

manifested. Employers and employees no longer see each other or their customers as objects, machines, or, to use a term from economics, “widgets.”

To deny God’s mandates “leads to the abuse of power by leaders and followers, by governors and the governed, by employers and employees” (p. 194). To acknowledge God’s mandates allows the individual Christian to experience both freedom and responsibility. The Christian becomes free to be a disciple of Jesus Christ in the world by living as a responsible member of the community.

Dietrich Bonhoeffer and Business Ethics is well organized and written with clarity. It is not one of those “dissertation-become-books” that is more likely to put the reader to sleep than inform and enlighten. The book, itself, is a quality publication for which the publisher deserves recognition. However, there is one unfortunate shortcoming that may compromise its usefulness as a textbook. It does not include an Index. An Index, at least so far as this reviewer is concerned, is an essential part of any book that is not a novel.

Walton Padelford deserves recognition for taking the teaching of business ethics beyond using some definition of Christian ethics to examine hypothetical cases to understanding ethics.

***Human Rights and the Ethics of Globalization*, by Daniel E. Lee and Elizabeth J. Lee. New York: Cambridge University Press, 2010. Paperback, xvi + 264 pages. ISBN: 978-0521519335.**

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Regardless of whether or not one believes that there are or should be things called Rights, natural rights, inalienable rights and other variations on the rights theme, it is hard to deny that human beings claim having them. That is as true of scholars as it is of employees mistreated by corporations, citizens denied freedoms from governments, or for that matter, students claiming unfairness by their professors. In an effort to bring more precision to discussion about rights, especially with respect to issues pertaining to business, Daniel E. Lee and Elizabeth J. Lee present in this book a balanced framework of the philosophical foundations of human rights and ethics and how these rights inherently matter to individual lives and conscientious decision-makings by multinational companies. The book is a welcome addition to the business ethics literature, though it is surprising that the Lees do not build on the extensive literature on the topic in the field itself. Nevertheless, the Lees’ contribution is valuable, especially given the way they connect philosophical formulations to the legal enforcement of rights.

I. STARTING POINTS

A. *Foundational Methodology*

The Lees reject the claim of self-evident moral truths, recognizing that such claims leave us with unanswered questions.¹ Instead, the authors propose to understand human rights and ethical issues from the perspective of several differentiations and follow a rights-based approach well familiar to people in the field. In particular, they distinguish between negative rights (rights of forbearance) and positive rights (rights of entitlement) as well as introducing several others based on their innateness, their relationality and their contractarian basis. They further urge that we refrain from making claims about rights of entitlement unless one is also prepared to address the question of whose job it is to make good on those rights.²

The thrust of the Lees' distinctions is that in a competitive global economy, it is possible for multinational corporations to fulfill greater social responsibility, uphold higher ethical standards, appeal to conscience, and respect human rights³ if such rights, responsibilities, and standards are to be defined in narrower and more precise terms.

Following these distinctions, the Lees employ Kant as the starting point for constructing a business ethics that can serve as a framework for ethics of globalization.⁴ Drawing the second formulation of Kant's categorical imperative, the Lees emphasize the importance of treating oneself and others *never merely as means but always at the same time as ends in themselves*.⁵ Echoing a long-made move in the field, they question the end that a business serves and answer with the concept of stakeholders, including customers, employees, suppliers, competitors, and the communities in which companies operate.⁶

The authors suggest that our responsibilities are the same to our near and distant neighbors in the ethics of globalization. The ethical principle for multinational companies to refrain from harming others thus also applies equally to near and distant neighbors. The Lees oppose the idea that moral duty should be thought of in terms of concentric circles of responsibility. In such a model, the business' affirmative duties prefer near neighbors to those of our distant neighbors. But the very fact of globalization makes distant neighbor become near neighbors one day.

B. *A Critique*

From the perspective of business ethics, two major questions arise from the Lees' methodology. The first pertains to the omission of many of the leading thinkers in the field who have addressed many of these same problems. When the field was in its foundational period of philosophical development, several scholars made contributions that could bolster or make more precise the Lees' argument. For example, Patricia Werhane, in her classic work *Persons, Rights, and Corporations*, not only dealt with some of these same considerations of categorizing rights, but in elucidating her moral framework on the basis of basic versus non-basic rights, she was able to articulate a prioritization of various rights.⁷ Indeed, the issue of prioritization of stakeholder interests has been a common topic for stakeholder theory for years,

beginning with its foundational articulation by Ed Freeman.⁸ Werhane's "basic vs. non-basic" differentiation was one such attempt. Arguing out of a social contract perspective, Thomas Donaldson and Thomas Dunfee⁹ provided a two-tiered evaluation based on moral free space and cross-cultural hypernorms.¹⁰ Also drawing from Rawls, Robert Phillips also provided an argument on fairness and merit that would seem to resonate with the Lees' approach.¹¹ From the standpoint of globalization issues, Donaldson's¹² and Richard De George's work¹³ would seem to be helpful to address issues of prioritization of values.¹⁴ The work of these seminal figures in the field would seem to help to sharpen the agenda the Lees set out for themselves.

At the same time, sometimes a fresh articulation of a perspective carries with it its own value. Absent the internally driven critiques of point-counterpoint debates that has defined a significant part of the field, the Lees reset the debate freshly. This, the Lees have done and regardless of whether their sources include leading figures in the field of business ethics, their argument is worthy of business ethicists to attend to. Moreover, what often is lacking from many of the philosophical treatment of deontological ethical claims—with some exception, such as via Dunfee—is a direct connection between the philosophic and the legal. In this respect, the Lees offer an important argument.

II. THE PRACTICAL ISSUES

In Parts II and III of the book, the Lees work on practical grappling of their model in two different ways. The first way is through case studies. The second way is through a careful consideration of the ways in which rights might be enforced in today's global world.

Practical implementations of the philosophical analysis and practice guidelines are discussed through the four case studies in four representative countries: sweatshops in China, Firestone in Liberia, Free trade coffee in Ethiopia, and low wage Mexican factories in Maquiladoras. Fundamental to their resolution of all the cases is the means-end criteria and what that means for a business to engage in real ethical practice.

A. Legal Options

Of more significance, we believe, is the Lees' confidence in the law to be a tool to enforce human rights. Rights do have a clarifying edginess to them. If one has a right, one has something that sounds as if it is a strong claim. Yet, if there is no enforcement mechanism for an asserted right, then rights lose a good deal of strength. The Lees address this plainly. They understand that the precise distinctions they make have little efficacy if there is no mechanism to back them up. And so, they spend time sorting through possible options.

They note, for instance, that there is no world organization that might enforce human rights violations. Such an organization may ultimately form, but currently, there is scant reason to base rights protection on one. Another option would be for legislation that would explicitly provide for human rights protection. This extra-territorial application of the law has been used both by the United States in terms

of anti-corruption laws¹⁵ as well as the European Union in its Privacy Directive.¹⁶ However, they also reject the notion of Congress legislating extraterritorially.¹⁷ They also point out the limits of trade sanctions, another possible way to attempt to enforce human rights standards as well as criticizing the limited scope of trade agreements. Each of these may be able to play a role at certain times and places, but the mechanism the Lees are looking for, they argue, is contained in the possibilities of the U.S. Alien Tort Act.¹⁸

The Alien Tort Act dates back to the original 1789 Judiciary Act for the United States. Its language is “The district courts shall have original jurisdiction of any civil action by an alien for a tort only committed in violation of the law of nations or a treaty of the United States. The law laid in a sleepy, relatively forgotten state until the 1980s, when it came to life in the prosecution of a Paraguayan security officer for torture.¹⁹ Since then, it has been used in several international cases, such as against Unocal for its security forces’ alleged violation of human rights of Burmese in protecting the oil company’s pipeline; Texaco and Rio Tinto also faced civil suits under the law.²⁰ Internet giants Google and Yahoo joined the extractives in feeling the sting of an Alien Tort Act suit, for the human rights violation allegedly occurring in China.²¹ Several environmentally-based cases have been filed as well. The Lees carefully argue the rational, evolution, and criteria pertaining to the Alien Tort Acts. A central feature for its possible efficacy is the development of consensus of international legal norms. If these continue to develop, then the U.S. courts provide a lever, via the Alien Tort Acts, to enforce international understandings of human rights.

B. A Legal Critique

In a previous chapter, the Lees expressed skepticism over the desirability of extraterritorial Congressional legislation to enforce human rights overseas. So, why would we think that the U.S. court system can do what Congress should not? The answer lies in the development of international legal norms. With such *international* norms in existence, then it is much easier for a nation-state’s court system—whether in the U.S., Norway, or Ethiopia—to enforce the norm (provided that country has something similar to an Alien Tort Act) than for a nation-state’s legislature to claim legal authority outside its borders. In other words, core to the Lees’ approach is not the extraterritorial enforcement of U.S. rights overseas, but the enforcement of international legal norms by a U.S. court. Thus, at least on a *prima facie* level, the confidence the Lees express in the Alien Tort Act as an enforcement mechanism has merit. There are, however, two downsides.

The first, phrased in general terms, is the fear that any one country’s interpretation of an international norm may be in conflict with another, thereby rendering *international* norms not so international. Would the Brazilians interpret an international legal norm the way judges would in San Francisco? If the Alien Tort Act is a useful tool to protect human rights, would we welcome complementary tools, created by legislatures in and applied by courts in North Korea or Cuba? Conflicts resulting

from such applications of international legal norms may place significant pressure on the durability of the norms themselves.

The second, much more specific issue comes from James Thuo Gathii's recent book, *War, Commerce and International Law*. His research and own experience argues strongly that emerging market countries view international norms as being vestiges of colonial exploitation rather than universal, fair principles of law.²² If Gathii's argument is true, then the use of the U.S. court system to enforce what is perceived to be a parochially colonial norm runs real risks of undermining its capability of being an accepted enforcement mechanism for human rights.

Having offered these critiques, one can still acknowledge that no mechanism will be perfect now nor for the foreseeable future and the Lees do offer the Alien Tort Act as a contemporarily vibrant, creative, and powerful mechanism to put teeth into philosophical formulations of human rights protections.

III. THE RIGHTS OF STRANGERS

In 2004, Paul Seabright wrote a small book entitled *The Company of Strangers*.²³ Seabright's argument is that the global market has created institutions that allow complete strangers to trade and to interact with each other without the slightest idea of who the other is. This is something, he argues, that is a good thing because of the efficiency and the prosperity it brings. While Seabright's work is not particularly inspiring in terms of how we might care about the intrinsic importance of another person's well-being, markets do connect our individual well-being even if just on the limited basis that we are able to satisfy our individual needs because of that distant person. This is a thin understanding of connection, but a connection nonetheless.

Twelve years earlier, Parker Palmer, wrote a book with exactly the same title.²⁴ Palmer worried that we have become strangers to one another as our lives have become more privatized and more compartmentalized. We don't interact with each other in public spaces as much and that makes us into strangers. As a step to combat that, Palmer argued for a spirituality of hospitality, something shared by all religions, so that when one meets a stranger, one's duty is to extend hospitality, not to fear and suspect them. Palmer's argument is that something more than the legal and the economic is necessary for any person to grasp the importance of the other. Indeed, that awareness goes beyond intellectual distinctions; it trades on an affective orientation, in Palmer's case, through a spiritual embrace of hospitality toward strangers as being core to our own individual identity.

This contrast is crucial to the completion of the Lees task. Relationally-based rights can be enforced—in greater and lesser amounts—by affection, economics or law. To the extent we find ourselves in a relationship in which we care about how another human being is affected by our actions, we may genuinely restrain our own self-interest for that other person's well-being. This gives rise to the Lees' example of the parent-child relationship. But evidence strongly suggests that there are breaking points in the numbers of people with whom we can relate and those numbers are rather small. Anthropologists demonstrate that there are breaking points in groups of six, thirty, and one-hundred fifty.²⁵ Beyond those sizes of groups, we psychologi-

cally tend to find it very difficult to believe ourselves to be in a relationship. Only by “work-arounds” can we find ways to connect our caring to a larger number of people. Identification into larger institutions like tribes or teams are one way to do so. Religion, spiritual belief, and ideology can provide ways to find solidarity with those beyond those numbers as well. Economic markets can provide reasons for people to be aware that they are, indeed, connected to others even if simply in a self-interested way.

The question we raise is whether philosophical distinction aligned with legal enforcement will be enough to ensure rights in a global business environment. This alignment, we believe, is a good step in the right direction both in terms of the distinctions and also in terms of the realization for the need for legal enforcements of rights and candidates for doing so. But these other motivations have a role as well.

For instance, when Martin Luther King, Jr., wrote his letter from the Birmingham jail fifty years ago, he was facing anger from local clergymen who disapproved of “outsiders coming in.” In his letter, King wrote, “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial ‘outside agitator’ idea. Anyone who lives inside the United States can never be considered an outsider.”²⁶

King had never seen an iPad or worn a pair of Nike shoes to run his nonviolent anti-segregation campaigns. But he saw the tension and problem that globalization of economy would have brought to the world thirty years later after his campaign. All communities and states were interrelated. And so, it would certainly seem that Dr. King would agree with the Lees that responsibilities that companies have to its various constituents arise from their relationships and that it makes little sense to differentiate responsibilities in sets of concentric circles in a global economy in which we all are neighbors rather than outsiders. Having said that, we are also strangers to many of the people with whom we have business relationships. That raises a question of how we come to see these strangers as human beings we care about in the first place. True, we can use the hammer of the law to enforce protection of rights and as lawyers ourselves, we believe there is certainly a time and place for that. But it also seems that accompanying rights talk, there needs to be an affective side so that rights are something we even want to bother with. By this we mean an affective side—even a spiritual side akin to Dr. King’s—that sees strangers as a kind of business partner with whom we really do have a relationship that affects us.

Actually, we believe the Lees are well-positioned to make this argument. One of us has known the Lees for over twenty-five years, and asked Professor Lee for advice when he first had the chance to teach his first ethics course. Professor Lee subsequently wrote a book, “Hope is Where We Least Expect to Find It.” In that less academic, but more inspiring volume, Professor Lee digs deep into our spiritual, affective side, a side that resonates deeply with King’s letter from the Birmingham jail.

The difficulty with rights talk is that it tends to become emotionless. Whether they are rights protecting people from something, rights to have something, or intellectual distinctions about what they are, rights do need enforcement to become real. That enforcement may well be based in law and to that extent, the Lees offer

a valuable contribution in connecting philosophy with potential legal enforcement mechanisms. The law needs to be supplemented, however, with enforcements that are more motivational than coercive. Markets do provide a thin example of that and the cultivation of the affective, spiritual side provides a thicker one that makes respect for rights crucial for one's own identity.

NOTES

1. DANIEL E. LEE & ELIZABETH J. LEE, *HUMAN RIGHTS AND THE ETHICS OF GLOBALIZATION* 12 (Cambridge University Press, 2010). For a harsher critique of the idea of self-evident moral truths and human rights from the field of business ethics, see the critique from Bill Frederick, William C. Frederick, *VALUES, NATURE, AND CULTURE IN THE AMERICAN CORPORATION* (Oxford University Press 1995).

2. DANIEL E. LEE & ELIZABETH J. LEE, *HUMAN RIGHTS AND THE ETHICS OF GLOBALIZATION* 34 (Cambridge University Press 2010).

3. *Id.* at 247.

4. *Id.*

5. *Id.* at 55, citing IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 41 (4:433) (Mary Gregor trans.; Cambridge University Press 1998).

6. See Lee & Lee, *supra* note 1, at 56.

7. PATRICIA H. WERHANE, *PERSONS, RIGHTS, AND CORPORATIONS* (Prentice Hall 1982).

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

9. See, e.g., THOMAS DONALDSON AND THOMAS W. DUNFEE, *TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS* (Harvard Business Review Press 1999), elaborating their Integrative Social Contracts theory; see also THOMAS DONALDSON, *CORPORATIONS AND MORALITY* (Prentice Hall College Div 1982); see also THOMAS DONALDSON, *THE ETHICS OF INTERNATIONAL BUSINESS* (Oxford University Press 1989); see also Thomas Donaldson and Thomas W. Dunfee, *Integrative Social Contracts Theory*, in Blackwell Encyclopedia of Management, 2nd edition 243 (P. Werhane and R. Freeman eds., Blackwell Publishing 2005).

10. Donaldson and Dunfee, *supra* note 9.

11. ROBERT A. PHILLIPS, *STAKEHOLDER THEORY AND ORGANIZATIONAL ETHICS*, 1st edition (Berrett-Koehler Publishers 2003); see also Robert A. Phillips, *Stakeholder Theory and A Principle of Fairness*, 7 *BUS. ETHICS Q.* 51 (1997).

12. Thomas Donaldson, *Values in Tension: Ethics Away from Home*, 74 *HARVARD BUSINESS REVIEW* 48 (1996); see also Thomas Donaldson, *THE ETHICS OF INTERNATIONAL BUSINESS* (Oxford University Press 1989); see also Thomas Donaldson and Thomas Dunfee, *When Ethics Travel: The Promise and Perils of Global Business Ethics*, 41 *CAL. MGMT. REV.* 48 (1999).

13. RICHARD T. DE GEORGE, *COMPETING WITH INTEGRITY IN INTERNATIONAL BUSINESS* (Oxford University Press 1993).

14. On this issue, see, e.g., ROBERT C. SOLOMON, *ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS* (Oxford University Press 1993); see also EDWIN HARTMAN, *ORGANIZATIONAL ETHICS AND THE GOOD LIFE* (Oxford University Press 1995); see also TIMOTHY L. FORT, *ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION* 62–86 (Oxford University Press 2001), for Aristotelian articulations of the notion of how business can have a sense of community.

15. See, e.g., The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (“FCPA”).

16. See, e.g., Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (“The Data Protection Directive”).

17. For a set of critiques about extra-territoriality in general and with the FCPA in mind, see Steven R. Salbu, *Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act*, 54 WASH. & LEE L. REV. 229, 283–84 (1997); see also Steven R. Salbu, *The Foreign Corrupt Practices Act as a Threat to Global Harmony*, 20 MICH. J. INT'L L. 419, 433 (1999); see also *Are Extraterritorial Restrictions on Bribery a Viable and Desirable International Policy Goal Under the Global Conditions of the Late Twentieth Century?* 24 YALE J. INT'L L. 223 (1999).

18. See Lee & Lee, *supra* note 2, at 210–45.

19. *Id.* at 211.

20. *Id.*

21. See DeNae Thomas, *Note. Xiaoning v. Yahoo! Inc.'s Invocation of the Alien Tort Statute: An Important Issue but an Improper Vehicle*. 11 VAND. J. ENT. & TECH. L. 211–48 (2008). For the Alien Tort Statute claim against Yahoo, see *Xiaoning et al v. Yahoo! Inc., et al.*, 07-CV-02151 (N.D. Cal. Oct. 31, 2007). See also Jill Gardiner, *Thompson Targets Google, Yahoo Over China Policy*, N.Y. SUN, Dec. 14, 2006, <http://www.nysun.com/new-york/thompson-targets-google-yahoo-over-china-policy/45150>.

22. See James Thuo Gathii, *WAR, COMMERCE AND INTERNATIONAL LAW*, xiv (Oxford University Press, 2010); See also Timothy L. Fort, *Book Review*, 21 Business Ethics Quarterly 345 (2011).

23. PAUL SEABRIGHT, *THE COMPANY OF STRANGERS: A NATURAL HISTORY OF ECONOMIC LIFE* (Princeton University Press 2004).

24. PARKER PALMER, *THE COMPANY OF STRANGERS: CHRISTIANS AND THE RENEWAL OF AMERICA'S PUBLIC LIFE* (The Crossroad Publishing Company 1983).

25. For a more extensive discussion of these numbers, see TIMOTHY L. FORT, *ETHICS AND GOVERNANCE; BUSINESS AS MEDIATING INSTITUTION* (Oxford University Press 2001).

26. See Martin Luther King, Jr., *Letter from a Birmingham Jail* at http://web.cn.edu/kwheeler/documents/letter_birmingham_jail.pdf (last accessed April 21, 2012). Originally, *The Negro Is Your Brother*, 212 THE ATLANTIC MONTHLY 78 (1963).