STAKEHOLDER THEORY AND THE LOGIC OF VALUE CONCEPTS: CHALLENGES FOR CONTEMPORARY INTERNATIONAL LAW

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PRELIMINARY THOUGHTS: THE RAMIFICATIONS OF THE STAKEHOLDER APPROACH

The year 2009 marked the 25th anniversary of the first publication of R. Edward Freeman's *Strategic Management: A Stakeholder Approach*.(1) Although there was no official celebration of this historic milestone, it is not an exaggeration to claim that the book has been inducted into what might be called the Hall of Influential Writings. The book's thought-provoking contents have already left many transformative footprints in the business world.(2) Furthermore, the stakeholder approach has been introduced in various other areas, including contemporary international law. Because the

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stakeholder approach was originally designed for business management, the process of transferring its insights is not an automatic one. It is surprising, therefore, that hardly any attempts have been made to put the most pertinent premises under a magnifying glass to determine the role they play and whether this is sufficient or not for the purpose of making a successful leap from business management to contemporary international law. This is virtually a virgin journey. Undertaking the task, however, a map is provided in the sense that "all roads lead to Rome" through a comparison of different types of stakeholder theory, that is, broad and narrow.

Although Freeman has been called "[t]he father of stakeholder theory", it is more accurate to see his scholarship as the first source of the kind of strategic business management that "calls for change", more precisely, a "conceptual revolution".(3) Rather than adopting the analytical and methodological mindset of the classical model of corporate social responsibility, as espoused by Milton Friedman, he urges managers to think more broadly. To maximize strategic effectiveness with a specific view to securing the mission of a firm, corporation or organization, managers must recognize parties that are otherwise (narrowly) perceived as non-marketplace constituencies, first and foremost the government and special interest groups without monetary stakes, e.g., environmentalists. Even terrorist groups have to be counted as stakeholders to the extent that their power-oriented agendas can substantially affect the activities and goals of a firm, corporation or organization.(4) If managers apply social viability as the most important criterion for policy- and decision-making, a certain meta-theoretical prediction is made possible. This is to say that by accommodating the interdependency between business and the larger society, managers will not only become more responsive to the different demands that characterize the current and external environment; they will also obtain an internal business advantage as a consequence of their own capacity to adjust. To strategize in a manner that takes account of as many concerns and factors as possible is a progressive measure in the sense that the actions and/or omissions of

managers are with a view to staying "open for business" in the future and not just (narrowly) here and now at time T.

While Freeman's pragmatism is consistent with the theoretical antagonist to Friedman's classical model of corporate social responsibility, namely the view that profit-maximization for stockholders should give way to socially desirable goals, it does not entail this as a no-choice model for modern corporate social responsibility. Beside effectiveness, there is no ex ante commitment to particular norms or values, including the left-wing and anti-establishment criticisms that supposedly underpin the notion of socially desirable goals.(5) Freeman even states that the choice between capitalism and socialism misses the mark in strategic management.(6) In this way, he distances himself further from Friedman who relies entirely on ideology for conflict resolution, in reality, the choice between (socialist) revolution and the (capitalist) status quo. Without a commitment to capitalism as a laissez-faire system, essential economic freedoms are lost and, at worst, replaced by a marketplace with central planning and direction, so Friedman believes. While such an order overlaps with the welfare state in the case of socialism, it is inconsistent with a liberal society. For the same reason, socialism is synonymous with totalitarianism. According to Freeman, on the other hand, strategic management requires flexibility about best practices. Success may be the outcome of decentralization, deregulation and privatization or, alternatively, a mixed market economy, that is, a combination of capitalist and socialist components. Although socialism is tantamount to so-called Big Government, there is no necessary link between, on the one hand, centralization, regulation and nationalization and, on the other hand, oppression of basic rights. To talk about capitalism versus socialism in the Friedmanian tradition distorts the role of ideology, as if a rule of right is exhausted by negative freedoms.

Ideology can also be a bad influence in the attempt to analyze stakeholders. For example, it can cause selective blindness as regards the legitimacy of not-so-popular constituencies. In illustration of this, it suffices

to mention the anti-union corporation whose leadership refuses to (be made to, to be coerced in other words… as they interpret reality) negotiate with union representatives at the expense of their own right to freedom of association. Be that as it may, the very same anti-union corporation may jeopardize its long-term interests if CEOs and other high-ranking managers continue to obstruct democratic processes which are valued by the majority of workers and citizens. The main point is, according to Freeman, that a strategy of exclusion may prove counterproductive. Recognition and consideration of stakeholders does not have to translate into approval and, concerning "their stakes", appropriate demands. Under pragmatism, the choice between approval/disapproval and appropriate/inappropriate demands is one which, once again, misses the mark.(7) This is, of course, particularly evident in the case of terrorism. If and when constituencies are described as "terrorist groups", this in itself reflects an unfavorable judgment. Because trade unions seek to change the distribution of power between labor and management, they can be branded as terrorist groups for this reason alone. That granted, explicitly extra-democratic and pro-revolutionary 9/11-type terrorists do not fit into the cold-war categories (cf. capitalism versus socialism). The point is that 9/11-type terrorists are as critical of Christianity and the role of the U.S. as a superpower as they are of capitalism. What they attack and try to destroy is "our way".(8) Therefore, managers and, more broadly, elected and appointed officials must, as a minimum, allocate "Time, energy and resources… in order to P".

The issues that divide the parties affect more than Western versus non-Western economics, politics and religion, meaning that morality is also part of the conflict equation. This does not make a difference, though. Morality arguably belongs to the first-order level of norms and values. At this level, statements about fairness and justice are presented. While disputes over these give rise to red alerts on the Good/Evil Empire Radar, the response strategy remains the same. This is to say that managers and other leaders are always expected to aim at a win-win situation as opposed to the zero-sum

outcome that Friedman's view is geared toward. Why? Because, if "the others" lose out in absolute terms, the people in question will remain hostile opponents who – and that is the decisive factor – pose a greater threat than they have to. For the same reason, negotiations and settlements must emphasize the willingness to make compromises.(9) While it may appear that the outcome is for their sake too, the truth is that there is no intention to do more than calculate the potential harm versus benefit if we were to give them what we actually owe them – which is nothing (cf. zero). Their stakes are instances of inappropriate demands and *not* valid claims against us. However, compromises are necessary as means to P.

In the light of this, Freeman lists hypothetical imperatives like "If the goal is effective management for social viability, all stakeholders must be considered" as direction posts. Unlike these, standards that are prescribed by morality, that is, categorical imperatives are ones which managers and other leaders only need to know about. The point is that the choice of morality per se is left to the various strategizing parties themselves. In the context of business, it is left to the firm, corporation or organization.(10) The problem is – in 1984 – that a practical application of the broad stakeholder theory is inhibited by the implication of pragmatism, namely value-neutrality as regards normative substantive issues. To help equip managers with the analytical tools, Freeman provides a brief guide to some of the most commonly invoked positions, including utilitarianism.(11) However, as a consequence of their status (as the most commonly invoked positions), the distinction between conventional morality and morality proper (which is independent of conventions, customs or normal practices) is not sharp. This is evidenced by the manner in which the question to the firm, corporation or organization is phrased verbally, "What do we stand for?"(12)

That granted, even in 1984, Freeman is acutely aware that the choice of moral norms and values is too important to be determined in accordance with whichever conventions or opinions_business people subscribe to here and now at time T. An implicit ambition to introduce a singular ethics is

contained in the following comment:

> *There are many things to be said about values which are neither 'just opinion', nor dry empirical studies of 'what someone's values happen to be' or studies of 'opinions held'. By paying attention to the logic of value concepts, theorists can develop better descriptions and yield more effective prescriptions for managers. Ultimately, the 'stakeholder issue' must be resolved in the arena of 'distributive justice'. The sledding is rough, but the questions cannot be avoided.*(13)

After the publication of "*Strategic Management: A Stakeholder Approach*", Freeman undertook the task of formulating moral prescriptions for managers, something which culminated in a combination theory of Kantianism and consequentialism.(14) Of course, this can only be construed as a recall of the freedom that came with the morally open-ended question. In the light of the numerous ethics scandals that have come to characterize the modern business environment, this may even be unavoidable. However, while the authors of this article do not hesitate to acknowledge that Freeman's post-1984 conversion from pragmatism to idealism brought about another impressive contribution to the field of strategic management, it is necessary to separate such admiration from the fact that certain deficiencies in the broad framework have not been remedied. For experts and scholars on contemporary international law, this is very unfortunate, partly, because this area is now permeated by the terminology and philosophy of stakeholder theory and, partly, because the deficiencies concern some of the most central concepts which at the same time are supposed to contrast with the narrow cum classical model of corporate social responsibility. More precisely, not enough attention has been paid to the logic of (1) needs and wants, and (2) basic rights and corresponding duties. Only if (1) and (2) are remedied, is it possible to resolve, per Freeman, "the stakeholder issue" in at least one realm of distributive justice. To the extent that terrorist groups violate the

implied rights, their acts should be prohibited under international law. Political legitimacy should be measured by the same standard.

Historically speaking, the United Nations' decision to apply stakeholder theory to international law can be traced to the 1997-2006 administration of Secretary-General Kofi Atta Annan. His 2004-report to the Security Council is particularly indicative of this.(15) Rather than simply talking about human right-holders and corresponding duty-bearers in terms of individuals, groups, peoples, countries and states, Annan refers expressly to "stakeholders".(16) Furthermore, it appears that stakeholders are differentiated on the basis of "interests" and "goals" which, in turn, establish "constituencies".(17) While Annan does not distinguish between narrow and broad stakeholder theory, international human rights norms are only consistent with a particular version of the last-mentioned, as will be clarified later.(18) This is not because the civil/political rights that are defended under the narrow stakeholder theory are dismissed by the broad theory in question. Instead, the reason owes to a foundational incompatibility, which appears in the course of examining the types of credentials-checking that underlie the logic of the relevant values. Rights, as conferred by contemporary international law, require a framework that is consistent with a comprehensive rights-typology, one that encompasses civil/political as well as economic/social rights. The problem is, once again, that this is not provided by the theory itself. Because the rationale for core economic/social rights depends on references to basic human needs, the lack of a framework that can clearly differentiate needs and wants is an aspect of the same problem.

Before embarking on the project of trying to "fill the gaps", the differences between Friedman and Freeman should be outlined. In the next sections, therefore, the authors present the premises for the narrow and broad version of stakeholder theory with a specific view to general jurisprudence, thereby explicating the leap from business management to contemporary international law in a fashion that makes sense for theorists and practitioners within the last-mentioned area. The authors also conduct a legal test with the

norms that guide the analogy to business managers in the context of contemporary international law, namely those who promote "peace and security for mankind" under the auspices of the United Nations.(19) After this, they present a philosophical test that meets the formal requirements for adequate analysis and assessment of contemporary international law.

FRIEDMAN: THE NARROW PARADIGM

According to the narrow stakeholder theory, status as stakeholders is reserved for traditional market participants, such as stockholders, employers, employees, and customers. That granted, the interests of stockholders are ascribed primacy because the continued survival of the firm, corporation or organization depends on their investments.(20) Normatively speaking, this approach presupposes capitalism whereby the means of production should be privately owned. Furthermore, capitalism relies on voluntary cooperation, the technique of the free marketplace. For Friedman, this means that individuals contract for the purpose of engaging in transactions. To be mutually beneficial, however, both parties to the arrangement have to be informed.(21) In the event that this condition for bilateral success is not satisfied, the blame can be traced back to the persons who do not know enough (to be informed), in accordance with the terms for the bargain behind the marketplace itself, viz. freedom in return for individual responsibility.(22) In the case of products and services, the Buyer Beware Doctrine follows as an implication. For employment practices, Employment at Will (EAW) outlines the ideal relationship between the relevant parties, with discretionary powers for employers and self-regarding choices for employees to resign if they are dissatisfied with the conditions.(23)

As agents for stockholders, managers are hired hands who are entrusted with the task of serving the interests of their exclusive constituency. For the same reason, corporate social responsibility consists in a fiduciary obligation to conduct the affairs of the business in accordance with the desire of the stockholders which "typically is to make as much money as possible".(24)

That which is necessary for this objective is also that which is fair or just. If profit-maximization entails rationalization of the production mode, then this measure should be implemented regardless of the consequences to blue-collar employees and their "right" to work. What matters is whether rationalization results in an increase of capital earnings and the net worth of the firm (cf. market value). If so, the stockholders will be benefitted through higher returns on their investments – as they should.

While serving in a professional capacity, managers have to accept three limitations. First, they are duty-bound to obey the law of the state. Second, they should avoid fraud and deception. And, third, managers are expected to respect ethical customs. Summarizing the "basic rules of the game", the narrow paradigm defines the legal and ethical bottom line although some commentators object that the players are given mixed signals. The theoretical dynamics are such that managers, in addition to the duty to avoid fraud and deception, can be said to have a "responsibility to 'push the envelope' of legality in pursuit of profits", at least so DesJardins and McCall think.(25) It follows that business scandals are failed attempts to secure a monetary gain in a way that falls *within* narrowly construed legal margins. As a consequence of the implied pressure to "get it right", pushing the envelope manifests itself as a matter of risk assessment and cost-benefit analysis *rather than* a matter of ethics. Needless to say, if DesJardins and McCall are correct, the current business culture has to be deconstructed to the extent that it focuses attention on aggression, arrogance and greed in the presence of praiseworthy codes of corporate values and virtues, thus signifying that customary morality is an integral part of the problem.(26) The situation is as follows: customary morality causes corruption, conflicts of interests and other types of wrong-doing. Instruments designed to prevent and/or combat the relevant forms of conduct are merely rhetorical statements. In reality, therefore, it is customary morality that prevails. From the point of view of general jurisprudence, the state of affairs can be subsumed under a version of realism because it holds that real-world

practices that are sufficiently established constitute standards for appropriate action. To the extent that the expression "sufficiently established" is a matter of agreement, if only tacitly, the implied normal standards overlap with conventional morality. Certainly, if "Everybody is doing it", no crime has been committed. The lack of compliance with "a high moral character" (cf. unenforced codes that prescribe moderation, altruism, etc.) is proof enough.

Assuming that DesJardins and McCall's interpretation captures analytical features, Friedman's theory comes with in-built tensions for all areas of normativity, including the law. If rules are legally codified, managers should conform to them in terms of law strict and proper, as opposed to morality. While this reveals a link between the narrow paradigm and legal positivism, "pushing the envelope of legality" is a phenomenon that is difficult, if not impossible, to reconcile with the respect for law implication of the general jurisprudence position in question. Radical legal positivists demand that rule-application follows the letter of the law. More moderate legal positivists, on the other hand, do not necessarily point to legal materials that "posit" permissions, prohibitions, duties, etc., expressis verbis. Instead, they allow that the spirit of the law be interpreted for the purpose of reaching conclusions about particular cases. It is this kind of approach that can be used to push the envelope.

Be that as it may, nobody should be above the law. Even if managers play the game of business by analogy to poker, a not so noble sport that Albert Carr uses as a comparison, there are certain minimum requirements that outline a distinction between, on the one hand, permissible bluffing and, on the other hand, unacceptable fraud and deception.(27) It follows that a player should not have an ace up his sleeve, should not play with marked cards, should not withhold chips he owes, and so forth. The point is that laissez-faire capitalism is not a route to anarchy. At the same time, laissez-faire seems to be as firmly anchored in human nature as the economic activities that it makes possible. This is to say that rational people will always choose to assemble in the free marketplace because here they are

able to pursue their own ends unhindered and undisturbed as well as the means for the realization of these. It is as if human agents are hard-wired to come together… to do business in a way that advances *my interests*. On Friedman's premises, the freedom to seek one's own gain counts as a market force. This is also why a socialist system is a bad state of affairs. It does not provide people with incentives. Rather than allowing people to function as catalysts for the law of demand-and-supply, socialism stifles the very kind of enterprise that otherwise describes humanity per se. Other so-called impersonal market forces include the freedom to rank-order wants so as to establish preferences, the freedom to bargain without interference or intervention by the government or third-party individuals, and the freedom to buy or sell goods or services at a price which is agreed by the market agents themselves.(28)

In so far as Friedman stresses that "One man's good is another's evil," morality is a phenomenon that imputes distinctions between different constituencies, down to that one man.(29) In terms of general jurisprudence, these translate into relativism and subjectivism. Because both positions are carriers of the free market ideology, the implication can be formulated as the prescription that "There should not be any censorship for want-based preferences". To allow some and not others is tantamount to withholding freedom of thought and expression from groups or individuals with whom the politically powerful happen to disagree. To avoid unfair discrimination, therefore, a policy of respect for autonomy must be implemented. In practice, this means that all preferences are treated as equal. If the law of demand-and-supply is intercepted on the basis of irrelevant standards (cf. opinions that are not shared by me/us), a wrong is committed through the fact that the advancement of a preference-based demand is undermined beforehand. As a consequence, the market is impoverished.

Although Friedman does not engage in an analysis of wants, the choice of this category and terminology is hardly a coincidence. Unlike needs, wants primarily cover preferences that are non-essential and, ipso facto,

involve more luxurious things and circumstances. In this way, the marketplace becomes more attractive of course, assuming almost promise-making qualities as a place that can deliver. That said, the preclusion of needs is a matter of consistency and not – as some critics suspect – a conspiracy against poor people. Friedman does not have to concern himself with those who cannot afford anything. The worst-off are advised to make use of the opportunity that the marketplace offers everybody, open competition on the basis of skills. The marketplace is a meritocracy. If poor people have what it takes, the market will pay them the monetary compensation they deserve. The same is true of women, colored people and other members of minorities.(30) No matter how much a representative democracy preaches inclusiveness, it cannot rival the marketplace. This functions as a strategy of equalization and emancipation for the most marginalized individuals and groups, those who would be victims of intolerance if the majority prevailed. Furthermore, the ends and means for so-called unconventional agency and participation cannot be deemed inappropriate although the government may have scientific evidence that "They are not good for you". This suggests another advantage of the terminology of wants, namely the link with the convictions of their own holders. They may disagree. While disagreeing, the parties will give different reasons which, in turn, reflect different perspectives on "What you should and should not have or do". If anything, this reinforces the mentioned advantage because the discussion is bound to be a testimony *for* plurality and diversity and *against* uniformity. Because needs allegedly refer to that which is in people's best interest objectively, this category is not a suitable match for laissez-faire capitalism. Talk about needs is perfect for politicians who wish to dictate for others or, more hypocritically, issue public decrees that are ethically "justified" by paternalism. However, this position not only clashes with relativism and subjectivism whereby there is no distinction between needs and wants; it is also in conflict with liberalism as a way that maximizes freedom as long as actions do not result in harm to others or

deprive others of their freedom.(31) It may be legal for people who sympathize with the belief-system of al-Qaeda or the Taliban to purchase weapons, but the leap from theory (cf. beliefs) to practice (cf. actions) involves accountability.

The state is required to back up right with might. Following Friedman, elected and/or public officials have a responsibility to "protect our freedom both from the enemies outside our gates and from our fellow-citizens…[and to] preserve law and order", in addition to duties to protect the workings of the free market at the structural level and to prohibit interference.(32) Regarding inter-state affairs, the commitment may be to traditional self-defense in the event of an attack (so as to right a wrong) or to an analogy to the concept of a preemptive strike (so as to avoid a wrong in the first instance). The point is that security is not necessarily consistent with peace although this is the ultimate goal because only peace is conducive to "our continued survival, being who we are". Whether "they" (the enemy) also secure their post-conflict existence is not our concern. Unlike social viability, the notion of continued survival does not presuppose interdependency. Absolute dominion and imperialist conquest, even if the risk of long-term failure is present, is consistent with the narrow paradigm (cf. "He who dares nothing, wins nothing"). In the context of relativism, the implied superpower ideology means not only that rights are at-home phenomena but that other states have comparatively less rights because they cannot measure up, at least not here and now at time T. Internally, Friedman's political arrangement requires the implementation of the minimal state (cf. decentralization, privatization and deregulation) as a modality for individual self-sufficiency (to not have to rely on anybody), thus in essence creating a relationship between the state and the citizens that is opposite to the one between the state and the international community. Whenever the state engages in more than laissez-faire – the standard for best practices – it should be with one goal in mind: to conserve freedom "for us". Theoretically speaking, relativism and nationalism merge.

For a conclusion, the following warrants attention. Friedman's theory can arguably be classified as neo-liberalism or libertarianism, for two reasons. First, corporate social responsibility entails that social utility gives way to profit-maximization. To violate the rights of individual stockholders for generalized consideration is inexcusable, as a matter of principle.(33) Besides market freedoms, Friedman's rights-typology is limited to civil/political rights and, even more narrowly for basic rights, to life, liberty and security *on condition* that the arrangement is the outcome of a voluntary agreement between equal parties. The point is that meta-rights to be able to negotiate the terms for transactions in accordance with preferences must be accommodated. For example, people should be free to choose a higher salary in return for unsafe working conditions, thereby establishing a private hierarchy of basic values. Transferred to international law, voluntarism implies recognition of national sovereignty as a parallel to individual autonomy. The justification for this coincides with the argument that legal positivism produces, namely respect for borders. In practice, therefore, only treaty law is binding on the states-parties to the United Nations. If the surrender of sovereignty is the outcome of coercion, the "law" which is subsequently applied to them has no validity, no reality (for them). As a consequence, the rights of individuals are ultimately grounded on citizenship or nationality. Just because the rights of individuals happen to have status as "international human rights" does not mean that they have a super-national source. The mandate to legislate is and remains monopolized by that particular state.

That said, the (minimal) state is not in a position to confer economic/social rights. The reason for this owes to fact that credentials-checking necessarily entails powers or free choices. In the words of Herbert L.A. Hart, the holder of a right stricto sensu, viz., a claim-right is a "small-scale sovereign" who has (i) a bilateral liberty to waive the primary duty or leave it in existence as he chooses (cf. discretionary powers) and, if the primary duty is breached, (ii) enforce the secondary duty, e.g., by suing for

compensation (cf. remedial powers) just as the right-holder may (iii) choose to waive the secondary duty.(34) Besides making rights consequences of duties, the right-holders present themselves as the parties who, by definition, must be in control of the correlative duties (cf. the analytical correlativity thesis).(35) Therefore, in the event of scarcity, there would be no rights that correspond to duties to render aid and assistance. As it happens, there would be no real economic/social rights in any set of circumstances because, as explained by Joel Feinberg, the availability of resources here and now at time T may change in tomorrow's world. Consequently, it is the lack of a guarantee of fulfillment that disqualifies economic/social claims as candidates for status as rights.(36) As a theoretical premise, it holds that economics determine ethics and, therefore, that "Ought Implies Can" (cf. economic realism). Here it should be added that however practically possible in the real world, a redistribution of resources is perceived as an instance of serious wrong-doing. This is the second reason why Friedman's theory can be classified as neo-liberalism or libertarianism. Even if rights and corresponding duties are treated as in-group phenomena in accordance with relativism, thus giving rise to a compatriot version of concentric-circle morality, the government has no jurisdiction over the assets that rightfully belong to individual citizens. It is not the case that private property trumps humanity (as often argued by Marxists) for humanity depends on economic freedoms; instead the case is that political rulers cannot change the rules arbitrarily, that is, without the prior consent of those who are directly affected by the new system. Furthermore, it makes no difference if the implied revolution secures the most basic type of human well-being or welfare. The issue of freedom versus well-being, therefore, boils down to a distinction between justice (cf. a liberal society) and injustice (cf. a socialist welfare state). It should be observed, however, that even so-called welfare liberalism may collapse into a doctrine that emphasizes liberalism at the expense of welfare. This is true in the case of, for example, John Rawls. Turning against utilitarianism, he advocates a fair opportunity to acquire or

receive, as the case may be, the material necessities for individual well-being. But, given that another principle of justice, namely the Principle of Liberty has higher status, the most basic rights are bound to present themselves as civil/political rights *rather than* economic/social rights.(37) Thus, while there is a certain push toward the realization that human agents cannot function properly unless they enjoy both freedom and well-being, the tension between Rawls' position and other types of liberalism seems more apparent than real.(38) Ironically, the same conclusion applies to one of the most adamant defenders of a double-aspect notion of agency, namely Alan Gewirth. In spite of logically compelling arguments along Kantian lines, whereby the individual is bound to contradict himself if he were to reason that there are no rights to freedom and well-being, well-being loses out on comparison. Unlike freedom, well-being is a value that requires resources for its realization. Freedom is a negative concept because it imposes negative duties of non-interference. On the other hand, well-being is a positive right that entails positive duties to do or to deliver something, e.g., assistance to those in need.(39)

THE BROAD ALTERNATIVE: MAKING INTERNATIONAL HUMAN RIGHTS MANDATORY

On the premises of the narrow stakeholder theory, morality is necessity in a "business as usual" sense. This is to say that managers cannot but down-prioritize non-stockholders, ignore all non-monetary interests and treat non-market agents as if they only matter potentially.(40) Mediated by choice, control and power, the link between capitalism and neo-liberalism results in rights and corresponding duties that match Hart's theory, which is not an integral part of the original framework of Friedman's classical model of corporate social responsibility. Given that maximization of freedom is also tied to that which the individual wants for himself, the preclusion of needs is not surprising. That granted, subjectivism and relativism entails that needs must be classified as a type of wants. People who prefer, for example, food

over the right to vote are making statements about the comparative importance of things – as they see them. Their opinions may be so strongly felt that they talk about needs as opposed to wants. However, all it takes to disprove the assumption of a distinction is the existence of groups or individuals who are on a hunger strike for their civil and political liberties, including the right to vote. Why are they on a hunger strike? Because they "need" their civil and political liberties. Dogs are welcome to have the food that was intended for them… until their place within their own species is secured. A sign of equation between humanity and superiority may be arrogant, but is it less correct than the reference to the animal kingdom which is the only option when food is accentuated? Certainly, things that are peculiarly human cannot be dismissed just because they involve higher rather than lower instincts, capacities or faculties, such as reason.

Transferring the various insights to international relations, states are unable to escape responsibility for polices that serve to protect an ownership elite although this "has to be" from the point of view of the concentric-circle constituency ranking. It follows that the accomplishment of peace as the ultimate goal is indistinguishable from the agenda of realpolitik. Peace is a way of consolidating national interests. Depending on how narrowly the concept of national interests is interpreted, large numbers of so-called ordinary people may be dissatisfied by the outcome. But, this fact should be evaluated correctly. Harm to Wall Street is something that affects Main Street too, although narrow stakeholder theorists' indignation would not be determined by a headcount but instead by the obstructionist policies have caused the unfortunate snowball effect. What is true in economics is also true in politics in so far as the citizens do not benefit from a socialist regime that confiscates their individual freedom as well as the property of "the capitalists". Socialism would continue the conflict, not end it. Therefore, the value of peace cannot be exaggerated. In practice, it may even be necessary to secure peace at the expense of de jure accountability for the victimization that took place during the conflict. According to M. Cherif Bassiouni, using

peace as a post-conflict bargaining chip for justice is one of the main characteristics of realpolitik as a strategy (for impunity).(41)

As mentioned in the Introduction, the purely pragmatic version of the broad stakeholder theory also emphasizes peace. Consequently, a similarity with the narrow paradigm presents itself. In addition, the purely pragmatic version recommends compromises regardless of possible agreements or contracts. If this strategy were treated as a general norm for conduct, inter-state affairs would be other-directed in a derivative manner. The commitment is still to us, to Self. At the same time, the demands of the parties with whom a state is negotiating are fitted into the post-conflict equation. Apparently, the intention is to secure "peace for the sake of peace". In turn, this means that significant differences are introduced. More precisely, the analogy to the narrow paradigm is irreversibly invalidated through the fact that realpolitik maintains the current power balance.(42) This is the reason why terrorist groups can never be tolerated. Some are more radical than others, but there is no escape from a discontinuation of the status quo. It follows that defenders of the narrow paradigm are pragmatists for *particular purposes*, whereas broad pragmatists do not have a political agenda… beyond the effort to proceed as good pragmatists. To try to neutralize terrorist groups in a "war against terrorism" is a mistake because this will refuel the conflict, in principium ad infinitum. To minimize the risk to life, liberty and security, a preventive approach is more effective. Instead of retaliation after a terrorist attack, state leaders can engage in democratic dialogue on the basis of demands. If so, the terminology should emphasize needs. Unlike talk about (demands in terms of) wants, needs send a diplomatic message.(43) If and when used in dialogue, needs typically describe the things or circumstances that their holders cannot be or do without in order to realize the goals they subscribe to.(44) Thus, talk about needs lowers the level of controversy by setting aside those aspects that focus attention on the goals themselves. States cannot be expected to feel sympathy for terrorist groups, but if they are willing to "meet them in the

middle", this type of compromise will translate into a measure of protection because co-existence is rendered possible thereby. The distribution of power may have to change internally, so as to not "invite problems" in the future. For example, the government may require that the mass media exercise more cultural sensitivity although critics interpret the measure as censorship, a violation of free thought and expression.(45) While such a step is unthinkable for libertarians, the broader challenge is how and where to draw the line between a flexible adjustment and sheer fear of the harm that might befall us unless we give in. Accusations of cowardice are warranted in the last-mentioned case. At the same time, the broad stakeholder approach avoids talk about "the enemy" who, by definition, deserves to be defeated and not to win. The point is that methodology matters. To secure peace for the sake of peace is inconsistent with pride and honor, according to the narrow premises. The concept and indeed criterion for continued survival encompasses the virtues in question. It is neither possible nor permissible to sell out in this regard. Furthermore, because the relativism-nationalism constellation eliminates the Principle of Equality in the case of the superpower, acts of aggression are warranted – if "only" as necessary evils. As a character project, the use of force testifies to our sincerity and, if put to the ultimate test, our willingness to endure even the greatest losses on the path to victory. As an instance of pure pragmatism, the broad stakeholder approach translates such a "show of strength" into potential suicide. To jeopardize the future of, say, the American people on the Alter of Pride and Honor is indefensible. Why fight to the last man if we can remain who we are without bloodshed. Regarding the premises for the narrow paradigm, it seems odd to even worry about pride and honor in relation to The Other, as if outsiders can (override relativism and) affect the group's perception of its own standing. Real neutrality, an attitude of disinterest and non-engagement would be more suitable, at least if it is correct to assume that greed is not a motivational factor, that references to pride and honor are not simply excuses for attempts to, as it were, "free them" of their natural resources, oil,

gas, gold, and so forth.

At this point of the analysis, it should be noted that the broad stakeholder approach is not limited to pragmatism. The alternative to this adopts the same definition of a stakeholder, meaning that "any group or individual who can affect, or is affected by, the achievement of a firm, company, corporation or organization's purpose" is included.(46) In addition, however, it contains components that fall under idealism. As it happens, the leap from pragmatism to idealism is a normatively qualitative one, a leap from that which makes good business sense to standards for legitimacy, legal as well as political.

Under idealism, managers continue to have a responsibility to be responsive. However, the strategy aims at a different type of responsiveness, namely one that highlights moral principles and values. More precisely, it holds that managers have a duty to balance the different interests and/or needs of the different stakeholder constituencies while using, to borrow a term that is coined to separate morality proper and ethical customs, "hypernorms" as a measurement for reality.(47) After this, pragmatism is in the service of idealism, that is, morality; but not the other way around. That which is necessary and/or effective for profit-maximization or, per Freeman, the social viability of the business should not be secured at the expense of justice as a substantive concept.

On scrutiny, there are at least five principles that constitute hypernorms, viz.: (1) the Principle of Stakeholder Consideration ("You should give equal consideration to all stakeholders on the basis of interests and/or needs**.** They have a right to inclusion."); (2) the Harm Principle ("You should not inflict serious harm on others. They have a right to not be subjected to mistreatment"); (3) the Respect Principle ("You should treat people as ends in themselves, and not merely as means. They have a right to dignity"); (4) the Principle of Stakeholder Participation ("Stakeholders whose well-being is substantially affected by the decisions of a firm, company, corporation or organization should participate, in some sense, in the relevant decisions.

They have a right to democracy or, more broadly, to a rule of right as opposed to a rule of might") and, finally; (5) the Fair Opportunity Requirement and Principle (whereby it holds that "You should not discriminate against others on the basis of facts, traits or characteristics that they have no control over, that is, facts, traits or characteristics that they had no fair opportunity to acquire or un-acquire in accordance with their own free choices. They have a right to impartiality").(48)

The Principle of Stakeholder Consideration, the Respect Principle and the Fair Opportunity Requirement and Principle belong under deontological ethics. This is to say that without a willingness on behalf of the agent to consider others (and not just himself or his own close group or circle) as a matter of duty (cf. deon), he cannot even enter the territory of morality. However, the agent should be prepared to do more than that – for the sake of securing morality. In addition to extending or broadening the stakeholder community (from me and/or mine to, as a principle, everybody everywhere), he chooses to conform to norms that explicate the special status of others as well as of Self. Out of his own free will, the moral agent shows respect for everybody everywhere, and commits to not depriving anybody of fairness or justice for reasons that are irrelevant from the point of view of desert or merit. However, the agent's intentions and, with these, the mens rea factor for the aspect of accountability or responsibility that pertains to blame and guilt, is deemphasized for the Harm Principle and the Principle of Stakeholder Participation. Rather than being motivated by (the duty) principle alone or, meta-theoretically, by right reason, these two hypernorms highlight the consequences of the decisions, actions and/or omissions that can be ascribed to the agent. This shift in perspective is the outcome of the realization that consequences matter and that, furthermore, they matter for reasons to do with morality. As it happens, consequences may be unintended. From the point of view of consequentialist morality, however, this makes no difference. Wrong-doing *consists in* bad consequences. Therefore, bad consequences should be judged accordingly. In other words,

the harm that befalls, for example, victims of sexism cannot be explained away with a reference to the fact that the manager who excluded the female in question from employment, promotion, and similar opportunities insists that "I did not mean to be a male chauvinist". Furthermore, to the extent that the victim's well-being can be said to have been substantially affected, she is, as a minimum, entitled to have a say and, ipso facto, be heard by objective parties who do not have a stake in the dispute or grievance. It follows that the right to democracy (or, more broadly, to a rule of right) entails due process as a component. In turn, this suggests that morality requires that a good reason for not hiring, promoting, etc. should be given. In practice, therefore, EAW doctrine should be replaced with Just Cause Policy.(49) As regards theory, it also follows that the distinction between deontological and teleological ethics cannot be treated as a sharp and significant conceptual and normative split. If anything, they complement each other. For example, an attitude of disrespect typically precedes infliction of serious harm on others. The same cause-and-effect can occur at the individual level, thus also imposing a duty to Self. That said, the concept of serious harm is not monopolized by impairment or complete loss of physical or psychological integrity. E.g., slavery may be consistent with well-being in the form of contentment with the conditions for daily life and yet slavery is what it is: human ownership, captivity and exploitation as a consequence of freedom-deprivation on the basis of skin color (cf. the most recent legal practice in the United States). The reason is as arbitrary, that is, disrespectful and undignified as the fact that a human being lost his freedom in the first instance.

As hypernorms, the principles in question function as moral prescriptions in the form of categorical imperatives which, together with a conditional diversity clause, form part of an implicit social contract.(50) As a matter of thought-experiment as opposed to historical fact, the idea is that if reasonable persons negotiate the transition from the state of nature to civilized society, they would agree to (1) universalism for hypernorms and

other norms that can be subsumed under these; (2) subjectivism for norms that affect Self; and (3) relativism in contextually-specific circumstances where cultural identity is at stake, thus necessitating a national, regional or local communality of values or principles that may not be shared with non-members of the group in question. Furthermore, it would be made to hold that (1) should regulate (2) and (3), meaning that subjectivism and relativism must not conflict with universalism in practice. The explanation for this is that "the other norms" that can be subsumed under universalism are basic human rights. The term basic refers to a subset of important interests which links the concept of the human person and the idea and indeed ideal of minimal decency. More precisely, the stakes belong to the core of, respectively, civil/political rights and economic/social rights. Accepting the axiomatic belief that because the human person possesses inherent value or intrinsic worth in his individual capacity, he deserves (as a minimum for decency) protection of the interests in life, freedom and security. If this treatment is not forthcoming, the individual is denied dignity and respect, which is the ultimate testing stone for rights.(51) The same is true for basic economic/social rights. To withhold the means – or at least the fair opportunity (which, if protected, gives rise to a right to work) to provide the means – for (minimal) material security, such as food, clothing, shelter, medical care, health, etc., is tantamount to degradation of that particular individual, as if he counted less than others. In morality, he counts the same as others; but in reality fellow human beings are attempting to deprive him of his rightful place within the community, to strip him of membership by virtue of might which is an act of wrong-doing. Political leaders may be able to secure effective enforcement of unjust law and government but idealism separates that which is effectively enforced from that which is appropriate and legitimate in all cases that entail non-recognition of hypernorms. As a position, idealism can be subsumed under a moderate version of natural law theory in so far as hypernorms are legislated independently of the legal law. The norms in question constitute the higher law. Ideally, the legal law and

the moral law overlap or, more to the point, should overlap. At the same time, idealism is not a position that denies the empirical existence and validity of legal cum unjust law, as radical natural law theory would. Unlike legal positivists, though, idealists do not see it as law in the strict and proper sense of that term. If the legal law allows agents to contract without consideration for fundamental principles and basic rights, the contract is rendered null and void. Any agreement must incorporate the social contract to have force at all.

On the premises of the human rights version of the broad stakeholder theory, so-called freedom from want is an aspect of the right to life. Cutting across the traditional distinction between civil/political rights and economic/social rights, the right to life entails a positive capacity component that is anchored in invariant needs that demand satisfaction, in addition to a guarantee of survival through non-interference.(52) Together, provision of essentials (cf. material security) and the duty not to kill, at least not arbitrarily (cf. survival) constitute enabling conditions for controlling one's own natural vulnerability and mortality. Instrumentally speaking, non-victimization in both instances is necessary for the exercise and/or enjoyment of all other stakes, inter alia, private property and market freedoms. While the implied interests deserve protection in terms of derivative rights whenever possible, their lower-order status in the hierarchy means that limits must be imposed on neo-liberalism. Basicness (which exponents of neo-liberalism misinterpret) trumps non-basicness. At the same time, the priority criterion (cf. rank-ordering and prioritizing interests in accordance with importance) is consistent with autonomy for all derivative cum non-basic rights, that is, rights which fall outside the territory of universalism. Because basic rights are grounded in humanity simpliciter, that is, a concept that is unmediated by references to contingent facts such as autonomy and, as a precondition for this, rationality, they are universal and equal in the strictest sense of those terms.(53) This special status bestows immunity on their individual holders. The relevant rights should not be

violated or sacrificed in order to promote the ends of other individuals or, alternatively, for social utility (cf. utilitarianism), thus also making basic rights inalienable.

Putting pragmatism in the service of idealism would dramatically alter the outcomes of the decision-making process, as well as the methodology for this. All types of gamesmanship would be precluded and replaced by democratic virtues and values, such as inclusion, equality and transparency. In the case of terrorist groups and conflict-resolution, the human rights model would deem the concept of collateral damage an ethically offensive and inexcusable assault on innocent non-combatant civilians. If advocates of the narrow stakeholder approach counter-argue that the implied sacrifices of human life are unfortunate but unavoidable costs that must therefore be paid, idealists would draw a distinction between necessity and morality. However good a cause is, it is never better than the methodology with which it is accomplished. Just because X is effective as a strategy for cause C does not mean that X is right, and X should be right. Otherwise idealism is no better than utilitarianism when it, for example, cancels individual rights to privacy for the sake of national security because this promotes the good or the happiness of the majority.(54) That granted, making the leap to contemporary international law may give rise to different conclusions. In the next section, narrow versus broad conceptions will be tested against the branches of the law that confers human rights.

THE LEGAL TEST: CONTEMPORARY INTERNATIONAL LAW

A study by Louis Henkin, a human rights expert, shows that contemporary international law is consistent with both capitalism and socialism, or a combination of these (cf. mixed market economy). However, some rights imply a commitment to certain political-economic principles, inter alia, the "right to own property and not to be arbitrarily deprived of it; the right to work and to be free to choose employment; to enjoy trade union protection against a powerful employer, private or public; and to be protected against

unemployment or its consequences".[55] It follows, according to Henkin, that there is no escape from the welfare economics of thinkers like John Maynard Keynes and John Kenneth Galbraith *as opposed to* Friedman's laissez-faire economics. If rights themselves are used as criteria of assessment, recognition and protection include not only limitations precluding government from invading civil/political rights, but positive obligations for government to promote economic/social rights, a broad cum comprehensive conception in other words.

The law imposes such a conception through a "remarkable synthesis of civil-political rights identified with the Liberal State and economic-social benefits of a Welfare State".[56] In terms of stakeholder theory, a narrow approach to rights is not an option, conceptually and normatively. Citing article 22 of the Universal Declaration of Human Rights, the realization of economic/social rights is "indispensable" for the dignity of the human person and the free development of his personality.[57] As a consequence, neo-liberalism or libertarianism has to be deemed an anti-human rights philosophy, a way of denying fairness from the point of view of customary international law (cf. the Universal Declaration of Human Rights). Another discovery, which also points to a synthesis, is that contemporary international law makes room for utilitarianism, in addition to the idea of individual human rights. However, the idea of individual human rights "rejects the extreme utilitarian position that would justify even the complete sacrifice of individuals if it would increase total happiness".[58] Under the law, social utility cannot trump dignity. To the contrary, norms are balanced in a way that uses deontological ethics (cf. dignity) as a limit on teleological ethics (cf. social utility).

Citing hard law, that is, instruments that impose legally binding duties through treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), dignity is on the basis of worth as derived from membership of "the human family".[59] Consequently, contemporary

international human rights law provides a speciecist foundation for the concept. There is nothing beneath this, meaning that an attitude in favor of human worth (cf. "human beings have worth because and only because they are human beings") is in and of itself groundless. This is a matter of axiomatic belief. A meta-justification of dignity is not a possibility unless judges from other species were summoned, which would be inconsistent with speciecism. But, why show respect for dignity on the basis of human worth… unless it was *already assumed* that membership of the human family entitles one to a specific kind of treatment, namely to not be reduced to a means merely for the ends of other individuals or for social utility? The point is that international human rights law is "an essentially Kantian project".(60) It follows that dignity is not an "ur-value" that still has not been given a framework.(61) From the point of view of morality, a theory has been authoritatively expressed. Without the Respect Principle and its implications, inter alia, the ban on slavery, slave-related practices and other forms of exploitation, it would not be possible to understand the law in the first instance. The same argument can be made in connection with social contract theory and its implications, inter alia, the right to rebel. Although not formally articulated, the assumption is that such a right is sanctioned by the spirit of the law. In connection with an analysis of basic human needs, Henkin brings social contract theory to the very forefront of his study by arguing that an appropriate notion of modern statehood must take account of these and that, furthermore, basic human needs create a commitment to international solidarity.(62) The transition from failed or failing state to legitimacy depends on the system's response to internal and external demands that affect core economic/social human rights.

In the light of this, the synthesis of civil/political and economic/social rights is something that pushes toward a double-aspect notion of peace, security and justice. In other words, it takes both types of rights to secure the values and goals in question. In stakeholder terms, the law combines or mixes narrow freedom and broad well-being. Furthermore, the synthesis of

individual rights and utilitarianism does not pose a threat to the strategy of recognizing the individual as the ultimate unit of the law (cf. methodological individualism), nor should it. Unlike the narrow stakeholder theory, however, the broad human rights version tolerates and even subscribes to utilitarianism (which is also the standard morality behind the welfare state) as long as the individual does not lose out. If utilitarianism is treated as a version of absolutism, it is bound to miss the mark in morality. For example, the case of individual privacy versus national security does not result in "no rights" for suspected terrorists. Such a Better Safe Than Sorry policy presupposes too much, namely that rights are not real unless they are consistent with social utility. To take this step is tantamount to excommunicating stakeholders arbitrarily. Morally and, mutatis mutandis, legally, national security may be used as a valid reason for restricting the "exercise of rights", but not their conferment.(63) Furthermore, with universalism, the broad human rights version is also geared to the task of assisting other people in other places whereas the relativist view that accompanies the narrow stakeholder theory restricts the conferment and, ipso facto, the protection (cf. fulfillment and enforcement) of rights and responsibilities to the group at home, "our fellow citizens". If a treaty is signed for an international aid program, the assumption is that "there is something in it for us". Following Friedman, all parties contract in order to be benefitted by the arrangement. Realistically speaking, the intention to help is nurtured by a desire to gain an advantage of some sort, preferably profit. Because this desire may damage our reputation (among idealists), "our real reason" may not be put down as a contractual stipulation, although this formality will not change the quid pro quo game. States do not simply transfer money, technological equipment or scientific know-how to underdeveloped countries in an effort to even the playing field. It takes idealism to maintain that rich nations have inflicted certain inequities through colonialism which they should now assume responsibility for by remedying the imbalance, which is a source of international conflict.

Interestingly enough, both a positive and a negative response will prove the truth of the (realist) "right is might" dictum.

On scrutiny, however, there is one problem that has not been addressed yet, but which could easily result in a major setback for the comprehensive human rights typology. So far, the incorporation of economic/social rights has happened without any discussion of rights and duties per se or the relationship between the two values, especially in connection with basic human needs. The incorporation project may actually be in jeopardy for this reason alone. More precisely, if attacked by economic realism, there would not be any firm foundation for a defense, let alone a counter-attack. This is very unfortunate. However, rather than it being the case that politicians "took an idea constitutionalized in a few countries and rendered it universal", philosophers can show, among other things, that economic/social rights test positive to one particular theory, namely the modern version of the Interest Theory of Rights.(64) Furthermore, to be recognized as genuinely international cum universal, some kind of natural constitutionalism has to go into their theoretical framework, a way of thinking that is rooted in facts about the right-holders themselves. Otherwise references to basic human needs ultimately reduce to postulates. Once again, however, philosophers can advance a theory that eliminates this risk. In the process, idealism is strengthened as a position.

THE PHILOSOPHICAL TEST: THE BROAD LOGIC OF NEEDS AND RIGHTS

On the premises of the logic of extensionality, basic needs constitute universal and objective facts. As such, they are knowable by their own possessors, that is, human beings. Furthermore, basic needs delineate a realm of necessities that apply independently of any opinions about their status. By putting the conditions for credentials-checking on a formula, the ontological and epistemological parameters can be further explicated as follows.

If X is a basic need, then X is something which the need-holder, Y,

cannot be or do without, without at the same time, suffering serious harm. Furthermore, it holds that (if X is a basic need, then) X is something which Y, or anybody else for that matter, is unable to change by changing the way he thinks or feels about X.(65) It is not possible to un-need X just through adopting the belief that, e.g., "X is a myth". While basic needs provide data that can be directly or indirectly accessed by observers, they are immune to manipulation. Logically speaking, absolutism is an implication of the way that basic needs exist. From the point of view of reality, they are given by the natural constitution of human beings. The constitution itself is not subject to free choice amendment or abrogation, as in the statement "We no longer want to have to have X".

In the light of this, it is unproblematic to maintain that the general and factual norm for humanity encompasses all the things that the majority of the members of homo sapiens cannot be or do without *simply because* they are who they are. Paradigms include nutritious food, clean water, unpolluted air, sleep and similar physiological needs. Other examples, which qualify as needs that are just as basic, belong to the class of what might be called developmental needs.(66) For example, most human beings are born with the capacity to develop into rational and autonomous agents – which is what is commonly taken to be part of the concept of the adult – and, consequently, children and adolescents have a need to receive the things that facilitate the process that places them within the norm, such as nurture, training and education. In order to be consistent, the narrow version of stakeholder theory has to at least accept these preconditions for rationality and autonomy in terms of needs rather than allow inequality (of liberal core values!) prior to open competition. If A but not B has what it takes to participate in the marketplace, A is in a position to pursue what he wants whereas B will be at a disadvantage … until an opportunity to catch up presents itself. However, since the fulfillment of physiological needs is tied to successful development, a fair opportunity must take account of nutritious food, sleep, etc.

The truth about humanity is that its members cannot function properly qua human beings unless their basic needs are met. If these needs are not met, proper functioning will either be impaired temporarily or discontinued entirely and permanently, resulting in death.(67) On account of the ontological and epistemological parameters, the list of basic needs spans a variety of areas. For example, some types of freedom of mobility can be defended as basic needs in so far as their non-satisfaction is linked with intense physical and/or psychological suffering, including insanity. The use of isolation cells to restrict movement to a space that "breaks" the inmate shows that the suffering may also have a social component. Research studies of the natural threshold of tolerance pertaining to inclusion and exclusion may even confirm the Aristotelian hypothesis that to be human is to be "a *polis*-animal", somebody who is made to belong to a constitutionally organized whole.(68) It follows that isolation cells constitute cruel and inhumane prison practices. As a form of punishment, exclusion should not be so extreme as to create a (human rights) situation where a human person does not belong anywhere anymore. Regarding rights founded on basic needs, it also follows that some of these fall under civil/political rights and *not* economic/social rights, as otherwise assumed by Henkin. In addition, torture can be viewed as a textbook example of a harmful practice that is prohibited because it substantially affects basic needs, although international law subsumes it under civil/political rights. To subject terrorists to water boarding may be an effective interrogation method that serves the common good, but such a utilitarian argument ignores the universal stake in humanity. It is unconstitutional to disrespect the common foundation for our existence.

From the point of view of logic, all needs contrast with wants – as well as desires and preferences – on the basis of considerations to do with their status (cf. the systematic aspect) as opposed to their origin (cf. the genetic aspect). Unlike needs, wants – as well as desires and preferences – come and go in accordance with the beliefs, opinions or feelings of particular individuals. It follows that if I want X, then (1) I have to have a conception

of X, and (2) there has to be circumstances in which I would try to secure X – as a goal, as something I favor and therefore prefer (which is also why X is the object of my conscious pursuit). This entails that subjectivism applies to the relevant category. As groups are also in a position to determine what "we want", relativism too has a pull.

While empiricism can be used as a testing tool for both needs and wants, thus confirming Felipe Fernández-Armesto's claim that empiricism belongs among the most authoritative truth-recognition technologies, wants reduce to the outcome of choices.(69) In turn, this explains why harm has to be replaced by, as a maximum, frustration. Furthermore, many wants are so non-hard, if not superfluous, that their holders would be better off if they used their needs as demarcation criteria for their wants. Such a rational approach promotes well-being and, as an integral aspect of this, freedom from the "welfare diseases" that describe many modern liberal and capitalist societies. In turn, this is also why there is no automatic connection between want-maximization and happiness, as otherwise assumed by the narrow stakeholder theory.

Theoretically speaking, the definition of needs gives rise to a complexity that warrants separate attention, namely extensionality on the basis of references and applications to that particular individual and/or group. Consequently, a typology makes room for subjectivism and relativism. At the same time, however, the similarity to wants is limited. If statements are purely subjectivist and/or relativist, it holds that "It is *true for me* that I need X" and/or "It is *true for us* that we need X" in spite of the fact that things could be different for me as an individual and/or for us as a group. This suggests that there are alternatives to the current state of affairs. Just like wants, the needs do not have to be. They do *not* describe irrevocable necessities, although needs have a hold on me and/or us here and now at time T. A violinist needs his instrument even if he is dreaming about a career as a car mechanic – something he wants to become but is not yet. Furthermore, the implied measure of freedom competes with the

powerfulness of the majority in the case of relativism. Unlike individual needs, cultural/social needs involve a numerical factor that one person cannot rise above unless, that is, he chooses to rebel, to not conform to *their way*.(70) However, the cultural/social needs themselves will continue to exist as long as there is sufficient support from the group as a whole. If most members decide to dismiss the norms from which the needs are derived, the world will be transformed, at least in one sense. This is to say that the change, whether radical or moderate, results in "a new way" that alters the form of existence within a given culture of society accordingly. Because cultural/social needs are linked with designs that transcend conventions or customs, the transition phase may be difficult, though. For example, American citizens cannot terminate their needs for cars, computers and televisions overnight, inter alia, because of the relevant country's physical infrastructure and the way in which information is disseminated. If they opted out without careful preparation, they would experience the difference between cultural/social needs and relative wants first hand in so far as all normal activities and practices would be interrupted to a degree that qualifies as chaos. Unlike relative wants, cultural/social needs are carriers of choices that have already been implemented as membership strategies. Relative wants may feed on these as more-than-average marketplace aspirations (as in "An American family typically needs one car per household but we really want three because that's a status symbol") or, if rationality is consulted, an anti-dote to self-destruction (as in "We want hybrid cars instead of conventional cars because we need to pollute less"). Relative wants may go both ways. In either case, they miss the mark (cf. cultural/social needs) descriptively and prescriptively.

Accepting a broad typology of needs, idealism argues that if basic and less basic needs compete, the interest in fulfillment of basic needs should be promoted as a First Priority (Principle). Having an identity as that particular individual and/or group not only involves rank-ordering one's beliefs in accordance with ends (one aspires to) and means (with which to accomplish

the ends), but also capacities.[71] In other words, if that particular individual and/or group, be it a culture, a society or a sub-group within a culture or a society, ignores humanity in the process of defining values, the way that is constructed cannot but fail in the moral sense, however authentic and unique for that particular individual and/or group. This explains why subjectivism and/or relativism *must be consistent with* objectivism/universalism in order to be deemed appropriate.

Basic needs, so it holds, are co-founders of human rights in that the Harm Principle links these facts (cf. reality) with fundamental norms (cf. morality). Because the argument is not directly from needs (from what "is") to rights (to what "ought" to be), there is no risk of committing the so-called naturalistic fallacy.[72] At the same time, it is true to say that harm functions as a bridge-concept to the extent that it helps give direction to morality. The general norm for humanity, viewed as a factual norm, delivers the materials that are common to the species. In and of itself, it does not prescribe conduct or behavior. Normativity in the strict sense does not enter into the equation. It is not the case that prescriptions are advanced in the context of logic. What is the case, however, is that the link between basic needs and serious harm establishes a value parameter and that, furthermore, the relationship between needs and rights is mediated by the implied natural constitutionalism. If human beings were not constituted the way they are, judged by the general norm for (factual) humanity, right reason would not have to include the Harm Principle. Why invoke a principle in morality, if the principle does not enable its stakeholder constituency to remain in the image of the species? Irrespective of what the law says, it seems that the concept of human rights and corresponding duties is, in the final analysis, indisputably indispensible for this reason.

Theoretically speaking, it is the opposite of harm which forms an integral part of the definition of rights. This is to say that in order for something to count as a right the object of this must, as a necessary condition, constitute a benefit. It holds that, a principle or, mutatis mutandis,

a law which is conceived as conferring on members of constituency C a right to treatment T, is envisaged as advancing the interests of each and every member of C on the supposition that T is normally a good for each and every member of C.(73) It should be observed that the qualifying term "normally" serves consistency. If X has a recognized right to receive a bag of peanuts, X, being allergic to peanuts, will experience the enjoyment of the right involved as a source of potentially serious harm rather than a benefit. For the majority, however, the right to a bag of peanuts counts as a benefit – especially if there is no other way of meeting people's basic need for proteins. Without the means for the avoidance of serious harm, X's stake in well-being would go unprotected.

Accommodating the rule rather than the exception, the framework for the modern version of the Interest Theory of Rights allocates equal and universal rights to treatment T to all stakeholders of C on the basis of the following reasoning: it is because treatment T in terms of fulfillment of basic needs advances important interests for stakeholders and does so because T is a benefit for their well-being, from the point of view of the factual norm for humanity, that rights to treatment T exist. That granted, the notion of a benefit is not a sufficient condition. As it stands, the framework is consistent with utilitarianism, as espoused by Jeremy Bentham.(74) Linking benefits and rights, utilitarianism appeals to the capacity to suffer pain on behalf of sentient beings. However, rights cannot be for the sake of those beings alone. On the premises of the modern version of the Interest Theory, this implication is tantamount to denying rights. Rights-recognition, therefore, incorporates a condition for the extension of treatment T to X. If and only if the object of the (alleged) right promotes the good of the intended recipient cum beneficiary as an end in himself, is it correct to state conclusively that "X's right to T has been established". In the context of basic needs, the interest in well-being must be promoted for the right reason. The idea of individual rights necessarily entails respect for dignity. It holds "if no respect, then no rights". As a consequence, it is a perfect match for

contemporary international law.

On the premises of the modern Interest Theory of Rights, the nature of the relationship between rights and duties not only entails a refutation of the analytical correlativity thesis (whereby duties are prior to rights) but also of the doctrine that rights, for their existence, depend on the practical possibility of their fulfillment (cf. economic realism). Furthermore, the narrow stakeholder theory proceeds as if there is a synthesis between the two views, more precisely, as if the analytical correlativity thesis commits theorists to economic realism. In turn, the alleged synthesis constitutes the traditional basis for the distinction between civil/political rights and economic/social rights in terms of, respectively, negative and positive rights. Realists and liberals alike either preclude economic/social rights or make these secondary *because* they are positive whereas civil/political rights are real rights or primary *because* they are negative. The empirical falsehood of this conception has been documented by thinkers like Henry Shue, who concludes that both types of rights typically entail both negative and positive duties.(75) More importantly, however, it is logically untenable. It does not make sense to argue that duties are prior to rights. If anything, rights are reasons for duties. In the words of Bassiouni, duties are "consequences".(76) Whether it is practically possible to fulfill these in the real world is something that depends on the circumstances, but this consideration is post facto. It cannot affect rights-recognition – as if the right disappears if its fulfillment is not guaranteed through duty-fulfillment. The analytical correlativity thesis cannot sanction this step. The claim that in order for A to have a right, there must exist at least one other person or party, B, who has duty concerns the order of values *in abstraction from* fulfillment of either of these. The point is that the positive/negative vocabulary is not driven by logic but instead by ideology – which misses the mark. The logic of the values in question (cf. rights and duties) cuts across the distinction between liberalism/capitalism and socialism. The criteria for credentials-checking that accompany the modern Interest Theory of Rights do not warrant the line

of argument whereby "A has a right to food lest A becomes an economic burden". Or, even more absurdly, economic/social rights are limited to an already privileged economic/social elite, as the narrow version of stakeholder theory otherwise makes it hold.

As it happens, international hard law confirms the unconditional rights-conception whereby rights-recognition and rights-protection must be separated. Under the ICESCR, the existence of rights is *not* mediated by real world facts about resources and fulfillment. This does not mean that the United Nations are ethically unconcerned about whether the right-holders receive the things or goods which the rights entitle them to. To the contrary. The notion of duties plays a central role in conjunction with rights-protection through its promissory language on behalf of the states parties. The ICESCR states that:

> *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*(77)

The steps in question cover all aspects of rights-protection, from implementation into national law, to enforcement in national as well as international law, and fulfillment. Aiming at full realization, furthermore, social and economic rights *generate obligations* to provide individuals with the substance of the relevant rights in accordance with the economic circumstances. If the goal, that is, actual rights-fulfillment, cannot be realized here and now at time T (and the assumption is that it cannot in many places), human rights generate – in the second instance – obligations to try to create, step by step and through specific programs, the conditions whereby it *becomes possible* (in the future) to give people that to which the rights are

rights. It is these instrumental meta-obligations which are intrinsic to the ICESCR's notion of programmatic obligations.(78) Rights-protection in the form of fulfillment is important because this secures, as explained by the modern Interest Theory of Rights, that the right-holders receive the objects of the rights. Everything that can be done should be done to accomplish this. However, if the goal is not realized, the relevant economic/social human rights continue to exist as real rights. As such, they continue to emit normative stimuli. Neither man's poverty nor man's inhumanity to fellow man can stop the process. If anything, it starts it in earnest.

A SINGULAR CONCEPT OF ETHICS: A BROAD CONCLUSION

If the foundation for rights were reduced to rationality/autonomy, only civil/political rights would qualify as candidates for human rights as opposed to economic/social rights. While such a narrow outlook may have been a motivating factor behind the bifurcation of the two types of rights in question, the United Nations nevertheless opted for a dual track.(79) The measures of protection that accompany economic/social rights continue to be comparatively weak, though. In other words, it seems that there is a certain liberal and realist bias in force, especially since there are no compelling reasons for treating economic/social rights as less. To the contrary, theorists have shown that their interdependency emphasizes economic/social rights so as to say that people depend on these for the purpose of exercising or enjoying civil/political rights.(80) In so far as Henkin also points to the interdependency of the different economies of different societies, the financial world synthesis in question (which has been confirmed by the current global recession) introduces a need to separate economic/social rights and national sovereignty.(81) The issue of rich versus poor states has to be addressed with a more complex notion of the law of supply-and-demand in mind. A number of critical questions about the marketplace and international business practices, such as "Is scarcity a necessity?" require honest answers. A progressive approach under idealism would also entail a

de-emphasis on treaty law as well as its complementary general jurisprudence parameter, namely legal positivism. What is more, the law of the state – to which business managers owe obedience under the narrow stakeholder theory – would be considered secondary in comparison to those branches of contemporary international law that confer rights on the basis of humanity simpliciter. Introducing this hierarchy, the human rights version of the broad stakeholder theory neither rejects the narrow premise that rights ultimately belong to people in their individual capacity (cf. methodological individualism), nor does it automatically equate customary international law with natural law. That said, if customary international law accords with morality proper, a strong presumption in favor of codification follows, especially because the human rights version of the broad stakeholder theory dismisses voluntary arrangements (between individuals and/or between states) as a necessary condition for binding norms.(82) Like pragmatism, voluntarism is limited to subjectivism and relativism. As a consequence, the theory eliminates the foundation for free market thinking in the classical sense, just as it introduces skepticism toward the doctrine of the good will. It takes reason to make choices, but it takes more than reason or rationality to secure morality. Only principled agents are willing to do the good or right thing. Those who lack standards will choose to engage in, per Aristotle, preferential wrong-doing.(83) They know, for example, that murder is wrong. In spite of this knowledge, however, they prefer to commit the misdeed because they themselves stand to gain an advantage from the killing of a fellow human being. As it happens, the advantage may be proportional to the number of victims, meaning that crimes like genocide or ethnic cleansing yield greater benefits for the perpetrators. Being corrupt, they probably deny the bad will causality as a horrific and unfounded accusation rather than admit their guilt and, consequently, show remorse, ask for forgiveness, etc. Mixing deontological and teleological ethics, the human rights version of the broad stakeholder theory is able to arrest, indict, prosecute and punish wrong-doers on the basis of the fact that they substantially affected others,

with harm, with disrespect, with degradation, etc. Irrespective of intentions, it can never be right to commit genocide, ethnic cleansing, or similar forms of systematic mass killing. A moral defense of the wrong-doers is not a possibility, not as long as prosecutors are able to prove their participation anyway. As inexcusable acts, the consequences for the perpetrators are best construed as "Justice must be done!" imperatives.

Making the leap from business management to contemporary international law, the stakeholder theory shifts the application perspective, if sometimes in a slightly subtle manner. Obviously, the United Nations do not approach their constituency with a view to dividends on stock. Profit-maximization does not enter into the relationship with the stakeholders. Furthermore, as a not-for-profit organization, effectiveness is not solely a question of "How many people are we assisting?" While the United Nations can be said to be in the service business, their success does not depend on the number of satisfied customers because this is how the organization can demonstrate that "We are supplying in accordance with the demand". United Nations stakeholders typically suffer the kind of losses that either makes talk about satisfaction meaningless or gives it a meaning that disrespects the ban on revenge. If so, an approximation to justice may (have to) encompass monetary compensation – but a complete restoration of the victims' dignity logically require remedies that the United Nations cannot provide unless, of course, they were able to un-do the situation. Once a life is lost, it cannot be returned to its rightful owner. This explains why life is priceless. Each "customer" is entitled to have the same (infinite) value placed on his life. It remains true, therefore, that the idea of individual human rights serves to balance utilitarianism.(84)

Appropriateness also requires that peace not be pursued as a post-conflict measure at the expense of justice for victims, be they viewed as individuals or as members of groups. Regardless of the reasoning (peace for the sake of peace or peace as a means with which to conserve the status quo), a preference for peace amounts to an intolerable instance of realpolitik.

If and only if peace is consistent with idealism, is peace a defensible strategy. Even on its own premises, realpolitk is a counterproductive strategy for all parties, thus undermining narrow zero-sum gamesmanship. Whenever the peace is interrupted by new conflict, the security situation is impacted negatively, meaning that the path to atrocities and corresponding assaults on the conscience of mankind is reopened. The broader point is that there cannot be any long-term peace and security without recognition and protection of human rights. Consequently, putting pragmatism in the service of idealism amounts to "killing two birds with one stone".

A commitment to human rights is a condition for political legitimacy. If the states parties refuse to comply with the norms in question, they make themselves a threat to the rest of the community. The proto-typical example of the implied building block argument is Adolf Hitler's Nazi Germany, which engaged in three jus cogens violations, namely crimes against humanity, war crimes, and crimes against peace.(85) Because Hitler's acts of aggression ignored the equal rights of other states, Nazi Germany's totalitarianism and indeed terrorism was international in scope. However, unlike the crimes that fell under the jurisdiction of the 1945-1946 International Military Tribunal at Nuremberg (IMT), terrorism has gone unrecognized outside the domain of convention.(86) In the modern era, it remains on the jus cogens waiting list. Bassiouni mentions terrorism as a candidate in the context of the International Criminal Court (ICC) which – unlike the IMT – is a permanent forum for criminal justice.(87) As a co-architect of the ICC, Bassiouni is taking the meaning of jus cogens seriously. As "the compelling law", it imposes obligatio ergo omnes, that is, non-derogable duties of enforcement. Consequently, a No Impunity policy would result. To include terrorism (in addition to war crimes, crimes against humanity and genocide), however, the implied crimes would have to coincide with violations of basic rights to life, liberty and security – just like all other breaches of jus cogens norms. In other words, the nature of the criminality must be such as to place it among the most serious offences

which are of universal concern to the international community. Otherwise there is no case for terrorism as a jus cogens prohibition under customary international law. Be that as it may, 9/11-type terrorism crimes seem to fulfill the requirements. For the sake of consistency, due process of law (to secure a fair trial, in particular the examination of evidence and the presumption of innocence) and the right not to be tortured must be recognized (irrespective of the "by convention" argument) on behalf of those accused of terrorism, again because these stakes are derivative from basic rights.(88)

The application of stakeholder theory leaves one terrorism challenge. This pertains to a state's treatment of its ordinary, law-abiding citizens. Typically, modern statehood is closely associated with liberalism. As an ideology, however, liberalism is not geared toward talk about state-sanctioned terrorism. Even if it were, terrorism would be limited to violations of life, liberty and security as traditionally interpreted (cf. negative rights). The state that implements a strategy of selective deprivation in the case of welfare – thereby allowing the structures to inflict economic/social harm – is automatically exempt from the "terrorist state" stigma. The more conservative liberals are, the more they believe that "the class society" is a (communist or Marxist) myth. Be that as it may, the United Nations keep an open mind about internal wrong-doing. According to Annan, poverty as a consequence of institutionalized inequality belongs among the "root causes" of the failed state.(89) Given that stakeholder theory was adopted as a general jurisprudence parameter during Annan's administration, this fact-finding is significant of course. Apparently, the leap from business management to contemporary international law is about more than a broad cum comprehensive rights-typology. Annan's perspective is traditional to the extent that he accepts the United Nations' premise that the organization exists to promote peace and security. But, by making it clear that these goals cannot possibly be accomplished without economic/social human rights, he must be said to have modernized the mission by virtue of the Great

Emphasis he puts on the rights in question. Rather than merely tolerate economic/social rights as the declaratory outcome of half-hearted compromises that date back to the cold war era, Annan brings them to the very forefront of the discussion as constants in the post-conflict justice equation. In this way, the United Nations are siding unambiguously with the broad version of stakeholder theory. Since the popularity of the narrow stakeholder theory in the business world has not prevented breaches of the law (numerous scandals involving white-collar crimes, embellishment, fraud, corruption, etc.), ethics legislation against oppression and tyranny that targets subsistence may be a more effective strategy. If so, the United Nations would probably be well-advised to consult with professional moral philosophers. Ethics is first and foremost about changing the current (customary) mindset, and not so much about rules and regulations. That granted, the way people think about things is, at least in part, determined by the way key concepts are defined. Misconceptions are dangerous, especially in the transition from theory to practical application. Therefore, corrections are a precautionary measure.

While the broad version of stakeholder theory defines all demands and expectations in terms of needs as opposed to wants, thereby reinforcing the contrast to the narrow, it does not actually provide the logic or the analytical credentials-checking for these values. Furthermore, while it links basic human needs and basic human rights, it does not address the issue of rights per se, nor the relationship between rights and corresponding duties. Upon having remedied these deficiencies, however, the challenge that stakeholder theorists like Freeman presented in 1984 by stating that "[u]ltimately, the 'stakeholder issue' must be resolved in the arena of distributive justice" can be tackled in a way that convincingly and conclusively substantiates the incorporation of economic/social human rights.(90) Such rights can be construed as non-discriminatory claims to distributive justice, as a minimum, at the level of rights-recognition. Given that Annan accommodates collective responsibility as an inter-state phenomenon, thus judging the Principle of

Individual Responsibility insufficient (or too narrow in application) for the purpose of fulfilling and enforcing economic/social rights, the implied (per Henkin and Bassiouni) international solidarity obligations may result in more than a conceptual revolution. According to Henkin, "the basic human needs of those unable to provide for themselves are the responsibility of all" and "it is permissible if not obligatory to take from those who have (as by taxation) to provide for those who have not".(91) This statement can be interpreted as a moral guideline for reconstruction of the international society to the extent that this implements strategies and policies that purposefully maintain "disadvantages for systemic ends".(92) Apparently, such structural violence calls for conflict-resolution in the form of re-distributive justice, that is, fairness for rights-protection which accords with absolute egalitarianism. In practice, this entail (1) the complete discontinuation of concentric-circle stakeholder perceptions, especially those that are grounded on (narrow) criteria (cf. nationality or citizenship), and (2) a revision of the concept of social viability. Social viability does not simply translate into long-term survival. It is a phenomenon that incorporates (broader) considerations to do with sociability defined as the ability to co-exist as human beings who share important similarities with each other – namely basic human needs – and who cannot become individualized in a strict (and narrow) sense unless the relevant similarities are first acknowledged and addressed.

Basic human needs constitute the key to all central concepts: stakeholders, justice, viability, etc. On the premises of the logic of extensionality, basic human needs must be distinguished from wants which delineate the realm of opinions – the very components that must be kept separate from dignity, respect and decency as integral parts of a singular ethics. For this reason alone, it does not make sense to claim that the terminology of needs is a tool of totalitarianism. If anything, basic human needs delineate a communality of values the objectivity and universality of which invalidates the "might makes right" dictum. The general point is that

in order to argue against the link between basic human needs, morality and natural constitutionalism, it is necessary to resort to ideology as opposed to logic.(93)

Paradoxically enough, ideology is something that plays a counterproductive role in the case of liberalism. This is to say that the framework that accompanies the (narrow) Choice Theory of Rights is not consistent with the right to freedom, the center-piece of Friedman's position. In so far as the right-holder is able to agree to, for example, selling himself into slavery, freedom may be lost as a direct consequence of the individual's own choice. To pay this price for liberalism is, of course, an entirely absurd outcome.(94) Because human rights are inalienable as well as equal and universal, the Choice Theory of Rights cannot generate "real" civil/political rights, let alone explain why contemporary international law treats freedom as a value that should never be disassociated from humanity, not theoretically and not practically. Furthermore, in the case of jus cogens law, the Choice Theory of Rights is unable to match the non-derogable duties with corresponding rights exactly because the duties are non-derogable. What is true of freedom is also true of life and security. To pass as rights, these values have to be correlative to, borrowing Hart's own terminology, relative duties – and they are not, not de jure and not in morality.(95)

The essential point is that the broad stakeholder theory *rescues* the rights that exponents of the narrow version claim to defend. The secondary hypothesis that acts of terrorism should be prohibited to the extent that they adversely affect life, security and freedom – whether narrowly or broadly construed – only makes sense on the premises of the modern version of the Interest Theory of Rights. By using the derivative implications of jus cogens crimes as a measurement for terrorism, the playing field will be more even. Like terrorist groups, governments sometimes resort to force. The difference is that they do so in self-defense because, by definition, they are representatives of the status quo. Terrorists, on the other hand, apply violent methodologies for revolutionary purposes. However, these may include

respect for human rights. Because political legitimacy is mediated by respect for human rights, governments may be worse terrorists than the terrorists so-called.

Finally, the fact that only a broad cum comprehensive typology is adequate for an analysis of contemporary international law should not be overstated. Two points warrant attention that at the same time describe future challenges. First, morality remains a critical tool of the law. As it happens, there is room for improvement as regards basic human needs and rights-recognition. For example, contemporary international law does not confer human rights to a number of physiological needs, including sleep. It follows that rights-distributive justice is an ongoing project, something that makes the law a dynamic rather than a static phenomenon. For the same reason, participants in the legislative process must up-date their knowledge on a continuous basis. This introduces a second challenge that is related to the nature of the knowledge that legislators as well as United Nations managers and international law theorists acquire. While these groups are expected to cooperate with experts from the empirical sciences, it is not possible to take the objectivity of experimental research or, more generally, scientific discovery, for granted. Basic human needs in the form of physiological necessities can be subsumed under hard cases, but the same conclusion may very well not extend to, for example, economic activity as a fundamental aspect of humanity. Extreme caution is advisable in such instances where there is a risk of collapsing the distinction between logic and ideology, especially because logic operates as an authorizer in the transition from descriptions to prescriptions. Prescriptions that depend on ideology for the sake of ideology "reasoning" are not sufficiently compelling, judged from the perspective of singular ethics. That granted, the human rights version of the broad stakeholder theory does not entail a claim that wants should be exercised from the law – it only requires a First Things First approach. For example, the right to periodic holidays with pay, an international norm under the ICESCR, has often been under attack because it

is based on wants as opposed to needs.[96] The truth of this claim may and may not be a misjudgment. That aside and suggesting a third challenge, the incorporation of wants that do not automatically translate into marketplace demands is a relatively unexplored issue. In the context of human rights, the use of a terminology that implies connotations like "surplus" and "luxury" may have very unfortunate and indeed unfair consequences for analysis and assessment. The point is that there may be a "third way" to rights. If so, this should be used for the purpose of revising the stakeholder framework. Rather than blindly repeating a prevailing view, theorists should at least keep an open mind about the possibility of another conceptual revolution. As it happens, the stakeholder theory may chart territories for change in the wake of applying it. If so, the task of supplementing or adding premises or parameters assumes the character of a fourth challenge. As this extends to the most general level of jurisprudence, practitioners have to be prepared to make corrections on the basis of developments that the theory "throws off" as must-dos regardless of what the law says or the opinions or normal practices of some or, for that matter, all members of the global partnership that makes up the United Nations. For example, a commitment to natural law theory – through the broad stakeholder theory – means that the Principle of Universal Jurisdiction bind the states parties as a compelling implication of the theory's standards for right reason and not merely, citing Bassiouni, as "a presumption", which the ICC may give an advantage, "if only over time".[97] Consequently, references to a presumption should be replaced with the analogy to a categorical imperative which can only be "softened" by a clash with consequences that entail violations of the fundamental moral principles that guide the concept of singular ethics which, in turn, generate and/or substantiate core human rights. It should be noted that Bassiouni is one of the most uncompromising defenders of the Principle of Universal Jurisdiction, which would put an effective end to the superpower as strategy for immoral and, mutatis mutandis, illegal action above the rule of (human rights) law. Whether this is part of the reason why he himself also makes use

of the broad stakeholder approach is another question.[98] Regardless, the fact that Bassiouni – just like Freeman – is enjoying status as a father figure within his field could perhaps be the beginning of something extraordinary as far as the future evolution of the connection or, per Henkin, synthesis of contemporary international law and stakeholder theory is concerned. ❖

NOTES:

1. R. Edward Freeman, Strategic Management: A Stakeholder Approach (1984).

2. A modest interpretation of these may be unavoidable, though. In 2009, Freeman himself complains that the system has "gone awry" as regards corporate scandals. Furthermore, at the national and international level, he sees the "economic melt-down" as a consequence of undue risk-taking. For each catastrophic event, the message "You must adopt new strategies" has been reinforced but the question now is how bloody the footprints have to become before managers begin to implement the theory that can transform practice? *See* FREEMAN ET AL, BUSINESS ETHICS: A MANAGERIAL APPROACH xv (2009).

3. Abe J. Zakhem et al, Stakeholder Theory: Essential Readings in Ethical Leadership and Management 9 (2008). *See also* Freeman, *supra* note 1, at 7.

4. Interview with M. Cherif Bassiouni, Distinguished Research Professor of Law and President, International Human Rights Law Institute, DePaul University College of Law; President, International Institute of Higher Studies in Criminal Sciences (Siracusa, Italy); Honorary President, Association Internationale de Droit Pénal (Paris, France), in Chicago, IL (Dec. 2, 2009).

During the interview Bassiouni noted that although (threats of) violence is not indiscriminate but instead for a purpose – just like possible monetary or business interests are purely derivative – terrorist agendas are illegitimate to the extent that they entail means-end strategies that victimize innocent people.

5. Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N. Y. Times Magazine, Sept. 13, 1970, reprinted in Joseph R. DesJardins & John J. McCall, Contemporary Issues in Business Ethics 7-11 (2005).

Examples of socially desirable goals include elimination of pollution, discrimination and unemployment. Furthermore, the corporate social responsibility model that focuses on these coincides with utilitarianism, whereby maximization of social utility should be applied to every area of reality. Thus, both (private) business and (public) government are measured by the same ethics standard. However, while utilitarianism may make sense for public officials who represent the people as such, business managers should not be political, according to

Friedman. If government (ethics) and business (ethics) are not kept separate, utilitarianism becomes an instance of socialism. To pursue goals like the elimination of pollution, discrimination and unemployment is not just to do the business a disservice (because social utility is prioritized at the expense of profit-maximization – something managers should not do); it is to undermine the fabric of a free society (because the standard is imposed either by bad managers or by unfair regulations).

6. FREEMAN, *supra* note 1, at 8.

7. The implied judgments derive from idealism, from analysis and assessment that highlight terms like "should" or "ought" as opposed to "must" (cf. pragmatism). Idealists express aspirations which summarize their notion of "a good society". Contrary to these, pragmatists design strategies that make "a good society" (regardless of interpretation) possible in the real world, in effect, facilitating the transition from theory to practice.

8. The fact that 9/11-type terrorists target symbols, such as the World Trade Center and the Pentagon, proves the ambition to annihilate "our way" at its very core. The national psyche of the American people has a stake in the institutions in question. If they are destroyed, the American people are demoralized, which is the most culturally toxic or harmful component of terrorism.

9. FREEMAN, *supra* note 1, at 77-78.

Like Friedman, Freeman sees business as a game. Unlike Friedman, however, Freeman believes that the pursuit of self-interest as a strategy may be counterproductive in the context of the Prisoners' Dilemma stakeholder version of the game.

Why negotiate voluntarily? Because, there is no other way to keep from having a solution imposed upon the organization from outside. And, to accept such an imposition of a solution to a problem is to give up the managerial role. Additionally, there seems to be no reason to pay the enforcement costs of adversarial proceedings. How many managers, lawyers and other professionals in large organizations spend most of their time in some sort of adversarial proceedings with stakeholders? Could not these resources be put to work more productively? *Id*. at 77.

It is ironic, of course, that Freeman's voluntarism is a tool for maximization of freedom, which is the value that Friedman presupposes in all aspects of his theory, including the pursuit of self-interest.

10. FREEMAN, *supra* note 1, at 48, 50 n.23.

The choice between ethics and no ethics is not optional, but the choice between the different types of ethics is, and this view is constant from 1984 to 2009. *See* FREEMAN ET AL, *supra* note 2, at xvi, xviii. Note also the connection between this and the view that "…to

accept such an imposition of a solution to a problem is to give up the managerial role". *See supra* note 9.

Morality proper is subsumed under so-called enterprise strategy the bottom line issue of which is "how to be more effective". In practice, this entails an enterprise strategy that has some sort of "fit" with the society in which managers find themselves. It should be noted that this view is also constant from 1984 to 2009. *See* FREEMAN, *supra* note 1, at 83, 101. *See also* FREEMAN ET AL, *supra* note 2, at xvii.

11. FREEMAN, *supra* note 1, at 104.

12. *Id*. at 101.

13. *Id*. at 248-249.

Note that the link between opinions and wants is explained in the section entitled, The Philosophical Test: The Broad Logic of Needs and Rights at p. 24.

14. While consequentialism functions as a moral strategy with which to regulate Kantianism so as to avoid the practical implications that most contemporary philosophers view as so morally extreme as to make them immoral, it is debatable whether Freeman's consequentialim is a version of utilitarianism. Sometimes he assumes that consideration should be with a view to benefitting as many stakeholders as possible, thereby making generalized cum utilitarian consideration the norm; at other times, however, consequentialism is a response to the part of Kantianism that requires agents to look at actions per se and dismiss any consideration of the consequences of these. Separating consequentialism and utilitarianism, Freeman argues that consequences that adversely affect stakeholders in terms of harm belong under morality. For example, A Jewish man whose only "crime" consisted in his being Jewish may have lost his life as a consequence of B's "moral choice" to reveal his hiding place, i.e., to tell the truth to the Nazis as a matter of Kantian cum categorical duty. Here it should be added that the disagreement between Kantianism and Freeman's type of consequentialism also concerns the possibility of predicting consequences. Whereas Kantianism rejects this, business management entails prognostic strategies. *See* FREEMAN, *supra* note 1, at 40, 68.

Note that some commentators dispute the claim that Freeman's stakeholder theory has much (change) to offer in comparison to the narrow paradigm. For example, James A. Stieb writes that "some advocates have moved a bit too quickly and without proper definition or argument. They have exceeded Freeman's intentions which are more libertarian and free-market than is often thought". *See* James A. Stieb, *Assessing Freeman's Stakeholder Theory*, 87 BUS. ETHICS Q. 401 (2009). Certainly, if optional choices of ethics are not consistent with idealism, no moral progress has been accomplished. *See supra* note 10.

15. Kofi Atta Annan, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,* Report of the Secretary-General to the Security Council), U.N. Doc. S/2004/616 (23 Aug., 2004) [hereinafter 2004-Report].

The authors are not disputing the fact that – prior to Annan's administration – sporadic and rudimentary applications can be found. Instead, the claim is that it took some time to complete the transition from simply talking about "stakeholders" to reaching a level of conceptual and normative maturity that made stakeholder theory suitable for the United Nations as an approach to international justice issues. Given that the first launching of stakeholder theory dates to 1984 and, furthermore, given that it began as a purely pragmatic notion as opposed to one that was geared toward the discussion and/or endorsement of particular values, the time factor involved in the gradual development of stakeholder theory cannot be ignored.

For post-1984 and pre-Annan usage, the reports of the relevant two administrations led by, respectively,

Former Secretary-General Javier Pérez de Cuéllar (1982-1991) and Former Secretary-General Boutros Boutros-Ghali (1992-1996) test negative to the assumption that the stakeholder way functioned as a guideline for United Nations analysis and assessment of human rights situations. For a couple of standard examples, *see* Javier Pérez de Cuéllar, *United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Report of the Secretary-General to the General Assembly, U.N. Doc. A/46/539 (9 Oct., 1991). *See also* Boutros Boutros-Ghali, *The Situation Concerning Western Sahara*, Report of the Secretary-General to the Security Council, U.N. Doc. S/L995/986 (24 Nov., 1995).

For post-Annan usage, there is ample evidence in support of the stakeholder way as an established parameter.

Current Secretary-General Ban Ki-Moon (2007-present) is undoubtedly a strong advocate of this. For a standard example of this, *see* Ban Ki-Moon, *The United Nations Mission in Sudan*, Report of the Secretary-General to the Security Council, 6-8, 15-17, 23 U.N. Doc. S/2009/545 (21 Oct., 2009).

16. 2004-Report, *supra* note 15, at 6-9.

17. *Id.*

18. The so-called idealist version of the broad stakeholder theory will be the main objective of all sections that follow after the account of Friedman's narrow version of the stakeholder theory. For the purpose of explaining how and why this is consistent with contemporary international law, no distinctions will be made between international criminal law, international humanitarian law and standard human rights law. It is the similarities and

not the differences between the various branches that matter. Note that Bassiouni expresses skepticism towards attempts to attach significance to the differences in the context of post-conflict justice. *See* Bassiouni & Daniel Rothenberg, *Facing Atrocity: The Importance of Guiding Principles on Post-Conflict Justice*, *in* INTERNATIONAL HUMAN RIGHTS LAW INSTITUTE ET AL, THE CHICAGO PRINCIPLES ON POST-CONFLICT JUSTICE 4 (2007).

19. The Secretary-General, *The Charter and Judgment of the Nűrnberg Tribunal: History and Analysis*, Memorandum submitted to the General Assembly, 15, 21 U.N. Doc. A/CN.4/5 (3 Mar., 1949).

20. ZAKHEM ET AL, *supra* note 3, at 9.

21. Friedman, Capitalism and freedom 13 (40th ed. 1992).

22. *Id.* 33.

Note that the Principle of Individual Responsibility was established as an international norm by the International Military Tribunal at Nuremberg (MIT). This entails that people who commit jus cogens crimes (war crimes, crimes against peace and crimes against humanity) are responsible and liable to punishment in their individual capacity. Under international customary law, the Principle of Individual Responsibility functions to supplement the Principle of State Responsibility. *See* the Secretary-General, *supra* note 19, at 62.

23. Traditional EAW doctrine says that if and when an explicit agreement of contractually binding terms is absent, the employment relationship exists only as long as the parties will it to continue. That is, either party is free to end the relationship at his own will. Furthermore, the relationship may be terminated at any time and for any reason by the employer who, consequently, has absolute discretion, cf. the common law principle "for good cause, for no cause or even for cause morally wrong". Exceptions to the doctrine are union members and government workers with explicit contracts that contain contractually and – in the last-mentioned case – constitutionally guaranteed protections in the form of grievance procedures that specify how and when an employer may fire an individual worker. It follows that due process rights, which fall under civil/political rights, do not apply to private corporations, firms or organizations. In Friedman's case, any interference with the freedom of the employment contract is unacceptable, meaning that no third party should be permitted to dictate the terms that regulate the relationship between employer and employee. *See* DESJARDINS & MCCALL *supra* note 5, at 114. *See also* FRIEDMAN, *supra* note 21, at 115-117.

24. FRIEDMAN, *The Social Responsibility of Business Is to Increase Its Profits, supra* note 5, at 8.

25. DESJARDINS & MCCALL *supra* note 5, at 21.

26. *Id*. 27.

27. Albert Carr, *Is Business Bluffing Ethical?* 46 HARV. BUS. REV. 143 (1968).

28. Under Friedman's notion of voluntarism, the mutual benefit outcome of the agreement is consistent with the Principle of Individual Utility.

In the context of classical liberalism as opposed to libertarianism, the freedom to seek one's own gain serves as a means for social utility. The most famous illustration of this link is Adam Smith's "invisible hand" in the marketplace. *See* ADAM SMITH, THE WEALTH OF NATIONS BOOKS IV-V 32 (Andrew Skinner ed., Penguin Books 1999) (1776).

29. FRIEDMAN, *The Social Responsibility of Business Is to Increase Its Profits*, *supra* note 5, at 10. In connection with the concept of harm, Friedman also states "what one man regards as good, another may regard as harm". *See* FRIEDMAN, *supra* note 21, at 3.

30. *Id.* 20-21.

31. On the premises of John Stuart Mill, the avoidance of harm infliction and the avoidance of freedom deprivation (cf. action in accordance with the Harm Principle and the Principle of Liberty) function as general limits on individual rights. See JOHN STUART MILL, ON LIBERTY AND OTHER ESSAYS 104-128 (John Gray ed., 1991).

Note that Gilbert Rist claims that the terminology of needs – including basic human needs – is merely something that favors the dictatorial oppressor. *See* Gilbert Rist, *Basic Questions about Basic Human Needs, in* HUMAN NEEDS 133-153 (Karin Lederer ed., 1980).

32. FRIEDMAN, *supra* note 21, at 2.

33. The normative emphasis on stockholders has often prompted theorists to classify the narrow version of the stakeholder theory as "the stockholder theory". One example of this is John Hasnas, *The Normative Theories of Business Ethics: A Guide for the Perplexed*, 8 BUS. ETHICS Q. 21 (1998).

34. Herbert L. A. Hart, *Bentham on Legal Rights*, in OXFORD ESSAYS IN JURISPRUDENCE 192 (Alfred W. Simpson ed., 1973).

35. It should be noted that the analytical correlativity thesis has two main applications in general jurisprudence. Alone, the thesis says that "In order for A to have a claim-right, there must – as a logically necessary condition – exist at least one other person or party, B, who has a duty toward A". Hart's application defines the right-holder as the duty-sovereign, the one who can make free choices about the correlative duty. An alternative application, espoused by Bentham, makes the right-holder the duty-beneficiary. See FEINBERG, SOCIAL PHILOSOPHY 61 (1973). See also Anja Matwijkiw, *A Philosophical Perspective on Rights, Accountability and Post-Conflict Justice: Setting up the Premises*, *in* POST-CONFLICT JUSTICE 177-178 (M. Cherif Bassiouni ed., 2002).

36. FEINBERG, *supra* note 35, at 84-97.

While Rawls rejects a hierarchy, it is undeniable that his criticism of the utilitarian theory of justice presupposes that liberty is recognized and protected as a primary value – why else be against utilitarianism which would trump that same liberty?

37. John Rawls, A Theory of Justice 60-61 (1999).

38. Originally, Rawls was a supporter of rule-utilitarianism. He abandoned this position in favor of liberalism, in part, in response to the problem with individual rights. Mill, who defended both liberalism and utilitarianism, did not foresee this and, therefore, his work does not address the possibility of the implied criticism.

39. Alan Gewirth, Reason and Morality 340 (1978).

The leap from this position to classical liberalism is a small one in so far as there is agreement that it is practically possible to secure non-interference in the real world. A duty *not to do* X where X = harm infliction or freedom deprivation is always fulfillable whereas a requirement to do something, especially to provide aid or assistance, may in fact fail in various circumstances.

40. This affects a number of constituencies, inter alia, children and future generations. It should be noted that the last-mentioned is also a problem for utilitarianism which, like the narrow stakeholder theory, restricts consideration to those who exist here and now at time T.

41. M. Cherif Bassiouni, International Criminal Law 5 (3rd ed. 2008).

42. On Bassiouni's account of realpolitik, the interference of "political results" is another characteristic of the sacrifice-of-justice-in-return-for peace deal. *See id*.

43. Of course, if all demands are treated in terms of needs, the distinction between needs and wants collapses. As will become evident later, maintaining the distinction presupposes idealism.

44. Therefore, the pragmatic approach coincides with a purely instrumental sense of needs.

45. One recent case that illustrates the dilemma involved in the choice between protecting the freedom of speech & press and the appropriateness of judging other groups' belief-systems comes from Denmark. In 2005, twelve newspaper cartoons in Jyllands-Posten depicting the Muslim Prophet Mohammed – especially one that showed the Prophet wearing a bomb in his turban – provoked followers of Islam to issue a Fatwa on Mr. Kurt Westergaard, who executed all the drawings in questions. So far, the Danish government has refused to introduce a ban on publications whose target groups perceive them as offensive for reasons that are anchored in religious sensitivity. One common argument is that if a religion cannot accept criticism, then it is weak – something it should not be. It goes without saying that the

attempt to move the judgment to the first-order level of normative discourse is not enough to reach a satisfactory solution for all parties to the dispute. The possibility of this depends on the willingness to identify moral standards or principles that could create a commonality of values. For an account of the most pertinent facts of the controversy and its implications, which the Danish Prime Minister Anders Fogh Rasmussen summarized in terms of the "worst international crisis since world war II", see Wikipedia: The Free Encyclopedia, http://www.en.wikipedia.org/wiki/kurt_westergaard.

46. FREEMAN, *supra* note 1, at 49. *See also* ZAKHEM ET AL, *supra* note 3, at 9.

47. FREEMAN, *supra* note 1, at 53, 57. *See also* DESJARDINS & MCCALL *supra* note 5, at 71.

48. Just like the Principle of Respect, the Harm Principle and the Principle of Freedom, the Principle of Stakeholder Consideration and the Fair Opportunity Requirement and Principle have philosophers as humanistic norm-authors. For consideration as a value in morality, albeit outside the context of stakeholder theory, *see* BERNARD WILLIAMS, MORALITY: AN INTRODUCTION TO ETHICS 9-13 (1993); for the Fair Opportunity Requirement and Principle, see FEINBERG, *supra* note 35, at 117.

For an attempt to develop and apply fundamental moral principles to international law, *see* Anja Matwijkiw & Bronik Matwijkiw, *A Modern Perspective on International Criminal Law: Accountability as a Meta-Right, in* THE THEORY AND PRACTICE OF INTERNATIONAL CRIMINAL LAW: ESSAYS IN HONOR OF M. CHERIF BASSIOUNI 19-79 (2008).

49. In the context of business management, hypernorms also entail that the (narrow) Buyer Beware doctrine be replaced with Strict Liability Doctrine. *See* DESJARDINS & MCCALL, *supra* note 5, at 117, 284-290.

50. According to Hasnas, the field of business ethics can be divided between "three leading normative theories", namely stockholder, stakeholder and social contract theories. Contrary to Hasnas, the authors of this article agree with DesJardins and McCall that social contract theory "attempts to explain" stakeholder theory defined as the view that management must and indeed should consider the interests of all constituencies. Furthermore, it should be noted that social contract theory is often invoked by leading experts on contemporary international law, including Louis Henkin and Bassiouni. Without social contract theory, the leap from business management theory to contemporary international law will be impeded. *See* Hasnas, *supra* note 33. *See also* DESJARDINS & MCCALL *supra* note 5, at 75. *See also* LOUIS HENKIN ET AL, HUMAN RIGHTS 285 (1999). *See also* M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 691-698 (2003).

51. DESJARDINS & MCCALL, *supra* note 5, at 47.

Note that Bassiouni defines life, liberty, personal security and physical integrity as basic rights, although he sees deprivation of live as "the ultimate denial of human dignity". *See* M. CHERIF BASSIOUNI, THE PROTECTION OF HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE: A COMPENDIUM OF UNITED NATIONS NORMS AND STANDARDS xxvi (1994). *See also* M. Cherif Bassiouni, *The Philosophy and Policy of International Criminal Justice, in* MAN'S INHUMANITY TO MAN: ESSAYS ON INTERNATIONAL LAW IN HONOR OF ANTONIO CASSESE 100 (Lal Chand Vohrah et al eds., 2003).

52. DESJARDINS & MCCALL, *supra* note 5, at 50-51.

53. The humanity simpliciter criterion contrasts with the philosophy of Kant, who believes that the value or worth of individual persons is determined by (humanity *in terms of*) rationality and autonomy. IMMANUEL KANT, GROUNDWORK OF THE METAPHYSICS OF MORALS 37, 41 (Mary Gregor, ed. & trans., 1998).

By defining humanity in terms of rationality and autonomy, Kant puts a sign of equation between (normal) adults and human beings, thus disqualifying children as right-holders, together with adults who suffer from pathological conditions that impair rationality and autonomy, such as Alzheimer's Disease. In doing so, Kant excludes a numerically significant number of people from the moral community.

54. Types of privacy that may be adversely affected include full body scanners (which show the private parts of the human person) in airports and putting the names of suspected terrorists on Watch Lists and/or No-Fly Lists.

55. HENKIN ET AL, *supra* note 50, at 283.

56. *Id*. 286.

57. *Id*. 281.

58. *Id*. 285.

59. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966); 999 U.N.T.S. 171 (*entered into force*, Mar. 23, 1976) [hereinafter ICCPR]. *See also* International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); 993 U.N.T.S. 3 (*entered into force,* Jan. 3, 1976) [hereinafter ICESCR].

60. Jürgen Habermas *The Kantian Project of the Constitutionalization of International Law. Does it Still Have a Chance? in* MANUEL ESCAMILLA, LAW AND JUSTICE IN A GLOBAL SOCIETY 115 (2005).

61. As otherwise suggested by Henkin. *See* HENKIN ET AL, *supra* note 50, at 276.

62. *Id*. 285.

Note that Bassiouni is in favor of "social and human solidarity". *See* M. Cherif Bassiouni,

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of [Gross] Violations of International Human Rights Law and [Serious] Violations of International Humanitarian Law, Report of the Independent Export to the Commission on Human Rights, E/CN.4/2004/57 26 (rev. 24 October 2003).

63. This premise is sufficient to show that utilitarianism has no rights-cancelling force. *See* ICCPR, *supra* note 59, at arts. 21 and 22(2). Note that certain rights are exempt from this permission, inter alia, the right not to be subjected to torture, genocide and slavery. S*ee id*. art 4(2).

64. HENKIN ET AL, *supra* note 50, at 286.

65. David Wiggins, Needs, Values, Truth 10 (1998).

66. The developmental needs have a higher degree of generality than those which characterize some elderly people, such as the need for a walking stick, a wheelchair, etc. The last-mentioned could be called third age needs since they apply to the late stages of life. Contrary to developmental needs, however, these depend upon a wide range of societal and individual factors (work conditions, life style, environment, etc.) and, for the same reason, they must be relativized in accordance with the factors. This is not the case with developmental needs. They apply to everybody everywhere, that is, every child or adolescent regardless of time, place and circumstances. That granted, it is possible to talk about "special needs" for younger members of the species. If so, the terminology presupposes a disability, some kind of exception from constitutionally decreed normalcy.

67. The link between death and serious harm should be qualified. To be human is to be mortal and therefore death is part of the norm for humanity. For the same reason, it could be argued that third age needs do not belong to the class of basic human needs. To maintain the opposite is to challenge the final fate that Mother Nature has built into the natural constitution of everybody everywhere. Even assuming growing old is, by analogy with growing up, about realizing inherent human potentials, to (eventually) die is to comply with the norm.

68. ARISTOTLE, POLITICS 10 (Ernest Barker, trans., 1995).

69. Felipe Fernández-Armesto, Truth: A History and a Guide for the Perplexed 5-6 (2001).

Note that the choices presuppose intentionality along the lines of G.E.M. Anscombe's philosophy. *See* G.E.M. ANSCOMBE, INTENTION 68 (1967).

70. It is observations of this nature that prompt Fernández-Armesto to declare that relativism is tantamount to majority tyranny. *See id.* 165-166.

71. Alan Gewirth, Self-Fulfillment 25, 40 (1998).

72. For a philosophically thought-provoking account of the "is-ought" problem as one that

can be resolved by considerations to do with the logical structure of action, *see* GEWIRTH , *supra* note 39, at 16, 102.

It should also be noted that Freeman's statement "By paying attention to the logic of value concepts, theorists can develop better descriptions and yield more effective prescriptions" supports the idea that there is a logic of morality, meaning that prescriptions are linked with descriptions. *See supra* note 13.

73. Neil MacCormick, Legal Rights and Social Democracy: Essays in Legal and Political Philosophy 164 (1982).

74. In one sense, therefore, Hart's (Choice Theory) criticism that Bentham's utilitarianism "gets in the way of conceptual clarity" is correct. *See* Herbert L.A. Hart, *Bentham on Legal Rights, in* OXFORD ESSAYS IN JURISPRUDENCE 171 (Alfred W. B. Simpson ed., 1973).

75. Henry Shue, Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy 35-64 (1980).

76. M. Cherif Bassiouni, *Searching for Peace and Achieving Justice: The Need for Accountability*, 59 LAW & CONTEMP. PROBS. 17 (1996).

77. ICESCR, *supra* note 59, at art. 2(1).

78. For an account of this notion, *see* David M. Trubek, *Economic, Social, and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs, in* THEODOR MERON, HUMAN RIGHTS IN INTERNATIONAL LAW: LEGAL AND POLICY ISSUES 209 1984.

79. For an insider perspective on this, *see* John P. Humphrey, Human Rights and The United Nations: A Great Adventure (1984).

80. SHUE , *supra* note 75, at 70.

Note that the direction of the interdependency entails that the narrow version's view of humanity rests on premises that repeat its own ideological creed. People who claim to "need" freedom rather than food are, at best, in denial about their own natural constitution. It is still true, however, that they need freedom in an instrumental sense – to realize liberalism as a goal.

81. HENKIN ET AL, *supra* note 50, at 285-286.

82. Legal positivists dismiss customary international law because it reduces to morality or, per Friedman, ethical customs. Natural law theory, on the other hand, rejects customary law if this inconsistent with idealism. The criterion for law proper is measured by appropriateness in the form for recognition and protection of basic human rights, both civil/political and economic/social rights. If this criterion is fulfilled, natural law theorists are able to treat customary as a paradigm of law.

83. For a detailed account of preferential wrong-doing as opposed to

commissions/omissions by the perversely wicked (who believe, however erroneously, that they are doing the right thing), *see* PETER A. FRENCH, THE VIRTUES OF VENGEANCE 24-29, 181 (2001).

84. This is particularly so because utilitarianism presupposes that all rational preferences are quantifiable in monetary terms. From the point of view of non-utilitarianism, this is as offensive as it is reductionist, as if satisfaction depends on the right sum of dollar notes. *See* FREEMAN, *supra* note 1, at 49 n.3.

85. The Secretary-General, *supra* note 19, at 4.

86. International Terrorism: A Compilation Of U.N. Documents (M. Cherif Bassiouni ed., 2002).

87. BASSIOUNI , *supra* note 50, at 701.

For an analysis and assessment of the ICC in comparison to alternative "for a capable of prosecuting acts of terrorism", *see* Richard J. Goldstone & Janine Simpson, *Evaluating the Role of the International Criminal Court as a Legal Response to Terrorism*, 16 HARV. HUM. RTS. J. 21 (2003). In spite of certain intrinsic and extrinsic features which hamper the ICC's effectiveness, Goldstone and Simpson conclude that "the ICC could be a very effective forum for the prosecution of acts of terrorism". *See id*. 24, 26.

88. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987.

89. 2004-Report, *supra* note 15, at 3.

90. *See supra* note 13.

91. HENKIN ET AL, *supra* note 50, at 285.

92. *Id.*

93. The logic of extensionality is compelling – by analogy to jus cogens law – in the sense that it secures both the objectivism-universalism constellation for descriptions of humanity-as-a-fact and matches the requirements for humanity-as-a-norm prescriptions that are recognized in terms of rights and corresponding duties by contemporary international law. Because basic human needs are co-founders of core human rights, the concept of singular ethics that they give rise to presupposes a synthesis of descriptions and prescriptions.

94. As indeed pointed out by one of Hart's most astute critics, McCormick. *See* Neil MacCormick, *Rights in Legislation*, *in* LAW, MORALITY AND SOCIETY: ESSAYS IN HONOUR OF H.L.A. HART 196 (P.M.S. Hacker & J. Raz eds., 1988).

Another paradox is the narrow stakeholder theory's exclusion of the right to work. The transition from a rule of might to a rule of right presupposes its recognition because the theory

in question proceeds on the assumption that economic activity characterizes humanity. Therefore, on its own premises, the exclusion is a self-contradiction. From the point of view of morality, it violates the Fair Opportunity Requirement and Principle. Furthermore, as an instrument for the fulfillment of basic human needs, positive freedom (cf. well-being) is adversely affected.

95. Hart, *supra* note 34, at 192.

96. ICESCR, *supra* note 59, at art. 7(d).

97. M. Cherif Bassiouni, *Accountability for Violations of International Humanitarian Law and Other Serious Violations of Human Rights*, 1 THE GLOBAL COMMUNITY YILJ 14-25.

98. Anja Matwijkiw, *A General Jurisprudence Approach to International Criminal Law*, 5 THE GLOBAL COMMUNITY YILJ 321 (2005).