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978-0-521-76794-1 - The Moral Foundations of Social Institutions: A Philosophical Study

Seumas Miller

Excerpt

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Introduction

1. OVERVIEW

This book is concerned with contemporary social institutions that are also complex organizations or systems of organizations. Thus its field of concern includes governments, police services, business corporations, universities, welfare institutions, and the like; it also includes criminal justice systems (comprised of a police organization, courts, correctional facilities, etc.), legal systems (comprised of a legislature, the law, courts, legal firms, etc.), financial systems (comprised of retail and investment banks, a stock exchange, regulators, auditing firms, etc.), and so on. On the one hand, it offers a *general* theory of social institutions – a teleological account, according to which all social institutions exist to realize various collective ends, indeed, to produce collective goods. On the other hand, it provides *special* theories of particular institutions, for instance, a theory of government.

Lest this field of concern appear too broad, and hence the ambitions of this book overblown, let me immediately add that the theories on offer are philosophical and, as a consequence, foundational and synoptic in character. Moreover, these theories are *normative* accounts of *some contemporary* social institutions, not accounts of all social institutions, both past and present. Much less are these theories descriptive or normative accounts of *all* organizations and associations; private clubs with restricted entry, for example, lie outside the scope of the normative theory of contemporary social institutions.

Roughly speaking, a descriptive theory is concerned with *what is* (the state of the institution as it happens to be), whereas a normative theory is concerned with *what ought to be* (the institutional processes that ought to be taking place, and the purposes that the institution ought to be

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serving). Thus – to foreshadow part of the discussion in Chapters 1, 2, and 9 – an institution, such as a police organization, might have as its institutional purpose the protection of human and other moral rights, *normatively speaking*; nevertheless, as a matter of fact the police officers in question and, therefore, the police organization per se, might not pursue this collective end but rather engage in purely repressive action on behalf of the government of the day.

A normative theory is not a fanciful story about some utopian state; rather, it provides an account of what an institution realistically could be, and ought to be. Normative theory thereby gives direction to institutional actors, policy makers, citizens, and other stakeholders in the actual world.

My assumption in writing this book is that contemporary social institutions, including international institutions, are extraordinarily important for the well-being of humankind, but that in many cases the responses of institutions to the various challenges that they confront are manifestly inadequate, and the institutions in question in need of ethical renovation, if not redesign and rebuilding. Consider in this connection global poverty in Africa and elsewhere (Chapter 7) or the current crisis in the international financial sector (the greatest financial crisis since the 1929 stock market crash). The latter has thrown the global economy into recession and has involved the collapse and government bailout of a whole range of leading U.S. and European financial institutions: Lehman Brothers (United States), Northern Rock (United Kingdom), Fortis (Belgium), Hypo Real Estate (Germany), Fanny Mae and Freddie Mac (the United States' two largest home mortgage lenders), and AIG (the world's largest insurer) (Chapter 10). Consider also abuse of power and other forms of corruption in leading liberal democratic governments, such as by the Bush administration in the United States (Chapter 12), officially sanctioned use of torture in security agencies (Chapter 9), and the deleterious effect of the “dumbing-down” of the mainstream media on its role as the Fourth Estate (Chapter 10).

In Part A of this book I address a range of theoretical issues that arise in the context of the philosophy of social institutions. Part B applies the fruits of this theoretical work to specific institutions and challenges.

The material in Part A is somewhat conceptually complex, at least by the standards of some of those who are not academic philosophers. However, the book is written in such a way that readers who are interested only in the applications of this theoretical work can go straight to Part B without first having absorbed the content of Part A; indeed, even within

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Excerpt

[More information](#)*Introduction*

3

Part B it is possible to focus only on chapters dealing with institutions of specific interest.

In Chapter 1 I elaborate my normative, teleological account of social institutions. In my earlier book, *Social Action: A Teleological Account* (Miller 2001b), I provided a detailed analytical account of this theory and applied it to a variety of social forms, including joint action, conventions, and social norms. In this book I take over this account, extend it somewhat, and apply it to social institutions. On my teleological account, social institutions exist to serve various collective ends that are also collective goods, such as security (police services) or the acquisition, transmission, and dissemination of knowledge (universities). The extent to which actual institutions fail to serve these collective ends is the extent to which they are in need of redesign or renovation.

In Chapter 2 I elaborate an account of the general normative character of social institutions based on my individualist, teleological model, and according to which social institutions have a multifaceted normative dimension with multiple sources. These sources include ones that are logically prior to institutions, such as basic human needs and (institutionally prior) human rights, such as the rights to life, to freedom, and not to be tortured.

The normative character of social institutions includes the collective goods that they produce, the moral constraints on their activities, and a variety of *institutional* moral rights and duties (as opposed to moral rights and duties that are logically prior to institutions, that is, natural rights and duties). Such institutional moral rights and duties include ones that are derived from institutionally produced collective goods and, indeed, that are constitutive of specific institutional roles, such as the rights and duties of a fireman or a banker. They also include more broad-based institutional (moral) rights and duties that are dependent on community-wide institutional arrangements, such as the duty to obey the law in the jurisdiction in which one resides, the duty to assist the national defense effort of one's country in time of war, the right of access to paid employment in an economy in which one participates, the right to own land in some territory, and the right to freely buy and sell goods in an economy in which one participates.

These moral rights and duties are institutionally relative in the following sense. Even if they are in part based on an institutionally prior human right (e.g., a basic human need, the right to freedom), their precise content, stringency, context of application (e.g., jurisdiction, national territory, particular economy), and so on can be determined only by

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[More information](#)

reference to the institutional arrangements in which they exist and, specifically, in the light of their contribution to the collective good(s) provided by those institutional arrangements.

On my account, collective ends are collective goods by virtue of their possession of the following three properties: (1) they are produced, maintained, or renewed by means of the *joint activity* of members of organizations, for example, schools, hospitals, welfare organizations, agribusinesses, electricity providers, police services – that is, by institutional role occupants; (2) they are *available to the whole community*, for example, clean drinking water, clean environment, basic foodstuffs, electricity, banking services, education, health, safety, and security; and (3) they *ought* to be produced (or maintained or renewed) and made available to the whole community because they are desirable (as opposed to merely desired) and such that the members of the community have an (*institutional*) *joint moral right* to them.

Note that my notion of a collective good, as defined, is different from standard notions of so-called public goods deployed by economists¹ and others, for example, in respect of a good's being jointly produced and having an explicitly normative character as the object of a joint moral right. Moreover, I do not make any sustained attempt to quantify these collective goods in the manner of, say, classical utilitarianism ("util" or mental states of pleasure). However, this is not to say that collective goods in my sense cannot be quantified, at least in some limited ways: for example, the quantification of police organizations' provision of security by recourse to rates of reported crime, clearing-up rates, and so on.

An important underlying assumption here is that *contra* much economic theory, human beings are not always and everywhere motivated by self-interest, albeit self-interest is a powerful and pervasive driver; moral beliefs and, specifically, doing one's moral duty for its own sake – as the German philosopher Immanuel Kant stressed – are an important additional motivation for action and one not reducible to self-interest – no matter how self-interest is conceived; for example, self-centeredness or pursuit of one's own goals (whatever they might be) at the expense of the goals of others (Sen 2002, 28–36). So, institutional design needs

¹ Economists typically define public goods as being nonrival and nonexcludable. If a good is nonrival, then my enjoyment of it does not prevent or diminish the possibility of your enjoyment of it; for example, a street sign is nonrival because my using it to find my way has no effect on your likewise using it. Again, a good is nonexcludable if it is such that if anyone is enjoying the good, then no one can be prevented from enjoying it, for instance, national defense.

to proceed on the assumption that both self-interest and morality are important motivations for human action, neither of which necessarily dominates the other when they come into conflict, as they often do.

In Chapter 3 I discuss the relationship between institutional structures and individual autonomy; to a degree, therefore, my concern is with the threat to the moral rights of institutional actors posed by some of the institutions in which they are housed. I argue, among other things, that well-functioning, well-designed, morally responsive social institutions enable individual autonomy, rather than necessarily diminish it. I also argue against the view that the reproduction of institutions is simply the unintended result of the actions of institutional actors.

By contrast, I emphasize the importance of the members of institutions strongly identifying with the institutional ends, constitutive activities, and social norms that are in part definitive of those institutions. Indeed, particular institutional actors have *special* moral rights and duties and, as such, are to a degree subject to a partialist ethic. Hence the limitations of so-called impartialist ethical theories, such as utilitarianism (Hoff Sommers 1986). Thus a journalist (but not an ordinary citizen) may be required to publish the truth, or protect her source, notwithstanding the predictable harmful consequences of her doing so (Bradley 1927). Here the partialism is with respect to an objectively specified category of persons, such as journalists' sources, and not simply individual persons as individuals, as in the case of partialism toward one's friends (Chapter 6). Unlike partialism in respect of one's friends, the partialism exhibited by journalists in relation to their sources, by lawyers in relation to their clients, and by various other institutional actors with special duties to specific categories of persons is impersonal.

Moreover, members of a given institution typically share a common structure of motivating moral beliefs in relation to their institutional roles and do so notwithstanding a diversity of prior and continuing, motivating, preference structures, for instance, with respect to why they joined the institution in the first place or why they do not leave it, and in relation to the lives that they lead outside the institution in question. Indeed, from the perspective of this book such preferences are extraneous to the analysis of institutions *per se*. Naturally, some extraneous preferences – specifically, some aggregated, widely shared, extraneous preferences – play an important role in the explanation of institutional change and performance (Hirschman 1970; North 1990). For example, those imbued with a strong desire to succeed in life may well enhance the performance of the government department of finance that they join,

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[More information](#)

whereas those principally looking for job security do not. Nevertheless, these motivational differences are not constitutive of the organization in question *qua* institution, that is, *qua* government department of finance. On the other hand, the motivation to act in the public interest is constitutive of government departments *qua* institutions.

Needless to say, there are multiple, important, unintended consequences of the actions of institutional actors, both on themselves and on their institutions (Graham 2002, introduction). Of particular relevance to our concerns in this book are those unintended institutional outcomes, such as institutional corrosion, consequent on the failure of institutional actors to discharge adequately their institutional responsibilities (Hirschman 1970).

In Chapter 4 I provide a detailed analysis of the moral notion of collective moral responsibility, a notion that underpins institutions and, often indirectly, the duties of institutional actors. My account of collective moral responsibility is in part based on my teleological theory of joint action (the Collective End Theory [CET] elaborated in Chapter 1) and is individualist in character. I argue against corporatist accounts of collective moral responsibility, that is, accounts that ascribe moral responsibility to entities other than individual human beings.

In Chapter 5 my focus is on the dark side of institutions. Specifically, I provide a detailed analysis of the concept of institutional corruption. I proffer five hypotheses in relation to institutional corruption: (1) the personal character of corruption, (2) the causal character of corruption, (3) the moral responsibility of corruptors, (4) the asymmetry between corruptors and those corrupted, and (5) the involvement in institutional corruption of institutional actors who corrupt or are corrupted. An important assumption here is that social institutions, including economic institutions, are subject to processes of decline (Hirschman 1970) – notably corruption and, relatedly, loss of rationality. As Hirschman argues, these processes of decline typically activate counterforces, such as (in the case of economic institutions) exit (Hirschman 1970, chap. 2), for instance, loss of customers, and (in the case of political institutions) voice (Hirschman 1970, chap. 3), for instance, political protest. However, I suggest that an important motivational component of these counterforces is moral belief, for example, the belief that bribery, nepotism, and abuse of authority are morally wrong. It is not simply a matter of activating self-interest by increasing levels of competition or threatening sanctions.

Chapters 6–12 of this book are concerned with various applications of the theoretical work undertaken in Chapters 1–5. Thus in addition to

the *general* normative theory of social institutions outlined in Chapters 1 and 2, I provide *special* and derived (from the general theory) normative theories of a number of importantly different contemporary institutions, namely, the so-called traditional (and emerging) professions (Chapter 6), welfare institutions (Chapter 7), the university (Chapter 8), police organizations (Chapter 9), the business corporation (Chapter 10), institutions in part constituted by information and communication technology (Chapter 11), and government (Chapter 12).

In a book of this size I need to be selective, and some central institutions are omitted or only treated in a cursory manner, for instance, correctional and military institutions. However, I content myself with the thought that my task here is not to provide a detailed treatment of each of these social institutions, but rather to apply my teleological theory to a selection of the main contemporary social institutions.

I have also selected social institutions that are in large part grounded in one or another of the following basic human needs (Wiggins 1991, 6), rights, and/or desirable (as opposed to merely desired) goods: food, water, and shelter (economic institutions that produce basic foodstuffs, medicines, houses, etc., and welfare institutions), the right to personal physical security (police organizations), the acquisition/transmission/dissemination of knowledge/understanding (universities), the storage/retrieval/communication of knowledge (institutions in part constituted by information and communication technology), and the organization, maintenance, and direction of other institutions (government).

On my teleological, normative account (roughly speaking) the university has as its fundamental collective end the acquisition, transmission, and dissemination of knowledge, whereas police organizations have as their fundamental collective end the protection of the human and other moral rights (including institutional moral rights) of members of the community. Again, the traditional professions have a range of specific collective ends, for example, the administration of justice (lawyers). The collective end of each of these institutions is a collective good: a jointly produced good that is, and ought to be, produced and made available to the whole community because it is a desirable good and one to which the members of the community have a joint moral right.

By contrast with these social institutions, business corporations and markets in general do not have ethico-normative purposes (collective goods, in the above sense) that are *internal* to them. Rather they should be understood in instrumentalist terms, for example, as an institutional means for the production of desired (but not necessarily desirable)

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goods. Accordingly, a business organization in a competitive market is not deficient *qua* institution merely because it produces candy rather than basic foodstuffs; obviously, many business organizations operating in competitive markets produce material goods and services that are desired but not needed, or otherwise desirable – and they should continue to do so. Nevertheless, there are moral and other value-driven purposes that should give direction to the design and operation of at least some markets and business organizations. Specifically, there are collective goods, for instance, aggregated needs-based rights to basic foodstuffs, clean water, clean air, clothing, housing, medicines, that markets and business organizations ought to produce as a matter of priority.²

In addition, business organizations operating in competitive markets – including organizations that produce only desired (as opposed to desirable) goods – provide jobs; in doing so they fulfill a moral right, namely, the right to paid work. In contemporary societies there is a (derived) moral right (and corresponding moral obligation) to work for a wage, that is, a right to a job (some job or other), because (other things being equal) without a job one cannot provide for one's basic needs and one cannot contribute to the production, maintenance, and renewal of collective goods, such as via taxes. In short, although business organizations in competitive markets *per se* do not serve inherently valuable collective ends that are internal to them, they do have enormous instrumental value. Accordingly, they are available to serve value-driven, including moral, purposes and should be made to do so by way of regulation, incentive structures, and the like, as required.

Note that I argue in Chapter 2 against market fundamentalism (Soros 2008) and, in particular, against the view that the moral right to property is such that it overrides aggregated needs-based rights and other collective goods. Indeed, *contra* market fundamentalism, property rights are in fact based in part on needs-based rights; to this extent needs-based rights are available to override property rights and, specifically, the transfer rights of property owners whose own needs are well catered for. Moreover, transfer rights – the right that the owner of property has to transfer the right to use, exclude, and in turn transfer the good in

² My use of the term *aggregated* is not meant to imply that rights fulfillment is subject to some simple process of addition such that the fulfillment of, say, the respective rights to life of two individuals is worth twice that of one person. See Miller (2008b, chap. 5) for further discussion.

question to others – are a very weak link in market fundamentalism’s argumentative chain. From the fact that I might have certain use and exclusion rights to something because I produced it – or otherwise “mixed my labor with it” (to use John Locke’s famous phrase) – it simply does not follow that I have the right to transfer all those rights to someone else or that, if I do, the transferred rights have the same stringency as they had when they attached to me as the producer of the good in question.

Morality, and ethical values more generally, is implicated in business organizations operating in competitive markets in a variety of ways, aside from in terms of any collective goods that they might produce or property right that they might embody. Thus business organizations are constrained by human rights, they facilitate the exercise of the institutional moral right to buy and sell property (itself a joint right; see Chapter 2, Section 2), their constitutive activities often reflect a strong work ethic, and so on.

It is also important to stress that business organizations operating in competitive markets cannot necessarily be expected to achieve adequately the larger (indirect) purpose that justifies their existence, that is, the production of a collective good, by simply being left alone; there is a need for incentivization, regulation, accountability, and, where appropriate, institutional redesign to ensure that Adam Smith’s famous invisible hand actually delivers on its promises. If the current global financial crisis has demonstrated nothing else about free markets, it has surely demonstrated this.

In the course of discussing specific social institutions I examine some of the moral problems, including forms of institutional corruption, that these institutions face in the contemporary setting, for example, in the case of police and military organizations the practice of torture. I also attempt to offer practical solutions to some of these ethical problems, for instance, an outline of the key elements of an integrity system for the professions. I seek to frame these various practical ethical issues in terms of my individualist, teleological (normative) theories, both general and special, and to apply the various other theoretical understandings developed in Chapters 1–5.

I deliberately do not offer a philosophical theory of the institution of language for a somewhat different reason than my reasons (mentioned above) for excluding some other social institutions. Human languages are, as is often noted, a more fundamental kind of institution than the others and, indeed, are a logical presupposition of other institutions and

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[More information](#)

have general properties not possessed by other institutions³ – so much so that, arguably, they are not really a species of *social* institution at all.

Accordingly, I restrict my focus in this book to nonlinguistic institutions and, in particular, to contemporary social institutions that are also large complex organizations (Etzioni 1975) or systems of organizations. However, at various points I invoke the program of agent-semantics (Grice 1989) – itself a species of teleological individualism, as I see it – and make use of accounts of assertion, truth telling, and the like that I have elaborated in detail elsewhere, and that are congruent with the conception of social institutions that I am putting forward in this book (Miller 1985, 2003a). In Chapter 11 in particular, I offer accounts of certain contemporary institutions that are in part constituted by information and communication technology; these institutions are dependent on, and closely related to, the institution of language (on an agent-semanticist account of language).

An important reason for philosophical interest in social institutions – a reason additional to ontological interest – stems from the specifically normative concerns of philosophers. Philosophers, such as John Rawls (1972), have developed elaborate normative theories concerning the principles of justice that ought to govern social institutions. Yet they have done so in the absence of a developed theory of the nature and point of the very entities (social institutions) to which the principles of justice in question are supposed to apply. Surely the adequacy of one's normative account of the justice or otherwise of any given social institution, or system of social institutions, will depend at least in part on the nature and point of that social institution or system. For example, the principles of justice governing the distribution of benefits and burdens in relation to prisons differ in substance and application from those operative in relation to universities. This is presumably in large part because prisons have as a fundamental purpose to prevent ordinary people being harmed by dangerous persons, whereas universities have as a fundamental purpose to ensure the acquisition, transmission, and dissemination of knowledge.

In this book I elaborate a conception of social institutions according to which key elements of human morality, notably the human rights to life, to freedom, and not to be tortured, are logically prior to, albeit

³ The institution of the family and kinship systems are arguably another kind of social institution that is more fundamental than other social institutions (with the exception of human languages).