The Stakeholder Approach to Basic Economic and Social Rights: International Law and the Case of Milton Friedman versus R. Edward Freeman

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Abstract

In a previous article, Stakeholder Theory and the Logic of Value Concepts: Challenges for Contemporary International Law, published in International Studies Journal (ISJ) in2011, the authors outlined the general premises for stakeholder theory applications and international human rights law. However, the challenges that pertain to economic/social rights were not addressed in detail.

In this article, therefore, the authors provide a comparative analysis of narrow (or classical) versus broad (or modern)stakeholder theory with a specific view to determining the status of basic economic/social rights in the context of international human rights law. Narrow stakeholder theory is illustrated by Milton Friedman's framework, whereas the main ideasand thoughts that define the broad alternative are derived from the work of R. Edward Freeman. While the authors primarily endeavor to outlinethe single most crucial premises and implications of application, they are also hoping to inspire discussion about future developments, especially since it could be argued that the stakeholder theory that has the best fit with United Nations norms and strategies may be conducive to a business as usual conclusion.

Keywords: Stakeholder Theory, International Human Rights, Jurisprudence

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Introduction: An Overview of the Premises

Typically, stakeholder theorists are business management theorists, who are "putting together a deal (Freeman et al. 2010:226)" for the constituency whose interests are at stake and, while doing this, directing the activities of managers. Again typically, their recommendations for best practices pertaining to value creation are developed in the context of a discussion of corporate social responsibility (CSR) "with the usual economic view of capitalism (Freeman et al. 2010:29)." Subject to two qualifications, stakeholder theorists can be divided into exponents of respectively the classical and the modern model of CSR, in effect,

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Milton Friedman's radical "market-based approach (Freeman et al. 2010:29)" and the pro-reform movement that links its criticisms of the laissez-faire capitalism that is indistinguishable from Friedman's approach with a "public good (Friedman 2002:133, 140; Friedman 2005:7-11)" defense of market regulation. Because the implied loss of freedom violates the axiomatic separation of business and government, Friedman concludes, in 1962 and again in 1970, that there is no distinction between the relevant "activists' (Friedman 2002:7, 10, 133; Friedman 2005:9, 11)" negation of laissez-faire capitalism and socialism as an instance of totalitarianism. Therefore, the pursuit of profit cannot possibly be immoral. Instead, "doing business" is something that functions as a protective measure against the failed state. However, in 1984, R. Edward Freeman interrupts the ideological warfare by stating that "both approaches seem to miss the mark (Freeman 1984:8)." While this step reassures people that a modern approach is not tantamount to an attempt to undermine the fabric of a free society, Freeman is nevertheless careful to avoid any association between his "conceptual revolution (Freeman 1984:7)" and the view that profit-maximization for stockholders should give way to socially desirable goals, as exponents of the modern CSR believe. Outlining his own alternative to Friedman, Freeman identifies pragmatism as the reason for a paradigm shift. He urges managers to think more broadly to maximize strategic effectiveness. This goal cannot be accomplished without recognizing parties that are otherwise (narrowly – by Friedman) 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. If managers apply social viability as the criterion for policy- and decision-making, a certain prediction can be made. By accommodating the interdependency between business and the larger society, managers will not only become more responsive to the different demands of the external environment; they will also obtain an internal business advantage as a consequence of their capacity to adjust. To strategize in a manner that takes account of as many concerns as possible is a progressive measure in the sense that the actions of managers are with a view to staying "open for business" in the future

and not just (narrowly) here and now at time T. Good managers avoid counterproductive strategies. Pragmatically, managers must, as a minimum, allocate "Time, energy and resources… in order to P (Freeman 1984:45)" regardless of whether *their stakes* constitute appropriate demands of appropriate constituencies. Rather than judging, managers must aim at a win-win situation as opposed to the zero-sum outcome which Friedman's adversarial view is geared toward. Why? Because, if the other/s 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 must emphasize the willingness to make compromises.

In the light of this, hypothetical imperatives like "If the goal is effective management, all stakeholders must be considered" are direction posts. More precisely, the requirement is to balance the different demands of the different constituencies with a view to satisfying as many stakeholders as possible (…to secure effective management on the basis of social viability), and to interpret interests or demands in terms of needs (to secure neutrality as regards values that go beyond pragmatism). Standards that are prescribed by ethics are ones which managers need to know about, but the choice of morality per se is left to the strategizing parties themselves.

The dilemma is that an application of the broad stakeholder theory is restricted by the unacceptability of "an imposition of a solution to a problem (Freeman 1984:107)" – in the case of ethics, the particular type that has some fit with the society in which the firm exists. To impose ethics is "to give up the managerial role (Freeman 1984:77, 101)." To help equip managers with the analytical tools, Freeman provides a guide to some of the most commonly invoked positions, including utilitarianism. As a consequence, the distinction between conventional morality and proper (substantive) morality is not sharp. This is reinforced by the manner in which the question is phrased, namely "What do we stand for? (Freeman 1984:101)." At the same time, Freeman is aware that the choice of values is too important to be determined in accordance with whichever opinions business people subscribe to. A singular ethics, therefore, is the way forward, i.e., an ethics that resolves "the stakeholder issue (Freeman 1984:248-49)" in the arena of distributive justice.

After 1984, Freeman undertook the task of formulating moral prescriptions.[1] In this way, the broad stakeholder theory made the leap from pragmatism to idealism. For the same reason, the latter has to be accommodated in the discussion.

In addition to Friedman's approach, the ethics that go into Freeman's idealism will be detailed in the next sections, with a specific view to a comparative analysis of their basic rights conceptions. The objective is two-fold. First, to determine the status of economic/social rights. This has special significance in light of the fact that the United Nations has adopted stakeholder theory as a general jurisprudence parameter. Historically, the decision to apply the stakeholder terminology, methodology and philosophy to international law dates back to Secretary-General Kofi Annan's administration (1997-2006). His 2004-report to the Security Council (*The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*) is particularly indicative of this. 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 (Annan 2004:6-9)." Furthermore, it appears that stakeholders are differentiated on the basis of "interests" and "goals (Annan 2004:6-9)" which, in turn, establish "constituencies (Annan 2004:6-9)". The problem is, however, that Annan does not distinguish between narrow and broad stakeholder theory. This is why the second objective is to determine – on the basis of the narrow versus broad comparative analysis – which features best match the norms and ways of the United Nations. Unless those who promote "peace and security for mankind (Lie 1949:15, 21)" are cognizant of the correct interpretation of international law, they cannot be expected to manage the affairs of the United Nations in the way that they should while acting in their professional capacity. Given that justice is instrumental for success, the stakes cannot be any higher.

The Incommensurability of Freedom and Welfare

Following the narrow theory, recognition as stakeholders is reserved for traditional market participants. That granted, stockholders are ascribed primacy because the "continued survival (Zakhem et al. 2008:9)" of the firm depends on their investment. Normatively, this

approach presupposes that (1) the means of production should be privately owned, and that (2) the strategy for transaction relies on voluntary cooperation. In return for such market freedom, the parties assume individual responsibility.

As agents for stockholders, managers are entrusted with the task of serving the interests of their constituency. For the same reason, CSR 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 (Friedman 2005:8)." That which is necessary for this objective is also that which is fair. 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.

While serving, managers have to accept three rules of the game. 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. However, 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 (DesJardins and McCall 2005:21)." 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. That said, if "Everybody is doing it", no crime has been committed. As long as business practices are established, they constitute standards for appropriate action.

Although the narrow for-profit paradigm is consistent with legal positivism, there is an in-built tension. Respect for the law and "pushing the envelope of legality" are mutually exclusive on the premises of the general jurisprudence position in question. Furthermore, judges are more likely than not to protect risk-takers because of Friedman's hands-off policy.

The freedom to seek one's own gain is a market force. This is also why socialism is a bad state of affairs. Rather than providing people with incentives, socialism stifles entrepreneurship as well as self-

government. Concerning the latter, "One man's good is another's evil (Friedman 2002:10)," meaning that morality imputes distinctions that translate into relativism and subjectivism.[2] Applied to the marketplace, these imply that "There should not be any censorship of preferences." To allow some and not others is tantamount to withholding freedom of thought from groups or individuals with whom the politically powerful disagree. To avoid unfair discrimination, therefore, respect for autonomy is required.

The worst-off are advised to make use of the opportunity that everybody has, open competition on the basis of skills. The marketplace is a meritocracy that will pay them the monetary compensation they deserve. The same is true of women, colored people and other minorities. No matter how much a representative democracy preaches inclusiveness, it cannot rival the marketplace. This functions as a strategy for emancipation. The marketplace is a testimony *for* plurality and *against* uniformity. However different, each individual is in a position to pursue what he most wants, whereas talk about needs is reserved for politicians who issue decrees that *allegedly* are ethically justified by paternalism. This position (paternalism) not only clashes with relativism and subjectivism whereby needs are instances of wants; it is also in conflict with classical liberalism as a way that maximizes freedom as long as actions do not inflict harm or deprive others of their equal freedom.

The state is required to back up right with might. 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 (Friedman 2002:2)," in addition to maintaining the structures of the marketplace. Regarding inter-state affairs, the commitment may be either to self-defense in the event of an attack or to a preemptive strike. 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. Dominion and imperialist conquest is consistent with the narrow paradigm. Internally, Friedman's arrangement coincides with the minimal state (cf. decentralization, privatization and deregulation).

This is *not* in a position to confer economic/social rights. In the words of Herbert L.A. Hart, the holder of a right stricto sensu, viz., a claim-right

is a "small-scale sovereign (Hart 1973:192)" 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. 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).[3] 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.[4] As a premise, it holds that economics determine ethics (cf. economic realism).

In the light of this, Friedman's position can be classified as libertarianism for the following reasons. First, to violate the rights of stockholders for generalized consideration is inexcusable. Besides market freedoms, the 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 corporation. Meta-rights to negotiate the terms for transactions in accordance with preferences must be accommodated. Second, even if rights translate into a compatriot version of the concentric-circle conception (cf. nationalism), the government has no jurisdiction over the assets that belong to individual citizens. A redistribution of resources is wrong. Consequently, the issue of freedom versus welfare boils down to a distinction between justice (= a capitalist free society) and injustice (= a socialist welfare state).

Freeman's Revisionist Interpretation

Some commentators dispute that Freeman offers much potential for innovation. For example, James Stieb insists that "some advocates have moved a bit too quickly... They have exceeded Freeman's intentions which are more libertarian and free-market than is often thought (Stieb 2009:3)." Others counter-argue that there is one inescapable assumption,

namely that managers have obligations "above and beyond their obligations toward their shareholders (Zakhem et al. 2008:19)." If this is correct, broad idealism mutes accusations about an undisclosed alliance with Friedman.

So, who is right and who is wrong? In the following paragraphs, it will appear that it is possible to give both interpretations some support. At the same time, however, the idealist version of the broad stakeholder theory can still hold up as a Third Way.

In Freeman's framework, managerial capitalism as a concept that imposes a duty to stockholders is replaced with a fiduciary relationship to stakeholders, construed broadly as those individuals or groups who have claims on the firm. The shift from controversial demands to claims has significance because it underscores the legitimacy of all stakeholders, be they stockholders, the community or managers. It should be observed that managers also assume the role as agents for the other groups. This introduces a parallel to Friedman. In contradistinction to Friedman, however, Freeman welcomes the "recently (Evan and Freeman 1993:77)" legal constraints on the ability of managers to maximize the interests of stockholders at the expense of other claimants on the firm. When the national law created rights for these, in the 1960s and 1970s, it responded to distributive justice problems on behalf of vulnerable stakeholders, just as it contributed to the discontinuation of the classical management strategy of internalizing benefits and externalizing costs by making provisions for government regulation (the Civil Rights Act (1964), the Clean Water Act (1972), etc.).

After this, it is made to hold that conflicts of claim-rights should be resolved in balanced judgment, meaning that it is impermissible to let property rights or the requirements of the modern firm trump the important rights of others *unless* these others participate in the decision. In addition to the Principle of Corporate Rights (PCR), morality also accommodates consequences of actions in a manner that incorporates John Stuart Mill's distinction between self-regarding and other-regarding actions. Under the Principle of Corporate Effects (PCE), the corporation and its managers should be held accountable for the effects of their actions on others whose stakes are "reciprocal (Evan and Freeman 1993:79)", thereby arriving at a balanced judgment on the basis of interdependency. Cutting across the Respect

Principle and the Harm Principle, PCR and PCE summarize the implicit social contract.[5]

Additional norms that are ascribed status as ideals encompass the P1 Principle of Corporate Legitimacy and the P2 Stakeholder Fiduciary Principle. Like the PCR and the PCE, the contents of these do not diverge from the requirements of Kantianism and consequentialism, which are "pitted together (Evan and Freeman 1993:78)" although they derive from two different traditions in ethics. Notwithstanding P1 and P2 give rise to tension. On the basis of the premise that the purpose of the firm is to be a vehicle for the coordination of interests, the conclusion under P1 is that stakeholders have inalienable rights, thereby making the implicit social contract consistent with natural law theory. However, the same conclusion is counteracted by (1) rights-reduction of participation to simply "being heard", and (2) a corresponding duty-reduction toward claimants – from safeguarding the long-term stakes of each group – to "paying attention." Accepting the reality of conflict under P2, fiduciary is construed as prima facie and, subsequently, management should act in the long-term interests of the corporation "when the interests of the group outweigh the interests of the individual parties to the collective interests (Evan and Freeman 1993:82)." In this way, P2 may require the survival of the corporation at the expense of the stakes of individual claimants, *however deserving*. It follows that the vulnerability factor from Friedman's market approach reappears in Freeman's idealism. Voluntary cooperation becomes inseparable from unfairness. In other words, it is false that it is "through the firm (Evan and Freeman 1993:82)" that stakeholders make themselves better off. At worst, Kantianism is sacrificed in favor of libertarianism or consequentialism as an instance of utilitarianism.

According to idealism alone, balanced judgment is inconsistent with a permission to violate inalienable rights if their holders refuse to agree to being treated as means for corporate ends. As long as the individual authorizes the treatment, disrespect manifests itself as self-regarding. The fact that the harm that follows may be of a serious kind makes no difference. The individual should not be forced to do what is good for him. This assumption is borrowed from classical liberalism which, in turn, is consistent with the part of idealism that defends the rights to life, liberty and security in terms of civil/political rights. A broad typology of rights, however, includes freedom from want as 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 component that is anchored in invariant needs that co-found claims to fulfillment (of subsistence as a rights-object), in addition to survival through non-interference.

That said, if the hypothesis that acceptance of victimization is not a violation were true, the autonomy versus welfare tension must be resolved, once again, along the lines of Hart's theory. To rescue the singular ethics that idealists (allegedly) promote calls for an alternative. Given that basic needs derive from humanity, the credentials for the relevant economic/social rights cannot but invoke minimum decency in the context of universalism. After this, it seems that the framework is provided by the Modern Interest Theory of Rights.

According to Neil McCormick's premises for this, the concept of a benefit is a necessary condition. The claim to treatment T constitutes a right if and only if the object of the right in question advances important interests of the stakeholder constituency on the supposition that T is normally a good for each and every member of C. Judged by the general norm for humanity, fulfillment of basic needs secures welfare in terms of a benefit and, therefore, economic/social human rights qualify as candidates for rights-recognition. Although necessary, the concept of a benefit is not sufficient. The object of the right must also promote the good of the intended beneficiary as an end in himself. Therefore, in addition to harm-avoidance, rights-recognition incorporates respect for dignity on the basis of humanity simpliciter. Only if the interest in welfare is promoted for the right reason, is it correct that X's claim-right to T has been "conferred (MacCormick 1982:161)."

The Modern Interest Theory of Rights not only refutes the analytical correlativity thesis but also the doctrine that rights, for their existence, depend on the practical possibility of their fulfillment. 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 basis for the distinction between civil/political rights and economic/social rights in terms of 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 or primary *because* they are negative. Logically, however, this is

untenable. It does not make sense to argue that duties are prior to rights. If anything, rights are reasons for duties as consequences. Whether it is practically possible to fulfill duties in the real world is something that depends on the circumstances, but this consideration is post facto. It cannot affect rights-recognition. The essential point is that the positive/negative vocabulary is not driven by logic but instead by ideology – which misses the mark.

Because it is possible to secure both freedom and welfare, the incommensurability myth is dispelled. Those who fight for economic/social rights may ignore law and order. However, it is the state that is responsible for the inequities. The more widespread the welfare-deprivation is, the more the harm results in a dichotomy between statehood and legitimacy. Accusations of state-sanctioned terrorism would be denied by liberals outside the domain of life, liberty and security as traditionally interpreted, but the existence of a class society that implements a strategy of economic violence would suffice as proof. Given that the injustice is inflicted by the structures of society, the Principle of Individual Responsibility is inadequate. The Principle of State Responsibility also matters.

Back to the United Nations

The United Nations avoid qualifying the application of the stakeholder terminology, methodology and philosophy in terms of narrow versus broad and, therefore, the nature of the organization's commitment can only be determined indirectly, that is, on the basis of a comparative analysis of the two outlooks, as alluded to in the Introduction.

Transferring the analysis to the United Nations, the following points deserve attention. First, the relevant body of norms is consistent with both capitalism and socialism, or a combination of these (cf. mixed market economy) according to the parts of the group-right to self-determination whereby all peoples may "freely pursue their economic, social [and cultural] development (ICCPR 1966 and ICESCR 1966:art. 1(1)" and, furthermore, "freely dispose of their natural wealth and resources (ICESCR 1966 and ICESCR 1966:art. 1(2))."[6]

However, some individual rights imply certain political-economic principles, inter alia, the right to own property and to not 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. Consequently, international law tests negative to laissez-faire economics. It contains not only limitations precluding government from invading civil/political rights, but positive obligations for government to promote economic/social rights, a broad or comprehensive conception in other words. Citing the Universal Declaration of Human Rights (UDHR), the realization of economic/social rights is "indispensable (UDHR 1948:art. 22)" for the dignity of the human person and the free development of his personality. Furthermore, just like customary international law (cf. UDHR), international treaty law (cf. ICCPR and ICESCR) presupposes the doctrine of interdependency and, expressis verbis, links dignity with membership of "the human family (UDHR 1948:Preamble; ICCPR/ICESCR 1966:Preamble)." While speciecism is inconsistent with Kantianism, it is still correct to say that credentials-checking for basic rights in terms of human rights entails the Respect Principle, as advanced by the Modern Interest Theory of Rights. Furthermore, regarding basic needs, leading attorneys argue that these are reasons why the implicit social contract applies to international law, in addition to national law.[7] That said, some rights founded on basic needs belong to the class of civil/political rights and *not* economic/social rights. This is true of, for example, the right not to be tortured. To subject terrorists to water boarding may be an effective interrogation method that serves the common good, but such a utilitarian argument ignores the stake in humanity simpliciter which is what matters pertaining to rights-recognition.

Notwithstanding international law makes room for utilitarianism, in addition to the idea of individual human rights. Social utility, however, cannot trump dignity because social utility, again expressis verbis, merely restricts the "exercise of rights (ICCPR 1966:arts. 21 and 22(2)."[8] The time that philosophers have devoted to the task of resolving the "conflict" could have been saved if they had realized the Ultimate Logical Implication of the analysis of rights, namely the distinction between recognition and protection. From the point of view of rights-recognition, utilitarianism misses the mark. On a more positive note, utilitarianism is a tool for the promotion of the modern welfare state. Consequently, it is unwarranted to argue that there is no

benefit for the individual under that type of teleological ethics simply because the collective state of affairs is not accomplished for the sake of *that particular individual*.

As it happens, international hard law re-confirms the unconditional basic rights-conception whereby rights-recognition and rights-protection must be separated in the case of economic/social rights. Under the ICESCR, the existence of these 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 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 (ICESCR 1966:art. 2(1)).

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/economic rights *generate obligations* to provide individuals with the substance of the relevant rights in accordance with the circumstances. If the goal, that is, 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 ((Meron 1992:209)."

The synthesis of civil/political and economic/social rights is something that pushes toward a double-aspect notion of peace, security and justice. In stakeholder terms, the law combines narrow freedom and

broad well-being. At the same time, the Bifurcation Principle that conceptually separates civil/political rights and economic/social rights is a uniquely narrow feature. Furthermore, the measures of protection that accompany economic/social rights are comparatively weak, even with the adoption of the 2008 Optional Protocol. Therefore, there is a certain liberal and realist bias in force.

The United Nations' strategies constitute another testing stone. It appears that the leap from business management to international law requires methodological adjustments. For instance, the United Nations does not approach their constituency with a view to dividends on stock or profit-maximization. Furthermore, as a not-for-profit organization, the stakeholders that first and foremost deserve consideration are the victims of serious human rights violations, the worst-off. Regarding these, jus cogens crimes make a narrow analogy to customer satisfaction both superfluous and offensive. The United Nations cannot provide the remedies for restoration unless, of course, they are able to un-do the original situation. This explains why human life is priceless and why monetary compensation may be perceived as a humiliation, as if the value of life could be calculated.

Interestingly enough, the Founding Father of the United Nations' stakeholder way, Annan, mixes traditional and modern views in a fashion that does not upset the organization's amicable policy. To the extent that he, as the Secretary-General, reports on the assumption that the United Nations exist to promote peace and security and that justice is instrumental for peace and justice as well as a goal in its own right, the view is traditional. By viewing economic inequities as "root causes (Annan 2004:3)" of the failed state, however, Annan makes it clear that a broad stakeholder deal is void, perhaps even fraudulent, without protection of economic/social rights. By virtue of the Great Emphasis he puts on this, Annan must be said to have modernized the mission. However, while economic/social rights should be accommodated as constants in the post-conflict justice equation, no radical strategies are proposed, ones that would (1) tilt the scales between the wealthy/powerful states that interact for the purpose of maintaining law and order and those countries and continents, such as Africa, which are *not* included in that interdependency for reasons that all point in one and the same direction: a superior versus inferior relationship that has never been normalized, i.e., made to conform with the reciprocal stakes that

otherwise regulate the behavior of everybody else; and (2) call for fairness that accords with egalitarianism for basic human needs.

Thus, the "stakeholder issue" is only resolved in the arena of distributive justice in the sense that economic/social rights are non-discriminatory claims. At the level of rights-protection, however, ethics does not address the fact that international co-operation is based "upon the principle of mutual benefit (ICCPR/ICESCR 1966:art. 1(2))." If the requirement – on behalf of richer states – is that there is something "in it" for us, rendering aid and assistance reduces to a narrow business deal. The question is whether broad stakeholder theorists prefer to await a legal revolution before they rectify the imbalance.

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Endnotes

1. For Freeman's brief mentioning in 1984, see Freeman 1984: 50 n22; Evan and Freeman 1993: 75-93 (for a morally substantive account developed in "A Stakeholder Theory of the Modern Corporation: Kantian Capitalism"); Matwijkiw and Matwijkiw 2016:323-45 for a combination of stakeholder theory, ethics, and international law).
2. This entails that objectivity is precluded beforehand and, as a consequence, the credibility of substantive morality is at stake.
3. The correlativity 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." See Feinberg 1973:61; Matwijkiw and Matwijkiw 2010 (for a criticism of the constellation of the correlativity and economic realism).
4. For the philosophically subtle reduction of economic/social (claim-)rights to mere claims, see Feinberg 1973:84-97.
5. Note that the implicit social contract is a premise that is central to law at both the national and international levels, according to M. Cherif Bassiouni. The international legal theorist in question emphasizes jus cogens norms, which occupy the highest place in the legal hierarchy by virtue of the fact that they protect the most important interests, such as life, freedom, safety, and physical integrity. Violations of jus cogens norms constitute paradigms of crimes under international law. In terms of enforcement, jus cogens norms cut across the distinction between international criminal law, international humanitarian law, and standard international human rights law. Other legal theorists counter-argue that the implied stakes (jus cogens norms) must and, mutatis mutandis, should be recognized and protected *in abstraction from* the fiction of any kind of social contract. See Bassiouni 1994**:**xxvi**;** Matwijkiw and Matwijkiw 2016: 900.
6. Both the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social and Cultural Rights [ICESCR] belong under so-called hard law, meaning that the states parties to the implied treaty incur legally binding obligations.
7. One example is Louis Henkin, who argues that "[t]he commitment in the human rights idea to the welfare society… implies, I think,

that the basic human needs of those unable to provide for themselves are the responsibility of all, and that it is permissible if not obligatory to take from those who have (as by taxation) to provide for those who have not (Henkin et al. 1999:285)." The implied notion of human solidarity on the basis of dignity competes, so Henkin believes, with social utility.

8. Note that the rights not to be subjected to torture, genocide and slavery are exempt. See ICCPR 1966:art 4(2).