Is there morality of business?

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University of the Sunshine Coast
Faculty of Business

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Reverend Chancellor, Ladies and Gentlemen:

I am honoured to have this opportunity to address members of the university and the local business community here on the Sunshine Coast. I was speaking over lunch with your Chancellor Fr John Dobson OAM, agreeing that we are delighted to be believing Christians living in a robust, free and pluralist democracy where the public square has a distinctively secular touch. Neither of us would want to live in a theocracy with leaders of religious communities (even our own) holding sway in the determination of laws and public policies. Those of all religious beliefs and none have a place at the table of public deliberation about laws and policies. Each of us needs to be able to give an account of ourselves in the public square, including why we think some behaviours are acceptable and others not, some deserving sanction by the state and others not, regardless of the viewpoint of the actor or those offended by the action.

If we are to answer the question, “Is there morality is business?”, we must first consider the question: “Is there any such thing as morality in the public square?” If there is not or should not be, then there will be no place for talk of morality in business which is the public square in exchange mode. If morality is judged to be the preserve only of the private sphere and of quaint religious groups, it will have no place, or ought have no place, at the board room table or on the management desk.

One of the simplistic errors made by some observers of the secular public square is to boldly assert that morality has no place in the public square. Given that we all come from different religious and philosophical traditions, it is all too easy to assume that there is no such thing as right and wrong. It is just a matter of what works. By default, we fall back on an unquestioning utilitarianism or a simplistic economic consequentialism. We are satisfied once we answer the questions: what works? Can we afford the cost? We make no further inquiry: is this right or wrong?

Here is one example. This morning we had a stimulating working session here on campus with over 100 people from the community sector reflecting on collaboration. The facilitator displayed a PowerPoint listing the characteristics of a living system, including this observation: “Life is intent on finding what works, not what’s right”. This was stated as a fact. None of us in the group questioned the assertion. On reflection, we might want to amend the observation: “Nature is intent on finding what

*I am grateful to Dr John Sweeney, Edmund Rice Centre, for providing me with some excellent background reading for the preparation of this lecture.
works; the human subject is capable of seeking what is right, and in so doing ennobles self while also being able to enhance the workings of nature.”

For those who doubt that there is any place for morality in the public square, let’s reflect on three subsets of the public square – top-level sport, politics and law.

Is there any morality in sport? Or is it just a matter of winner takes all? What works? In recent days, there has been great consternation about the Pakistan cricket scandal with spivs bribing cricketers who are engaged in match fixing. Is the only “moral” concern about the possible defrauding of the bookies? Or is there some more overarching view of morality at play here – and more than just a concern for the ethics of the players overstepping the crease of moral behaviour? People are outraged because they think the spivs and the cricketers have done wrong, even apart from the adverse economic consequences suffered by a handful of bookies. The cricketers are judged by the community to have acted inappropriately, unprofessionally, corruptly and immorally regardless of whether there be any law, cricket code or custom explicitly prohibiting such behaviour. What they have done is wrong. It is immoral. Such an assertion is comprehensible, explicable and justifiable in the public square of the cricket commentator’s box and in the lounge rooms of cricket watchers the world over whether they be Muslim, Hindu, Christian or of no religion at all.

Is there any morality in politics? Graham Richardson wrote his political biography entitled Whatever it takes. Now that we have a hung parliament, we have all had a couple of weeks to think about the way in which Kevin Rudd was assassinated as prime minister. It would seem that for many voters, it is not simply a calculus of what works. They think it was WRONG.

What if Julia Gillard had won by a landslide? I suppose we would have all got on with our lives “moving forward”, not giving much more consideration to whether or not the internal Labor Party machinations of June 23 were right or wrong, simply whether or not they worked.

What if Tony Abbott is made Prime Minister? I presume the post mortems within the Labor Party will include discussion of whether or not “we did the right thing when we axed Kevin”. The fact that it did not work will prompt deeper reflection and not just in a utilitarian mode, asking whether it was right or wrong. Was there something immoral in the way Kevin Rudd was assassinated? Or was it just impolitic? inefficient? unprofessional?

Writing in The Australian on 16 July 2010 I said:

*Not being a politician, a caucus member or a faction boss, I ask: Is there not a political morality which can guide those of us who are not politicians at times of such political upheaval, helping to retain civility and to bolster the coherence of the body politic? There has been plenty of blood on the floor of both major party rooms in recent months with participants acting out of a variety of motivations – no doubt including consideration of the national interest, party interest, and self-interest. Some have put store in loyalty; others have subscribed to the “Whatever it takes” school of politics.*
Before the election is called, it is appropriate to note that Rudd did a power of good leading us on issues like the Aboriginal apology and sparing us the worst of the global financial crisis. We can express regret at the way Rudd was done in, regardless of which way we will vote at the election. And we can ask in a non-partisan way that he just be left alone or, as Malcolm Turnbull suggested, given a hug. Let’s lay off – for our own good, as well as his. We don’t need to kick our ex-prime ministers when they are down.

Is there a morality of law? Some would say law is simply what Parliament says is the law, or what the judges declare to be the law. But does it make sense to ask: are there good laws and bad laws?

I was a first year law student at the University of Queensland in 1971 when Sir Joh Bjelke Petersen declared a state of emergency under provisions of the Transport Act for the Springbok Rugby Tour. Most of my law lecturers stood silent, while Sir Zelman Cowen as Vice Chancellor wrestled publicly with the morality of what was being done in the name of the law. Years later, Gough Whitlam was wondering aloud with me about the great number of social reformers who came out of Queensland in the early 1970’s. I told him the answer was simple. We all had something to react to. We developed strong ideas about what was right and wrong in the public square. It was not enough just to say, “This is the law of the land and you will obey it.”

In the world of employment and business is there any public morality? Is it just a matter of avoiding harassment and discrimination and ensuring the economic interest of shareholders is protected? These seem to be the three hot button issues in the contemporary business scene. Just look at the litigation launched by Kristy Fraser-Kirk claiming $37million from David Jones for sexual harassment by their CEO Mark McInnes.

If we have strong ideas about right and wrong when it comes to harassment, discrimination and shareholder protection, there is a fair chance that morality has even more of a place in the market and public square than first appears. In the complex worlds of politics and economics, there is room for plenty of disagreement about what is right or wrong, and what is for the greater good or in the public interest. If in doubt about that, just ask: What is justice?

John Rawls wrote the very influential book *A Theory of Justice*. He proposed a thought experiment. Imagine everyone is placed behind a veil of ignorance where they do not know what their attributes, interests or place in society will be. In this Original Position, people would then choose a list of suitable arrangements to which they would be bound or to which they would voluntarily comply. Everyone would be entitled to the same list of basic liberties. The key offices in society would be open to everyone without discrimination. The unequal distribution of goods and opportunities would be justified in so far as it assisted the worst off in society to be better off than they would have been if no unequal distribution were permitted.

Recently the Nobel peace prize winner, economist and philosopher, Amatya Sen published a book *The Idea of Justice*. He gives the simple example of three children and a flute.
Bob is very poor and would like to have the flute because he has nothing else to play with. Carla made the flute and wants to keep it. Anne is the only one of the three children who knows how to play the flute and she plays it beautifully bringing pleasure to all who hear her.

Who has the best claim on the flute? Sen tells us that the economic egalitarian would give it to Bob. The libertarian would insist that Carla retain the fruits of her labour. Most Australians without a second thought would simply assert, “Carla made it; it’s hers; the rest should stop complaining; if they want a flute they should make their own!” The utilitarian hedonist would give it to Anne.

Who would you give it to? And it is no answer to say that you would split it in three.

Last year I was privileged to chair the National Human Rights Consultation for the Rudd government. A committee of very diverse membership we had to be attentive to the community’s diverse thinking on human rights. Some who agitate against the idea of public morality think human rights are just a figment of philosophical imaginations. They claim the only talk of rights that makes sense is talk of rights as legal entitlements set down in domestic law. They see all other classification of rights as being allegorical.

This is how we dealt with the overlapping consensus of philosophical theories providing a basis for human rights being discussed in the public square. A similar approach could be taken to discussing the broader notion of morality in the public square:1

There is a long history of philosophical musing about the reality of human rights. Precedents exist in a range of religious and secular philosophies. For example, Confucius’s Analects (compiled after his death in the 5th century BCE) promoted a society founded on respect, tolerance and generosity towards others; the Indian emperor Asoka advocated non-violence and religious tolerance in the 3rd century BCE; and Cicero (106–43 BCE) established the foundations of natural law, a concept closely connected to the modern idea of human rights.4

For centuries many thinkers who considered questions to do with justice and rights took as their starting point the idea that all human beings were created by God and were thus endowed with particular gifts and divinely commanded to live in a particular way. Such thinking holds little sway in the public domain today, even if some religious people still find it convincing.

Disgusted by the religious wars of the Reformation period, Dutch lawyer Hugo Grotius (1583–1645) was convinced that disputes about rights were the main cause of war. He defined a natural right to be ‘a moral quality pertaining to a person to

1 National Human Rights Consultation, Final Report, AGPS, 2009, pp. 52-4
possess or do something justly’.\(^5\) Reflecting on the human person in the community, he set down the demands for a peaceful and rational life lived in community and said, ‘What we have spoken about would carry some weight even if we were to suppose that God does not exist or that God takes no interest in human affairs’.\(^6\)

Across the Channel, Thomas Hobbes (1588–1679) also spoke of natural rights. He was troubled by the English Civil War and parliament’s execution of Charles I. Two years after the execution, and anxious that people be able to avoid the state of nature in which life would be brutish and short, he published his Leviathan.\(^7\) He thought the natural human condition was a state of war in which ‘every man has a right to everything; even to one another’s body’\(^8\), and he proposed the social contract, whereby all individuals would give up their right to govern themselves in exchange for security and peace guaranteed by a State able to provide ‘peace at home and mutual aid against their enemies abroad’.\(^9\)

John Locke (1632–1704) had a less jaundiced view of the state of nature than did Hobbes:

> Man being born, as has been proved, with a Title to perfect Freedom, and an uncontrolled enjoyment of all the Rights and Privileges of the Law of Nature, equally with any other Man or Number of Men in the World, hath by Nature a Power ... to preserve his Property, that is, his Life, Liberty and Estate, against the injuries and Attempts of other Men.\(^10\)

Locke thought the laws enacted by the State needed to reflect this law of nature, which stood as ‘an eternal rule to all men’.\(^11\) This thinking on natural rights was central to much of the political ferment in England, what was to become the United States of America, and France. The founding fathers of the United States declared, ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights’.\(^12\) Nowadays these truths are perhaps more contested: they are definitely not self-evident. People are more likely to speak about human rights rather than natural rights.

Some philosophers continue to claim that human rights can derive from the nature of the human being. They look to what is needed for the flourishing of the individual living in the community. But, even if they were to agree on specific facts about human nature, their critics say it is impossible to logically argue from how things are to how things ought to be. You cannot just slip from ‘is’ to ‘ought’. Other philosophers claim there are very few uncontested facts about human nature. They question whether there is any such thing as an essential human nature, arguing that ‘the only lesson of either history or anthropology is our extraordinary malleability’.\(^13\) Pragmatists such as Richard Rorty see a human rights culture emerging not from any increased moral

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\(^6\) ibid. 10.  
\(^7\) T Hobbes, *Leviathan* (1651), quoted in J Mahoney, ibid. 20.  
\(^8\) ibid. 12.  
\(^9\) ibid. 13.  
\(^11\) ibid. 20.  
\(^12\) US Declaration of Independence (1776).  
knowledge but from our being attentive to moving and shocking stories about the violation of people’s human rights.\textsuperscript{14}

Kantians do not find much moral guidance in emotion; rather, they seek universal rules or maxims. Immanuel Kant (1724–1804) propounded his famous maxim ‘Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means, but always at the same time as an end’.\textsuperscript{15}

Some philosophers admire the thinking of Professor John Rawls, who posited the thought experiment of people standing behind a veil of ignorance, knowing little about their future prospects and agreeing on principles of justice such as ‘Each person has an equal right to a fully adequate scheme of equal basic liberties compatible with a similar scheme of liberties for all’.\textsuperscript{16} Finally, a deconstructionist critique of human rights has emerged in recent years, destabilising the idea that human rights will always lead to better outcomes.\textsuperscript{17}

People disagree about what to include in the list of basic liberties, and they often seek assistance in the catalogues that have been drawn up by the community of nations in the formal human rights instruments promulgated since the United Nations was formed in 1945. In the words of Professor Louis Henkin, ‘Ours is the age of rights. Human rights is the idea of our time’.\textsuperscript{18}

It makes sense for business to have an eye to the protection of human rights at home and abroad. Human rights are within the moral purview of business. Though there were some raised eyebrows, I welcomed the submission our committee received from Telstra, one of Australia’s largest companies, arguing for enhanced protection of human rights. Telstra submitted to us:

Large and small companies, whether shareholder-based, family-centred, multinationals, NGOs or organisations established for charitable purposes, occupy a core part of most democratic economies, including Australia. In Australia and elsewhere, such organisations are often involved (sometimes publicly, sometimes privately) in: standing up for the rights of the oppressed; correcting injustices; trumpeting opposition to government oppression; and exposing corruption. Companies reflect the combined interests of individuals; and, for the most part, individuals support the protection of each others’ rights. Not only do corporations therefore play an integral role in protecting and promoting human rights values, there is nothing particularly remarkable about corporations (including an organisation like Telstra) contributing to discussion about a human rights framework.

Let me now offer two case studies of big business playing its role in determining what is right, what is fair when there are both uncertainty and novel developments in the law and politics affecting business operations. I will look at one historical example (business’s response to Aboriginal land rights) and one contemporary example (business’s response to climate change).

As we are waiting for the result of the federal election to be revealed, it is fashionable to tell stories about the three independents, including Bob Katter under his large hat. I

\textsuperscript{14} ibid. 118–19.
\textsuperscript{15} I Kant, \textit{Groundwork for the Metaphysics of Morals} (1785) 4:429.
\textsuperscript{17} See, for example, D Kennedy, \textit{The Dark Sides of Virtue: reassessing international humanitarianism} (2004); C Douzinas, \textit{The End of Human Rights: critical legal thought at the fin-de-siècle} (2000).
\textsuperscript{18} L Henkin, \textit{The Age of Rights} (1990) xvii.
recall a meeting on Palm Island in 1985. Bob was Sir Joh Bjelke-Petersen’s minister for Aboriginal Affairs. Clyde Holding was Bob Hawke’s Commonwealth Minister for Aboriginal Affairs. Clyde and Bob were promising national land rights and self-determination for these Aboriginal communities – the equivalent of national health reform! The leaders of all the Queensland Aboriginal reserve communities were in attendance. I was there as their legal adviser. Holding was accompanied by a very intelligent adviser from Canberra. Katter as ever was running late. Holding had the floor to himself. He was outlining Canberra’s grand vision. Then an hour late, Katter rushed in with the big hat and he went around the room greeting every Aboriginal leader by name and asking a question or two about the most local of issues from each of their communities. The Commonwealth adviser was devastated. By the time Katter had got half way around the room, Holding looked plaintive, wondering when that next plane to Canberra might be leaving. Grand plans go nowhere unless we are grounded, connected, and in relationship with those we are professing to serve.

In business, we need the Holding plan and the Katter contact. Back in 1985, big business was a strong opponent of Aboriginal land rights. It was thought to be bad news for business. Business had minimal contact with Aboriginal leaders and their supporters.

Then the ground changed when the law changed with the High Court’s decision in Mabo in 1992. One business leader Hugh Morgan from Western Mining decided to play hard ball even impugning the integrity of the High Court, fighting the Keating government which was proposing to legislate certainty for Aboriginal landowners and miners. For some years thereafter, commentators Hugh Morgan and Ray Evans agitated about what they perceived as the Catholic thinking behind the High Court’s Mabo decision. The suggestion was that the majority of judges who had been educated at Catholic schools must have allowed their Catholic perspective or values to influence their decision because it was inconceivable to these good Protestant gentlemen how else the court could have reached such a decision. They were particularly concerned that the lead judgments were written by Justice Brennan “regarded as a conservative Catholic” and by Justice Deane, “a Catholic of some standing”. Their anxiety was heightened by my relationship to Justice Brennan. Hugh Morgan offered public advice that I should have been particularly conscious of my father’s standing, “and sensitive to the implications of remarks which could quite incorrectly, give rise to suggestions of influence”. At the commencement of the Mabo proceedings back in March 1988, my father made a statement from the bench:

I have informed counsel appearing in this case that my son Fr Frank Brennan SJ is an adviser to the Australian Catholic bishops on matters relating to the land rights of Aboriginal and Islander peoples and that he is actively engaged in a ministry to these peoples. As this matter raises for consideration the question whether Islander people enjoy traditional rights with respect to land, not being rights arising under a statute, it is appropriate that the information I have given counsel should appear on the public record.

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19 See R Evans, “Gnosticism and the High Court”, Quadrant, June 1999, pp 20-26 (See also my response “Justice Brennan and Mabo”, Quadrant, September 1999, Letters, pp. 5-6)
20 Ibid., pp. 24,25
Counsel offered no comment and neither did the likes of Evans and Morgan until four years later when the litigation was well complete. I regarded my father’s statement as an excess of judicial scrupulosity. Morgan was convinced that “in *Mabo*, and all that followed from it, we are engaged in a struggle for the political and territorial future of Australia”. Evans discerned a “Gnostic heresy which seized the collective minds of the High Court”. By 1999, Evans was publicly lamenting that “Justice Brennan not only sat on the case but wrote the lead judgment, despite the fact that, in Australia, his son was, and has been for a decade, one of the most active and influential advocates for the revolutionary policies which were embodied in the *Mabo* judgment.”

The new CEO of CRA (Rio Tinto) Leon Davis decided to take a different approach. I had been given a fair drubbing over the years by some of the mining executives, especially in Western Australia where they liked to label me one of the wise men from the east – not a compliment when delivered in front of a Perth audience. In 1995, I was living briefly in the Philippines and I was contacted by CRA asking that I deliver the after-dinner address to their senior executives at their annual retreat at Sanctuary Cove. I thought this was not a good idea. It could spoil everyone’s dinner. But I was assured that the new CEO wanted to be seen to be making a difference. By the time I arrived for the dinner, *The Australian*’s Bill Leak had published a wonderful cartoon of an Aboriginal warrior at sunset standing on one leg with his spear and leaning on Davis saying, “Bugger me, next it will be Johnny Howard.” I was asked to present the framed original of the cartoon to Davis at the end of my address. The audience did not know what the gift wrapped package was. I invited Leon to come forward and leaned on his shoulder. There were shocked looks in the audience as I presented the gift and said, “Bugger me, next it could be Johnny Howard.” Davis thought it was the right thing to do – recognizing native title and moving his company to work with traditional owners. He could not guarantee a higher return to shareholders in the short term. But he thought there might be some commercial advantage in the longer term in stealing the march on their competitors in coming to deal efficiently with the reality of native title. Whatever of the short or medium term business advantages, he thought this was simply the right thing to do. It was the appropriate moral response of business.

The morality of business demands that we have concern not just for the short term returns for shareholders. We can also consider medium and long term returns with attention to the triple bottom line – economic, social and environmental.

Let me say a word about the contemporary issues of climate change. In June I attended the Global Foundation’s 2010 Summit in Melbourne. This Foundation prides itself on bringing together business, political and community leaders in a non-partisan fashion to consider the big questions confronting the nation. At the end of the Summit, the organizers wrote to the Prime Minster and the Leader of the Opposition highlighting the concerns of the meeting including the need for concerted national action on climate change. This is how we put it in the letter to our political leaders:

The transition to a low-carbon future – an agreed national narrative and concerted international action:

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23  Letter to author, 19 September 1994
24  R Evans, op. cit., p. 26
25  ibid., 24
Australia must begin, now, the transition to a low-carbon future, at home and abroad, while at the same time, ensuring it is implemented in such a way that Australia's prosperity is not diminished.

These are the answers provided to questions posed to the Global Foundation’s Working Group on a Low Carbon Future:

How do we re-energise Australian governments, businesses and communities to work towards an agreed national narrative and coordinated policy response on climate change?
- Re-energise the narrative and focus on the opportunities
- Simple, stable and credible policy to put a price on pollution as a matter of urgency

How do we ensure Australia maintains its energy prosperity and role as a major exporter of energy and energy technologies to the world, while balancing its responsibilities to the world, while balancing its responsibilities to the climate and the global community?
- We call for a national carbon reduction plan to be a national priority, including objectives, targets and pathways supported by clear policies and constant measurement of success

How will we plan to live in a low carbon future –how do we imagine our infrastructure, our cities, our built environment, our transport systems?
- Planning and communication for a “sustainable population” eg. transportation, energy networks, buildings, freight & ports
- Adaptation measures for locked-in climate change are required

When you look back to the statements of the Business Council of Australia in November 2009 when we seemed within cooee of getting an ETS, we find business trying to contribute to taking the lead:

Both the Opposition and government should be commended for working together constructively to reach this agreement on an issue as complex and far-reaching as Australia’s response to climate change.

When passed, the legislation will enable Australian businesses to plan for and make the required decisions about investments to transition Australia to a low-emissions economy.

I find that it is now the leaders of corporations delivering electricity by harnessing dirty brown coal who are some of those most eloquent about the need for a price on carbon so that they might start economically to develop renewable and cleaner sources of energy. These people are concerned about the planet. They are concerned about their social responsibility. They are also concerned about the long term economic viability of their businesses. A strong moral stance on climate change makes better business sense than simply taking the short term head in the sand approach. These business leaders are better able to look themselves in the mirror, to engage in discussion with their children and grandchildren, and to hold their heads high in society when they argue in their board rooms for a concerted approach on climate change, attempting to mitigate the adverse effects of burning dirty brown coal as if there is no tomorrow.

Moral considerations also come into play when ordering the internal affairs of business. I commend to you the splendid interview with Bill Moss in the Sydney Morning Herald, 21 August 2010: “Fabulously rich and still begging”. Moss recalled the time at Macquarie Bank when he asked an underling, “Whatever happened to that person I referred through?” The answer: “Oh, we couldn’t employ them because they
had a disability.” Now plagued with facioscapulohumeral dystrophy (FSHD), Moss reflects:

If I can leave one memory in my life, I don't want it to be about Macquarie Bank. It got me to a point. It developed me. It was great. It gave me a chance to meet global leaders and build businesses that might never have been built, and to change that world. But that's not what I want to be remembered for. I want to be remembered for making a difference to society.

Moral choices in business are about deciding which workable option to adopt when there are realistic alternatives. What works includes what is right – right for directors, right for employees, right for shareholders, right for customers, right for suppliers, right for the community, and right for the environment. The morality of business poses these questions for us: If what works could also be right, why would we not choose the right rather than the wrong? If what is wrong would deliver a greater profit to the business or the shareholders, should we not forego the greater profit? What’s right is always a matter for debate best assisted by respectful, informed public conversation. Regulatory frameworks can help to guide and reward ethical behaviour, punishing and discouraging unethical behaviour. But in the end, regulatory frameworks are no substitute for the ethical or virtuous person sitting at the board table or at the management desk.

I recall discussing this issue with Jill Ker Conway in Boston a few years ago. She had been receiving considerable public criticism for being on the board of Nike when the company was exploiting women workers in sweatshop conditions in counties like Indonesia. Conway had been president of the prestigious Smith College, serving on the boards of Nike, Merrill Lynch, and Colgate-Palmolive, having been Chairman of Lend Lease Corporation. She stayed on the Nike board with the specific intention of improving the lot of those women in those sweat shops. Even though the improvement of their conditions would adversely impact on the Nike bottom line, Conway was adamant that the company had to do the right thing. In part because of her advocacy, the company did change its way, opting more to do the right thing.

The formation of the virtuous person is a lifetime task or vocation. Business will be the better, and the world will be the better, for every business person (no matter what their religious or philosophical belief system) with a commitment to doing right by all persons affected by actions of the business. Business like sport, politics and the law, will always be able to tolerate some amoral and immoral actors. But it will not survive and thrive unless its moral actors continue to shape the regulatory ethical frameworks and lead by example having an eye to profits, social responsibility and the future of the planet.