



AlphaGovernancePartners

Risk Governance for Sustainable and Digital Investment Management



Sound fiduciary decision-making for finance directors:
support from moral philosophy

Dr. Eelco Fiole, CFA, Fellow IoD, Managing Partner
Adjunct Professor Finance Ethics, HEC Lausanne
fiole@alpha-gp.com, [@eelco_fiole](https://twitter.com/eelco_fiole)

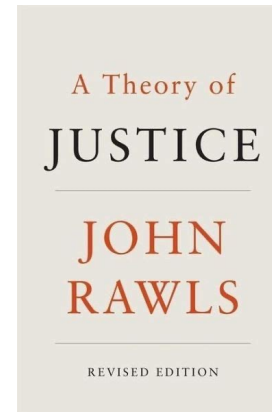
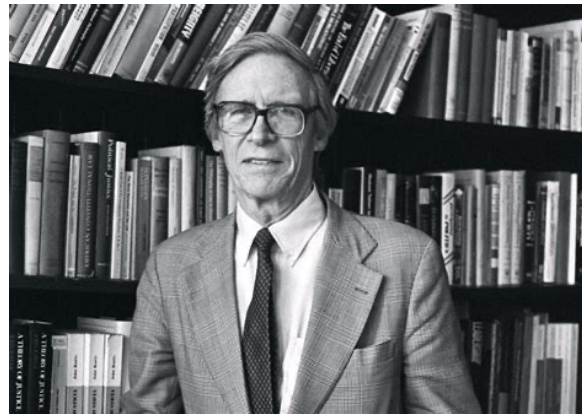
May 2023



That includes your company

“Justice is the first virtue of social institutions”

John Rawls
(1921 – 2002)





A: THE WORLD WE FIND OURSELVES IN

1. UN SUSTAINABLE DEVELOPMENT GOALS SHOW GRAND CHALLENGES OF OUR TIME



No.	Description
1	End poverty in all its forms everywhere
2	End hunger, achieve food security and improved nutrition and promote sustainable agriculture
3	Ensure healthy lives and promote well-being for all at all ages
4	Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all
5	Achieve gender equality and empower all women and girls
6	Ensure availability and sustainable management of water and sanitation for all
7	Ensure access to affordable, reliable, sustainable, and modern energy for all
8	Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all
9	Build resilient infrastructure, promote inclusive and sustainable industrialization and innovation
10	Reduce inequality within and among countries

Sustainable Development Goals cover social and environmental concerns aka grand challenges

2. UN SUSTAINABLE DEVELOPMENT GOALS SHOW GRAND CHALLENGES OF OUR TIME



No.	Description
11	Make cities and human settlements inclusive, safe, resilient, and sustainable
12	Ensure sustainable consumption and production patterns
13	Take urgent action to combat climate change and its impact
14	Conserve and sustainably use the oceans, seas and marine resources for sustainable development
15	Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss
16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels
17	Strengthen the means of implementation and revitalize the global partnership for sustainable development

Sustainable development “seeks to meet the **needs of the current generation, without** compromising the ability of **future generations** to meet their own needs, it means enabling people, now and in the future, achieve a **satisfactory level of social and economic development** and human and cultural achievement, while making **reasonable use of the earth’s resources**, preserving species and natural habitats”

United Nations (1987) *Report of the world commission on environment and development: our common future*. Oxford: Oxford University Press.

3. WICKED PROBLEMS ARE COMPLEX, AS THEY ARE SOCIAL AND DEPEND ON ETHICAL JUDGMENT



No.	Problem characteristic
1	in order to describe a wicked problem in sufficient detail, one has to develop an exhaustive inventory of all conceivable solutions ahead of time, as the information needed to understand the problem depends upon one's idea for solving it. As such, to find the problem is to find the solution: this may prove difficult. Given the intrinsic complexity of individual risks and the dynamic nature of risks, any solution to manage, mitigate or avoid risk is temporary
2	Criteria for when a solution has been found are lacking: there are no ends that link interacting open systems to the causal chains, a solution therefore will arrive on a level of good-enough, instead of one unique best solution
3	There are no true or false answers. The assessments of proposed solutions are expressed as "better or worse", "satisfying" or "good enough", depending on the level of goal achievement
4	There is no immediate and no ultimate test of a solution to a wicked problem. Any solution, after being implemented, will generate waves of consequences over an extended period of time
5	Every implemented solution is consequential and leaves traces that cannot be undone. There is no possibility to learn by trial-and-error, every solution is a "one-shot operation"
6	there are no criteria that enable one to prove that all solutions to a wicked problem have been identified and considered. A host of potential solutions arises, and another host of solutions is never thought up. It is a matter of human judgment which of these solutions should be pursued and implemented

Rittel H. and Webber, M. (1973) *Dilemmas in a general theory of planning*. Working paper, Institute of Urban & Regional Development, University of California

4. WICKED PROBLEMS ARE COMPLEX, AS THEY ARE SOCIAL AND DEPEND ON ETHICAL JUDGMENT



No.	Problem characteristic
7	Every wicked problem is essentially unique and may know an additional distinguishing property that is of overriding importance. Part of the art of dealing with wicked problems is the art of not knowing too early which type of solution to apply
8	every wicked problem can be considered to be a symptom of another problem. The level at which a problem is settled depends upon the self-confidence of the individual and cannot be decided on logical grounds
9	There is no rule or procedure to determine the “correct” explanation or combination of explanations. In dealing with wicked problems, there are several more ways of refuting a hypothesis than there are permissible in the sciences. The individual’s “world view” is the strongest determining factor in explaining a discrepancy, and therefore, in resolving a wicked problem
10	As the aim is not to find the truth, but to improve some characteristics for beneficiaries, pension funds are liable for consequences of the actions they generate. In the face of this, hypotheses which withstand attempts at refutation may be of little value, when consequences turn negative



Solutions to wicked problems:

- Are not perfect and are outcomes of negotiated political processes
- Don't do justice to all stakeholders at the same time
- Are valid for a limited period of time and need periodic review

Rittel H. and Webber, M. (1973) *Dilemmas in a general theory of planning*. Working paper, Institute of Urban & Regional Development, University of California



B: CORPORATE CONSIDERATIONS

5. COMPANIES CAN SOLVE FOR PURPOSE



- Corporate purpose: producing profitable solutions for problems of people and planet, not profiting from producing problems for either
- **Corporate governance is about aligning managerial interests with corporate purpose.** Governance increasingly overlooks the production of solutions for problems companies are solving, for their chosen audience including the notion of why companies are particularly well suited to solve these problems
- **Corporate purpose should be specified and implemented in practice mainly by the board of directors and the top managers,** who should reconcile the interests of all stakeholders and the community in general

British Academy Future of the Corporation program (2021), *Policy & practice for purposeful business*, doi.org/10.5871/ba- fotc/9780856726699.001

Mayer, C. (2021), *The governance of corporate purpose*, European Corporate Governance Institute - Law Working Paper No. 609/2021

6. COMPANIES CAN SOLVE FOR PURPOSE



Finance function?

Enterprise cost-based accounting approach: attach costs and revenues to inputs and outputs, AND, for the impacts of a company on financial and non-financial resources (externalities), irrespective of if these resources fall **within or outside of the legal boundaries** of the firm (towards **effective** boundaries)

Societal valuation-based approach: establish the impact of a company's activities on society and the environment, beyond financial valuation for shareholders

Assessments from the perspective of different stakeholders, reflecting their own perspectives on the firm and its corporate purpose

True and fair?

7. LET'S ASSUME YOU ARE A CFO



- You underly and (voluntarily) accept a fiduciary duty to the firm and its shareholders
- You all know the legal fiduciary duty in your jurisdiction

But: what does *fiduciary* mean?

- A relationship is fiduciary in nature when one party (the fiduciary) has *discretionary power over the interest of another* (the beneficiary, a stakeholder) and *is obligated to use that power to serve the other's best interest*

Legal notion

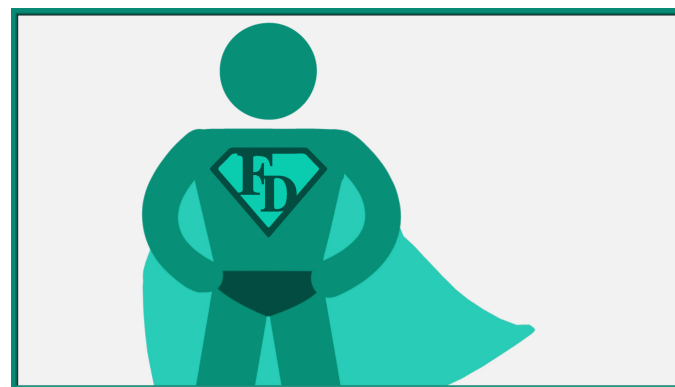
- Your industry is specialised; people need to **trust** strangers. A beneficiary *cannot meaningfully oversee* the work of the fiduciary – the beneficiary is **vulnerable...**

Ethical notion



8. LET'S ASSUME YOU ARE A CFO...

- So, it is ***related to trust***: protecting assets for those who cannot manage this themselves
- In 1928 in the US, Chief Judge Cardozo (1928) stated: *“a trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior”*
- So the fiduciary duty is not a market element, and is **not part of contract law...**
- Fiduciaries serve a **huge social interest**; failure is seen as a huge moral wrong...



Cardozo, C. in *Meinhard v. Salmon*, 249 NY 458, 464, 164 NE (1928), pp. 545-546

9. JUGGLING CONFLICTS OF INTEREST



A **conflict of interest** occurs when a **personal or corporate interest interferes with the ability** of an individual or institution **to act in the interest of another party**, when the person or corporate has **an ethical or legal obligation** to act in that other party's interest

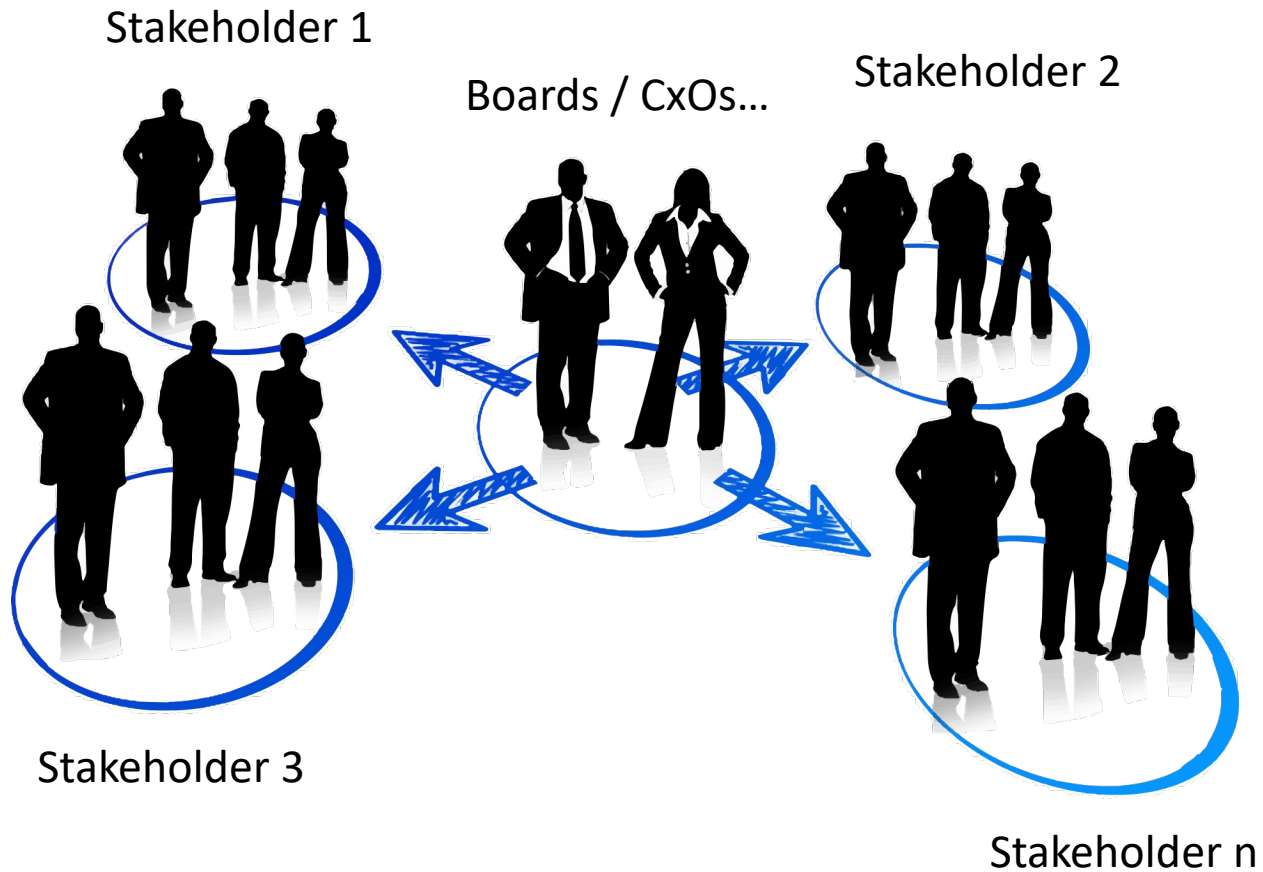
Three distinctions

1. Actual and potential conflicts of interest -> impact on perception
2. Personal and impersonal conflicts of interest: self-gain, conflict of duty (2 masters)
3. Individual and organizational conflicts of interest: organization can fail, no individual is at fault

Corporates: **conflicts of interest are mostly potential, impersonal and organizational**

But, these **conflicts of interests are at the mercy of behavior of decision-makers** (so we need competition, disclosure, rules and policies, and structural changes)

10. FACING DIFFICULT DECISIONS





C: ETHICAL CONSIDERATIONS

11. DECISIONS CAN HAVE ETHICAL DIMENSIONS



Directors' judgment is needed on **moral intensity**¹:

1. Social consensus: **social agreements** on what's right and wrong
2. Magnitude of consequences: overall **benefit and harm** of a decision
3. Probability of effect: **likelihood** that decision will lead to harm
4. Temporal immediacy: **time** between decisions and its consequences
5. Proximity: the psychological **distance** between director and those affected
6. Concentration of effect: **spread of harm** over few or many people

And on **moral framing**²: this determines the way a situation involving ethical aspects is presented or perceived and can be used by decision-makers to diminish the ethical dimension involved to justify unethical courses of action

¹Jones, T. (1991) "Ethical decision making by individuals in organizations: an issue contingent model" *Academy of Management Review*, Vol.16, No.2, pp. 231-248.

²Trevino, L. and Nelson, K. (2007) *Managing business ethics: straight talk about how to do it right*. 4th ed. Hoboken NJ: John Wiley & Sons.

12. WHICH LEAD TO ETHICAL RISKS



Ethical risks: the risks that decisions and actions, both managerial as well as transaction-related, are deemed to be unethical in the eyes of internal and external stakeholders

A. The firm and the law: responsibilities

B. The firm and stakeholders

1. have we correctly specified and valued our stakeholders
2. what are our non-legal, value-based obligations to them
3. do we understand the relationship between our actions/decisions and fairness

C. The firm and the business environment

1. do we understand societal values and the relationship of those to ours
2. do we understand the consequences of our behavior on our environment

13. WHICH LEAD TO REPUTATIONAL DAMAGES



Reputation is the opinion (social evaluation) of stakeholders toward a person, a group or organization. Reputation helps drive the excess value of a firm

Reputational capital gains or losses when the following changes

Cumulative reputation

Economic performance

Stakeholder interface

Legal interface

Symptoms of loss of reputational capital include

- ➔ Client flight and loss of market share
- ➔ Investor flight and increase of the cost of capital
- ➔ Talent flight
- ➔ Increasing contracting cost



Carillion PLC

Carillion directors to face FCA action for misleading investors

UK regulator plans to publicly censure the company rather than impose financial penalties



Carillion was liquidated in 2018 with just £29m in cash and £7bn in liabilities, leaving taxpayers to pick up the pieces © Bloomberg

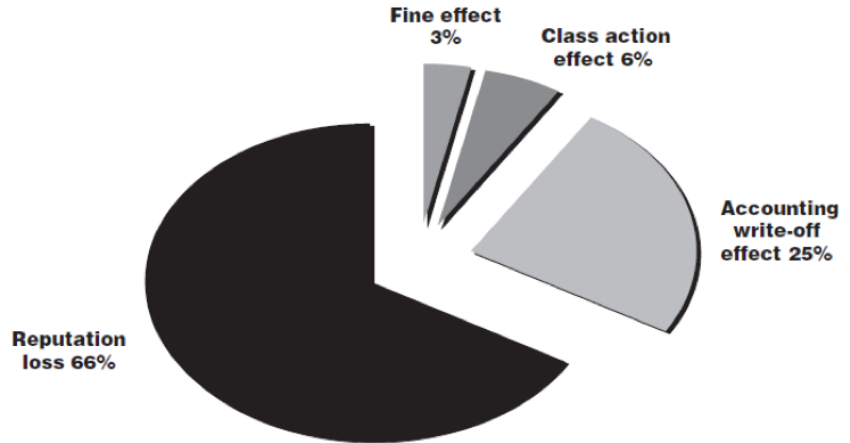
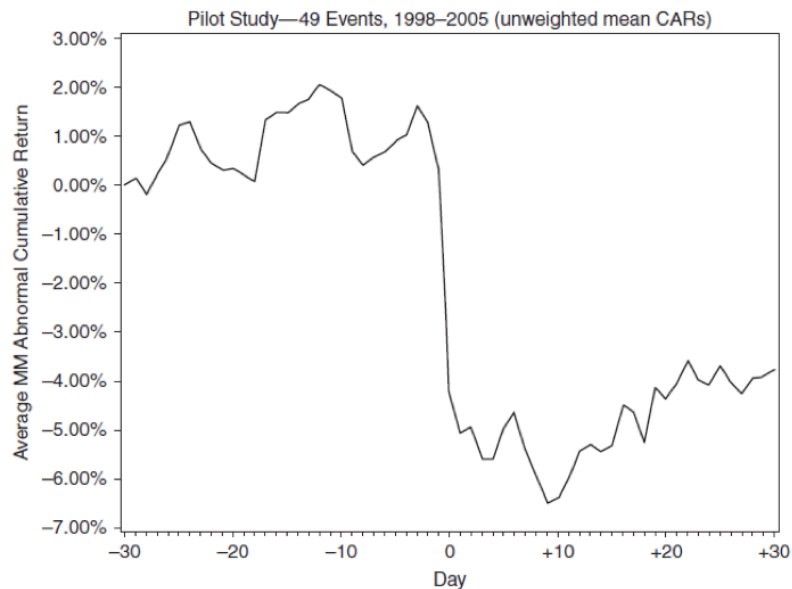
Matthew Vincent and Gill Plimmer NOVEMBER 13 2020

The UK's financial regulator has said it is planning to take action against former directors of Carillion, almost three years after the government contractor collapsed under £7bn of liabilities, leaving taxpayers to pick up the pieces.

14. AND THOSE LEAD TO FINANCIAL DAMAGES



Studies found **negative** mean cumulative abnormal results of up to 7% and reputational losses far larger than cost of fines and accounting write-offs



Erosion of trust in the system of governance: law makers, regulators, directors

Societal anger, feeling of betrayal, followed by withdrawal: “*why bother?*”

15. CAN WE RELY ON THE LAW TO ENFORCE DUTIES?



No.	Maybe, however...
1	The law is a rather crude instrument that is not suited for regulating all aspects of financial activities, especially those that cannot be easily anticipated, reduced to precise rules, and enforced by effective sanctions
2	The law often develops as a <u>reaction</u> to activities that are considered to be unethical. Many people think their actions are legal even if not always moral
3	Merely obeying the law is insufficient because people demand ethical treatment. The law is a relatively low standard of a minimally acceptable level of conduct that is generally below expectations and ambitions.
4	Market exchanges between two parties often have third-party effects: they affect others who are not parties to a transaction. These effects may be externalities.

► The law can only mitigate conflicts of interest so far... We need ethics...

Boatright, J. (2014) *Ethics in finance*. 3rd ed. Chichester: John Wiley & Sons

16. WHAT IS ETHICS, REALLY?



- Finance ethics received little attention - finance people not trained in ethics - ethics people not trained in finance....
- Ethics as a field of practice: it sounds esoteric, we want to be precise, know for certain. Can senior executives handle ambiguity? What is ethics, really?
- Ethics or moral philosophy is a branch of philosophy that *involves systematizing, defending, and recommending concepts of right and wrong behaviour* (Wiki 😊)
- Ethics seeks to resolve questions of human morality by defining concepts such as good and evil, right and wrong, virtue and vice, justice and crime
- Ethics is having the **right thought** and doing the **right thing** - it doesn't get more precise
- So on making good decisions for others, it seems fiduciary duty falls in the domain of ethics...



17. IDENTIFYING ETHICAL RISK

We first need to recognize the presence of an ethical issue and then identify the ethical element in this issue; there are six non-cumulative elements

1. Ethics invariably involves some **impact on people's welfare**
 - a. Inflicting harm vs. relieving suffering, or providing benefit vs. doing harm
 - b. Inflicting harm always requires justification and compensation

Key question: **is anyone being harmed, and if so, can harm be justified and how does compensation take place?**

2. Much of ethics consists of **having a duty** or an obligation to act in certain ways

Key question: **what is my duty or obligation in this situation, and to whom?**



18. IDENTIFYING ETHICAL RISK

3. Concept of *rights* is prominent in ethics: human, employee, customer, shareholder rights etc. Rights are often thought to be correlated to duties

Key question: **are anyone's rights being violated, and if so, can the violation be justified?**

4. Concepts of procedural and/or substantive **fairness or justice** are often at issue in matters of ethics

- Procedural fairness: Fairness consists of treating people equally in accordance with some rule, agreement or expectation
- Substantive fairness assumes outcomes are in accord with justified rules

Key question: **is everyone being treated fairly or justly?**



19. IDENTIFYING ETHICAL RISK

5. **Honesty** might be regarded as a duty, especially in developing the kind of relationships essential for financial activity – a basic moral requirement

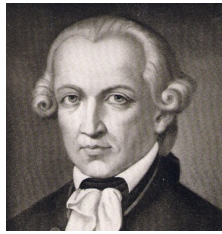
Key question: **am I being entirely honest in my actions?**

6. **Concept of dignity:** the fundamental moral requirement that all people be treated with respect as human beings

Key question: **am I showing respect for all persons involved?**

▶ These are some tools to recognise ethical risks

20. ULTRA BRIEF INTRODUCTION TO DEONTOLOGY



Immanuel Kant (1724-1804)

(1) Look at actions, not in isolation, but as following from rules of conduct (laws)

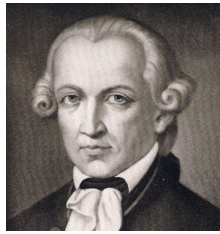
(2) *“Morals is not really the doctrine of how to make ourselves happy, but of how we are to be worthy of happiness”*

(3) *“Act as if the maxim of your action were to become, by your will, a universal law of nature”*: this is Kant’s definition of reasonability, it focuses on intent

(4) An instruction to behave in a particular way is an imperative. Only the categorical imperative has moral content: absolute and unconditional

The ultra brief introductions are sourced from Wolff, J. (2018) *An introduction to moral philosophy*. New York: W.W. Norton & Company.

21. ULTRA BRIEF INTRODUCTION TO DEONTOLOGY

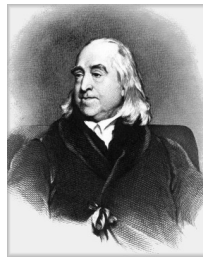


An action has moral worth if used according to (3). Neglecting others is a failure of a duty to other people. Kant considers human beings under two aspects:

- a) A natural, empirical being of experience, with desires and happiness-seeking
- b) A being with inner freedom, acting in accordance with reason and capable of following moral law

Each person is both ruler and ruled: morality as a system of rational laws, a system that binds people. It follows then that a duty to oneself is a duty to subjugate one's desires to one's rational freedom (so follow reasonability as in (3)...)

22. ULTRA BRIEF INTRODUCTION TO UTILITARIANISM



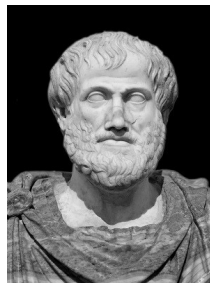
Jeremy Bentham (1748-1832)

Principle of greatest happiness (= utility): that principle which approves or disapproves of every action whatsoever, according to the tendency if the action promotes or opposes happiness

Happiness is understood to be the balance of pleasure over pain, cumulated for all humanity. Bentham's central convictions:

- (1) Morality requires everyone to be treated as an equal
- (2) Only things that matter are the pleasures and pains of sentient creatures (...)
- (3) Morality and good governance (of humanity) have to be based on firm principles

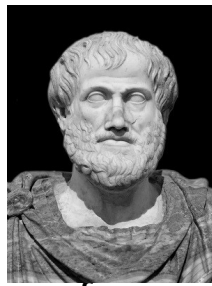
23. ULTRA BRIEF INTRODUCTION TO VIRTUE ETHICS



Aristotle (384-322 BC)

- (1) People cannot always expect to find precise answers to ethical questions, because these are often messy, complicated and ambiguous
- (2) People should expect answers to be tentative or imprecise
- (3) Acting morally, focused on living a good life, requires practical wisdom, which requires judgment and experience, it requires thinking and acting
- (4) Concern is with what sort of people we should be: what character we should try to develop – what do we feel (e.g. sympathy) – how should we live

24. ULTRA BRIEF INTRODUCTION TO VIRTUE ETHICS



(5) Living a good life = being happy (\neq pleasure) -> Aristotle focuses on the function of a human being, which is flourishing

(6) *„Human good turns out to be the activity of soul exhibiting virtue, in accordance with the best and most complete“*

(7) Intellectual virtues: reflection and contemplation leads to the highest degree of happiness, because it is more godlike than anything else we do, or: the conception of happiness is to live life in conformity with human excellence, or virtue

(8) A morally admirable person is someone who possesses the virtues and acts on her/his perceptions on what ought to be done (a.k.a. practical wisdom)



D: SOME CONCLUSIONS

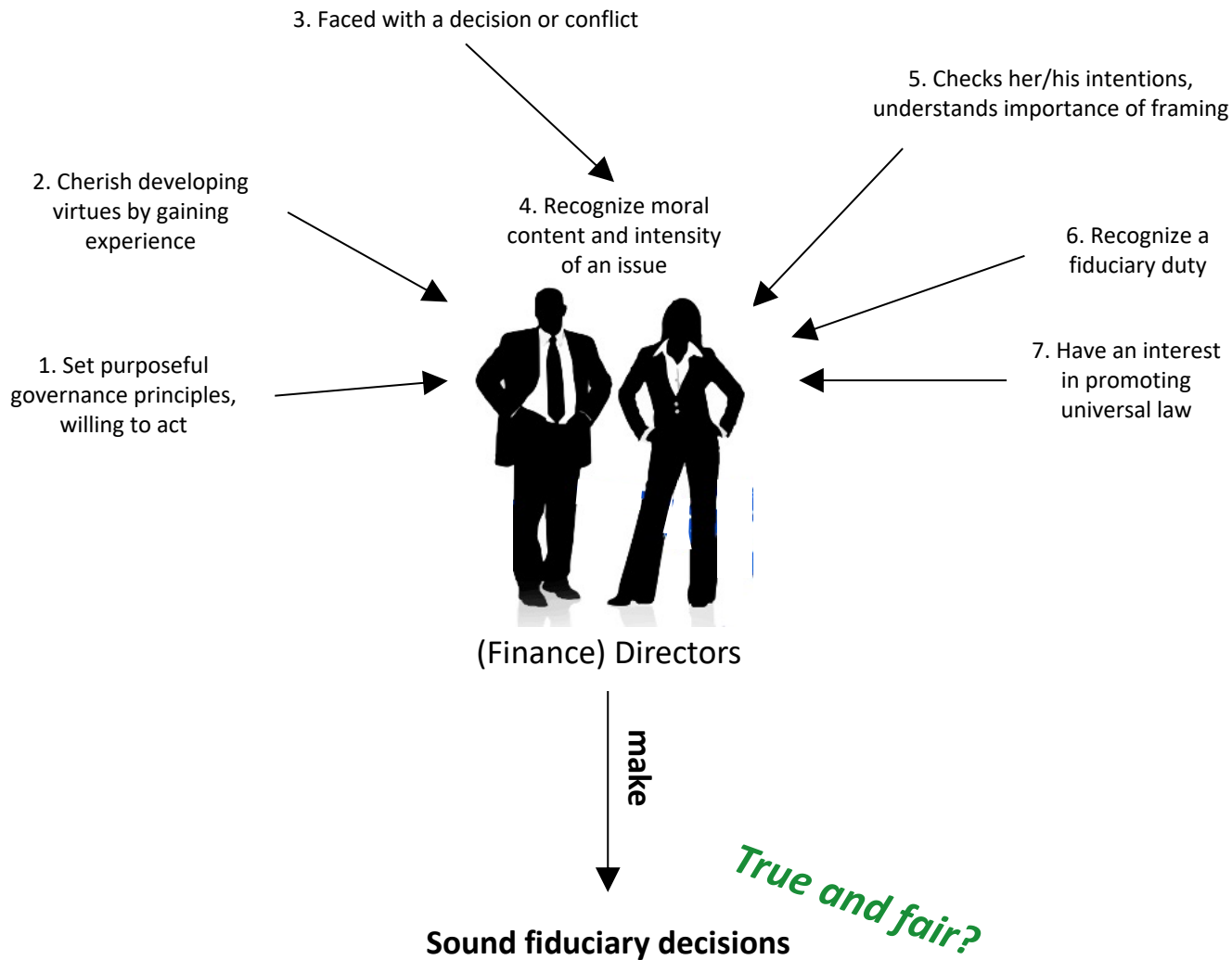
25. CONCLUSION FROM ETHICS



Deontology	Utilitarianism	Virtue Ethics
Rules of conduct can be established (excluding influencing dependencies)	Firm principles for governance can be established	Virtues are important. Check how they are impacted by relationships, commitments, assets at stake, incentive systems, inside information etc.
Check intention and categorize as categorical	Stakeholders can be seen as equal persons	
Check if a decision be seen as universal law	Happiness of stakeholders can be assessed	

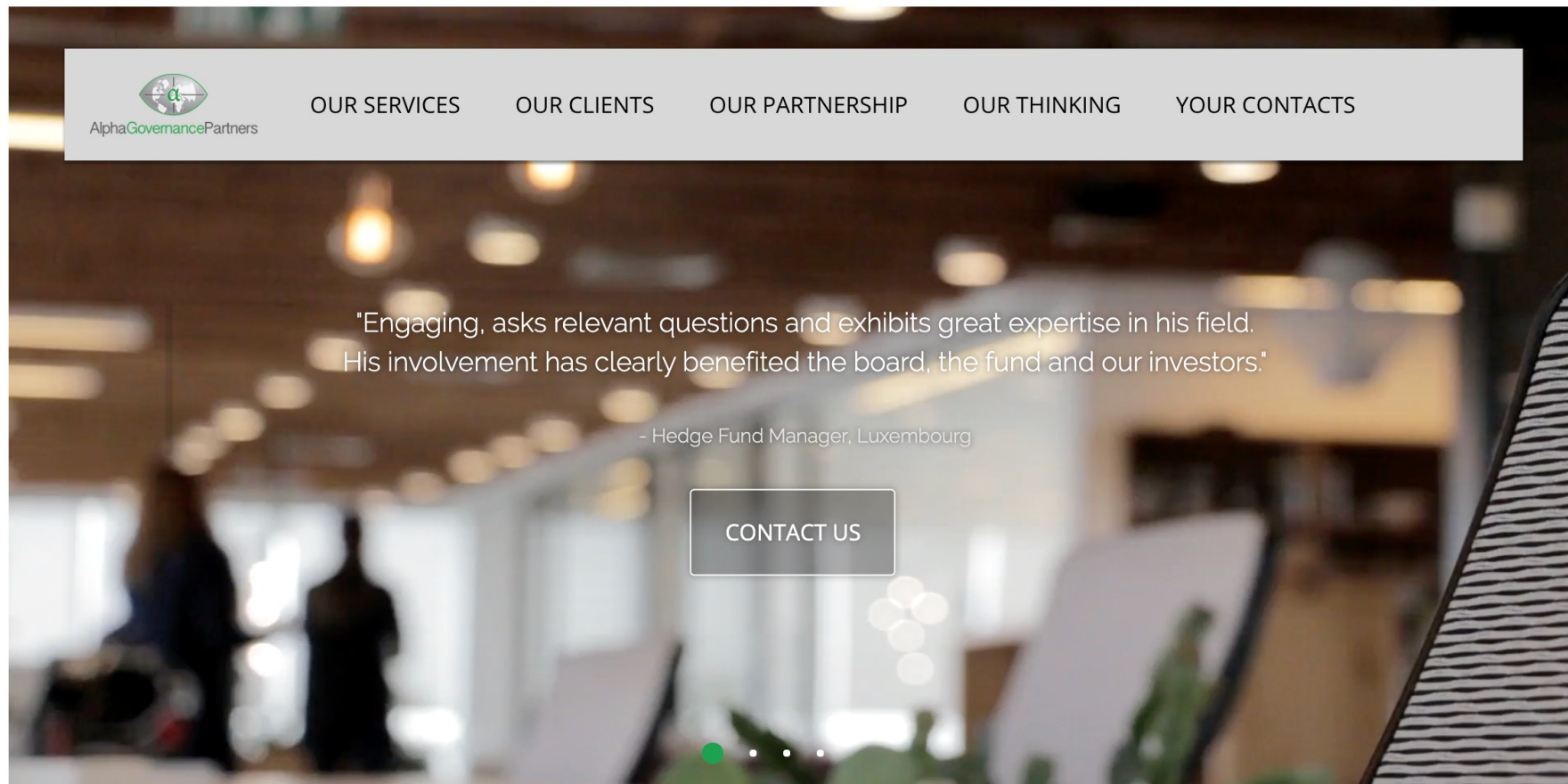
While we can regulate, many questions remain: on how to gain experience, on how situations may vary, on consistency. But we already know from the legal definition that some virtues are required: care, prudence, loyalty, impartiality, and others

26. FINAL CONCLUSION



- Today's world...
- Corporate purpose
- The CFO
- Conflicts of interest
- Ethical risks
- Ethical approaches
- ▶ Better decisions


APPENDIX: MORE ON WWW.ALPHA-GP.COM



Welcome to Alpha Governance Partners: high-end investment and fintech fiduciaries.

ANNEX 2: Dr. EELCO Fiole, CFA, FELLOW IOD - Zurich & Singapore



 Managing Partner (co-founder), Alpha Governance Partners (AGP), fiole@alpha-gp.com, +41 76 522 8140, +65 8820 7815, @eelco_fiole
Alpha Governance Partners, the only jurisdiction-agnostic, conflict of interest-free, high-value-add partnership providing governance-focused professional fiduciaries to any company or vehicle in finance and fintech. The 6 partners serve on financial entities and vehicles such as banks, wealth managers, asset managers, investment funds, charities, family office vehicles, management companies, supra-nationals, pension funds and fintech incl. blockchain and are spread over Bologna, Copenhagen, Geneva, London, New York, Singapore, Tokyo, Toronto and Zurich

Summary

Eelco is a non-linear T-shaped finance polymath and trusted, regulator-vetted professional fiduciary and advisor. Versatile and hands-on, up-to-date lateral thinking, resilient and enabling, globally networked, bridging the big picture and the detail. Strong analytical, synthesis and communication, motivation and negotiation skills, building cross-functional relationships on all levels, across cultures. With almost 30 years in the industry, of which 15+ years in fiduciary board, CFO- and COO-roles, strategizing and executing, clients and peers value his integrity, presence, experience, creativity, judgment and methodological team approach to solve issues, allowing for ambiguity. Eelco is a regular speaker on governance and ethics and has appeared on a.o. CNN Switzerland and the OECD



Formative Experience

Designing financial and investment governance for the Tezos Foundation (largest ICO in 2017), managing a burning multi-bn hedge fund platform at Credit Suisse, the Lehman-, Madoff-, Parmalat-events, a pan-African change project at a Lagos-listed universal bank, controlling for exponential growth at UHNWI-firm Centrum Bank, the UBS/SBC-merger integration, group-level ABN AMRO-training

Career

- **Professional director and advisor (AGP), 2015-**, impact priv. equity, pension f., UHNWI-peer gov., sustain. energy tech, Africa fintech, tokenisation, blockchain, Web3, prev.: blockchain, fintech, quant, hedge f., em. markets, ins.-linked, struct. prod., priv. debt, trade fin., China eq., Africa real est.
- **A decade as C-level in wealth- and investment management, and blockchain** a.o. CFO at the Tezos Foundation in Zug (equity USD 600 mn, crypto and fiat), COO at Credit Suisse Alternative Investments, with teams in Zurich, London, New York, and Pune with risk-based veto rights (AuM USD 17 bn), Group-CFO at alternatives provider Millennium Global Investments (backed by RIT Capital and APAX) in London and Geneva (AuM USD 15 bn), CFO at UHNWI-manager Centrum Bank, now part of VP Bank, Vaduz (AuM USD 10 bn) and CFO of the UBS Corporate Center in Zurich (incl. Group Treasury, -Participations and -Real Estate) during and after the UBS/SBC-merger
- **5 years as consultant and project leader**, incl. at PwC and zeb Zurich, with focus on financial institutions (incl. on the ground in Poland, China, MENA, Africa). **6 years as corporate and institutional banker** and financial analyst at UBS Basel and ABN AMRO Amsterdam/Maastricht

Education

- PhD Economics (Basel), ExM Environmental Governance (Geneva), MSt Social Innovation (Cambridge), M Blockchain Technologies (Barcelona), MAS Applied Ethics (Zurich), M Positive Leadership (Madrid), M Laws (London), MSc Business Administration, BEng Mechanical Engineering (Rotterdam)
- CFA, CDir, QRD, B-Leader, CIFD, SCR, FRM, CAIA, CDDA, IFQ, CL6σBB, exec.ed. at a.o. Chicago, Harvard, INSEAD, Stanford, Stern, Tandon, Wharton

Extracurricular

- Recipient CFA Institute Inspirational Leader Award 2022 for Ethics. Adjunct Professor Finance Ethics Universities of Lausanne and Neuchâtel, Chair Alpha Summit Advisory Group, CFA Institute, Member Advisory Committee, ESG Exchange, Johannesburg, Council Member, Institute of Directors, London, Director, Cambridge University Sustainability & Social Impact Society, Chair, UniNe Ethics in Finance Award, University of Neuchâtel, Jury Member Ethics & Trust in Finance Global Prize, Geneva. Previously a.o. Instructor Risk Management, Euromoney, Instructor Investment Governance, Swiss Finance Institute, Member Exam Council CAIA Association Contributor Sustain. Hedge Funds, UNPRI. Various prof. publications
- Languages: English, German, Dutch, with a base in French, Mandarin and Spanish
- Other: 20+ years substantial private exposure to China (married in Shanghai in 2002). Visited approx. 100 countries. Enjoys seasonal sports, yoga