given the opportunity to act in an unrestrained, opaque way, the firm engaged in self-serving opportunism that ultimately contributed to an undermining of business credibility in the United States. These and similar abuses at Tyco, Worldcom, Xerox, RiteAide, and many others caused a severe reaction both in capital markets and among regulators.[21] It is likely that some of the reactions to the loss of credibility will be overbroad and will ultimately constrain business efficiency. Ultimately, though, the blame for any reduction in efficiency must rest not with regulators or investors, but rather with those managers who so aggressively abused the system.[22]

More broadly and systemically, the pervasive corruption that exists today harms background institutions, particularly in developing countries, and often in very significant ways. Transparency International, the corruption-fighting non-

18. *See, e.g.*, MARGARET M. PEARSON, CHINA'S NEW BUSINESS ELITE (1997) (analyzing of the growing strength of the business class in China that has arisen apart from democratization of the country's politics).

19. *See, e.g.*, B.N.P Setlur, *We Need This Passion, but for Another Battle*, INDIAN EXPESS, May 31, 2002, *at* http://www.indianexpress.com/full_story.php?content_id=3564 (arguing that the passion for a war against Pakistan needs to be rechannelled to revive an economy "in shambles").

20. *See, e.g.*, John A. Byrne et al., *How to Fix Corporate Governance*, BUS. WEEK, May 6, 2002, at 69.

21. *Id.*

22. A central premise of Milton Friedman's arguments, after all, is that managers have a duty to shareholders, not to themselves. The corporate scandals are more about managerial profiting at the expense of the shareholders rather than shareholder abuse of other stakeholders. Michael O'Hara makes a similar point in this volume with respect to the extent to which businesses managers actually allocate resources to cover risks; frequently, they do not fund even a small amount to what might be seen as minimal risk, but in doing so, there is a lack of managerial attention to the risks actually faced by businesses. Michael O'Hara, *Governing for Genuine Profit*, 36 VAND. J. TRANSNAT'L L. 765 (2003).

governmental organization (NGO) located in Berlin emphasizes that there is both a demand side and a supply side to corruption.[23] The demand side is reflected in corrupt government officials who request or accept bribes or both.[24] Corporate managers who willingly pay or even offer payments are the supply side.[25] Corruption distorts the decisions of background political institutions, reducing their efficiency.[26] It also weakens public trust in those organizations while at the same time destroying social capital.[27] Corruption is particularly pernicious in its damaging effects on the overall environment for business activity.[28]

Although business has the power to harm the pillars of a nurturing environment, it also has the power to contribute in positive ways to strengthen them. The efficient functioning of background institutions is highly dependent upon honest and fair dealing on the part of the business firms.[29] Respecting the jurisdiction and authority of those institutions responsible for regulating business is also critical, as the experience in many developing countries makes clear.[30] Implementation of non-adversarial compliance systems whereby corporations act fairly and openly in host environments is a significant way to support background institutions in developing countries.

The relationship between business and society is recognized in the U.N. Global Compact, announced by U.N. Secretary-General Kofi Annan at the World Economic Forum in Davos in January 1999 and formally launched in July 2000, which is based upon a recognition of the vital role that businesses can play in dealing with social and environmental problems.[31] Among the benefits suggested for business are "a greater chance of a stable and harmonious

---

23. *See* Peter Eigen, *About TI, Transparency International, at* http://www.transparency.org/about_ti/index.html.
24. *Id.*
25. *Id.*
26 *Id.*
27. *Id.*
28. *Id.*
29. *See* United Nations, *The Global Compact, at* http://www.unglobalcompact.org (for the principles and work of the United Nations in offering the Global Compact as a standard for business behavior). There may also be a dimension related to responsibility for the individual flourishing of those who work for the corporation. For an argument along these lines, see Caryn L. Beck-Dudley & Steven H. Hanks, *On Virtue and Peace: Creating a Workplace Where People Can Flourish,* 36 VAND. J. TRANSNAT'L L. 427 (2003). *See also* Frances E. Zollers & Elletta Sangrey Callahan, *Workplace Violence and Security: Are There Lessons For Peacemaking?*, 36 VAND. J. TRANSNAT'L L. 449 (2003) (discussing how inattention to individual flourishing can result in workplace violence).
30. *See supra* note 29.
31. *See* United Nations, *The Global Compact: Overview, at* http://www.unglobalcompact.org.

atmosphere in which to do business" and the long-term benefit of a more stable and peaceful society in which investments can prosper.[32]

Business thus has the power to strengthen or weaken the essential foundations for commercial activity. Rationally, all businesses need to maintain these critical elements for their operation. Those who free ride on the actions of others run the real risk of contributing to a dynamic that may cause the background institutions to ultimately fail or be weakened in such a way as to place the system at risk. Because these pillars are independent of all other factors, all businesses, wherever located and whatever their commercial objectives, need to support them. Thus a rational case can be made for support of the pillars as a hypergoal of for-profit public business firms.

Any rational case will limit the identification of hypergoals to those factors for which a plausible empirical case can be made concerning their role as essential foundations for efficient business interaction. The concept of hypergoals would be strengthened and the set of specific hypergoals likely expanded if there are also underpinning moral grounds.

2. The Moral Argument: Deontological Positions

An "overlapping consensus"[33] among recognized moral frameworks in support of the identification of hypergoals would provide a second methodology for identifying specific examples. In this Section we look to applied business ethics and consider social contract-based analysis, along with ecumenical and stakeholder ethical arguments. We then discuss the countervailing views of positivist economists and Neo-Hobbesans.

a. The Social Contract Argument

Thomas Donaldson and Thomas Dunfee elaborate a social contracts-based analysis of business ethics introducing the idea of hypernorms.[34] Hypernorms are manifest, universal principles that stand at the top of the pyramid of all ethical and moral norms.[35] They are based upon principles so fundamental that they establish standards by which all other norms are to be judged.[36] In general

---

32. *Id.*
33. *See generally* JOHN RAWLS, POLITICAL LIBERALISM (1993) (arguing for foundational moral principles based on agreement on principles, regardless of their source).
34. DONALDSON & DUNFEE, *supra* note 3.
35. *Id.* at 49-81.
36. *Id.* at 43-44.

terms they should be discernible in a convergence of religious, political, and philosophical thought.[37] In their book *Ties that Bind*, Donaldson and Dunfee identify a series of indicators available to help managers determine the existence of hypernorms in the context of a given ethical decision.[38]

Donaldson and Dunfee describe at some length a hypernorm of necessary social efficiency.[39] This hypernorm identifies duties to maintain the efficiency of societal systems at a level essential to provide critical social goods necessary to meet minimal needs for health, food, housing, and education.[40] These duties apply to business organizations. The basis of the obligation to act in conformity with this hypernorm is similar to the rational case made above that business organizations need to support the background institutions securing the pillars of a nurturing environment for business. The analysis of hypernorms should point toward specific hypergoals. For example, the obligation to act consistently with the hypernorm of necessary social efficiency would indicate the existence of a hypergoal that all businesses need to aspire to reduce the supply side for corruption. Similarly, it would require that a firm act to reduce violence and conflict.

A plausible case can be made for a hypernorm relating to respecting human well-being.[41] This may have implications for internal goals of corporations that should aspire to minimize their potential for human harm. An example of an action inconsistent with this hypergoal would be diverting to developing countries tires whose safety is questioned in industrialized countries, on the assumption that the weaker regulatory framework of the developing country would be less likely to identify or effectively sanction the sale of dangerous products. Not all hypernorms translate into hypergoals. Only those that pertain to the basic nature and objectives of business firms would qualify.

The clear implication of mandatory hypernorms is that all firms must act consistently with their guidance.[42] All firms have a moral obligation to internalize applicable hypernorms into organizational hypergoals. Dunfee connects the two by arguing that firms should act consistently with three basic principles in response to moral pressures arising from the business environment.[43] The three basic

---

37. *Id.* at 59.
38. *Id.* at 60-61.
39. *Id.* at 117-38.
40. DONALDSON & DUNFEE, *supra* note 3, at 119.
41. *See id.* at 117.
42. *Id.* at 46-47.
43. *See generally* Thomas W. Dunfee, *Corporate Governance in a Market with Morality*, 62 LAW & CONTEMP. PROBS. 129 (1999).

principles, which may help to define the parameters of hypergoals, are as follows:

> 1) The starting presumption is that all corporate actions must be undertaken to maximize shareholder wealth;
>
> 2) In order to maximize shareholder wealth, managers must anticipate and respond to existing and changing moral pressures in their relevant markets that may pose threats to firm strategies, or which may provide competitive opportunities;
>
> 3) Organizations must act consistently with manifest universal moral norms and principles (hypernorms).[44]

In *The Ethics of International Business,* Tom Donaldson considers the implications of a social contracts-based approach for global firms conducting international operations.[45] Donaldson envisions a global social contract setting a minimal floor of responsibility for all business firms.[46] Specifically, global firms have an obligation to enhance the long-term welfare of employees and consumers, minimize the drawbacks of large productive organizations, and refrain from violating minimal standards of justice and human rights.[47] These obligations are defined in terms of ten fundamental rights: freedom of physical movement, property ownership, freedom from torture, fair trial, nondiscriminatory treatment, physical security, freedom of speech and association, minimal education, political participation, and subsistence.[48] Global firms should avoid participation in the deprivation of any of these rights.[49] In some very limited circumstances, Donaldson argues that global firms have an obligation to protect potential victims against deprivation of these fundamental rights by others.[50] Recognizing limits derived from the nature and role of business, Donaldson is unwilling to extend a duty to global corporations to aid those deprived of any of the ten fundamental rights.[51] Donaldson also recognizes that sometimes variances in standards among nations may be due to differing levels of economic development, and he is willing to accept some lowering of ethical standards on that ground, so long as core human rights are not violated.[52] The core obligations Donaldson identifies should apply, where relevant, to corporations whose scope of operations and impact cause them to fall short of global status.

---

44. *Id.* at 149.
45. *See generally* DONALDSON, *supra* note 5.
46. *Id.* at 64.
47. *Id.* at 54.
48 *Id.* at 81.
49. *Id.*
50. *Id.* at 83.
51. *Id.* at 84.
52. *Id.* at 82.

Thus, the basic assumptions and concepts of Donaldson's approach are consistent with the identification of specific hypergoals applicable to all corporations wherever situated.

b. Ecumenical and Stakeholder Arguments

An approach of growing popularity among business ethicists is to identify middle-level rules capable of serving as guideposts for multinational corporations (MNEs). These may be based in a single theory, or more commonly, they may be based in a variety of generally-recognized ethical theories. Richard DeGeorge has provided one of the most elaborate of the ecumenically grounded middle-level approaches.[53] His guidelines are directed at U.S.-based multinationals regarding their dealings within less-developed countries.[54] DeGeorge seeks a realistic middle ground between the absolutist Righteous American who inflexibly always follows her home country norms and the Naive Immoralist who is willing to accept any type of practice so long as there is evidence that "everyone is doing it."[55] In response, DeGeorge offers seven illustrative rules for behavior.[56] DeGeorge bases the principles upon an ecumenical foundation, using several ethical theories—something that is apparent from even a cursory glance at the principles:[57] (1) Do no intentional direct harm; (2) Produce more good than harm for the host country; (3) Contribute to the host country's development; (4) Respect the human rights of employees; (5) To the extent that local culture does not violate ethical norms, MNEs should respect the local culture and work with and not against it; (6) MNEs should pay their fair share of taxes; and (7) Cooperate with local governments in developing and enforcing just background institutions.[58]

As with Donaldson's moral minimums, DeGeorge's rules are probably overbroad if considered as ipso facto corporate hypergoals. Not all of DeGeorge's illustrative rules would necessarily translate into corporate hypergoals. For example, contributing to the host country's development may not be a plausible concept for all publicly-held, for-profit corporations. Such a goal may be beyond the resources and competencies of small firms based in developing countries. However, DeGeorge's basic approach recognizes a domain of obligations or principles toward which all firms should aspire. Both DeGeorge and Donaldson identify norms that there are

53. *See generally* DEGEORGE, *supra* note 4.
54. *Id.* at 42-45.
55. *Id.* at 15-19.
56 *Id.* at 46-58.
57 *Id.*
58. *Id.*

compelling reasons for firms to respect. Further, they both make it clear that they are not descriptive of a status quo already firmly reflected in corporate behavior.[59] Thus, the well respected innovative approaches advanced by Donaldson and DeGeorge support the identification of hypergoals.

An important recent advance in moral analysis of organizations is the concept of businesses as "global citizens." The most comprehensive elaboration of this idea is by Jeanne M. Logsdon and Donna J. Wood, who develop a detailed account of business as a global citizen[60] working step by step, from the idea of individual local citizenship, to a conception of business citizenship and global communities, to, ultimately, the concept of business citizenship. Applying familiar sources such as the U.N. Universal Declaration of Human Rights, they propose, for example, that all businesses have a moral duty to support the conditions under which human rights can be exercised.[61] Logsdon and Wood base their argument on both moral and rational grounds, arguing that "[b]usiness citizenship is a necessity for the survival and health of the business institution,"[62] and even that it is "essential for the sustainability of capitalism itself."[63] They connect the idea of business citizenship to hypernorms and it appears abundantly clear that their approach is entirely consistent with one founded upon identification of hypergoals.

The stakeholder concept is an important dimension of most Western approaches to business ethics. The term stakeholder identifies those who have a "stake" or an interest in the decisions of an organization.[64] Definitions vary, but the essence of the idea is that those who may be significantly affected by an organization's action, or who are at risk as a result of the decision, have a "stake" in that decision.[65] Typical listings of stakeholders include, among others, consumers; users; bystanders; government agencies at the federal, state, and local levels; suppliers; creditors; and distributors.[66] More recent writings also include those internal to the firm, such as employees, shareholders, and even senior managers.[67] An important task for business ethicists is to define the nature and extent of

---

59. *See* DE GEORGE, *supra* note 4, at 26-33; DONALDSON, *supra* note 5, at 30-43.

60. Jeanne M. Logson & Donna J. Wood, *Business Citizenship: From Domestic to Global Level of Analysis*, 12 BUS. ETHICS Q. 155 (2002).

61. *Id.*

62. *Id.* at 181.

63. *Id.*

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

65. *Id.*

66. *Id.*

67. *See, e.g.*, CLARKSON CENTRE FOR BUSINESS ETHICS, THE CLARKSON PRINCIPLES (1999).

stakeholder interests that organizations have an obligation to recognize in their decision-making.

On first impression, stakeholder analysis may seem inconsistent with the identification of hypergoals because its approach is constituency specific. Stakeholder groups are often in opposition with each other, as is the case with the conflicting demands made by animal rights groups and AIDS activists on pharmaceutical firms conducting medical research involving the use of animals. The very plurality and diversity of stakeholder groups and interests seems to cut against the idea that a set of universal goals applicable to all business firms can be identified. We, however, believe that such a view of stakeholder analysis is too narrow. When one shifts the level of analysis from the specific decision to the overall goals of a firm, stakeholder management is capable of focusing on broader, more universal goals consistent with the identification of hypergoals. In 1999, a team of ethicists developed a set of principles known as the Clarkson Center Principles of Stakeholder Management (Principles).[68] They are addressed to managers of corporations of all types and locations, and are designed to be consistent with the "organizational structure and purpose of the modern business enterprise."[69] Although many of the seven principles are procedurally oriented and quite general (e.g., No. 3: Managers should adopt processes and modes of behavior that are sensitive to the concerns and capabilities of each stakeholder constituency), some are consistent with the idea of hypergoals (e.g., No. 6: Managers should avoid altogether activities that might jeopardize inalienable human rights or give rise to risks which, if clearly understood, would be patently unacceptable to relevant stakeholders).[70] Thus, when properly focused, stakeholder analysis is consistent with the concept of hypergoals.

3. The Moral Argument: Naturalist/Aspirational Considerations

Naturalist ethicists offer complementary analyses supporting the idea of foundational principles. An important difference between the naturalist/aspirational approaches and those of duty-based theories is that the aspirational model considers the "why be ethical" argument differently. Whereas a deontological approach considers the nature of moral obligation from a perspective of reasoned principles or

---

68. *Id.*
69. *Id.* at 257.
70. *Id.* For an application of stakeholder theory to issues of violence, particularly that of the experience of Cantor Fitzgerald after September 11, 2001 see Tara Radin, *700 Families to Feed: The Challenge of Corporate Citizenship,* 36 VAND. J. TRANSNAT'L L. 619 (2003).

consensual agreement that human beings ought to act in a certain way, or both, the aspirational approach suggests that the basis lies in a dimension of human nature. Naturalists suggest that a fundamental interest in at least social,[71] and perhaps moral,[72] behavior is rooted in human nature. This interest in goodness is often obscured under certain prevailing notions in economic[73] and political[74] theory where human nature is assumed to be oriented toward a narrow sense of self-interest. The naturalist/aspirational approach involves articulating positive interests of human beings whereby theorists tap into a desire for moral goodness that is natural, authentic, and inspiring.[75] It recognizes a natural enthusiasm for wanting to perform moral acts.[76] This position is complementary to, rather than opposed to, prescriptive ethics because the inspired person must then learn what she should do to satisfy her normative interests. In this sense, peace becomes a bootstrap: by articulating it as a desirable goal, people can be inspired to more-deeply consider their moral obligations necessary to achieve that goal. In doing so, the naturalist/aspirational position also suggests that other characteristics of human nature need be taken into account in order to reinforce the inspirational corporation.

For example, Timothy Fort offers the notion of Business as Mediating Institution, whereby businesses are viewed as communities in their own right, and yet, are truly communities only when they are sufficiently small so that individuals within them have a sense of personal relationship with the others in the organization.[77] Such mediating institutions ought to be generally free to develop norms appropriate for their small communities and, in fact, Fort argues that for individual moral development to occur, there must be significant individual engagement with the development of norms within such a community.[78] On first impression, this seems very

---

71. *See, e.g.*, PAUL R. LAWRENCE & NITIN NOHRIA, DRIVEN: HOW HUMAN NATURE SHAPES OUR CHOICES (2002).

72. *See, e.g.*, JAMES Q. WILSON, THE MORAL SENSE (1993).

73. *See, e.g.*, OLIVER E. WILLIAMSON, MARKETS & HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS (1975).

74. DANIEL A. FARBER & SUZANNA SHERRY, A HISTORY OF THE AMERICAN CONSTITUTION 16 (1990) (arguing that the difference in attitude between that of the period prior to the Revolutionary War and the period after was that post-Revoluntary War leaders believed that the government could no longer rely on individual virtue to check behavior, and instead required reliance on a system of institutional checks and balances).

75. *See generally* Timothy L. Fort, *A Deal, a Dolphin and a Rock* (Ruffin Lectures, Apr. 2002) (paper on file with authors).

76. *Id.*

77. *See generally* TIMOTHY L. FORT, ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION (2001).

78. *Id.* at 21-36.

similar to the microsocial contracts envisioned by Donaldson and Dunfee. For Fort, however, the reasons come not from a notion of pragmatism or social contracts, although he does not reject these contributions as inapplicable, but rather through a natural law tradition grounded in anthropology and theology.[79] Fort also suggests a second level of analysis drawn from natural law that prevents mediating institutions from practicing ethically troublesome behavior.[80] This second level of analysis is the basis for the recognition of hypergoals. Rather than identifying overarching goals as constraining forces, this approach recognizes aims as quests relevant for corporations to pursue regardless of location, line of business, or form of corporate governance.[81]

Fort argues that human nature contains within it natural desires for certain kinds of goods. Natural law theorists such as Finnis[82] have used these desires as a teleological basis for moral development. Similarly, Aristotelian businesses ethicists, such as Robert Solomon, identify more than 20 virtues that are relevant to moral business behavior.[83]

Is peace a natural desire? Phrased otherwise, is there an innate desire for peacemaking in the midst of conflict? Countering the common assumption that nature is invariably competitive, primatologist Frans DeWaal has demonstrated that peacemaking occurs regularly among all creatures,[84] particularly with respect to human beings' closest relatives, the primates.[85] DeWaal argues that

---

79. *Id.* at 9.

80. Fort, *supra* note 75.

81. *Id.*

82. JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS 92 (1980).

83. ROBERT SOLOMON, ETHICS AND EXCELLENCE 199-266 (1993). Contemporary science also provides relevant insights. Most controversial is the work of evolutionary psychologists such as Steven Pinker and Leda Cosmides who argue that evolution has produced a human brain with separate cognitive capacities specifically oriented to particular functions. Rather than a general purpose, problem-solving brain, the human brain is designed to have a language function, a cheater-detection function, and so on. While evolutionary psychologists typically do not wed neurological functioning capabilities to moral aims out of concern for the metaphysical implication of teleology, philosopher Larry Arnhart has done so in connecting Darwin and Aristotle. The link is that to perfect a function of an organ or a creature is to achieve a teleological end for that particular function or organism. It is to flourish or to function well within the capacities one has. *See generally* Leda Cosmides et al., *Introduction: Evolutionary Psychology and Conceptual Integration, in* THE ADAPTED MIND: EVOLUTIONARY PSYCHOLOGY AND THE GENERATION OF CULTURE 9 (Jerome H. Barkow, Leda Cosmides, & John Tooby eds., 1992); STEVEN PINKER, HOW THE MIND WORKS (1997); LARRY ARNHART, DARWINIAN NATURAL RIGHT: THE BIOLOGICAL ETHICS OF HUMAN NATURE 29 (1998).

84. *See generally* NATURAL CONFLICT RESOLUTION (Filippo Aureli & Frans B.M. DeWaal eds., 2000).

85. *See generally* FRANS DEWAAL, PEACEMAKING AMONG PRIMATES (1989).

the innate need for peaceful relations, at least among one's community, is strong and that elaborate social rituals are established by even the fiercest of competitors.[86] It is not that the desire for peace eliminates competitive instincts, but that within competition there is an abiding desire for peace such that reconciliation is a critically important social category for primates.[87] As DeWaal notes, human beings share this aim for reconciliation.[88] In an important sense, there may well be a particularly-human need to balance emphasis on competition with that of reconciliation. While competitive games and opportunities are everywhere, there is an open question as to whether scholars and decisionmakers have adequately recognized the human need for reconciliation. This is a biological end to be satisfied, and by being so, raises normative questions as to how best to go about achieving this telos.

One can plausibly argue that (1) there is a fundamental aim among primates, including humans, for peace and reconciliation, and (2) this aim imposes a need for socially-relevant mechanisms to achieve that aim. In other worlds, there is a two-tiered normative analysis inherent in nature: that pertaining to an overarching "hypergoal," and that pertaining to a locally-relevant structure of socially obligatory norms necessary to achieve that goal. It is this model that we wish to describe more fully in business terms, for our argument is that the hypergoal of peace has implications for the relevant ways in which a firm operates and, given the potential consequence of violence if firms do not "adapt" to this hardwired element, survival itself may be at stake.

4. The Normative Claims: Objections

Up to this point, we have given brief summaries of relevant approaches taken by modern business ethicists, each of which, in some dimension or form, incorporates or espouses ideas consistent with the identification of corporate hypergoals. We believe that the great weight of the literature supports such an idea. However, we should note that there are at least two categories of dissenters who would argue against the existence or relevance, or both, of universal principles or goals that can guide or constrain management strategy. First, are the neo-Hobbesans such as Velasquez, who take the realistic view that corporations cannot be expected to exercise self-restraint in a manner inconsistent with their economic self-interest.[89]

---

86. *Id.* at 10-18.
87. *Id.* at 7.
88. *Id.*
89. Manuel Velasquez, *International Business, Morality, and the Common Good,* 2 BUS. ETHICS Q. 27 (1992).

Velasquez argues that powerful global corporations are subject neither to a global sovereign authority nor to effective limiting power from individual nation states.[90] As a result, the actions of global corporations may be beyond the reach of the legal systems of states or the effective jurisdiction of any international authority.[91] In that environment, it is often difficult for one business actor to signal reliability to another, so that those who breach ethical conventions such as promise-keeping or honesty may escape any negative reputation effects. In such a circumstance, the desire to maximize profit and the intense pressures of competition may spur firms to unethical behavior. Velasquez argues there is little hope for an effective common morality for global business in the absence of some Leviathan that can enforce its terms for moral behavior.[92] Velasquez states the following premise:

> In the absence of an international sovereign, all rational agents will choose not to comply with the tenets of ordinary morality, when doing so will put one at a serious competitive disadvantage, provided that interactions are not repeated and that agents are not able to signal their reliability to each other.[93]

This view is representative of those who take a legalistic view of morality. Morality is thought of as the product of external social control. The only viable solution is establishment of a powerful international authority. This is in contrast to the more-optimistic views of human nature that assume many people try to do the right thing and are influenced by desires relating to the respect of their peers. Under this more-benign view of human nature, viable solutions include social and economic incentives and strategies designed to maximize freedom of choice.

We do not believe that the neo-Hobbesan critique is sufficient to counter the multiple, foundational arguments in support of the identification of hypergoals. The neo-Hobbesans' concerns speak primarily to the question of whether a concept of hypergoals can ever be successfully realized. Even taken at their strongest, they do not constitute an argument that the ultimate purpose of hypergoals is wrong-headed. Human nature, after all, might not be as dark as a Hobbesian might suggest. We would also note that the widespread existence of exemplary corporate practice is an empirical counter-point to the Neo-Hobbesans' assumptions about likely human behavior.[94] Moreover, the Hobbesian argument assumes a unipolar

---

90. *Id.*
91. *Id.* at 37.
92. *Id.* at 36.
93. *Id.*
94. Even with the intense media attention recently given to corporate misconduct, the vast majority of corporations act consistently with societal values and

conception of power.[95] The contemporary world, however, consists of multiple poles of power, not only in terms of nation-states, but in terms of the power wielded by NGOs, consumers, the media, and corporations themselves. The combination of these power sources provides the room for Dunfee's argument for a "Marketplace of Morality" where corporations must concern themselves with the moral preferences that are embedded within a fully functioning free market.[96]

The other main potential objection to the idea of corporate hypergoals comes from the fields of economics and finance. The proponents of a positivist economics approach, represented by the views of Michael Jensen, advocate a narrow objective function of wealth creation to be maximized by the management of a firm.[97] Although rarely explicit that this concept applies to all publicly owned, for-profit firms, such a conclusion is not only compatible with their approach, but probably mandatory. Thus, they are essentially advocating a hypergoal of shareholder wealth creation. The debate then becomes not one of the validity and existence of hypergoals, but rather what counts as hypergoal candidates. A debate has lasted for some time between the advocates of stakeholder management and positivist economists. Proponents of the positivist approach are critical of stakeholder theory, an approach they see as having roots in "the politics of special interests, and managerial self-interest."[98] They argue that purposeful behavior in an organizational environment requires the existence of a single-valued objective function.[99] Otherwise, managers cannot know how to make tradeoffs among conflicting goals and it is impossible to measure success.[100] Ideas such as multi-fiduciary stakeholder theory[101] and various accounting standards proposed by NGOs to measure social responsibility,[102] by providing multiple objectives, confuse and distract managers. Jensen argues for an "enlightened" principle of

---

expectations. Many corporations, such as Johnson & Johnson, Merck, Timberland, and BP Amoco have been lauded for their proactive contributions to the community.

95. *See* Velasquez, *supra* note 89.

96. Dunfee, *supra* note 43, at 139-43; *see also* Thomas W. Dunfee, *The Marketplace of Morality: First Steps Toward a Theory of Moral Choice,* 8 BUS. ETHICS Q. 127 (1998).

97. Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function,* 12 BUS. ETHICS Q. 235, 236 (2002).

98. *Id.*

99. *Id.* at 237.

100. *Id.* at 250.

101. Kenneth E. Goodpaster, *Business Ethics and Stakeholder Analysis,* 1 BUS. ETHICS Q. 53 (1991).

102. *See generally* VIRGINIA HAUFLER, A PUBLIC ROLE FOR THE PRIVATE SECTOR: INDUSTRY SELF-REGULATION IN A GLOBAL ECONOMY (2001) (providing an overview of a variety of social responsibility measures available to measure corporate responsibility).

value maximization emphasizing a single objective function: maximize the long-term value of the firm.[103] In order to achieve this, astute managers will find it useful to apply some of the concepts from stakeholder theory as a means of determining what critical constituencies of the firm desire. After all, these constituencies will ultimately play a major role in how the firm is valued. Ultimately, the positivist approach does not directly reject the search for hypergoal identification. Instead, it identifies one powerful candidate for hypergoal status. The ultimate question is whether there are others beyond shareholder wealth maximization. We believe that there are.

5. Normative Considerations: Conclusion & Consistency with Legal and Political Constraints

There appear to be strong moral reasons for the recognition of hypergoals. Whether one follows a duty-based approach or an aspirational approach, there appear to be overarching objectives that human beings share. By identifying them, one makes them more concrete for decisionmakers. To the extent they are positive, these hypergoals counteract an assumption that human beings are only motivated by a narrowly-defined sense of self-interest. Moreover, in identifying hypergoals, one can develop a two-tiered analysis for corporate decisionmakers. The higher level is to make corporate actions consistent with hypergoals and the norms that have been demonstrably linked to that goal. The second level is to attend to the emotions, sentiments, and interests of those stakeholders immediately affected by corporate action. This two-tiered analysis will be utilized in applying notions of sustainable peace to contemporary international dilemmas, such as the conflict diamonds case.

A concept of corporate hypergoals is not useful if it is inconsistent with extant legal rules or political expectations. Because at this point the scope and nature of any specific hypergoals is a black box, the only way in which the general concept of internalized hypergoals would be impermissible is if the legal constraints on publicly-owned, for-profit corporations do not allow for any flexibility in establishing goals. Milton Friedman, the best known apostle of wealth maximization for shareholders, is equally famous among business ethicists for his important qualification: "while conforming to the basic rules of the society, both those embodied in law and those

103. Jensen, *supra* note 97, at 245-46.

embodied in ethical custom."[104] Certainly, hypergoals that reflect manifest, documentable universal moral principles are likely to be compatible with law. We believe that the most appropriate solution is to note that hypergoals must, of necessity, be generally compatible with the legal regimes in which corporations operate. Therefore, it is sensible to, when considering the process by which hypergoals are to be identified, consider all constraints likely to result from the legal and political environment. As is argued elsewhere in this volume, integrating a hypergoal of peace is something that is consistent with extant corporate governance regimes either implicitly or explicitly.[105] Given the consistency of that conclusion with our position, we defer to the argument of that paper in demonstrating the compatibility with our analysis of strategic corporate options with extant governance principles.

On the basis of the analysis so far, we believe that a strong case exists for the existence of hypergoals. In the next Section we discuss the characteristics of hypergoals.

B. *The Characteristics of Hypergoals*

Hypergoals may serve as action guideposts for all publicly-held, for-profit corporations, showing the way toward the resolution of business decisions with moral overtones. Capability to fulfill this role would require that hypergoals be (1) consistent with a primary emphasis on profit-making, (2) consistent with standard corporate governance regimes, (3) few in number, clear, and readily measurable, and (4) goals that firms should aspire to as they evolve as entities over time.

The basic business objective of publicly-held, for-profit corporations is to generate wealth for their owners or shareholders.[106] This uncontroversial proposition holds for such corporations throughout the world.[107] This does not, however, mean that every one of these organizations has an objective of generating maximized accounting profits, particularly in the short term. Microsoft was recently sanctioned by the SEC for accounting manipulations that were designed to lower their profits in the short term, so that they could "bank" earnings for future quarters to maintain the appearance

---

104. Milton Friedman, *The Social Responsibility of Business is to Increase its Profit*, N.Y. TIMES (Magazine), Sept. 13, 1970, at 32.

105. *See generally* Timothy L. Fort & Cindy A. Schipani, *Adapting Corporate Governance for Sustainable Peace*, 36 VAND. J. TRANSNAT'L L. 377 (2003).

106. *See, e.g.*, PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 2.01(a) (1994).

107. *See* Bradley, *supra* note 1, at 50-77 (discussing transnational defining of corporate purposes in terms of profitability).

of steady growth.[108] Liberty Media's John Malone is notorious for avoiding accounting profits, which are subject to taxation, and seeking other measurements of performance that will presumably appeal to investors.[109]

Thus, even in this supposedly objective function of a business enterprise, there is room for interpretation and maneuver. Any hypergoal applicable to business corporations needs to reflect this environment and be consistent with the basic expectations of the owners of the organization. A hypergoal emphasizing disclosure and transparency would advance the status of shareholders and help them to monitor whether the organization is providing value maximization along the lines they desire.

It is unlikely that there would be a large set of identifiable hypergoals. The need to be applicable to all publicly-held, for-profit corporations and to fit with the diverse forms of regulation and governance will produce only a limited set. This is consistent with the concept of hypergoals as providing highly important, yet mandatory, guidance for organizations to act in a manner supportive of the essential environment for business activity.

A goal is a result that one wishes to obtain or to aspire to.[110] It defines the mission of an organization and establishes the manner in which performance will be measured. Jensen and others argue that value maximization is the only proper goal for profit seeking corporations.[111] Units of an organization may have various sub-goals designed to help the organization reach its overall primary goal or objective. These will vary within and across organizations. The great diversity of organizations and types of business activities will produce an environment in which there will be a multiplicity of subsidiary goals. Our focus is not on these smaller goals. Instead, in the prior Section we asked whether there are general goals that are relevant to all organizations. We concluded that the answer is yes. Goals at this level might pertain to such things as an obligation to act with basic transparency and to make serious efforts to reduce or eliminate business-supported public sector corruption. A goal of that type must be understood as something to aspire to. It would be unrealistic to condemn any corporation that failed to achieve complete success regarding such a goal.

---

108. Henry Norr, *SEC Slaps Microsoft for Books*, SAN FRAN. CHRON., June 4, 2002, at B1.

109. *See generally* L.J. DAVIS, THE BILLIONAIRE SHELL GAME (1999).

110. *See* MERRIAM WEBSTER'S COLLEGAIATE DICTIONARY 499 (10th ed. 1993) (defining goal as "the end toward which effort is directed").

111. *See* Jensen, *supra* note 97.

III. CANDIDATES FOR HYPERGOALS

In this Section, we discuss two candidates for hypergoals.[112] We do so to illustrate what a hypergoal looks like. Our focus is on the control of violence and as a consequence, we select two potential hypergoals: one, transparency, indirectly related to the control of violence, and the other a direct obligation to take steps within the core competencies of the firm to contribute to sustainable peace. Even though the latter is quite general in its focus, we nevertheless believe it to be sufficiently concrete to be readily identifiable, as well as robust enough to provide guidance for corporations.

A. *Transparency*

The first hypergoal candidate is transparency. By transparency we mean that an organization should report accurately and fairly all aspects of their operations relevant to investors and other stakeholders. The obligation to report is mitigated by considerations of cost and legitimate proprietary interests. Firms must consider the costs of providing information and, where it is material, may satisfy the requirement by standing ready to provide responses to legitimate inquiries. Of course, firms may safeguard intellectual property interests including trade secret protection that may be lost if certain information is disclosed.[113] Transparency of organizational decisions and financial reporting is widely recognized today as an aspect of good governance.[114] Transparency is important for the effective functioning of capital markets and it takes on particular salience in reference to the wide spread phenomenon of bribery.[115]

Major transnational organizations, such as the Organization for Economic Cooperation and Development, have made transparency a central criterion for governmental as well as corporate practices,

---

112. There are many other potential candidates, e.g., contributing to a sustainable environment. However, our purpose here is not to develop a full set of hypergoals, but instead, to focus on the concept as relevant to the mitigation of violence.

113. Costs and intellectual property interests must not be used as a smoke-screen, an easy excuse to justify policies that are in fact counter to the spirit of transparency.

114. *See* Eigen, *supra* note 23. Calls for the goal, of course, have increased since the 2002 corporate misbehavior.

115. *See* David Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach: The C² Principles (Combating Corruption)*, 33 CORNELL INT'L L.J. 593 (2000).

primarily as a way to root out corruption.[116] One of the many problems of bribery is that it erodes the participation of citizens in government, favoring instead those who can buy access to power.[117] The dysfunction this creates can lead to coups.[118] A recent study showed a direct correlation between corruption and violence.[119] That study took as a benchmark the Transparency International Corruption Perception Index and matched it against the Heidelberg Index, which categorizes how conflicts are resolved in specific countries.[120] The study found that countries that were the most transparent resolved conflicts by violence only 14 percent of the time while those that were the most corrupt resolved conflicts by violence 60 percent of the time.[121] The linkage between corruption and violence may not be causative; it could be that corruption leads to poverty and poverty in turn leads to violence. It is worth noting that this linkage is not intended to suggest that corruption leads to terrorism, a form of violence of particular concern today. It is, however, suggestive of generic forms of violence.[122]

Why would corrupt countries be more prone to violence?[123] A

---

116. Miguel Scholoss, *Luncheon Address at the Symposium on Fighting International Corruption & Bribery in the 21st Century,* 33 CORNELL INT'L L.J. 469, 478 (2000).

117. *See* Philip M. Nichols, *The Myth of Anti-Bribery Laws as Transnational Intrusion,* 33 CORNELL INT'L L.J. 627, 632-33 (2000).

118. *Id.* at 633 (citing Susan Rose-Ackerman, *The Political Economy of Corruption, in* CORRUPTION AND THE GLOBAL ECONOMY 31, 45 (Kimberly Ann Elliott ed., 1997)).

119. *See* Timothy L. Fort & Cindy A. Schipani, *The Role of the Corporation in Fostering Sustainable Peace,* 35 VAND. J. TRANSNAT'L L. 389, 398 (2002).

120. *Id.*

121. *Id.* Countries in the second quadrant of transparency—i.e. relatively less corrupt, but not as transparent as those least corrupt—resolved disputes by violence twenty-six percent of the time and those in the third quadrant resolved disputes by violent means forty-four percent of the time.

122. There is a complex relationship between poverty and the terrorists who take advantage of that poverty to pursue the aims and tactics that they select. A wealthy, well-educated terrorist may, for instance, not feel the poverty of a given population, but needs to exploit the desperation of such poverty in order to pursue his own aims. It is for this reason that some foreign policy analysts, such as Strobe Talbot, talk about attacking terrorism by attacking poverty not so much in order to prevent a bin Laden from existing, but in order to "drain the swamp" where a bin Laden can find sanctuary to pursue his objectives. Strobe Talbot, *The Other Evil,* FOREIGN POL'Y, Nov.-Dec. 2001, at 75.

123. *Cf.* Steven R. Salbu, *A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery,* 33 CORNELL INT'L L.J. 658, 661 (2000) (warning that extraterritorial attempts to impose anti-corruption laws can themselves be viewed as an intrusion that could flame emotions); Clyde D. Stoltenberg, *Globalization, Asian Values, and Economic Reform: The Impact of Tradition and Change on Ethical Values in Chinese Business,* 33 CORNELL INT'L L.J. 711, 726 (2000) (echoing Salbu's concern at least insofar as extraterritorial extension of anti-bribery laws could be viewed as an exercise of U.S. hegemony).

key reason may be that corruption thrives on secrecy.[124] Secrecy prevents public evaluation and discussion over whether the behavior of individuals in positions of authority, whether governmental or corporate, is legitimate.[125] This leads to the second criterion: voice.

Voice is the reciprocal component of transparency. Those who receive the information about the organization's operations need to have some means of acting upon it. Indeed, as already noted, this is a key component of functioning democracies and functioning democracies have been tied to reduced violence.[126] Not only do citizens have a say in the rules that govern them, which promotes a sense of legitimacy to the rules themselves, but where many different people have voice, a premium is placed on how to take into account those voices through negotiation and compromise—traits that lead to nonviolent resolution of disputes.[127] Two additional analogies help bolster this point.

The Nobel Prize-winning economist, Amartya Sen, has studied the incidences of famine and has concluded, somewhat controversially, that famines simply do not occur in countries governed by a functioning democracy.[128] In his view, the reason for famine is not the lack of food, but rather the lack of voice by those who are hungry and with that lack of voice, an ability to influence the political decisions that lead to the distribution of food.[129] Voice thus becomes a critical element in the alleviation of extreme forms of poverty because it violates a basic notion of justice in the form of participation—a factor related not only to macroeconomic issues of famine, but which has also been tied to dimensions of corporate governance as well.[130] Sen's claim expands the ethical criterion of

---

124. Hess & Dunfee, *supra* note 115, at 597-98.

125. DONALDSON & DUNFEE, *supra* note 3, at 226-30.

126. *See generally* SPENCER R. WEART, NEVER AT WAR: WHY DEMOCRACIES WILL NOT FIGHT ONE ANOTHER (1998) (arguing that well-established democracies have never warred with each other).

127. *Id.* at 15.

128. AMARTYA SEN, DEVELOPMENT AS FREEDOM 178 (1999).

129. *Id.* at 180-81.

130. *See* CONNIE PECK, SUSTAINABLE PEACE: THE ROLE OF THE UN AND REGIONAL ORGANIZATIONS IN PREVENTING CONFLICT 17 (1998); *see also* FINNIS, *supra* note 83, at 147 (arguing that a basic sense of justice in natural law is the participation in the rules that govern an individual); *see also* DONALDSON & DUNFEE, *supra* note 3, at 163-64 (likewise arguing that voice in terms of participation in the development of a social contract is a key component of justice). In addition to these macroeconomic notions, there are reasons to believe that the institutionalization of voice in the form of strong employee rights, such as through employee stock ownership, could also be a guarantor of voice and promote its advantages. *See* Dana Muir, *Employee Profit Sharing, Voice, and Peace*, 35 VAND. J. TRANSNAT'L L. 485 (2003). More controversial, perhaps, is an additional argument that shows that gender voice is particularly important; that is, that the voice of women in organizations tends to be associated with

voice beyond the values and traditions underpinning Western liberalism. Instead, voice is justified as a key criterion for good action.

This idea is further supported by anthropological research. David Fabbro has conducted research on the traits of peaceful societies.[131] Among the attributes of such societies are egalitarian social structures where social control is achieved through group consensus.[132] Obviously, decisions made on the basis of group consensus require a sense of voice by all the members of the society. Here, too, the fact that this finding comes from robust anthropological data suggests something deeply rooted in our human nature that is ethically important in a universal sense, and not grounded solely in western, liberal, democratic values.

Ultimately, corruption interferes with the efficient and fair operation of government entities, while at the same time it distorts the operation of capital and consumer markets. In the process, it weakens the capacity of the background institutions essential to autonomous business enterprise and strikes at their very legitimacy.[133]

B. *Contributing to Sustainable Peace*

To this point, we have suggested repeatedly that peace is a potential hypergoal. We have not described what sustainable peace is, nor have we linked corporate behavior to the achievement of it. This Section attempts to do so. The argument proceeds as follows. First, we define sustainable peace. Second, we describe the potential corporate role in achieving sustainable peace. Although sustainable

---

less violent behavior. *See* Terry Morehead Dworkin & Cindy A. Schipani, *Gender Voice and Correlations With Peace,* 36 VAND. J. TRANSNAT'L L. 527 (2003).

131. David Fabbro, *Peaceful Societies: An Introduction,* 15 J. PEACE STUD. 67 (1978).

132. *Id.*

133. Transparency's status as a hypergoal further derives from two factors. First, as the discussion suggests, there is a duty-based justification for it. That is, transparency is an overarching good that one should practice because it tends to eliminate or at least mitigate various harms associated with secrecy. Because of its breadth, it can be characterized as a hypergood. Second, one can view transparency as an instrumental hypernorm necessary to achieve an aspirational hypergood of sustainable peace. That is, transparency leads to a good of peace. Moreover, transparency is based on a rooted interest in honesty. While human beings undeniably have an enormous capacity for deception, it is important to parallel that capacity with a desire for truth-telling as well. Lie detector tests, for instance, are based on the evidence that shows that deception produces biological stress. One can claim an aspirational dimension, therefore, for openness and honesty that accords with an aspect of human nature. Thus, both duty-based and aspirational elements support the notion of transparency as a hypergoal.

peace may also have duty-based arguments establishing it as a hypergoal, the following discussion assesses it from a more aspirational perspective.

1. Defining Sustainable Peace

A term like sustainable peace evokes a positive consideration of peace as related to the practicing of justice, but like its environmental cousin, sustainable development, the term is open to a variety of interpretations. Some degree of open-endedness is valuable because flexibility allows for adjustments based on specific circumstances of historical times and places. We focus on the primary attributes of a state of peace: the absence of organized violence and an ongoing sense of stability.[134] A longing for a lasting peace may well be an innate psychological desire of all human beings. An examination of the poetry, art, and music of cultures around the world reinforces the perception that peace is desired. Indeed, it may be the most compelling existential end articulated by humanity. Poets and religions long for it,[135] composers attempt to create it,[136] and even military strategists can build armies in order to achieve it.[137]

In her book *Sustainable Peace*, Connie Peck, assessing governmental and regional governmental associations that can contribute to peace, describes sustainable peace as involving

> [t]he institutionalization of participatory processes in order to provide civil and political rights to all peoples. It requires adequate legal enforcement and judicial protection to ensure that all citizens are treated equally and fairly and that their human rights are safeguarded. It involves equitable economic development and opportunities so that

134. The means by which peace is obtained are relevant. One way to create an ongoing sense of stability and lack of violence is, as Tacitus said about the Roman conquest of Carthage, to create a desert and call it peace. Certainly, it is true that if one eradicates a population and its environment the likelihood of future violence by nonexistent parties is low. Another way is for a population to be so completely controlled, repressed, and oppressed that there is no opportunity for any kind of dissent or opposition. Thus, the satellite countries of the former Soviet Union experienced relative stability for an extended period of time, but at the cost of economic opportunity, religious freedom, and other basic rights. These notions of sustainable peace are based on the unrestrained and unconstrained exercise of power, a system fraught with moral peril. The employment of these strategies does not fit within our definition of sustainable peace.

135. *See* APPROACHES TO PEACE: A READER IN PEACE STUDIES (David P. Barash ed., 2000) (providing an interesting compilation of various poetic and religious odes to peace).

136. Composers writing requiems typically attempt to musically reenact as sense of peace.

137. *See, e.g.*, MICHAEL I. HANDEL, MASTERS OF WAR: CLASSICAL STRATEGIC THOUGHT 22 (3d ed. 2001) (describing the Chinese general Sun Tzu theory of preparing for war in order to avoid it).

> economic and social rights can be provided. Finally, it entails the development of pluralistic norms and practices that respect the unique cultures and identities of all. Sustainable peace also requires education of dominant groups to convince them that their own long-term security interests lie in the development of a just society.[138]

In short, Peck argues that sustainable peace exists when there is a sense of justice that includes participation, equal treatment, human rights, economic opportunity, education, and respect for diversity.[139] To phrase it differently, sustainable peace requires the establishment of the norms advanced by the deontological theorists of social contracts, stakeholder theory, citizenship, and pragmatism. The *telos* of peace provides the psychological aspiration for why these norms are desirable. It is not only that institutions should be just, but that by being just, less bloodshed occurs. Within the reality that nation-states will certainly contend for power, a commitment to these moral principles provides an important counterweight, so that when stability is created, it is created on the basis of justice. Sustainable peace thus becomes a peace of justice.

2. Corporate Dimensions of Sustainable Peace

That corporations can play an important role concerning sustainable peace is not necessarily intuitive. Those who argue that "the business of business is business" would conclude that the task of achieving sustainable peace is up to states. This view seems supported by the realist view of international relations, particularly the *realpolitik* balance of power theory. Under the realist theory of international relations, states are the principle actors on the world scene and they are driven to expand their power as much as possible until checked by some other power.[140] Peace results from a balancing of powers so that the possession of power by strong states is in equilibrium so that conflicts, when they arise, can be limited and resolved by the parties who are part of that balance of power.[141] A classic example of this was the Concert of Europe, which dominated European affairs for nearly 100 years prior to the outbreak of World War I.[142]

Yet, the history of the Concert of Europe shows that more was at stake than consideration for the expansion of national power. The balance of power system became unstable when a moral dimension

---

138. PECK, *supra* note 130, at 45.
139. *See id.*
140. *See* DONALD KAGAN, ON THE ORIGINS OF WAR AND THE PRESERVATION OF PEACE 1-7 (1995).
141. *Id.* at 6-7.
142. *See* HENRY KISSINGER, DIPLOMACY 94-105 (1994).

was removed from it and replaced by the naked ambition of each state.[143] In Kissinger's analysis, for example, an important dimension of what held the Concert of Europe together was a moral sense of solidarity between Russia and Austria-Hungary as offspring of the Holy Roman Empire.[144] This solidarity muted the innate competition that the two countries felt over Balkan areas—Serbia in particular—were ethnically related to the Russians, but were the prime alternative for the geopolitical expansion of Austria-Hungary.[145] When Russia and Austria-Hungary abandoned their commitment to solidarity and replaced it with a more-realist notion of questing for power, Kissinger argues that it was simply a matter of time before the Balkans became a flashpoint that shifting alliances could not accommodate.[146] In fact, in such a zero-sum competition, what was more important than shifting alliances were enduring ones that could be called upon in time of war.

There are three features of Kissinger's analysis salient for understanding a realist definition of sustainable peace. First, it is instructive that Kissinger, who is as prominent a balance-of-power theorist as one is likely to find, sees a moral commitment as an essential underpinning of the Concert of Europe. This should provide reasons for those who are skeptical about the relative values of moral claims in the rough and tumble world of politics (as well as economics) to recognize the importance of moral claims. Second, without passing judgment on the relative quality of having solidarity as "children" of the Holy Roman Empire, moral claims may be a necessary part of balance of power stability. This has implications for the free market. It is often assumed in the heuristic of "purely competitive markets" that freely-functioning markets self-correct. Self-interested behavior, therefore, is both efficient and fair in a utilitarian sense because it produces more wealth. Yet the Concert of Europe analogy demonstrates that relying entirely on organizations to provide stable balances on the basis of self-interest runs significant risks. Thus, moral aspiration can be a helpful dimension to balance of power equations. Third, the Kissinger assessment of the Concert of Europe opens the door to the analysis of what moral claims are, in fact, most beneficial to a global system. The balance of power framework has also been augmented by a fourth approach to international relations: the neo-realist school.

The neo-realist school considers the state to be the primary actor on the world stage, but it also recognizes that states are interested in

---

143. *Id.*
144. *Id.* at 102.
145. *Id.* at 103.
146. *Id.*

the protection of the security needs of their populations.[147] Such needs include not only security from invasion, but also basic needs of food and shelter as well as psychological needs of cultural or national identity.[148] These needs are more open to analysis of how disputes are resolved and how societies are organized. For instance, one does not get to a psychologically-satisfying experience of peace by living in Tacitus's desert or the Soviet Union's Gulag. One might find a psychologically-appealing state of stability in a dependable balance of power, but as we have seen, balances of power may flourish best when a moral end is incorporated. As we argue, *infra*, corporations may play a significant role in encouraging the inclusion of moral values compatible with markets and freedom in decision-making.

Peck's analysis, as explained in Part III.B.1, has two potential limitations for corporate life. First, she addresses governmental rather that corporate governance. Second, her arguments could be characterized as western-oriented and therefore may be subject to concerns whether these really are universal characteristics that would sustain peace. This Article suggests, however, that these potential limitations do not ultimately ripen into problems that prevent applying principles along the lines of Peck's recommendations to the evaluation of corporate strategy.

One reason is that there are likely spillover effects from corporate governance to cultural ways of resolving problems. This can occur in three ways. For example, Jane Jacobs has argued that political beliefs can be sorted into two piles.[149] In the first pile are values of respecting hierarchy, obedience, discipline, and taking vengeance and deceiving rivals.[150] In the other pile are collaboration with strangers, striking voluntary agreements, respecting contracts, and shunning force.[151] Jacobs and others have argued that where commerce is strong, republican political culture is also more likely to be found.[152] Thus, to the extent there is a commercial culture reliant on negotiation, compromise, and contracts, there is a predicate for the building of a political culture that values these traits.

The second reason builds directly on the first reason. In his study on why democracies do not war with one another, Spencer Weart concludes that governmental leaders typically utilize the

---

147. *See, e.g.*, Herbert C. Kelman, *Social-Psychological Dimensions of International Conflict*, *in* PEACEMAKING IN INTERNATIONAL CONFLICT: METHODS AND TECHNIQUES, at 191 (I. William Zartman & J. Lewis Rasmussen eds., 1997).

148. *Id.*

149. JANE JACOBS, SYSTEMS OF SURVIVAL: A DIALOGUE ON THE MORAL FOUNDATIONS OF COMMERCE AND POLITICS (1992).

150. *Id.*

151. *Id.*

152. WEART, *supra* note 126, at 82.

strategies to resolve problems abroad that they do at home.[153] Weart writes that

> it is an established fact that the behavior a state's leaders practice at home tends to be reflected in their diplomatic actions abroad. The old liberal saw that republicans generally behave more peacefully toward other nations than do autocrats has been confirmed about as reliable as anything can be in statistical studies of human communities.[154]

In addition to the notion that commerce leads to the kinds of traits that are likely to support dispute resolution based on principled discussion is the notion that a commerce-driven culture is likely to lead to a political culture, which itself is more likely to approach disputes internationally in a less violent way.

Admittedly, we are painting with a large brush, but the work of Jacobs and Weart does point to general trends worth noting. They suggest that corporations' behavior can have spillover effects in the culture in which they operate.[155] There is a final way this may occur, although the evidence to support it is more speculative and anecdotal than the studies conducted by Jacobs and Weart. The third reason is that corporations can, in fact, demonstrate the efficacy of voice. In countries without a tradition of democratic governance, the relative power of corporations in such countries may be sufficient to influence the development of democratic traits, which have been linked to reduced amounts of violence.[156] Contemporary management theory, after all, does not exclusively rely on a stereotypical "command-and-control" model. Instead, corporations, such as Motorola, use employee voice as a key competitive advantage to improve quality workplace processes.[157] Thus, employees and those watching the companies' actions can see a voice-based model of governance that may influence the development of democratic principles more generally.

As a result, while there is a difference between political and corporate governance, the methods used by political officials and corporate leaders are more intertwined than one might think. If corporate action does influence political culture, and if that political culture is tied to reduction of violence, then corporate governance practices are relevant to the sustainability of peace.

Perhaps in implicit recognition of the arguments given there is a growing understanding that corporations have the capacity to do

---

153. *Id.* at 88.

154. *Id.* at 89.

155. *See id.* at 87-90.

156. *See generally id.*

157. *See* GEORGE ECKES, THE SIX SIGMA REVOLUTION: HOW GENERAL ELECTRIC AND OTHERS TURNED PROCESS INTO PROFITS 1-11 (2000) (emphasizing quality processes involving management at every level of the organization).

something about problems of violence. Since 1989, the vast majority of violent conflicts have occurred within existing borders rather than across them.[158] Corporations have the capacity to do something about problems of violence because of their power and influence, particularly in emerging economies.[159] Even if corporate leaders do not view their responsibility as contributing to peace, they are responsible legally for protecting employees and business assets from violence that, as has been painfully demonstrated, may be quite foreseeable.[160] A side benefit of peace is security; from the perspective of protection of shareholder value, corporate leaders have a strong reason to expand strategies contributing to sustainable peace.

The reasons for corporations to take into account the impact of business decisions on peaceful relations go beyond a mere legal compliance dimension. In keeping with our earlier reference to the importance of incorporating aspirational quests in addition to compliance rules, we suggest that the aim of peace is strong enough to be deeply motivational to leaders and employees. This should be particularly true if senior managers become convinced that they can take steps likely to lessen the amount of bloodshed in the world, thereby making business enterprise more sustainable by ensuring grounds of stability.

What are possible corporate contributions to sustainable peace? An article in this symposium issue specifies four ways in which corporations can contribute to sustainable peace.[161] They include (1) providing economic development, (2) being open to external evaluation of corporate actions through the promotion of transparency principles as well as supporting the rule of law, including protection of property rights and enforcement of contracts, (3) nourishing a sense of community both between the corporation and its host country as well as within the corporation itself, and (4) engaging in track-two diplomacy both in the sense of assisting conflicting nation-states to work out their differences as well as building positive images of one's home nation by good corporate citizenship.[162] Given this agenda for corporate action, there are

---

158. R. SCOTT APPLEBY, THE AMBIVALENCE OF THE SACRED: RELIGION, VIOLENCE, AND RECONCILIATION 17 (2000).

159. *See* Eric W. Orts, *War and the Business Corporation*, 35 VAND. J. TRANSNAT'L L. 549 (2002).

160. Fort & Schipani, *supra* note 119.

161. *Id.*

162. *See* Joseph Montville, *Transnationalism and the Role of Track-Two Diplomacy*, *in* APPROACHES TO PEACE: AN INTELLECTUAL MAP 262 (W. Scott Thompson & Kenneth M. Jenson eds., 1992) (defining track-two diplomacy as the "unofficial, informal interaction among members of adversarial groups or nations with the goals of

clearly a significant number of possible corporate contributions to foster sustainable peace. For purposes of our discussion and in the interests of space, we will assume that corporations make a contribution to peace through economic development in many ways. The narrow definition of track-two diplomacy—the unofficial dialogue among members of conflicting nation-states that sets the stage for more collaborative negotiations and relationships between those states[163]—is important, but beyond the scope of the strategic choices we envision with respect to the management of a business organization. The remaining dimensions of this four-part agenda can be characterized as issues of corporate citizenship, something that foreign policy leaders, such as the U.S. Secretary of State, have recognized as critically important.[164]

---

developing strategies, influencing public opinion, and organizing human and material resources in ways that might help resolve the conflict").

163. *Id.*

164. The 2002 criteria for the Secretary of State's Award for Corporate Excellence were:

- Maintaining good corporate citizenship by engaging in ethical business practices, maintaining the integrity of the company, and dealing with consumers in accordance with fair business practices.
- Displaying exemplary employment practices and a fair opportunity for trade unions to represent employees as well as avoiding discrimination based on race, gender or ethnicity.
- Creating a healthy workplace environment for all workers. This includes working for the effective abolition of child labor and forced labor practices as well as maintaining a working environment equal to, if not exceeding, comparable local industry standards of health and safety.
- Conducting business with an astute consciousness of local, national, and global environmental concerns. This includes the collection and ongoing monitoring of useful information regarding the environmental, health, and social impacts of operations. Also, working with local, national, and international officials to adequately communicate to the public regarding potential environmental and health issues without compromising the business's integrity and ability to operate successfully.
- Contributing to the overall growth and development both economically and socially of the local society. This includes work-specific skills training, general academic improvement, and opportunities for personal self-improvement, as well as other programs, services and philanthropic endeavors for the local public, all aimed at providing a base for growing and sustaining an increased quality of life.
- Endeavoring to ensure that business activities are compatible with the science and technology policies of the countries and, as appropriate, contribute to the development of local innovative capacity.
- Developing and maintaining a healthy respect for the local, national, and international authority. This includes rejecting the practices of bribery, extortion, illegal tax exemption, and favoritism in favor of creating a fair and open marketplace beneficial to all.

For instance, Rayonier received the Secretary of State's Award for Corporate Excellence in 2000, primarily for its attention to employee development and the needs of indigenous Maori peoples.[165] F.C. Shaffer won the Award in 1999 for its work in Ethiopia, where it shared its knowledge in building sugar refineries with competitors after a devastating flood ripped through the country.[166] SELCO Vietnam was a 2001 winner for supplying electricity to families who lacked access to a power grid,[167] and Ford Motor Company won the same year for its extensive HIV-AIDS education and treatment program in South Africa.[168] These firms, along with other winners,[169] contributed to their communities while also providing economic development and adherence to local, national, and international law.[170]

The Award for Corporate Excellence criteria and the winners of the award exemplify the sense of a positive interface with a community by respecting the humanity and talents of those working for the company and by seeking to eliminate suffering and providing positive opportunities for the wider community of which the companies were a part. One can fairly describe this criteria and these companies as aspirationally emblematic of corporate citizenship because, as citizens, they (1) conformed to relevant laws, (2) performed their role as economic engines of development, and (3) did so in a way that is constructive rather than exploitative. Moreover, these companies practice important elements of Peck's identification of the kind of participatory contribution stakeholders make to the governance of an organization. Corporations consider the interests of the stakeholders so important that they proactively address them. In a more subtle way, the practices of a company committed to quality, such as Motorola, teach the importance of voice as an essential aspect of Peck's method of creating participatory governance mechanisms that contribute to sustainable peace.

At this point we have (1) inquired as to the possibility of the existence of hypergoals broadly applicable to corporations, (2)

U.S. Dep't of State, *Secretary of State's Award for Corporate Excellence: Selection Process and Criteria for 2002, at* http://www.state.gov/e/eb/cba/bs/ace/2002/14279.htm.

165. Press Release, Embassy of the United States of America, South Africa, U.S. Department of State Award for Corporate Excellence (Jan. 16, 2002), *at* http://usembassy.state.gov/pretoria/wwwhpr3u.html.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* (listing Xerox do Brasil as the 1999 winner, and listing Motorola Malaysia and Frigorifico Canelones as winners in 2000).

170. Lorne W. Craner, Remarks to the Business for Social Responsibility Conference, Privatizing Human Rights: The Roles of Govenrment, Civil Society and Corporations (Nov. 8, 2001), *at* http://www.state.gov/g/drl/rls/rm/2001/6684.htm.

presented rational instrumental and moral arguments in support of the concept, and (3) suggested candidate hypergoals of transparency and sustainable peace. We now turn to explore how for-profit, publicly-owned global corporations engaged in transnational transactions can implement a hypergoal of sustainable peace. We focus on this set of firms because most violence and conflicts have transnational dimensions and because firms that operate in that environment have the greatest potential for making an impact.[171] In the next Section, we will discuss the basic strategies available to global corporations when they encounter issues in transnational activities involving cultural conflicts.

IV. STRATEGIES FOR COPING WITH CULTURAL CONFLICTS

Up to this point we have discussed corporate contributions to sustainable peace in very general terms. We have noted that corporations can have an important impact through (1) job creation and general contributions to economic production, (2) living and promoting transparency, (3) acting as a good citizen in home and host communities, and (4) in certain circumstances, by engaging in track-two diplomacy.[172]

In order to understand how corporations approach decisions with implications for sustainable peace, we begin with a brief discussion of how firms generally manage their ethics strategies. Ethics programs are now ubiquitous in corporate America and provide an opportunity for developed statements of corporate goals, including those supporting the hypergoal of sustainable peace.[173] Currently, few

---

171. Domestic firms, particularly those located in strife-torn communities, may also have a major impact on the resolution of conflicts. Their situations are likely to be more *sui generis*. Nonetheless, they should contribute to sustainable peace within their capacities and circumstances.

172. Perhaps the most significant contribution that many corporations can make is to monitor and modify their actions that have a direct tie to actual or potential violence, which are sometimes called zones of conflict. Such decisions range from buying or distributing goods or services involving coerced or slave labor, supporting those who employ violence in return for economic favors, and providing goods and materials that enable others to engage in violence. The international trade in weapons is a major ingredient in the level of violence that exists today. Merely complying with laws pertaining to "trading with the enemy" is not sufficient; firms should take steps to determine the ultimate destination of weapons and military material, and should have in place policies defining their role in seeking to mitigate global conflicts. This itself is an important application of the concept of a corporate contribution to sustainable peace. This Article touches on this in conjunction with the analysis of conflict diamonds, but recognizes that there are additional, specialized dimensions to corporate activities in zones of conflict. The United Nations has a specialized focus on such areas as part of its Global Compact.

173. *See infra* notes 174-78 and accompanying text.

firms state formally their overall orientation for ethical decision-making, so it is necessary to imply their strategic orientation from their policies and the manner in which their corporate ethics programs are organized. Ultimately, we will show that the type of ethics programs and policies that a firm has signals how the firm is, or is not, implementing strategies consistent with sustainable peace.[174]

The overall philosophy underpinning an organization's ethics program may be signaled by language in a parental or unified code. One key difference is the important distinction between ethics programs that are compliance-based and those that are integrity-based.[175] The former are essentially internal social control systems based upon external standards, typically home nation laws.[176] They

---

174. While the rise of NGOs and the pressure they can apply to corporate reputation is significant, perhaps a more compelling reason for corporations to adopt ethics programs is the 1991 Federal Sentencing Guidelines (the Guidelines). To simplify a great deal, the Guidelines' approach is to reduce the fine otherwise applicable to a violation of federal law if a corporation has adopted an "effective" program. Elements of an effective program include a clear code of conduct, mission statement, or values statement; the appointment of a high-level executive to oversee the program; education of employees as to the dimensions of the program; a "safe" place (such as an ombudsperson office) to register complaints about unethical behavior; and self-reporting of violations to government authorities. Policies need to be perceived to apply to top management as well as to rank-and-file employees, and companies need to have well-designed training sessions in order for the programs to be part of corporate culture.

Firms vary their ethics programs in significant ways. Often the foundation of an ethics program is a formal code of ethics. Most major U.S. and European-based companies now have individualized, comprehensive ethics codes. Corporate codes often serve as a constitution for their ethics programs by providing a basic foundation while at the same time laying out core structural and procedural components. Codes can be quite diverse and managers have a great deal of choice as to how to design a code for their own organization. (Managers who want an "off the shelf" ethics code are considered to be not serious about the value of such codes. To be effective, codes must reflect the values, culture, and history of the organization.) One key dimension for large, global corporations relates to the scope or jurisdiction of the code. Firms may have a centralized, single code that applies to all units of the organization. Centralized codes are typically based in the parent unit and imposed in a top down manner on the other units of the overall organization. In contrast to the centralized approach are operating unit-based codes. A firm taking this approach would have a different code for each foreign subsidiary or other subunits of the firm. The multiple code approach is more likely when foreign subsidiaries are treated essentially as national firms in the environments in which they operate; or where there are certain issues, such as gender equity, concerning which it is difficult to build a consensus across diverse subunits of the organization. In some cases the firm may only have local codes. In other cases, the parent may have a more general code while subunits have their own separate codes. This is likely to create federalism issues where questions arise as to whether the parent organization code or the local code should be applied to a given decision.

175. *See* Lynn Sharp Paine, *Managing for Organizational Integrity*, HARV. BUS. REV., Mar.-Apr. 1994, at 106.

176. *See id.* at 109-10.

are more likely to involve lawyers in their design and operation. Their principles are often more specific, sometimes supplemented by references to legal restrictions. In contrast, integrity-based approaches are focused on values internal to the firm.[177] The principles may be very general, sometimes expressed as a credo. The values underling the principles expressed derive from the firm's history and culture. Non-lawyer executives are more likely to be involved in the formulation of the code, even very senior management. These descriptions represent the extremes that are possible across firms. In fact, many firms have programs that reflect elements of both types.[178]

A. *A Descriptive Typology of Corporate Strategy*

How then may firms manage specific decisions relevant to the hypergoal of sustainable peace? We will approach this question by suggesting a framework that can help us understand alternative strategies available to firms in dealing with the hard cases resulting from cultural conflicts in global transactions. The framework is designed to allow classification of the basic or most-fundamental options; it is not intended to be all-inclusive or comprehensively descriptive. Clearly there are other options and some firms may combine strategies in a wide variety of ways. Our purpose here is a more limited one of discussing the implications of the alternatives and showing how they fit into a two-tiered approach to business ethics. The categories are Corporate Imperialist, Corporate Chameleon, Corporate Nationalist, and Corporate Opportunist.[179] A comparison of the four categories is provided in Table 1.

---

177. *See id.* at 111-12.

178. The design of a formal ethics program can also vary. A growing number of U.S. firms have ethics officers. Ideally an ethics officer is a senior executive who has direct access to the Chief Executive Officer, and if necessary, to the Board of Directors. Some have relatively large staffs and run extensive training programs, help lines and services and may even participate in critical decisions. The relative power of the ethics officer signals the approach of the firm to resolving cultural conflicts. Does, for example, the ethics officer have authority over or lines to foreign units of the organization? Or, instead, do the foreign units have separate practice officers responsible for the decisions within that unit? Answers to these and similar questions determine the extent to which the ethics program is centralized and unified.

179. Others have proposed models of the ethical approaches of global corporations. Enderle has proposed a framework involving four types: Foreign Country, Empire, Interconnection, and Global. *See* DONALDSON & DUNFEE, *supra* note 3, at 217-19.

Table 1

Corporate Decision Types in Managing Across Cultures

Type	Decision rule	Source of Values	Code	Ethics Program	Flag	Ethical Orientation
Imperialist						
Citicorp, Nike	apply own ethical value everywhere	internal, from company culture and history	corporate level, uniifed specific	integrity oriented, centralized, strong ethics officer	company	ethical absolutist
Chameleon						
Shell, United Technologies	adopt ethical values from host environments	norms and customs of host environments	decentralized code, separate subsidiary	business practice officers at each subsidiary	host country for each subsidiary	ethical relativist
Nationalist						
Honda, AT&T, Renault	adopt values of home country for decisions everywhere	laws and customs of home country	reference to home country laws	compliance oriented	home country	ethical absolutist
Opportunist						
Texaco, Northrup, Huntingdon Life Sciences	maximize firm's profits, stategic use of ethics to enhance profits	any source enhancing profits	general, focused on performance goals	if any, results oriented goals	many flags (including pirate) depends on context	ethical egoist

The Corporate Imperialist tends to be admired by business ethicists. Corporate Imperialists operate on the basis of a very strong and clear set of organizational values. Their values are internally derived and focused, and often will have been developed with primary reference to the history and culture of the firm. Most importantly, the employees will ordinarily buy into these organizational values so that they become widely accepted norms throughout the organization, including all global subsidiaries. For U.S. and leading European firms, these values are likely to be reflected in a unified or single headquarters level code.[180] In U.S. firms there is an ever-increasing likelihood that there will be a formal ethics program headed by a senior executive designated by the title of ethics officer.[181] However, a formal code or ethics program is not an absolute requirement for qualifying as a Corporate Imperialist. There are clearly other means by which organizational values can be established and supported throughout an organization. Non-code, non-program based approaches would presumably be more likely for global firms with headquarters in Europe and South America, and even more for global firms based in Asia.

180. NATURAL CONFLICT RESOLUTION, *supra* note 84.
181. *Id.*

The fundamental decision principle employed by the Corporate Imperialist is to apply its own values and principles everywhere the company does business. The company's values are to dominate and trump all conflicting customs and norms. Within the strong Corporate Imperialist organization, this decision principle would be stressed in employee training, and it might be imagined as always flying the corporate flag (e.g., the Nike swoosh) wherever it does business. A strong Corporate Imperialist would rely on its own policies in deciding whether to respond to bribe solicitations, and would follow its own rules about gender discrimination to the letter.

The ethics program would be integrity-based and would likely be managed outside the legal department. The program would be highly centralized and the foreign operating units would be under the overall jurisdiction of the parent's corporate ethics managers.[182]

The second alternative is the Corporate Chameleon. The tendency of these firms is to follow local norms and customs, which will generally be considered to dominate or trump home office policies or any universal standards. They do not merely respect local customs and traditions; they fully adopt and internalize them in their foreign operations. If they operate subsidiaries, they tend to see these as local firms within the host environment. Thus, a European Corporate Chameleon would view its Japanese subsidiary as a Japanese firm. The Corporate Chameleons can be recognized by the fact that they tend to have sub-codes for regional or national subsidiaries. They may also have corporate practice officers assigned to each subsidiary with full responsibility for matters involving ethical standards and practices. Similar to the Corporate Imperialists, firms acting as Corporate Chameleons take a strong, consistent position concerning ethical standards. But they differ at a key point—the Chameleons consistently base their standards on local practices and customs.

---

182. The ethical philosophy of this approach can be characterized as one of absolutism. Note that absolutism is not limited to any particular viewpoint. All kinds of principles may qualify as the basis for absolutism. In its strong form, absolutism holds that there is only one truth, only one answer, which must be followed in all contexts. A view commonly associated with religious fundamentalists, it may also be associated with those who believe that a certain form of political organization (popular democracy) or economic system (shareholder capitalism) is the only viable system. The test is whether or not one applies the principles regardless of the norms of the community in which it is going to operate. The sole test is consistency in following the principle. Thus, a firm that has a strong sense of its own values and takes the position that it will follow those principles (e.g. equal opportunity, zero tolerance for sexual harassment) wherever it does business would qualify as an absolutist firm. Absolutism also has significant drawbacks. The idea that there is a single truth immediately leads to questions of the identity and source of such a truth. Where many do not agree with or understand such a truth, the result of absolutism will be to hold people to standards with which they disagree. It thus appears to involve an implicit coerciveness. Absolutism may also be criticized for failing to respect diversity among cultures.

Thus, across the Corporate Chameleon organization, there may be substantial variances in norms and in attitudes toward certain types of ethical issues. The norms of the local environments in which the firm operates would become part of the overall value system of the firm. The legacy S.G. Warburg firm[183] was described by its managers as such a firm and might be imagined of as flying its host country's flag over each of its national subsidiaries. A strong Corporate Chameleon would accede to local norms in deciding whether to make requested payments and would follow local practice in its treatment of women.[184]

The third category of firm is the Corporate Nationalist. This approach may be thought of as a global version of what Lynn Paine

---

183. Today the merged firm is UBS Warburg.

184. The ethical philosophy for this approach would be relativism. "When in Rome do as the Romans do." This familiar aphorism describes a clear-cut strategy available for international business dealings. When doing business in a foreign locale, act consistently with local customs: pay the bribe, accede to local standards on plant safety, discriminate based on gender—if that is what local firms do. This approach is known as relativism. Relativism is defended as respecting diversity and the moral autonomy of other humans. The relativist will argue: "Who am I to judge what is correct behavior for another?" "One should always respect the values of other cultures." "It is ethical imperialism and therefore wrong for one society to try to impose its values on other societies."

On the other hand, there are very powerful arguments against relativism. If the policy is followed without exception, so that any local practice is considered appropriate, then relativism becomes counter-intuitive to most people. There are some things, such as killing for economic gain or cannibalism, which are considered wrong by almost everyone. James Q. Wilson attributes this to an innate moral sense possessed by almost all humans. It helps explain, among other things, why lie detectors work on most people. Perhaps influenced by an innate moral conscience, many people are unwilling to accept relativism as a generally-applicable principle. Instead they draw a line. It is hard to imagine a firm accepting a requirement that they sacrifice the life of one of their managers in order to obtain a license to do business in another culture if that was the bizarre local practice.

Relativism is also criticized as being an illogical ethical theory. Relativism appears to deny individuals and groups the opportunity to be universalists by believing in and acting consistently with conceptions of universal values. It provides no answer to what to do if one is doing business in a culture of universalists. In that case, the relativist would seem to have no option other than to abandon relativism.

Relativism also fails to provide any basis for resolving conflicts between social groups when there is an interaction among them, as in trade among cultures with mutually exclusive values. If a transaction simultaneously involves more than one community, and those communities have directly conflicting values, what does one do? Perhaps the greatest problem with relativism comes from what it represents. It constitutes moral abdication, the surrendering of the ability to make any moral judgments concerning the actions of others. The true relativist must accept slavery, human sacrifice, cannibalism or any other practice that represents a genuine norm within a social group. That is why very few modern philosophers support the strong form of relativism. That is not to say, however, that weaker forms of relativism are not useful and appealing. Some managers may follow a strategy of using relativism as a default principle. So long as there is no compelling justification for *not* following local practice, the firm will acquiesce.

has described as a compliance-oriented firm.[185] In her article in the *Harvard Business Review*, Paine made an important distinction between firms that follow a compliance approach to business ethics and firms that emphasize integrity by instilling a "sense of shared accountability among employees"[186] keyed to the organization's own values. Firms following a compliance strategy focus on externally-imposed standards found in laws, industry codes, and outside sources.[187] In contrast, an integrity strategy is based upon self-chosen standards reflecting the company's values and aspirations and is typically led by senior management.[188] Corporate Nationalists would tend to be global versions of Paine's compliance-oriented firms, who look particularly to the laws and customs of their home country as the primary reference point for resolving cross-cultural issues. Upon close analysis, such firms do not have a strong individualized culture or customized set of organizational values, but instead adopt the values and customs of their home country. Wherever possible, they will seek to mold the local environment in which they operate into patterns consistent with the home culture. Certain U.S. and Japanese firms have been perceived as taking this approach. A U.S. firm following this strategy might be imagined as flying the Stars and Stripes wherever it does business. A U.S. nationalist would presumably not give in to requests for bribes because of the Foreign Corrupt Practices Act, and would follow U.S. laws pertaining to gender based discrimination. The ethical philosophy would be absolutism, but in this case the absolutist standards would be those derived from the home country's laws and customs.

The final alternative, and probably by far the most common, is the Corporate Opportunist. Such firms are the business equivalent of the pragmatic politician. All decisions are focused toward achieving a particular immediate or short-term goal. There is no anchor or core set of values designed to be a first point of reference in a given circumstance. Instead of an *a priori* approach to ethics, its managers pick and choose among local customs and practices, organizational norms, and home country values, depending on the circumstances and which strategy appears most likely to enhance the firm's goals.[189]

---

185. Paine, *supra* note 175.

186. *Id.* at 11.

187. *Id.*

188. *Id.*

189. This ethical approach is egoistic, prudential, and instrumental. Egoism operates on a different plane and involves the decisionmaker acting solely in his or her self interest. Rather than consistently following absolutist or relativist principles, the egoist firm would always act in a manner designed to advance its own interests. At the human level, the existence of egoism is explained by two quite different ideas. One is that humans are driven to act selfishly by their innate natures. This idea of psychological egoism is carried by some to the extreme conclusion that humans are

As with the pirate ships of old, they may carry a wide variety of flags, any one of which they will run up the pole when circumstances are ripe. Although some firms taking this approach may have a consistent decision-making matrix for deciding which flag they will hoist, it seems plausible that many firms basically approach such issues on an *ad hoc* basis. Thus, a U.S.-based global drug company with research operations in the United Kingdom and Singapore may take a different approach to its policies regarding use of animals in research in response to the strong and vociferous animal rights movement in the United Kingdom. They might follow looser policies concerning the treatment of animals in their facility in Singapore where the animal rights movement is relatively mute. On the other hand, if the management of that same Corporate Opportunist believes they will have a more productive workforce by applying the same human resources policies concerning leaves and benefits across all subsidiaries, they will do so even in the face of greatly differing practices (for example, France versus the United States). If they find that not following U.S. law concerning gender discrimination will lower wage costs in South American operations, they will ignore the U.S. policies.

---

incapable of acting in any other way. This is at best a highly controversial empirical claim. As noted in the discussion of relativism, there are many who make the opposite claim: that humans possess an innate moral sense reflected in the persistence of altruistic behaviors and the fact that physiological changes occur when many people act immorally.

The second basis for egoism is the argument that everyone will be better off if people act solely in their own self-interest. Individuals need each other, so people will often work to satisfy the desires of others as a means of achieving their own goals. In doing so, people will work harder and presumably with greater success than under any other regime. The assumption is that the aggregation of this effort will make everyone better off when measured by the satisfaction of individual desires. This, too, is a very controversial argument. It ignores externalities and would only seem to be operational in a state of anarchy in which there are no forms of government. Power and guile would likely be dominant factors in such an environment.

At the corporate level, if organizations act solely in furtherance of an objective function such as wealth maximization for shareholders, is that the equivalent of egoism? The answer would appear to be yes. Such a corporation would evaluate each decision in terms of its impact on the organization and would act inconsistently on other measures, sometimes following local standards, sometimes following home standards, depending on which approach is most likely to advance the interests of the firm. The egoistic corporation would act in a manner similar to a Kohlberg stage two human. Laws would be followed only when it was in the interests of the firm to do so. Calculations would be made of the likelihood of being caught and the likely penalty in deciding whether to abide by legal principles. A strategy of efficient breach would be followed in regard to promises and contracts. Contracts would be honored unless there would be more to gain from dishonoring the contract. The egoistic corporation would not follow a consistent policy of relativism or of absolutism based on some defined set of moral values.

Before leaving an entirely negative impression of the Corporate Opportunist, we should note that a far more benign view might be appropriate.[190] One explanation for Corporate Opportunist behavior is that those firms' managers might be seeking a sensible middle ground between the extreme absolutist and extreme relativist positions reflected in the other alternatives. True, they are picking and choosing their policies to fit specific situations, but they are doing so as a means to avoid the criticisms of extreme relativist or absolutist positions. This alternative, we will suggest, can be legitimated by the two-tiered approach of the Adapted Firm.

These four alternatives are presented primarily as a framework for assessing the basic options for managing cultural conflicts. Although there may be only a few companies classifiable as a pure version of any one of the types, it seems reasonable to expect that many companies fall generally into one of the classifications. As a means of demonstrating the application of the frameworks, we will consider how they apply to the current issue involving the distribution and sale of so called "bloody" or "conflict" diamonds. We select this example because the relationship between this product and violence is direct and documented. The capacity to commit violence on the part of those who initially traffic in these jewels is highly dependent upon actions by a number of private firms operating within well-established markets.

B. *Demonstrating the Decision Frameworks: The Case of Conflict Diamonds*

Conflict diamonds are extracted primarily from Sierra Leone, Angola, and the Democratic Republic of the Congo by terrorist military units fighting the recognized, legitimate governments in those nations.[191] The terrorist units use the funds from the sale of conflict diamonds to purchase weapons and other materials essential for carrying on their violent campaigns.[192] The importation of conflict diamonds into the United States has been widely criticized by human rights groups such as Amnesty International, and legislation constraining importation has been introduced into the U.S.

---

190. Note that the Corporate Opportunist is not a utilitarian. To qualify, the firm would have to be making the best decision from the viewpoint of all affected. The Corporate Opportunist is only acting in its own best interest. Further, if the firm were indeed seeking to achieve positive utilitarian outcomes, it would be a Corporate Imperialist in that it is seeking to apply its preferred values wherever it does business.

191. Global Witness, *Conflict Diamonds*, at 1-2, *at* http://www.globalwitness.org/campaigns/diamonds/downloads/conflict.pdf.

192. *Id.*

Congress.[193] The human rights abuses of groups tied to conflict diamonds, such as the Revolutionary United Front (RUF) in Sierra Leone, have been documented.[194] The RUF coerces children and young teenagers into their fighting forces.[195] The RUF has abducted women and children and used them in forced labor, as sex slaves, and as child soldiers.[196]

DeBeers, a South African company, dominates the diamond trade.[197] For many years, DeBeers engaged in a supply-side strategy that emphasized limiting the number of quality diamonds available for sale in order to maintain high prices.[198] Over time their market share declined as new producers from Russia, Canada, and Australia operated outside of DeBeers' controlled channels.[199] At the beginning of the 21st Century, DeBeers dissolved the Central Selling Organization that it controlled.[200] Its new demand-side strategy was able to draw upon their existing slogan, "A Diamond is Forever," to increase consumer interest in diamonds.[201] Human rights groups have countered with advertising of their own. Amnesty International has a television ad that features the song "Diamonds are a Girl's Best Friend" in which it alternates beatific images of models wearing diamonds with grisly pictures of amputees and other victims of African violence sponsored by conflict diamonds.[202] DeBeers admits that it traded in conflict diamonds prior to 1999, although its managers claimed to be unaware of the source of the diamonds during that period.[203]

The retail end of the diamond market is critical to the entire channel of distribution. Consumers can boycott if they are concerned

---

193. Clean Diamond Trade Act, H.R. Con. Res. 410, 109th Cong. (2002) (encouraging the United Nations to sanction diamonds from the Congo); Clean Diamond Trade Act, H.R. 2722, 107th Cong., § 5 (2001) (empowering the President to prohibit importation if there is "credible evidence that such polished diamonds and jewelry were produced with conflict diamonds").

194. *See, e.g.*, U.N. Mission in Sierra Leone (UNAMSIL), *Sierra Leone—UNAMSIL Background*, *at* http://www.un.org/Depts/dpko/unamsil/ UnamsilB.htm.

195. U.S. Bureau of Democracy, Human Rights, and Labor, *Sierra Leone: Country Reports on Human Rights Practices—2000*, *at* http://www.state.gov/g/drl/rls/ hrrpt/2000/af/ 755.htm.

196. Rod MacJohnson, *Amputation Terror Grips Sierra Leone*, AGENCE FRANCE-PRESSE, May 13, 1998, *available at* 1998 WL 2280411.

197. Nicholas Stein, *The DeBeers Story: A New Cut on an Old Monopoly*, FORTUNE, Feb. 19, 2001, at 186-206.

198. *Id.* at 190-91.

199. *Id.* at 192.

200. *The Changing Face of Diamonds*, EDMONTON J., June 1, 2001, at F3; *see* Stein, *supra* note 197, at 196.

201. *See* Stein, *supra* note 198, at 195-96.

202. News Advisory, *NGOs Call for an End to Diamond Bloodshed on Valentine's Day*, US NEWSWIRE, February 12, 2001, *available at* 2001 WL 4139876.

203. Eugenie Samuel, *Diamond Wars*, NEW SCIENTIST, May 25, 2002, at 6.

that their actions are in some way contributing to human rights abuses.[204] Concerned about negative reactions, high end retailer Tiffany & Company has a two-page letter available to consumers stating their zero-tolerance policy toward conflict diamonds and explaining how they have been actively involved with industry groups in seeking ways to mark the source of diamonds to prevent conflict diamonds from entering the streams of commerce.[205]

In between mining and the retail market are the steps in which the gems are cut and polished and then sold to retailers. Belgium (Antwerp) is a major wholesale point where a substantial majority of the world's diamonds passes through.[206] Distributors have a problem identifying the source of diamonds with certainty as purveyors of conflict diamonds have every incentive to conceal their derivation. A technical fix has proved elusive because the science required to identify the source of all diamonds would be labor-intensive and very expensive.[207] Nonetheless, efforts continue and may ultimately bear fruit.[208] Non-scientific approaches to identifying diamonds include the Kimberley Protocol, due to be implemented in January 2003, that requires a certificate of origin to accompany all diamonds.[209] DeBeers supports the Protocol and efforts to make sure that such certificates cannot be altered or forged. Even so, many believe that certificates are and will continue to be forged and manipulated.[210]

We now offer some opinions regarding how some of the major players might fit within the framework of corporate decision types. These opinions are based upon general news stories concerning the actions of the parties, and in many cases the failure of the parties to offer explanations for their actions. Essentially, we look for evidence that the parties fit or, more often, do not fit the criteria defining a particular decision type. A full and fair characterization for each of the parties would require a much more detailed investigation of their actions and motives. We offer these tentative opinions as a starting point for a discussion of the role played by the key parties. They

---

204. *See* Francesco Guerrera & Andrew Parker, *DeBeers to Seek Guarantees over 'Rebel Diamonds': Mining Giant Responds to Global Criticism and Demands Buyers' Pledges that they do not Deal in Stones Smuggled*, FIN. TIMES, July 11, 2000, at 1.

205. Letter from Tiffany & Co., Conflict Diamonds: We Want You to Know (copy on file with authors).

206. David Buchan et al., *The Deadly Scramble for Diamonds in Africa*, FIN. TIMES, July 10, 2000, at 6.

207. *Researchers Develop Methods to Characterize Diamonds*, ASCRIBE NEWSWIRE, May 31, 2002, *available at* LEXIS, Newsgroup File, Most Recent Two Years.

208. *See* Samuel, *supra* note 203.

209. DeBeers, *Leading the Way in Tackling Conflict Diamonds*, *at* http://www.debeers.com/html/corp_resp/leading.html.

210. Samuel, *supra* note 203.

represent how a case could be built for a formal placement into the framework.

DeBeers is the major player in this drama. We show how DeBeers might be shown initially to fit the criteria for a Corporate Opportunist and then evolve into a present status as a Corporate Nationalist. Critics charge that DeBeers initially engaged in strategies of willful ignorance and conscious disregard by failing to take steps that would identify the source of diamonds that they trade.[211] Only when multiple sources of outside pressure targeted DeBeers did they implement some changes in how they acquire and distribute diamonds.[212] By the time that they responded, the pressures were almost overwhelming. Tensions built up as a result of fiery speeches and proposed legislation in the U.S. Congress, a conference on conflict diamonds sponsored by President Clinton, actions by the United Nations, and reports from NGOs such as Global Watch and Amnesty International.[213] DeBeers appears not to have disclosed a clear corporate policy on this issue during the time period in which the issue was coming to global notice, nor do they appear at that time to have been following an expressed policy of the nation of South Africa. Among other factors, the legitimate sales from South Africa, an important source of revenue for the nation, would appear to be endangered by a failure to resolve this festering issue. In order to be a Corporate Chameleon, DeBeers would have to have been adjusting its policies on the basis of local norms. On the issue of conflict diamonds, that is hard to determine. For example, there is no clear evidence that DeBeers varied its policy consistently through a process in which it attempted to determine the existence of local norms and then systematically brought its policies into line with them. Evidence of such actions would be required in order to determine that DeBeers was acting as a relativist. Lacking evidence that it was acting as a Corporate Chameleon or a Corporate Nationalist, the failure of the firm to have a clear cut "imperialist" policy would seem to relegate them to the status of a Corporate Opportunist. This characterization takes on even greater relevancy in the face of charges that DeBeers has used the conflict to its advantage. As described in the *Africa News*,

> After initially being defensive about the issue of conflict diamonds, DeBeers came to see the advantage of it. With its monopolistic hold on the world supply of diamonds slipping by about 20 percent in recent

---

211. *See id.*
212. *Id.*
213. *Id.*

> years, here was a way of regaining control and decreasing the supply of rough diamonds, or at least socially acceptable ones.[214]

The article argues that DeBeers' strategy of branding diamonds as conflict-free is a cynical ploy to capitalize on the conflict.

Today, DeBeers and its marketing subsidiary emphasize on their web pages that the "trade in conflicts diamonds is unquestionably small"[215] and accounts "for only 3% of all diamonds being produced."[216] Despite these comments, it appears that DeBeers has been a strong supporter of the Government of South Africa's efforts reflected in the Kimberley Process. DeBeers describes its efforts as being in parallel with the South African Government.[217] These actions are more consistent with the characterization of a Corporate Nationalist.

The actions of the wholesalers in Antwerp are secretive, thereby limiting our ability to discuss particular firms and actions. Although we cannot know with certainty how to characterize them, a circumstantial case can be developed that they have been acting as Corporate Nationalists. The community is known to be extremely close-knit, working on the basis of personal contacts. They have little visibility at the retail level where consumers might be concerned about their practices. Any impact on them as a result of public disapproval of conflict diamonds is likely to be indirect. Therefore they have little incentive to disclose their policies in a public way. Instead, their focus is on those with whom they deal with directly as sellers and buyers in the channel of distribution. It is in the interest of their industry and also of Belgium to maximize the flow of diamonds through their centers, regardless of the source of the diamonds. To the extent that they act in a coordinated manner, following their own industry or national norms, they are acting in the manner of a Corporate Nationalist. They seek to sustain these policies to the greatest extent possible against all outside pressures. The sources of their standards are the norms found among their colleagues; that is to say that they are not derived internally by each of the firms.

Finally, there are the retailers who sell the finished diamonds to ultimate consumers. Tiffany & Company is a prime example. Tiffany is in the same position as universities and others that may purchase clothing and other items from manufacturers to which they then attach their own trademarks. In that way, the goods and any human

---

214. *Conflict and Security; Conflict Diamonds are Forever*, AFRICA NEWS, Nov. 8, 2002, Lexis, News Group File, Most Recent Two Years.

215. DeBeers, *Hot Topic: Conflict Diamonds, Introduction, at* http://www.debeersgroup.com/hotTopics/cdIntroduction.asp [hereinafter DeBeers, *Hot Topic*].

216. DeBeers, *supra* note 209.

217. *See* DeBeers, *Hot Topic, supra* note 215.

rights violations associated with them may become in turn associated with the retailer. Tiffany states that it has a firm policy that prohibits doing any business with any entity associated with conflict diamonds.[218] They state that the policy has been implemented through notifications to all suppliers.[219] In support of their policy, they have advocated legislation and have been involved with the industry group established to deal with conflict diamonds, the World Diamond Council.[220] This combination of activities, based on self-characterization, appears consistent with the approach of a Corporate Imperialist. Regardless of the norms and positions of other groups, they follow their own internally derived policy. They have a single, unitary policy that does not vary by location or circumstance. Further, they work to impose the policies on others, even their industry colleagues. Whether this tentative characterization is sustainable depends ultimately upon the reality of their efforts. Among other things, recent charges that their outlets in the United Kingdom are ignorant of the Kimberley Process would have to be found to be groundless.[221]

Each of the strategies identified via this example have serious drawbacks. DeBeers and the wholesalers underweight moral issues. Tiffany and other Corporate Imperialists may fail to consider nuances of local variances and may be out of tune with norms of important stakeholders, who may fear that the actions taken may harm legitimate diamond mining in poor African countries. In the next Section we consider the possibility of another option: the Adapted Firm.

C. *The Adapted Firm: The Difference the Hypergoal of Peace Makes*

An adapted creature or organism is one that has developed in order to be able to survive. What promotes survival, as biologists and primatologists now consistently demonstrate, is a combination of raw competitiveness with genuine cooperation extruding sentiments of affection, empathy, and solidarity.[222] If corporations can play a role in contributing to sustainable peace, they not only do something that is admirable, they also take steps to ensure their own survival. An

---

218. *See* Bob Dart, *Congressman: Know Crisis of Diamond Before You Buy*, PALM BEACH POST, Dec. 3, 2000, at 31A.

219. *Id.*

220. *See* Lynn Duke, *Diamond Trade's Tragic Flaw*, WASH. POST, Apr. 29, 2001, at H01.

221. Stuart Wallace, *UK Jewelers "Ignorant" of New Diamond Accord, Charity Says*, BLOOMBERG NEWS, Oct. 28, 2002, *available at* Lexis, News Library, Allbbn File.

222. *See, e.g.*, FRANS DE WAAL, GOOD NATURED: THE ORIGINS OF RIGHT AND WRONG IN HUMAN AND OTHER ANIMALS (1996).

Adapted Firm would be one that not only is profit-seeking and flexible as the Opportunist or the Chameleon would be; it is also attentive to critical identity issues as is the Nationalist, and it would be concerned with issues of global sustainability as is the righteous Imperialist. An Adapted Firm, however, is not simply adapted in a happy confluence of the positive features of all the other models we have presented.[223]

The Adapted Firm flourishes because it has a two-tiered approach to resolving corporate dilemmas. The two tiers can be described as (1) policies focused on local issues and values, and (2) more strategic, generalized values encompassing manifest, universal moral principles, such as an overarching quest to contribute to sustainable peace. This type of strategic orientation adapts the firm toward survival by limiting threats to the very existence of the firm that can result from violence. This quest, as we have argued, is not grounded in deontology, but in aspiration. As such, it is free of arguments that there is any imposition of values. By consenting to this quest, however, firms become subject to empirical indicators of what local practices lead to, or way from, peace. As such, norms such as economic development, openness to external evaluation (transparency and rule of law), and engagement in proactive citizenship (including strengthening the voice of internal and external stakeholders) become obligatory.

Table II expands the set of corporate decisionmakers by highlighting the Adapted Firm as a decision type.

---

223. As tempting as it is for academics to do exactly that in proposing the models they wish to champion, a second lesson of evolution is that there are evolutionary principles of natural selection working at many different levels—and therefore there is similarity in how various levels evolve—but they also work differently and at different levels. For example, a "seeing mechanism" may develop as an eye under the pressure of natural selection just as an ape evolves subject to the forces of natural selection, but one cannot simply conflate the evolution of the ape with the evolution of the seeing mechanism. *See* David Sloan Wilson, *Altruism and Organism: Disentangling the Themes of Multilevel Selection Theory,* 150 AM. NATURALIST S122 (Supp. 1997); *see also,* Fort, *supra* note 76 (arguing that multilevel selection theory is a tool to be used in corporate ethics by distinguishing between approaches that encourage positive sentiments and those that rely on contractual exchange). For an example of the difference a goal of peace makes to contractual negotiations, see George Siedel, The Role of Business Deal Making and Dispute Resolution Processes in Contributing to Sustainable Peace, Presentation at 2002 William Davidson Institute Conference, Corporate Governance and Sustainable Peace (Nov. 22-24, 2002).

Table 2

The Adapted Firm as a Corporate Decision Type

Type	Decision rule	Source of Values	Code	Ethics Program	Flag	Ethical Orientation
Imperialist						
Citicorp, Nike	apply own ethical value everywhere	internal, from company culture and history	corporate level, uniifed specific	integrity oriented, centralized, strong ethics officer	company	ethical absolutist
Chameleon						
Shell, United Technologies	adopt ethical values from host enviroments	norms and customs of host environments	decentralized code, separate subsidiary	business practice officers at each subsidiary	host country for each subsidiary	ethical relativist
Nationalist						
Honda, AT&T, Renault	adopt values of home country for decisions everywhere	laws and customs of home country	reference to home country laws	compliance oriented	home country	ethical absolutist
Opportunist						
Texaco, Northrup, Huntingdon Life Sciences	maximize firm's profits, stategic use of ethics to enhance profits	any source enhancing profits	general, focused on performance goals	if any, results oriented goals	many flags (including pirate) depends on context	ethical egoist
Adapted						
Levi Strauss	profit-making consistent with relevant marketplace morality and universal norms	firm, local communities and manifest universals	local norms and manifest universals integrated into overall corporate code	integrity oriented, strong ethics offier, role for subsidiaries	U.N., national, host, corporate	contractarian

The Adapted Firm also adapts to survive by its relations with the local community. It does not fight with violence in the abstract, but with particular adversaries in the concrete. One might characterize this immediate confrontation as a short-term reality. While a commitment to sustainable peace is a hypergoal, one has to survive the short-term to get to that hypergoal. Because we have framed this in naturalistic terms, the naturalistic concept of multilevel selection theory can help to illustrate the point.

Multilevel Selection Theory suggests that there are different mechanisms of analysis appropriate for different levels. This can be applied to a philosophy of corporate governance as well. As Fort has argued, it is important for corporations to have small communities within the business so as to draw upon and nourish innate moral sentiments in a group small enough for individuals to see consequences of actions and rationalize sentiments into principles.[224] As Donaldson and Dunfee have argued, extant social contracts within communities and nations may be authentic provided there is an opportunity for members of that community to exit the community and to have voice in the rules that affect them. These authentic norms are leavened by hypernorms; the manifest, universal moral principles that apply to all firms and contexts.[225] These two levels leave open a great deal of freedom for individuals to develop norms that affect them. On the local level of moral analysis, the salient features of good governance are flexibility, authenticity, voice, and psychological benefits of solidarity, support, empathy, and affection. Fostering these sentiments leads to an immediate short-term increase in the likelihood of reduced violence. A corporation attentive to these traits embraces solidarity with the local population.

Yet, the executive of an Adapted Firm must also know that these features, worthy as they are, also can lead to tribalism or relativism; ultimately these negative characteristics can undermine not only the sustainability of the firm (if it becomes a target of popular unrest) but of greater, even global, society as well. Thus, in addition to moral sentiments, there is a need for hypernorms to constrain destructive behavior.[226] We have argued that what prevents such a constraint from being an imposition of alien restraints is the extent to which it is justified by a hypergoal of peace, which links a powerful moral sentiment to a set of behaviors that make the ideal of sustainable peace into a reality. A hypergoal cannot be an imposition because it relies on a consensual agreement that peace is a universal aspiration. A hypergoal is based on an agreement of what people want to do. Once there is agreement on what people want to do—i.e., live in peace and survive—then there is a basis for legitimizing the obligations necessary in order to achieve this *telos*. Hence, an Adapted Firm is obedient to hypernorms through an aspirational quest for peace in the interests of its own survival and that of others as well. It does so by implementing those practices that have been linked to sustainable peace: economic development, openness to external evaluation, and citizenship.

Ultimately, we argue that the hypergoal of sustainable peace is better supported by the tactical decisions of thousands of Adapted Firms rather than by the grand strategic policies of a few. A tipping point is likely to be reached when a substantial percentage of firms that have some direct connection to a dimension of sustainable act as Adapted Firms. The Adapted Firm as we have described it (1)

---

224. Fort, *supra* note 75.
225. DONALDSON & DUNFEE, *supra* note 3, at 44-47.
226. *Id.* at 49-81.

considers peace to be a universal objective, (2) acts as a global citizen, (3) acts transparently, (4) supports and nurtures the rule of law, (5) properly balances financial goals with sustainable peace, and (6) broadens its definitions of stakeholders to include victims of violence. In reference to the specific issue of conflict diamonds an Adapted Firm would act as follows:

> (1) operates under a core principle that it will not handle diamonds unless it can make a confident business judgment that they are not conflict derived;
>
> (2) implements principle 1 as a firm policy and not merely to satisfy immediate concerns of ultimate consumers, NGOs and governmental entities;
>
> (3) exercises influence on direct suppliers and distributors to get them to avoid conflict diamonds even when dealing with others;
>
> (4) supports industry norms that will result in principle 1 being followed throughout the channels of distribution for gems;
>
> (5) discloses fully all policies and actions related to conflict diamonds; and,
>
> (6) cooperates with relevant actions of NGOs and governmental entities.

Moreover, evaluating how firms engage in such strategies demonstrate the precise place at which the four models of corporate strategy—Opportunist, Chameleon, Nationalist, and Imperialist—fall short. Ultimately, each of them is focused primarily either at a global or at a local level. This two-tiered approach will tend to produce four kinds of corporate decisions:

> (1) Defer to local norms—no implications for hypergoals;
>
> (2) Local norms are in conflict with hypergoals requiring deference to hypergoals;
>
> (3) Local norms are in conflict with hypergoals requiring some sacrifice of hypergoals in the short-term, but linked to a subsequent obligation to prevent similar dilemmas from reoccurring; and
>
> (4) Norms that lead to hypergoal of peace are themselves in conflict with each other, requiring the exercise of practical judgment to evaluate the priority of the most relevant norm.

In the case of conflict diamonds, the RUF represents a source of local norms which, as we have seen, justify use of murder, enslavement, torture, and child labor as a means of accomplishing its goals. If a multinational organization simply wished to default to such problematic local norms, it would be a Chameleon. It is not difficult to demonstrate that defaulting to RUF-derived norms violates most of the tenets of what corporations should do to contribute to sustainable peace. In particular, dealing either directly or indirectly with the RUF would lack openness to external evaluation measures such as transparency and support of the rule of law. It would be inconsistent with notions of good corporate citizenship. In this case, it would seem that, particularly for a luxury good such as diamonds, there would be no justification for following local customs, and that corporate behavior should, therefore, fundamentally and radically change.

The actions of the Corporate Opportunist, a category that may well explain the strategies of many multinationals, shares many of the problems of the Chameleon. DeBeers, described as initially an Opportunist, demonstrates the limits of this strategy. DeBeers, for a long time, was not open to external evaluation. In fact, its lack of transparency is one of the ways it has been able to distance itself from the consequences of its actions. And to the extent it is profiting from RUF actions, DeBeers disrespects the rule of law. Likewise, there is little evidence clearly demonstrating that DeBeers is using its corporate presence as a constructive citizen.[227]

On the other hand, DeBeers might claim that it is fostering economic development, and that its efforts in that sphere counterbalance any shortcomings in other areas. DeBeers does create jobs, which are probably the most important economic contribution that a multinational corporation can make to a home or host country. DeBeers has also been directly involved in the effort to increase black financial ownership in South Africa.[228] DeBeers' actions represent a common issue as to whether multinational corporations can justify opportunistic behavior on the basis of the economic and social development that their actions are otherwise providing.

Apart from the public pressures that have resulted and are likely to continue to squeeze DeBeers, an Adapted Firm would not resort to Corporate Opportunism because it is exactly this kind of behavior that is likely to blow up, perhaps quite literally, in one's face. Ideally, DeBeers should change its local practices in order to operate consistently with hypergoals and norms. If the economic development is so strong and important, however, to preclude that from happening, then DeBeers may continue to purchase diamonds, but more-proactively support the development and enforcement of laws designed to reduce the degree of problematic behavior in the future. That is, a short-term decision to engage in problematic behavior does not preclude obligations to contribute to the larger resolution of the underlying problem.

The diamond cutters of Antwerp represent a harder case to analyze. Although the Nationalist does respect the laws of its home country and therefore is open to a measure of external evaluation, it

227. There is also no evidence of the kind of corporate community DeBeers maintains and the extent to which it is open to gender equity, voice, identity, and small groups.

228. Zachary Wales, *S. Africa Mine Empowerment Eyes World Bank*, UNITED PRESS INT'L, Nov. 1, 2002, *available at* Lexis, News Library, UPI File.

is difficult to analyze the actions of the diamond cutters because there is little transparency. Perhaps the diamond cutters operate in an admirable way, but in working in an industry with the difficulties of diamond extraction, they will be tainted as well unless they are very transparent. One might even articulate a rule of thumb that states that the more the industry has a reputation for unethical behavior, such as violating human rights or consistent, significant fouling of the environment, the more there is a need for corporate transparency in order to counteract assumptions that all corporations engaged in that industry practice similar, unethical behavior. Similarly, there is little evidence as to what kind of community is fostered within the corporation itself, and no indications that the cutters use their access to the country in a way to promote the rule of law in that country or to act as responsible citizens in it. As with the Opportunist, there is some economic development, but as previously noted, economic development, although necessary, is not sufficient to guarantee sustainable peace. Economic development must proceed in a just way in order to promote sustainable peace.

Finally, there are the actions of Tiffany's. Tiffany's acts as an Imperialist. Although the Imperialists tend to be very attentive to notions of universal laws, they are sometimes deaf to the realities of the local situation. Tiffany's actions probably do provide assistance in terms of citizenship and mediation, and Tiffany's is attuned to the development of its own corporate community. What is unclear is how attentive it is to the realities of the countries where diamonds are mined. If it demands overly-rigorous standards, it may cause harm by undercutting critically important potential economic development. In this instance, the Adapted Firm would realize the need for universal hypergoals in order to sustain itself and survive, but it would also recognize the need to adapt to specific situations as well. Although it may seem that a hypergoal such as transparency might need to be sacrificed, this is not the case. The norms leading to the hypergoal of sustainable peace hang together in a balance. Knowing which to apply requires a wisdom Aristotle described as *phronesis*, a term that a leading Aristotelian business ethicist, Robert Solomon, defines as "sensitivity and imagination."[229] It is not an abstract concept, but a practical judgment based on solid training and practice that brings to bear such experience and knowledge on the particularities of the specific case.[230] As is the case with most managerial issues, including those with ethical dimensions, there is no simple computer calculation that can produce a correct moral answer. Because one norm leading to sustainable peace is sensitivity

229. SOLOMON, *supra* note 83, at 63.
230. *Id.* at 174.

to local community needs, it might be that Tiffany's insistence on transparency and human rights must be blended with economic development. Thoughtful managers who regularly consider the connection between business and peace will be in a position to apply their developed moral skills to the complexities of a case and to do so wisely.

We fully admit that this category is the hardest one to implement and that reasonable people can disagree on the exact policies optimally implemented. Yet, it seems that the implementation of a policy with a hypergoal of contributing to sustainable peace in conjunction with a hypergoal of transparency offers the opportunity for constructive resolution of difficult dilemmas.

V. CONCLUSION

We believe that a strong case exists for the existence of hypergoals. Hypergoals are mandatory for corporations. A hypergoal, such as sustainable peace, is rooted in our very nature as human beings. In order to make it relevant as a factor in decisions, the hypergoal of sustainable peace must be articulated as an aspect of human nature just as, more popularly, a narrow view of self-interest is articulated. In working toward the hypergoal of sustainable peace, corporations must attend to two tiers: an immediate, short-term orientation to foster solidarity with local populations in which the corporation works, and a longer-term orientation to abide by the specific norms that have been linked to sustainable peace.

The case of conflict diamonds demonstrates the difference between four different kinds of strategic options typically utilized by global firms in making decisions: Imperialist, Nationalist, Opportunist, and Pragmatist. Our model of the Adapted Firm, however, demonstrates how these approaches would change in the case of conflict diamonds and also provides a workable two-tiered analysis for survival in the short-term and sustainable peace in the long-term. The Adapted Firm is most likely to achieve the hypergoal of contributing to sustainable peace.

* * *