

# ***INDR***

*INTERNATIONAL NETWORK FOR  
DELIVERY OF REGULATION*

*SUPPORTING COOPERATIVE  
BEHAVIOUR*

*RESEARCH SERIES PAPER NO: 2022/2  
FEBRUARY 2022*

# SUPPORTING COOPERATIVE BEHAVIOUR

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Humans achieve more when we cooperate. The history of our species has followed an historical trajectory away from defensive and aggressive competition towards increasing cooperation. The cooperative mode of (social) interaction has developed integrally, linked with developments in our psychological reliance on ethical values, forms of engagement (institutions) and the evidence supporting levels of trust that others will act as expected. These mechanisms currently need to be strengthened and reinvented in order to avoid the risks that we currently face, which are now existential to our species. This paper summarises some of the core evidence for how we should aim to engage in business, regulatory, community, social and international contexts, emphasising the need for tools like common purposes, agreed ethical values and principles, means of providing reliable evidence, mechanisms for co-creation and coordination of roles, responsibilities, problem-identification and problem-solving, and mutual accountability.

## A. THE OBJECTIVE OF COOPERATION

### **Cooperation is Essential – and should be the Objective**

Human beings achieve more when we cooperate.

The ability to cooperate enabled our species to dominate all others. Since then, our cooperation in ever larger groups has produced huge benefits for humanity. We have changed how we cooperate over time, doing so in increasingly large contexts. Evolutions in cooperation have been supported by developments in our social and organisational arrangements (institutions) but critically also by developments in our mental and emotional faculties. If we now want to cooperate more, we need to focus not just on modernising our institutions but also on getting the best out of our mental and emotional mechanisms—again revising *how* we cooperate.

The risks facing humanity are now systemic, and so great that they threaten our existence:<sup>1</sup>

- (a) The planet: carbon emissions and global warming.<sup>2</sup>
- (b) Life and health: pandemic SARS viruses, eg Covid-19.
- (c) The financial system: Global Financial Crisis 2008-10 (GFC).<sup>3</sup>
- (d) World war: we have had two in the 20<sup>th</sup> century, and multiple other conflicts.<sup>4</sup> The United Nations does not look like the answer to the emergence of either large states that wish to dominate or interfere with others (China, Russia) or rogue states or fundamentalist groups (North Korea, Iran, Islamic State, Taliban).
- (e) Mass migration: refugees seeking refuge from war, asylum, and economic disaster.

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<sup>1</sup> *Planetary Emergency 2.0. Securing a New Deal for People, Nature and Climate* (The Club of Rome, 2020); I Goldin, *Divided Nations. Why Global Governance is Failing, and What We Can Do About It* (Oxford University Press, 2013). Goldin, head of the Oxford Martin School, has argued for some time that new global means of cooperation are needed. His 2013 analysis of five global risks—climate change, cybersecurity, pandemics, migration and finance—concluded that a new form of global governance is required. See recently I Goldin, *Rescue. From Global Crisis to a Better World* (Sceptre, 2021).

<sup>2</sup> Intergovernmental Panel on Climate Change, *AR6 Climate Change 2021: The Physical Science Basis* (Cambridge University Press, 2021).

<sup>3</sup> M Carney, ‘Turning Back the Tide’, speech given to FICC Markets Standards Board Conference, 29 November 2017; *Banking Conduct and Culture. A Permanent Mindset Change* (Group of Thirty, 2019); A Nesvetailova and R Palan, *Sabotage. The Business of Finance* (Allen Lane, 2020).

<sup>4</sup> See T Pettersson and P Wallenstein, ‘Armed Conflicts, 1946-2014’ (2015) 52(4) *Journal of Peace Research* 536-50.

- (f) National and political introversion, driven by perceived threats from economic austerity, inability to progress and frustration of personal and social expectations and from apparent inability to control immigration and communities, leading to populist-driven instability and resentment over continuing economic inequality.

We can only solve these problems by choosing between attempts at conquest, repression, isolation, competition or enhanced cooperation. As the distinguished cultural anthropologist Geert Hofstede said as far ago as 1980: ‘The survival of mankind will depend to a large extent on the ability of people who think differently to act together.’<sup>5</sup>

### **Designing for Cooperation**

So the issue is: How can we support cooperative behaviour and engagement? The proposition advanced here is that the key elements are:

- a. A trust-based system that differentiates those who can be trusted to behave according to ethical values in the achievement of agreed purposes and outcomes from those who do not, with appropriate accountability and consequences.
- b. A system in which all stakeholders work together to achieve the common purposes and outcomes and avoid undesired outcomes.
- c. Co-creation involving all stakeholders, such as government, industry and civil society.
- d. Agreement on the core purposes, objectives and outcomes.
- e. Agreement on the mode of engagement, i.e. a code of ethical practice governing the whole system, to which all actors should sign up, supplemented by all necessary subsidiary agreed rules on specific activities and behaviours, whether in law, standards or guidance.
- f. Agreement on the functions, roles, responsibilities, objectives, outcomes, metrics and accountability mechanisms of each stakeholder.
- g. Operating a constant monitoring system in which stakeholders account for their behaviour and contribution in achieving the desired purposes and outcomes, produce relevant data that they can be trusted and on their performance, and cooperate in identifying problems, analysing root causes and implementing agreed responses prospectively to reduce risk and retrospectively to repair harm.
- h. All stakeholders are treated as responsible actors and encouraged to act through self-motivation with competence, autonomy and relatedness.
- i. All contribute to an achievement and problem-solving mode in which all cooperate to achieve the purposes and outcomes whilst identifying and resolving problems and reducing risk.
- j. Appropriate responses are made to failures. Actors who make mistakes are supported to improve their performance, competence, behaviour and outcomes. Actors who behave unethically and anti-socially are subject to interventions of appropriate severity aimed at protecting society.

Adopting a mode of human society and business on this basis *saves cost but increases performance*. It has almost no direct implementation cost. Doing the right thing turns out to avoid cost and build value through enhanced performance and easier achievement of ethical goals. Some businesses or individuals may instinctively wish to pursue their own interests in free markets without red tape. However, the ideology of maximising shareholder value has been abandoned by business leaders as involving unacceptable risk and systemic harm. They have switched to pursuing sustainable stakeholder value. This model builds on a huge evidence base and shows how that can be done. It will reduce the perception that freedom is constrained, and open opportunities for ‘better achievement’ (and ‘better regulation’) by enlisting humans’ innate psychological motivations and capabilities.

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<sup>5</sup> G Hofstede, *Culture Consequences. Comparing Values, Behaviors, Institutions, and Organizations Across nations* (Sage, 2<sup>nd</sup> ed, 2001), Preface to first edition 1980, xv.

## Structure of this Analysis

This analysis will establish the basis for these system design elements. Its foundation, in Part B, is the science of human behaviour, contrasting the competitive and cooperative drives and modes, noting the research-based findings on the mechanisms that instigate and influence how humans think and behave, our reliance on values—especially fairness and justice—and the mental bridge of trust. We note the following particularly important scientific findings.

First, our reliance on particular values and forms of trust have changed over time in order to match our changing forms of societies, and we can in turn affect our values and behaviour through choice and selection of our modes of living and our institutions. We do this unconsciously but can also do it consciously.

Second, spontaneous altruistic actions build stronger trust and social capital than transactionally negotiated trust.

Third, groups that cannot cooperate are incapable of learning, evolving or innovating. Competition *within* a group will ultimately be destructive, whereas moderate competition *between* groups can be inspiring. However, stimulating cooperation through intrinsic motivation of individuals and groups will be the most effective strategy in achieving performance and transformation. In simple terms: cooperation is ultimately vital for sustaining life and group activities, whereas competition can be destructive.

Fourth, the evolutionary trajectory of transmitted genes and behaviour is towards increased cooperation, and towards increasing reliance on strong ethical values, since these elements are inextricably linked.

Fifth, we do not learn unless we spontaneously share information, and we will not do that if we fear criticism or sanctioning, so the best performing groups and organisations operate with cultures of psychological safety.

Sixth, cooperators do not punish, losers punish. Our reliance on punishment and sanctioning group members has changed over time and can now evolve further. Earlier groups of humans relied on punishment to maintain the adherence of members and social cohesion, and leaders and elites maintained their power by punishing subjects and inferiors. But we can observe and supporting intrinsic motivation and ethical purposes

Part C therefore notes that we have a political choice over how we interrelate in our societies, businesses and communities. The scientific evidence shows that we will be more successful in these endeavours if we design our interactions and institutions around strong ethical values and produce convincing evidence that we can be trusted to demonstrate them in our behaviours and organisational culture. Indeed, evidence of a shift away from individualism and towards more social-centred values and forms of cooperation and organisation can be seen in many contexts: political ideologies, corporate purpose and governance, legal and regulatory systems, employment, communities and dispute resolution. Many leading thinkers—from Jonathan Sacks and Roger Scruton to Mark Carney—have called for greater emphasis on social values, which have been highlighted in public discourse as a result of the pandemic.

In Part D we analyse the essential elements of the model that is required: agreed statements of ethical values and modes of cooperation (especially in codes of practice); involvement of all stakeholders through co-creation; agreement on common purposes, objectives and outcomes—and on undesired outcomes; a problem-solving approach respecting the functions and roles of all participants, irrespective of whether their contribution is major or modest; agreement on the associated roles and responsibilities of all stakeholders in order to achieve the purposes and outcomes; agreement on periodic strategic objectives and on the evidence that will be produced to demonstrate trustworthiness (or its absence) that will drive accountability and appropriate consequences to reduce risk and deliver protection as well as

prosperity; and clarification of the institutions (consensus-forming, strategic, operating, data generating and collecting, evaluating etc) that are necessary for the system of achievement and trust to perform well. Part E summarises major conclusions.

## B. UNDERSTANDING HUMAN BEHAVIOUR

### The Basis of Social Interdependence

David Johnson shows that human beings exist in three basic modes:<sup>6</sup>

- (a) Individualism – (*no interdependence*): a situation in which individuals perceive that they can reach their goal regardless of whether other individuals in the situation attain or do not attain their goals.
- (b) Competition – (*Negative interdependence*) exists when individuals perceive that they can reach their goals if and only if the other individuals with whom they are competitively linked fail to reach their goals. Participants, therefore, obstruct each other's efforts to achieve their goals.
- (c) Cooperation – (*Positive interdependence*) exists when individuals perceive that they can reach their goals if and only if the other individuals with whom they are cooperatively linked also reach their goals. Participants, therefore, promote each other's efforts to achieve the goals.

*Social interdependence theory* holds that the type of interdependence that is structured in a situation determines how individuals interact with each other. The interaction patterns, in turn, determine outcomes. So the design and selection of modes of interaction will affect outcomes.

Conflict arises in both competitive and cooperative modes—possibly even more in the cooperative mode, since differences of perspectives, goals and means should arise more freely. 'The issue, therefore, is not how to eliminate or prevent conflict, but rather how to make it productive or, at the very least, how to prevent it from being destructive.'

Evolutionary anthropologists have explained how human social groupings, modes of behaviour, mental processes and values have inter-related and evolved. The need to exist cooperatively in particular groups (families, tribes, nations) explains modes of intra-group cooperation and social norms (values) and inter-group competition, including existential conflicts such as warfare and aggression in response to perceived threats. The psychological mechanisms have evolved around drives for self-protection and self-thriving of the individual and the individual's social group.

The inter-relationships between us are formed by a constant and complex interplay and development between our brains, hormones, perceptions, anatomy, skills, groupings, institutions and cultures.<sup>7</sup> This involves constant potential for change. Major transformations occurred from around 1000 AD in Western Europe when the Church dismantled kinship and fertilised a pan-tribal society that shared ideas amongst new large networks (eg Cistercians, journeymen) producing bigger cities, bigger brains and innovation; a similar socio-political transformation in China from the 1950s; and where the European reformation produced a change from authoritarianism towards individualism and literacy.

Although humans are equipped with the ability to form diverse social groups for a diversity of purposes (social, defence, sustenance, work, recreation), limitations exist on the size of groups that can be sustained in particular levels of intensity (the Dunbar number, limited by the size of our brains). This has implications for the size of social, work, community, sport, and national groups.

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<sup>6</sup> DW Johnson, *Constructive Controversy. Theory, Research, Practice* (Cambridge University Press, 2015).

<sup>7</sup> J Henrich, *The Secret of Our Success: How culture is driving human evolution, Domesticating our species, and making us smarter* (Princeton University Press, 2016); J Henrich, *The Weirdest People in the World. How the west Became Psychologically Peculiar and Particularly Prosperous* (Allen Lane, 2020).

Frans de Waal has said that ‘When we became cooperative animals, we abandoned the right-of-the-strongest principle and moved on to a right-of-the-contributor principle.’<sup>8</sup> Christakis argues that humans are on an evolutionary trajectory to reduce competition and favour cooperation, through slowly increasing emphasis on ethical values (‘the arc of our evolutionary history ‘bends towards goodness’), because we learn (and accordingly our genes adapt) that moral behaviour is better for cooperation.<sup>9</sup> Unmoderated competition is coming under attack for producing undesirable social and economic outcomes.<sup>10</sup> Sztompka has suggested that six moral bonds—that people value simply because they feel happier to live in a society pervaded with good inter-relationships—are crucial: *trust, loyalty, reciprocity, solidarity, respect and justice*.<sup>11</sup>

## Competition and Cooperation

The twin but conflicting forces of competition and cooperation have driven life on earth. *Competition* arises because of the need to survive that applies to cells, multicellular organisms such as individual people, and groups. The need and drive to survive necessarily involves, at a basic level, dominance over others and their subjection or extinction. *Cooperation*, on the other hand, involves individuals and groups working together. The reason for doing this is that the outcome is to enable individuals and groups to evolve, learn, and improve their performance and outputs through higher levels of organisation and innovation.<sup>12</sup>

The contrast, therefore, is that competition may cause survival of the ‘winner’ of a contest but not of the ‘losers’, whereas with cooperation, not only do all participants survive but they also evolve and achieve more. Thus, groups that cannot cooperate are incapable of learning, evolving or innovating.<sup>13</sup> Competition *within* a group will ultimately be destructive, whereas moderate competition *between* groups can be inspiring. However, stimulating cooperation through intrinsic motivation of individuals and groups will be the most effective strategy in achieving performance and transformation.

Joseph Henrich, Professor of Human Evolutionary Biology at Harvard concludes: first, moderate levels of controlled nonviolent intergroup competition can strengthen impersonal trust and cooperation; second, extreme forms of within-group competition encourage selfish behaviour, envy, and zero-sum thinking; third, however, when disciplined by intergroup competition, moderate levels of within-group competition can inspire perseverance and creativity.<sup>14</sup>

We have evolved the means by which we cooperate, depending on changing circumstances and needs.<sup>15</sup> For example, relations between two individuals involving repetition need direct reciprocity; repeated encounters within a group of players need indirect reciprocity created by reputation; special selection assists multiple overlapping networks; multilevel selection can sometime help groups; kin selection has

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<sup>8</sup> FBM de Waal, ‘How Selfish an Animal?’ in PJ Zack, *Moral Markets. The Critical Role of Values in the Economy* (Princeton University Press, 2008), 66.

<sup>9</sup> NA Christakis, *Blueprint. The Evolutionary Origins of A Good Society* (Little, Brown Spark, 2019).

<sup>10</sup> M Heffernan, *A Bigger Prize. Why Competition isn’t Everything and How We do Better* (Simon & Schuster, 2014); ME Stuke and A Ezrachi, *Competition Overdose* (Harper Business, 2020).

<sup>11</sup> P Sztompka, ‘Trust in the Moral Space’ in M Saskai (ed), *Trust in Contemporary Society* (Brill, 2021).

<sup>12</sup> M Nowak with R Highfield, *SuperCooperators. Beyond the Survival of the Fittest. Why Cooperation, not Competition, is the Key to Life* (Canongate Bools Ltd, 2011), 280; M Bertness, *A Brief Natural History of Civilization. Why a Balance Between Cooperation & Competition Is Vital to Humanity* (Yale University Press, 2020), 11.

<sup>13</sup> M Bertness, *A Brief Natural History of Civilization. Why a Balance Between Cooperation & Competition Is Vital to Humanity* (Yale University Press, 2020).

<sup>14</sup> J Henrich, *The Secret of Our Success: How culture is driving human evolution, Domesticating our species, and making us smarter* (Princeton University Press, 2016), 349. J Henrich, *The Weirdest People in the World. How the West Became Psychologically Peculiar and Particularly Prosperous* (Allen Lane, 2020).

<sup>15</sup> M Nowak with R Highfield, *SuperCooperators. Beyond the Survival of the Fittest. Why Cooperation, not Competition, is the Key to Life* (Canongate Bools Ltd, 2011), 11, 15.

assisted eusociality in some animal groups<sup>16</sup> and historical human groups<sup>17</sup> but causes bias, nepotism and corruption in more open societies.

### Theories of Human Behaviour

Multiple researchers have put forward their own theories on drivers of human behaviour, usually based on their interpretation of the results of studies they have performed.<sup>18</sup> The theories that appear most often are:

- a) Social Learning Theory (SLT), a precursor of SCT, Miller 1941.
- b) Theoretical Change Model (TTM), Prochaska 1983
- c) Theory of Planned Behaviour (TPB), Ajzen 1985
- d) Social Cognitive Theory (SCT), Bandura 1986
- e) The Information-Motivation-Behavioural-Skills Model (IMB), Fisher 1992
- f) Health Action Process Approach (HAPA), Schwarzer 1992
- g) Health Belief Model (HBM), Rosenstock 1996
- h) Self-Determination Theory (SDT), Deci 2000

There is, therefore, considerable diversity, debate, and lack of overall coherence, between competing theories. One approach to this is to adopt a meta-analytical approach, seeking an overview. But this overlooks how individual researchers' theories have evolved, in particular how they have been influenced by ideas that were prevalent at a particular time but have been subject to change. An example is that many theories in economics, law and psychology were influenced by ideas about the importance of the individual, and how individuals sought personal freedom and made decisions rationally or on the basis of what was in their best interests. That idea (the basis of neoliberal capitalism) appears even in theories of behavioural researchers in the 20<sup>th</sup> century but has been challenged since by ideas of social interconnectedness, solidarity and altruism as forces that also have relevance.

Three particularly influential theories describe the following criteria as core characteristics driving behaviour:<sup>19</sup>

Theory	Description	Core characteristics
<i>Self-efficacy</i> <sup>20</sup>	reflects the capacity for individuals to take measures to achieve targeted goals.	Mastery, competence, confidence
<i>Self-determination</i> <sup>21</sup>	an intrinsic, self-sustaining form of motivation that is influenced by internal stimuli; fundamentally associated with social cognition <sup>22</sup> and personal empowerment.	Competence, autonomy, relatedness.
<i>Self-regulation</i> <sup>23</sup>	the capacity to moderate the thoughts and emotions that govern human behavior, in which individuals consciously attempt to control behavior in an effort to mediate outcomes, linking to standards (e.g. value-driven	Standards, motivation, willpower.

<sup>16</sup> EO Wilson, *Sociobiology. The new synthesis* (Harvard University Press, 1975).

<sup>17</sup> MAC Nowak, C Tarnita and EO Wilson, 'The evolution of eusociality' (2010) 466 *Nature* 1057.

<sup>18</sup> R Davis, R Campbell, Z Hilton, L Hobbs and S Michie, 'Theories of behaviour change across the social and behavioural sciences: a scoping view' (2015) 9(3) *Health Psychology Review* 323-344. This review identified 82 theories.

<sup>19</sup> See JM Garrin, 'Self-Efficacy, Self-Determination, and Self-Regulation: The Role of the Fitness Professional in Social Change Agency' (2014) 6(1) *Journal of Social Change* 41-54.

<sup>20</sup> A Bandura, 'Self-efficacy: Toward a unifying theory of behavioral change' (1977) 84(2) *Psychological Review* 191-215.

<sup>21</sup> RM Ryan and EL Deci, *Self-Determination Theory. Basic Psychological Needs in Motivation, Development, and Wellness* (Guilford Press, 2017).

<sup>22</sup> A Bandura, *Social foundations of thought and action: A social cognitive theory* (Prentice-Hall, Inc, 1986).

<sup>23</sup> H Leventhal, D Nerenz and D Steele, 'Illness representations and coping with health threats' in A Baum and J Singer (eds), *A handbook of psychology and health* (Vol. 4) (Erlbaum, 1984).

	expectancies), motivation (e.g. adherence to standards), and willpower (e.g. impulse control). <sup>24</sup>	
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It will be seen that these theories focus on the individual actor and his or her attributes (mastery, competence, confidence, motivation, willpower) with limited reference to external standards and controls. However, although self-determination and self-regulation theories focus on *intrinsic* motivation (competence, autonomy) they are also influenced by external factors (standards, social practice) and in practice how external factors support an individual's senses of competence and autonomy through emphasis on the individual's intrinsic ethical values and sense of relatedness to others. These psychological and behavioural theories clearly contrast with the theories of pure economics and law in which individuals make all decisions based on a rational cost-benefit calculation,<sup>25</sup> so need to be incentivised and controlled through rational cost-benefit levers such as financial targets and remuneration rewards (agency theory),<sup>26</sup> and are controlled by sanctions through deterrence. The extensive evidence from psychological and empirical studies largely ousts the former rationality theories.

### Human Behaviour: Prospect Theory and Moral Theory

Social interactions are influenced (positively and negatively) by our internal mechanisms of support. Important elements within our genetic, chemical and psychological mechanisms are the following.

*Heuristics and biases* (mental shortcuts, especially triggered by perceived familiarity or emotion: Prospect Theory).<sup>27</sup> These responses override more objective analyses, so removal of stress (ability to focus and avoiding 'crowding out by powerful imposed priorities, plus psychological safety'<sup>28</sup>) and having time to think usually delivers better judgments and actions.

*An internal moral compass*: the ability to distinguish between right and wrong based on an internal system of ethical/moral values<sup>29</sup> (see Moral Foundations Theory).<sup>30</sup> This mechanism of differentiation is typically automatic (values-based, drawing on feelings and emotion) rather than calculative (rational calculation, eg utilitarian, even though we possess the ability to reason).

But although we all possess all the same moral values, the set of values contains individual values that are inherently conflicted with other values, and we draw on particular values in particular circumstances. Schwartz illustrated this as a continuum of values in a circular model.<sup>31</sup>

<sup>24</sup> RF Baumeister and KD Vohs, 'Self-regulation, ego depletion, and motivation' (2007) 1 *Social and Personality Psychology Compass* 1–14.

<sup>25</sup> eg J Bentham, *An Introduction to the Principles of Morals and Legislation* (JH Burns and HLA Hart, eds) (London: Methuen, 1789/1982).

<sup>26</sup> MJ Jensen and WH Meckling, 'Theory of the firm: Managerial behavior, agency costs, and ownership structure' (1976) 3(4) *Journal of Financial Economics* 305; see also LA Stout, 'On the Rise of Shareholder Primacy, Signs of Its Fall, and the Return of Managerialism (in the Closet)' (2013) 36 *Seattle University Law Review* 1169.

<sup>27</sup> D Kahneman, *Thinking, Fast and Slow* (Allen Lane, 2011).

<sup>28</sup> AC Edmondson, *The Fearless Organization* (John Wiley & Sons, Inc., 2019).

<sup>29</sup> EO Wilson, *The Social Conquest of Earth* (Liveright Publishing, 2012).

<sup>30</sup> J Haidt and J Graham, 'When morality opposes justice: Conservatives have moral intuitions that liberals may not recognise' (2007) 20(1) *Social Justice Research* 98-116; J Haidt, *The Righteous Mind. Why Good People are Divided by Politics and Religion* (Penguin Books, 2012).

<sup>31</sup> SH Schwartz, J Cieciuch, M Vecchione, E Davidov, R Fischer, C Beierlein, A Ramos, M Verkasalo, J-E Lonnqvist, K Demirutku, O Dirilen-Gumus and M Konty, 'Refining the Theory of Basic Individual Values' (2012) 103(4) *Journal of Personality and Social Psychology* 663-688. See earlier SH Schwartz, 'Universals in the content and structure of values: Theory and empirical tests in 20 countries' (1992) 25 *Advances in Experimental Social Psychology* 1; S Schwartz, 'Are there universal aspects in the structure and content of human values?' (1994) 50(4) *Journal of Social Issues* 19-45.





The context affects the primacy of values: self-protection and the need to avoid anxiety trigger particular values, and opposing values are triggered by freedom from anxiety and the freedom to grow. A similar opposition occurs with self focus or social focus. Thus, the values that a group of society values will depend on its context and can change over time. If we feel threatened, the predominant values will trigger protective behaviour, such as strengthening of the tribalism of those who feel the same way, isolationism, anti-immigration, and so on. These characteristics have been identified as major causes of the rise of populism in politics in Hungary, Poland, the U.S. rust belt, the gilets jaunes in France and Brexit.<sup>32</sup>

### Values of Fairness and Justice

Values that do not appear in Schwartz's table are fairness and justice. These values appear to be universal. They are embedded in individuals' evaluative mechanisms of self-worth (the need to think of oneself as a just and responsible individual) and that of every society, reflected in the stories we tell about ourselves.<sup>33</sup> Wilson, Haidt and others believe that it was the genetic mutation in being able to distinguish right from wrong that occurred at the evolution of *homo sapiens* as a species that was the critical element in enabling our species to cooperate and hence to dominate all others.<sup>34</sup> However, we also have the ability to justify an unethical action after the event (cognitive dissonance), which is explained as a mechanism to maintain our sense of self-worth.<sup>35</sup> Thus, what we regard as fair and just

<sup>32</sup> C Crouch, *Post-Democracy After the Crises* (Polity Press, 2020); M Lind, *The New Class War. Saving Democracy from the Metropolitan Elite* (Atlantic Books, 2020); M Sandbu, *The Economics of Belonging. A Radical Plan to Win Back the Left Behind and Achieve Prosperity for All* (Princeton University Press, 2020); B Milanovic, *Capitalism, Alone. The Future of the System That Rules the World* (The Belknap Press of Harvard University Press, 2019); D Goodhart, *The Road to Somewhere. The New Tribes Shaping British Politics* (Penguin Books, 2017); R Ford and M Goodwin, *Revolt on the Right: Explaining Support for the Radical Right in Britain* (Routledge, 2014).

<sup>33</sup> A MacIntyre, *After Virtue* (Duckworth, 1985).

<sup>34</sup> EO Wilson, *Sociobiology. The new synthesis* (Harvard University Press, 1975); J Haidt, *The Righteous Mind. Why Good People are Divided by Politics and Religion* (Penguin Books, 2012).

<sup>35</sup> L Festinger, *A Theory of Cognitive Dissonance* (Row, Peterson, 1957); J Cooper, 'Cognitive Dissonance Theory' in PAM Van Lange, AW Kruglanski and ET Higgins, *Handbook of Theories of Social Psychology* (SAGE, 2012), ch 18.

varies over time and between individuals and groups, and can be open to challenge and debate—although such challenge may involve heated debate since it challenges our self of self-worth. The same analysis would apply for individuals as for the social groups and organisations in which they combine, such as clubs, professions, businesses, public bodies, and nations.

Values of fairness and justice have generated heated debates over centuries about individual, social and distributive justice. Important milestones have been moves beyond divisions such as serfdom, slavery, class, adoption of universal suffrage, and gender equality. However, given the continuation of inequality, poverty, abuse and exploitation that persists in the world, Amartya Sen reminded us that a theory of justice that can serve as the basis of practical reasoning must include ways of judging *how* to reduce injustice and advance justice, rather than aiming only at the characterization of perfectly just societies.<sup>36</sup> The hypothetical ‘social contract’ is no longer adequate. It has to be practical and to *deliver* equality of respect.

In the 21<sup>st</sup> century, philosopher Michael Sandel concludes that justice is a concept that is larger than either maximising utility or welfare, or respecting freedom of choice, and involves cultivating virtue and reasoning about the common good, involving:<sup>37</sup>

- (a) a strong sense of community: citizenship, sacrifice and service;
- (b) recognising the moral limits of markets;
- (c) confronting inequality, solidarity and civic virtue; and
- (d) the need for a politics of moral engagement.

Sandel follows MacIntyre in saying that with belonging comes responsibility. These ideas raise yet again the issue of whether ideas of equality and stakeholders, as well as respect for individuals and self-determination, require fresh effort to involve people in *co-creation* of the system and its ethical norms, purposes and outcomes, and in *cooperation* in their achievement.

### Trust

Trust is the mental ability to have confidence in how people will act in the future, so that we can make our own plans and actions.<sup>38</sup> In placing trust, we look for knowledge and evidence of the reliability of things in the past and present on which to base our mental predications about the future. The mental state of trust bridges the gap caused by *lack* of knowledge.

We can strengthen trust by producing more evidence that we can be trusted, based on our history of behaviour and our present competences and intentions. Various sets of criteria for characteristics of trust evidence have been suggested, of which that by McKnight and Chervany is a leading example:<sup>39</sup>

Trust-related characteristic	Second-order conceptual category
1. Competent 2. Expert 3. Dynamic	Competence
4. Predictable	Predictability

<sup>36</sup> A Sen, *The Idea of Justice* (Allen Lane, 2009).

<sup>37</sup> MJ Sandel, *Justice. What's the Right Thing to Do?* (Penguin Books, 2010; first pub Farrar, Strauss and Giroud, 2009).

<sup>38</sup> O O’Neil, *A Question of Trust* (Cambridge University Press, 2002). Many other sources include N Luhmann, *Trust and Power* (John Wiley & Sons, 2018); BA Misztal, *Trust in Modern Societies* (Polity Press, 1996); AB Seligman, *The Problem of Trust* (Princeton University Press, 1997); P Sztompka, *Trust. A Sociological Theory* (Cambridge University Press, 1999).

<sup>39</sup> DH McKnight and NL Chervany, ‘Conceptualizing trust: A typology and e-commerce customer relationships model’, *Proceedings of the 34<sup>th</sup> Hawaii International Conference on System Sciences* (IEEE 2001); DH McKnight and NL Chervany, ‘What Trust Means in ECommerce Customer Relationships: An Interdisciplinary Conceptual Typology’ (2001) 6(2) *International Journal of Electronic Commerce* 35-59.

5. Good, moral 6. Good will 7. Benevolent, caring 8. Responsive	Benevolence
9. Honest 10. Credible 11. Reliable 12. Dependable	Integrity
13. Open 14. Careful, safe 15. Shared understanding 16. Personally attractive	Other

These criteria have driven the type of evidence that people and organisations that wish to be trusted try to produce about themselves so as to build a convincing and consistent narrative. Thus, businesses rely on brand reputation and endorsements, regulatory systems include quality management and inspections mechanisms and consistent results over time, advisers rely on professional integrity mechanisms and rituals, traders rely on contracts and legal systems.

Yamagishi and Yamagishi drew a distinction between *trust* (expectations of benign behaviour based on inferences about a partner's personal traits and intentions,) and *assurance* (expectations that are based, instead, on knowledge of an incentive structure that encourages benign behaviour).<sup>40</sup> Linda Molm and colleagues drew on this distinction to differentiate between reciprocal exchanges and negotiated exchanges. In *negotiated* exchanges, actors ‘actors engage in a joint decision process, such as explicit bargaining, in which they reach an agreement on the terms of the exchange.’<sup>41</sup> Both sides of the exchange are agreed upon at the same time, and the benefits for both exchange partners are easily identified as paired contributions that form a discrete transaction.’ In *reciprocal exchanges*, actors spontaneously perform individual acts that benefit another (altruism), without knowing whether, when, or to what extent the other will reciprocate in the future. Exchange relations develop gradually over time in social contexts or fail to do so. In a laboratory experiment, Molm and colleagues found that reciprocal exchange produces stronger trust and affective commitment than negotiated exchange, and that behaviours signalling the partner's trustworthiness have greater impact on trust in reciprocal exchange. Negotiated exchanges with binding agreements provide assurance, while reciprocal exchanges enable trust. It follows that a society in which individuals engage in spontaneous acts of giving will generate stronger trust and affective commitment<sup>42</sup> than markets that are based on contractual arrangements. Molm and colleagues concluded that, ironically, the very mechanisms that were created to reduce risk in *transactions*—the negotiation of terms and strictly binding agreements—have the unintended consequence of reducing trust in *relationships*. Thus, the forms of social and relational exchange affect the extent of trust and social cohesion. A generous warm society is preferable to an individualist contractual society.

Trust is ethically neutral (it is the basis of cooperation in criminal gangs) and it has to be moderated by ethical criteria.<sup>43</sup> More than ‘Can I trust you to do this?’, ‘Is what we are doing the right thing to do?’. Values have to be central. Values involve a ‘co-primacy of right and good’.<sup>44</sup>

<sup>40</sup> T Yamagishi and M Yamagishi, ‘Trust and commitment in the United States and Japan’ (1994) 18(2) *Motivation and Emotion* 129-166.

<sup>41</sup> LD Molm, N Takahashi and G Peterson, ‘Risk and Trust in Social Exchange: An Experimental Test of a Classical Proposition’ (2000) 105(5) *American Journal of Sociology* 1396-1427.

<sup>42</sup> EJ Lawler and J Yoon, ‘Commitment in Exchange Relations: Test of a Theory of Relational Cohesion’ (1996) 61 *American Sociological Review* 89- 108.

<sup>43</sup> E Goffman, ‘On Cooling the Mark Out: Some Aspects of Adaptation to Failure’ (1952) 15(4) *Psychiatry* 451-63; D Gambetta, ‘Mafia: The Price of Distrust’ in D Gambetta (ed), *Trust. Making and Breaking Cooperative Relations* (Basil Blackwell, 1988); T Frankel, *The Ponzi Scheme Puzzle: A History and Analysis of Con Artists and Victims* (Oxford University Press, 2012); G Hosking, *Trust: A History* (Oxford University Press, 2014).

<sup>44</sup> JC Gibbs, *Moral Development & Reality* (Oxford University Press, 4<sup>th</sup> ed 2019).

There is mounting evidence that higher levels of integrity are correlated with commercial success in many contexts<sup>45</sup> and this is recognised by major investors.<sup>46</sup> Countries that have high trust relationships have high social capital<sup>47</sup> and commercial cooperation and success (eg Germany<sup>48</sup> and Japan<sup>49</sup>). There is also recognition that the culture of an organisation has a powerful moderating (regulating) effect on behaviour and outcomes.<sup>50</sup> The simple idea of ‘let’s all do the right thing’, plus ‘if we’re not sure, ask’ and ‘let’s all prove that we are trying to do the right thing’, has been shown to be an extraordinarily powerful strategy in achieving a group’s objectives. It is the essence of the Ethical Business Practice model.<sup>51</sup>

Modern market exchange is inconceivable without moral values.<sup>52</sup> A major objective since the GFC has been to try to rebuild destroyed trust in the financial sector and business generally.<sup>53</sup> However, the forces of globalisation, and digitisation through the internet, and intermediary platforms have produced a commodification of trust sources and confusion over the reliability of trust in strangers. In this world, trust is intermediated by technology owned by private trust producers (online reputation management, distributed ledgers and AI-based predictive systems), where the trustee is the trust-producing technology itself, whose trustworthiness may be impossible to establish, leading to issues over reliability, fraud and fake news.<sup>54</sup>

There is a symbiotic relationship between the health of states and societies and the state of their political and economic institutions.<sup>55</sup> Leading philosophers and many economists have identified ongoing social

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<sup>45</sup> M Jenkins, *The relationship between business integrity and commercial success* (Chr. Michelsen Institute, 2017); PM Nichols, ‘The Business Case for Complying with Bribery Laws’ (2012) 49(2) *American Business Law Journal* 325-368; *The case for purpose-driven business* (Regenerate, 2020), ch 3.

<sup>46</sup> *Sustainable investing: resilience amid uncertainty* (BlackRock, 2020).

<sup>47</sup> RD Putnam, *Making Democracy Work* (Princeton University Press, 1993); RD Putnam, ‘Turning In, Turning Out: The Strange Disappearance of Social Capital in America’ (1995) 28(4) *PS: Political Science and Politics* 644; F Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (Penguin Books, 1995).

<sup>48</sup> A Fox, *Beyond Contract: Work, Power and Trust Relations* (Faber, 1974); LG Zucker, ‘Production of trust. Institutional sources of economic structure 1840-1920’ (1986) 8 *Research in Organizational Behavior* 53-111.

<sup>49</sup> M Stevens, JP MacDuffie and S Helper, ‘Reorienting and Recalibrating Inter-organizational Relationships: Strategies for Achieving Optimal Trust’ (2015) 36(9) *Organization Studies* 1237-64.

<sup>50</sup> G Hofstede, *Culture Consequences. Comparing Values, Behaviors, Institutions, and Organizations Across nations* (Sage, 2<sup>nd</sup> ed, 2001); A Arnaud and M Schminke, ‘The ethical climate and context of organizations: A comprehensive model’ (2012) 23 *Organizational Science* 1767–1780; C Engel, ‘The Behaviour of Corporate Actors: How Much Can We Learn from the Experimental Literature?’ (2010) 6(4) *Journal of Institutional Economics* 445-475.

<sup>51</sup> C Hodges and R Steinholtz, *Ethical Business Practice and Regulation. A Behavioural and Values-Based Approach to Compliance and Enforcement* (Hart, 2017).

<sup>52</sup> PJ Zack, *Moral Markets. The Critical Role of Values in the Economy* (Princeton University Press, 2008), xi.

<sup>53</sup> *Corporate Governance and Business Integrity. A Stocktaking of Corporate Practices* (OECD, 2015).

<sup>54</sup> B Bodó, ‘Mediated trust: A theoretical framework to address the trustworthiness of technological trust mediators’ (2020) *New Media & Society* 1-23; B Bodó, ‘The Commodification of Trust’ Amsterdam Law School Legal Studies Research Paper No 2021-22.

<sup>55</sup> D Acemoglu and JA Robinson, *Economic Origins of Dictatorship and Democracy* (Cambridge University Press, 2006); D Acemoglu and JA Robinson, *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (Crown, 2012).

inequality and the political and extractive success of elites as major sources on destabilisation<sup>56</sup> and a need to focus on rebuilding crumbling social, community and political institutions.<sup>57</sup>

The experts who compiled the 2021 World Happiness Report recorded that during the pandemic there was greater economic insecurity, anxiety, disruption of every aspects of life and, for many people, stress and challenges to mental and physical health.<sup>58</sup> They concluded that trust and the ability to count on others are major supports to life evaluation, and that variation in trust was a major factor that explained very large international differences in Covid-19 death rates, which were substantially higher in the Americas and Europe than in East Asia, Australasia and Africa. They pointed to the more individualistic culture of the North Atlantic countries compared to countries in the Asia-Pacific region and the relative looseness of social norms as having contributed to lower public support for non-pharmaceutical interventions.

### **The Constant Co-Evolution between Psychology, Norms, Culture and Institutions**

Joseph Henrich has set out the evidence that charts the constant coevolutionary interplay between the factors that support humans working socially in groups, such as psychology, institutions and culture.<sup>59</sup> He suggests that changes in brains produced by culture include expansion of verbal memories, shifts to right brain in face processing, and thickening of *corpus callosum*. Henrich suggests that social norms arise directly from cultural learning and social interaction. Where there exists both a social practice and a standard against which it, and violations from it, can be evaluated, cultural evaluation will generate a widely shared rule that, if it is violated, will provoke a reaction from the community.<sup>60</sup> The circumstances and changes in psychology can influence the norms, ideas, practices and beliefs that emerge. Thus, norms that are accepted as central to the beliefs of one community are inimical to another population, given the differences in their psychologies. Examples include cannibalism, taboos on marriage affinities such as incest or cousin affinities, formal rituals, the concept of legal ‘rights’, or the

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<sup>56</sup> S Gerhardt, *The Selfish Society: How We All Forgot to Love One Another and Made Money Instead* (Simon & Schuster, 2010); C Eisenstein, *Sacred Economics. Money, Gift & Society in the Age of Transition* (North Atlantic Books, 2011); <sup>56</sup> M Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Allen Lane, 2012); K Raworth, *Doughnut Economics. Seven Ways to Think Like a 21<sup>st</sup>-Century Economist* (Random House Business, 2017); J Welby, *Reimagining Britain. Foundations for Hope* (Bloomsbury, 2018); B Milanovic, *Capitalism, Alone. The Future of the System That Rules the World* (The Belknap Press of Harvard University Press, 2019); *Under Pressure: The Squeezed Middle Class* (OECD, 2019); M Lind, *The New Class War. Saving Democracy from the Metropolitan Elite* (Atlantic Books, 2020); M Sandhu, *The Economics of Belonging. A Radical Plan to Win Back the Left Behind and Achieve Prosperity for All* (Princeton University Press, 2020); *Financial Inclusion Commission Strategy 2020* (Financial Inclusion Commission, 2020); T Piketty, *Capital and Ideology* (The Belknap Press of Harvard University Press, 2020); MJ Sandel, *The Tyranny of Merit. What's Become of the Common Good?* (Farrar, Strauss and Giroux, 2020); R Henderson, *Reimagining Capitalism. How Business Can Save the World* (Penguin Business, 2020); M Shafik, *What We Owe Each Other. A New Social Contract* (The Bodley Head, 2021).

<sup>57</sup> M Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (Yale University Press, 1984); M Mazzucato, *The Entrepreneurial State. Debunking Public vs Private Sector Myths* (Penguin, 2018 (originally 2013)); N Ferguson, *The Great Degeneration: How Institutions Decay and Economies Die* (Penguin, 2014); P Collier, *The Future of Capitalism* (Allen Lane, 2018); A Pabst, *The Demons of Liberal Democracy* (Polity Press, 2019); J Sacks, *Morality: Restoring the Common Good in Divided Times* (Hodder and Stoughton, 2020); *Innovative Citizen Participation and New Democratic Institutions. Catching the Deliberative Wave* (OECD, 2020).

<sup>58</sup> JF Helliwell, R Layard, JD Sachs, JOE De Neve, LB Aknin and S Wang, *World Happiness Report 2021* at <http://worldhappiness.report/>

<sup>59</sup> J Henrich, *The Secret of Our Success: How culture is driving human evolution, Domesticating our species, and making us smarter* (Princeton University Press, 2016); J Henrich, *The Weirdest People in the World. How the west Became Psychologically Peculiar and Particularly Prosperous* (Allen Lane, 2020).

<sup>60</sup> Henrich (2020), 69.

maximisation of personal gains.<sup>61</sup> There is, in particular, a constant feedback and evolution between culture, institutions, psychology and norms, in which anyone may influence the others.

Henrich's extensive study of societies across the world shows the considerable variety of forms and their associated values. He notes the specific institutional organisation and personal psychology that has evolved in Western, Educated, Industrialised, Rich and Democratic (WEIRD) populations, described as individualism. Its key characteristics are highly individualistic, independent, analytic, self-obsessed, control-oriented and nonconformist traits, with limited devotion to tradition, authority, obedience or conformity.<sup>62</sup> The psychological, institutional and cultural package of WEIRD populations, which Henrich calls *impersonal prosociality*, is 'associated with a set of social norms, expectations, and motivations for impartial fairness, probity and cooperation with strangers, anonymous others, or even abstract institutions like the police or government.'<sup>63</sup> Henrich regards this package as lying at an extreme end of the distribution of types.

Many social modes exist besides the WEIRD phenomenon, producing different outcomes. Japan demonstrates a different style of social organisation with strong cultural intensity, stability and productivity.<sup>64</sup> Brazil's post-colonial mode of patrimonialism has generated strong family-based ties but lack of trust in public institutions and organisation, leading to corruption.<sup>65</sup>

Fernand Laloux has shown that human consciousness has evolved in a series of stages, at each of which we have had to reinvent new forms of organisation.<sup>66</sup> He considers that we are currently undergoing a further transition from organisations based on empowerment, values-driven culture and inspirational purpose, multiple stakeholder perspectives, and family as the guiding metaphor to a 'higher' level, which he specifies as taming the fears of the ego, soul searching of who we are and what our purpose in life might be, dealing gracefully with adversity, and striving for wholeness.

Nicholas Christakis finds that humans 'have always had both competitive and cooperative impulses, both violent and beneficial tendencies. Like the two strands of DNA, these conflicting impulses are intertwined. We are primed for conflict and hatred but also for love, friendship, and cooperation.'<sup>67</sup> However, he argues that our species has evolved to learn how to live with (in fact, to tame) competition in order to prioritise the more important need for cooperation.

Importantly, as noted above, Christakis argues that the trajectory of evolution of human social and mental dispositions is to reduce competition and favour cooperation, which necessarily involves increasing emphasis on ethical values 'bend[ing] towards goodness'.<sup>68</sup>

A profound consequence of this understanding is that we can change ourselves through the *intentional* manipulation of values, norms, institutions, and culture. The process of natural 'cumulative cultural evolution' is occurring, and we have the choice of intervention. Similarly, if we make certain choices, we should not be surprised if they result in some undesirable consequences. Policies of either selfishness or fair cooperation will generate not only short-term responses from others but also deeper changes in institutions and culture, and more permanent consequences, that we may not intend. So, we not only

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<sup>61</sup> *ibid*, 84-85.

<sup>62</sup> *ibid*, 21, 313

<sup>63</sup> *ibid*, 48.

<sup>64</sup> JR Harrison and GR Carroll, 'Keeping the faith: A model of cultural transmission in formal organizations' (2006) 36 *Administrative Science Quarterly* 552; JA Chatman and CA O'Reilly, 'Paradigm lost: Reinvigorating the study of organizational culture' (2016) 36 *Research in Organizational Behavior* 199-224.

<sup>65</sup> RA Da Matta, *Carnivals, Rogues and Heroes: An Interpretation of the Brazilian Dilemma* (University of Notre Dame Press, 1991); DJ Hess and RA Da Matta, *The Brazilian Puzzle: Culture on the Borderlands of the Western World* (Columbia University Press, 1995).

<sup>66</sup> F Laloux, *Reinventing Organizations: A Guide to Creating Organizations Inspired by the next Stage of Human Consciousness* (Brussels, Nelson Parker, 2014).

<sup>67</sup> NA Christakis, *Blueprint. The Evolutionary Origins of A Good Society* (Little, Brown Spark, 2019).

<sup>68</sup> *ibid*.

can but should evaluate the consequences of policies such as racism, euthanasia, abortion, profit maximisation, global sustainability, and in fact every set of personal, organisational, and social goals.

### **Maintaining Cohesion: Punishment or Ethical Values, Fairness, Legitimacy**

Historically, humans have relied on punishment for those who breach values or rules, as the primary mechanism for maintaining adherence to a group. This occurs between group members to maintain social cohesion, and hierarchically by leaders and elites to maintain their positions of power and dominance by punishing subjects and inferiors.<sup>69</sup> Punishing behaviour has been studied extensively in Prisoner's Dilemma experiments to identify cooperative and defecting behaviour,<sup>70</sup> but leads to some unexpected conclusions. If both reward and punishment were on offer, then the winning groups did *not* use punishment, which was both costly and ineffective. Rewards went further than punishment in both benefiting the public good and in building cooperation, despite the efforts of free riders. Nowak concluded that the ability of people to gain a reputation was powerful: 'Cooperators in the public goods game gain a reputation, which makes them more attractive partners for other cooperators in private—one to one—dealings.'<sup>71</sup> Or, to put it succinctly: cooperators do not punish, losers punish.

Nowak summarises the Prisoner's Dilemma evidence as finding that although punishment is one mechanism that can counter the selfishness of natural selection that leads to a 'Tragedy of the Commons' destruction of common public goods, it is very inefficient and it does not help people cooperate much. A much better mechanism of achieving the maintenance of public goods is to 'reward fellow cooperators by establishing mutually beneficial private interactions with them' such that 'the public cooperators gain a reputation that makes them more attractive prospects to fellow cooperators' and private cooperation can support public cooperation.<sup>72</sup> Hence, transparency and ability to advertise good private cooperation is essential.

In other words, if we want to cooperate more, we can adopt a more sophisticated form of supporting social cohesion than punishment. It is based on supporting intrinsic motivation and adopting shared ethical purposes, and supporting the perception—and the fact—that most people are doing the right thing and observing the common values and norms, this observing shared rules.

Extensive research has illuminated the factors that affect whether people will obey social or legal rules. The principal factors are:

- (a) The rules are made through a fair *process*; where people feel that they have had involvement, or a possibility for voice and input.
- (b) The *substance* of the rule is perceived to be fair by the individual and most of the community, even if individuals do not agree with it.
- (c) The rule accords with their sense of *values*; namely the values of the individual, the particular community or social group or organisation.
- (d) The rule is *applied* fairly by/to all.
- (e) Most people are *observing* the rule.

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<sup>69</sup> TR Tyler, 'Psychology and the Law' in *The Oxford Handbook of Law & Politics* (Oxford, 2008). See TR Tyler, *Why People Obey the Law* (Yale University Press, 2006).

<sup>70</sup> E Fehr and S Gächter, 'Cooperation and punishment in public goods experiments' (2000) 90 *American Economic Review* 980. E Fehr and S Gächter, 'Altruistic punishment in humans' (2002) 415 *Nature* 137. See E Fehr and I Schurtenberger, 'Normative Foundations of Human Cooperation' (2018) 2 *Nature Human Behavior*, 458.

<sup>71</sup> M Nowak with R Highfield, *SuperCooperators. Beyond the Survival of the Fittest. Why Cooperation, not Competition, is the Key to Life* (Canongate Bools Ltd, 2011), 231.

<sup>72</sup> Nowak, 233-235, 218.

The concept and value of *fairness* applies to all elements. Those subject to the regime and its rules need to hold perceptions of fair process,<sup>73</sup> fair substance and fair application if they are to want to observe one or more rules and regard the regime as legitimate. For example, enforcement has to be perceived to be done fairly if it is to promote respect and observance. Indeed, many scholars regard the set of elements as adding up to the extent to which a regime and its rules are perceived as *legitimate*.<sup>74</sup> Similarly, in the workplace, evaluations of the procedural justice of performance appraisals were found to influence judgments of overall workplace fairness, perceptions of management legitimacy, and employee rule-adherence behaviour more strongly when employees believed fairer workplace procedures were required by law.<sup>75</sup> Fairness can clearly dominate the motivation of self-interest.<sup>76</sup> If the quality of *legitimacy* exists, people will be motivated voluntarily to observe the rules, even if they think that some aspects are unfair or they otherwise disagree with them.<sup>77</sup>

## C. A POLITICAL CHOICE TO BASE POLICY ON SCIENTIFIC EVIDENCE

### Major Shifts in Theories, Ideologies and Modes

The dominance of the economic and legal theories of self-control and calculation has influenced practice throughout the capitalist world in legal and regulatory systems. However, the empirical findings from scientific research into the behavioural motivations of human beings as individuals and in groups have turned previous orthodoxy on its head. As noted here, current understanding involves focusing on building trust between actors through evidence and relationships founded on shared values and supporting intrinsic motivation.

Further, the theories and practice on how humans behave have evolved and been influenced by dominant ideological/political thinking. There has been a hugely significant shift in the way humanity thinks and its values—but although the direction of travel is apparent, it is far from universally achieved and needs to be completed.

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<sup>73</sup> R Paternoster, R Brame, R Bachman and W Sherman, 'Do fair procedures matter? The effect of procedural justice on spouse assault' (1997) 31 *Law and Society Review* 163; DG Pruitt, RS Peirce, NB McGillicuddy, GL Welton and LM Castriano, 'Long-term success in mediation' (1993) 17 *Law and Human Behavior* 313; EA Lind & TR Tyler, *The social psychology of procedural justice* (Springer Science & Business Media, 1988); JW Thibaut & L Walker, *Procedural justice: A psychological analysis* (Erlbaum Associates, 1975).

<sup>74</sup> TR Tyler, *Why People Obey the Law* (Yale University Press, 2006); TR Tyler, 'Psychological perspectives on legitimacy and legitimation' (2006) 57 *Annual Review of Psychology* 375–400; J Sunshine and TR Tyler, 'The role of procedural justice and legitimacy in shaping public support for policing' (2003) 37 *Law and Society Review* 513; TR Tyler and YJ Huo, *Trust in the Law* (Russell Sage Foundation, 2002); JM Darley, TR Tyler and K Bilz, 'Enacting justice: The interplay of individual and institutional perspectives' in MA Hogg and J Cooper (eds), *The Sage Handbook of Social Psychology* (Sage, 2003); JT Jost and B Major, 'Emerging perspectives on the psychology of legitimacy' in JT Jost and B Major (eds), *The Psychology of Legitimacy* (Cambridge University Press, 2001); TR Tyler and SL Blader, 'Can businesses effectively regulate employee conduct? The antecedents of rule following in work settings' (2005) 48 *Academy of Management Journal* 1143; TR Tyler and SL Blader, *Cooperation in Groups: Procedural Justice, Social Identity, and Behavioral Engagement* (Psychology Press, 2000).

<sup>75</sup> Y Feldman & TR Tyler, 'Mandated Justice: The potential promise and possible pitfalls of mandating procedural justice in the workplace' (2012) 6(1) *Regulation & Governance* 46.

<sup>76</sup> D Kahneman, JL Knetsch & RH Thaler, 'Fairness and the assumptions of economics' (1986) 59(4) *Journal of Business* S285-S300; E Fehr & KM Schmidt, 'A theory of fairness, competition, and cooperation' (1999) 114(3) *Quarterly Journal of Economics* 817-868; Y Feldman & TR Tyler, 'Mandated justice: The potential promise and possible pitfalls of mandating procedural justice in the workplace' (2012) 6(1) *Regulation & Governance* 46-65.

<sup>77</sup> HC Kelman, 'Patterns of personal involvement in the national system: A social-psychological analysis of political legitimacy' in J Rosenau (ed), *International Politics and Foreign Policy* (Free Press, 1969); JT Scholz & N Pinney, 'Duty, fear, and tax compliance: The heuristic basis of citizenship behavior' (1995) *American Journal of Political Science* 490-512; HC Kelman, 'The role of national identity in conflict resolution' (2001) 3 *Intergroup Conflict, and Conflict Reduction* 187; DA Strauss, Reply: Legitimacy and obedience' (2005) 118(6) *Harvard Law Review* 1854; TR Tyler, *Why People Obey the Law* (Yale University Press, 2006).



Overall, the trend has shifted from self-centred (self-regarding, selfish) to social centred (other-regarding, altruistic) values. For example:

- a) *Political ideologies*: from individual freedom (self-determination, free markets, no-interference, no regulation, capitalist neoliberalism<sup>78</sup>) to social solidarity and communitarianism. It is now pointed out that the economic theory of Adam Smith rested on both cost-benefit<sup>79</sup> and socio-emotional pillars<sup>80</sup>; and that Polanyi argued for the economic to be re-embedded in the social.<sup>81</sup>
- b) *Philosophies*: from ‘an eye for an eye’ and religious fundamentalism to the Golden Rule (treat others as you would wish to be treated), social solidarity and sacrificial contribution.
- c) *Corporations*: shift from Maximising Shareholder Value (the sole purpose is to make profit)<sup>82</sup> through CSR, ESG, long-term sustainability and SDGs<sup>83</sup> to stewardship<sup>84</sup> and stakeholder capitalism.<sup>85</sup>
- d) *Legal and regulatory systems*: From enforcing compliance with rules (legal positivism) and through sanctions (theory of deterrence) to achieving ethical goals in ethical ways based on ethical principles and supportive interventions, differentiating strong and protective responses for those who flout the common ethical values and purposes, thereby segmenting people you trust from those you cannot. Regulating through (ethical) culture.
- e) *Work*: from polarisation between owners of capital and the means of production (workers) to cooperative organisations based on valuing all contributions and the value of ‘good work’.<sup>86</sup>
- f) *Communities*: From religious ideology to nationalism to social solidarity and respectful communitarian autonomy.<sup>87</sup>
- g) *Dispute resolution*: from adversarial models to modes that aim at reconciling and rebuilding relationships (techniques like mediation).<sup>88</sup>

The consistency of the shift in each of the above contexts is strikingly similar. Although liberal democracies may have achieved enormous shifts away from the authoritarian leadership of kings to total enfranchisement (including expanding the corpus of voters from aristocracy and landowners to include all male workers and then all females), power and its fruits remain controlled by the very rich and politically educated elites. The trajectory continues to shift from looking after oneself to thinking about others more widely, the planet and the natural and social environment. There is scientific underpinning for this because concern for others turns out to be good for the prosperity of all of us. Exclusive pursuit of self-advantage has been shown to produce catastrophic systemic harm that

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<sup>78</sup> FA von Hayek, *The Constitution of Liberty* (Routledge & Kegan Paul, 1960); J Rawls, *A Theory of Justice* (Harvard University Press, 1971).

<sup>79</sup> A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776).

<sup>80</sup> A Smith, *The Theory of Moral Sentiments* (1759).

<sup>81</sup> K Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (2002/1944).

<sup>82</sup> M Friedman, *Capitalism and Freedom* (University of Chicago Press, 1962); M Friedman, ‘Editorial, The Social Responsibility of Business is to Increase its Profits’ *New York Times*, Sept. 13, 1970, at SM17. See also FH Easterbrook and DR Fischel, *The Economic Structure of Corporate Law* (1991); W Lazonick and M O’Sullivan, ‘Maximising shareholder value: a new ideology for corporate governance’ (2000) 29 *Economy and Society* 1, 15-16; K Williams, ‘From shareholder value to present-day capitalism’ (2000) 29 *Economy and Society* 1.

<sup>83</sup> *Guide to Corporate Sustainability: Shaping a Sustainable Future* (United Nations Global Compact) (United Nations, 2015), <http://sustainabledevelopment.un.org/>

<sup>84</sup> *The UK Stewardship Code* (Financial Reporting Council, 2012).

<sup>85</sup> [www.opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf](http://www.opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf)

<sup>86</sup> *Good Work. The Taylor Review of Modern Working Practices*, 2017; *Good Work. A response to the Taylor Review of Modern Working Practices. February 2018* (HM Government, 2018); *Good Work Plan: establishing a new Single Enforcement Body for employment rights. Consultation* (BEIS, July 2019).

<sup>87</sup> A Etzioni, *The New Golden Rule: Community and Morality in a Democratic Society* (Basic Books, 1996).

<sup>88</sup> S Roberts, ‘Settlement as Civil Justice’ (2000) 63(5) *Modern Law Review* 739; P Randolph, *The Psychology of Conflict, Mediating in a Diverse World* (Bloomsbury Publishing PLC, 2016); C Menkel-Meadow, ‘The Origins of Problem Solving Negotiation and Its Use in the Present’ in S Cole, A Hinshaw and AK Schneider (eds), *Discussions in Dispute Resolution* (Oxford University Press, 2018).

threatens our very existence. There is an alternative, which has the support of scientific evidence, even though it may challenge some deeply held political and theoretical beliefs.

### Conscious Realignment towards Cooperation

The evidence cited above is that positive choices on context will produce values that are associated with the particular context and drive particular behaviour. Further, the abiding values of fairness and justice can be interpreted in particular ways depending on value beliefs and context. This poses two critical choices for us: do we positively choose to cooperate (rather than fight/compete) and to design our institutions so as to achieve this (rather than reform our institutions afterwards in the light of changed circumstances)?

If we wish to be more cooperative, we should aim to focus less on ourselves as individuals and more on ourselves together. Many thought leaders have been saying this recently.<sup>89</sup> This involves consciously moving away from a competitive mode, since it is essentially individualistic and produces multiple undesirable behavioural, social and economic effects,<sup>90</sup> to a cooperative mode.

Margaret Heffernan's list of disasters caused by uncontrolled competition include schools and examination systems, those addicted to computer games and high-level sports, corporations driven by share price obsession, financial traders driven by daily profit rankings and the constant firing of the lowest 'performers', scientific fraud, outsourcing producing workers' poverty, and inadequacies in the definition of Gross National Product.<sup>91</sup>

Competition law experts Maurice Stuke and Ariel Ezrachi have detailed a depressingly long and consistent series of examples<sup>92</sup> where the outcome of pursuit of competition has become toxic—crowding out ethical and social norms,<sup>93</sup> increasing unethical behaviour<sup>94</sup> and a 'race to the bottom',<sup>95</sup> promoting self-satisfied and selfish behaviour by commoditising us,<sup>96</sup> destroying society through destructive behaviour and eroding the social capital necessary for a market economy.<sup>97</sup> Perhaps surprisingly, Stuke and Ezrachi's prescription is to move beyond the toxic 'competition as warfare' to noble 'competing to create value' through *expanding* the total pie by developing new products, designs, and technologies that will satisfy needs unmet by those rivals.<sup>98</sup> Noble competition, they say, inherently maintains *values and integrity*, in which everyone *helps their rivals* to reach their full potential.<sup>99</sup>

Michelle Meagher's analysis is that business and markets are now too powerful to be controlled by law and public institutions. She says that the machine needs to be dispersed, democratised (by giving

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<sup>89</sup> See K Raworth, *Doughnut Economics. Seven Ways to Think Like a 21<sup>st</sup>-Century Economist* (Random House Business, 2017); P Collier, *The Future of Capitalism* (Allen Lane, 2018); D Ormand and M Phythian, *Principled Spying. The Ethics of Secret Intelligence* (Oxford University Press, 2018).

<sup>90</sup> MJ Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Penguin, 2013); M Heffernan, *A Bigger Prize. Why Competition isn't Everything and How We do Better* (Simon & Schuster, 2014).

<sup>91</sup> M Heffernan, *A Bigger Prize. Why Competition isn't Everything and How We do Better* (Simon & Schuster, 2014).

<sup>92</sup> ME Stuke and A Ezrachi, *Competition Overdose* (Harper Business, 2020).

<sup>93</sup> MJ Sandel, *What Money Can't Buy: The Moral Limits of Markets* (London, Penguin, 2013).

<sup>94</sup> NW Van Yperen, MRW Hamstra and M van der Klauw, 'To Win, or Not to Lose, at Any Cost: The Impact of Achievement Goals on Cheating' (2011) 22 *British Journal of Management* supp, S5, S6, S9-S10; GJ Kilduff et al, 'Whatever It Takes to Win: Rivalry Increases Unethical Behaviour' (2016) 59(5) *Academy of Management Journal* 1508.

<sup>95</sup> NA Den Nieuwenboer and M Kaptein, 'Spiraling Down into Corruption: A Dynamic Analysis of the Social Identity Processes That Cause Corruption in Organisations to Grow' (2008) 83(2) *Journal of Business Ethics* 133.

<sup>96</sup> Z Bauman, *Does Ethics Have a Chance in a World of Consumers?* (Harvard University Press, 2008), 58.

<sup>97</sup> RD Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster, 2000).

<sup>98</sup> ME Stuke and A Ezrachi, *Competition Overdose* (Harper Business, 2020), 244.

<sup>99</sup> *Ibid*, 256.

stakeholders representation at board level and creating balancing structures through cooperative business models and unionisation) and unresponsive power dissolved.<sup>100</sup>

Important statements of human rights are the UN Universal Declaration of Human Rights,<sup>101</sup> the European Convention on Human Rights,<sup>102</sup> the Charter of Fundamental Rights of the European Union,<sup>103</sup> the UK Human Rights Act 1988, and the Ruggie Principles.<sup>104</sup> However, admirable this list is on emphasising human values around the dignity of the individual, it is short on cooperative values and goals. This is not to revert to Marxian socialism or communism, but to reaffirm the individual with others. The reasons for this are that what has been called neoliberal capitalism, emphasising individualism and personal success, has produced selfishness at the expense of others. The cost of this and the inherent risks are now too great to be ignored.

Many economists have identified poverty and continuing inequality as major factors of destabilisation, not only to individuals and countries but to economies and global stability.<sup>105</sup> There is extensive evidence that inequality adversely impacts health,<sup>106</sup> happiness,<sup>107</sup> prosperity,<sup>108</sup> and achievement.<sup>109</sup>

Regional productivity differences were narrowing until 1980s, then the trend reversed.<sup>110</sup> Since the 1980s income growth has been very unevenly distributed across different socio-economic groups.<sup>111</sup> The benefits of global growth were enjoyed by those lifted out of poverty and into the middle class in emerging economies, especially China, and by the very rich. The poorest had limited income growth, but the dramatic point was that those towards the bottom of the industrialised West stagnated.<sup>112</sup> In most OECD countries, country wage shares declined while profit shares rose, and personal distribution of

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<sup>100</sup> M Meagher, *Competition is Killing Us. How Big Business is Harming Our Society and Planet - and What To Do About It* (Penguin, 2020).

<sup>101</sup> [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf). See also the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR).

<sup>102</sup> [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>103</sup> [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>104</sup> UN Office of High Commissioner for Human Rights, *Guiding principles on business & human rights. Implementing the UN 'protect, respect and remedy' framework*. UN 2011.

<sup>105</sup> K Raworth, *Doughnut Economics. Seven Ways to Think Like a 21<sup>st</sup>-Century Economist* (Random House Business, 2017); M Mazzucato, *The Value of Everything. Making and Taking in the Global Economy* (Allen Lane, 2018); B Milanovic, *Capitalism, Alone. The Future of the System That Rules the World* (The Belknap Press of Harvard University Press, 2019); T Piketty, *Capital and Ideology* (The Belknap Press of Harvard University Press, 2020), 19; M Sandbu, *The Economics of Belonging. A Radical Plan to Win Back the Left Behind and Achieve Prosperity for All* (Princeton University Press, 2020).

<sup>106</sup> M Marmot, P Goldblatt, J Allen, and et al., *Fair Society Healthy Lives (The Marmot Review)* (Institute of Health Equity, 2010); M Marmot, J Allen, T Boyce, and et al., *Health equity in England: the Marmot review 10 years on* (Institute of Health Equity, 2020).

<sup>107</sup> A Alesina, R Di Tella and R MacCulloch, 'Inequality and Happiness: Are Europeans and Americans Different?' (2004) 88 *Journal of Public Economics* 2009-42.

<sup>108</sup> M Marmot and RG Wilkinson, *Social determinants of health* (Oxford University Press, 1999); RG Wilkinson, *The Impact of Inequality: How to Make Sick Societies Healthier* (WW Norton, 2005); RG Wilkinson and KE Pickett, *The Spirit Level* (Penguin, 2009); M Marmot and J Allen, 'Social Determinants of Health Equity' (2014) September *American Journal of Public Health* S517.

<sup>109</sup> R Wilkinson and K Pickett, 'Income Inequality and Social Dysfunction' (2009) 35 *Annual Review of Sociology* 493-511: referring to mental illness, violence, imprisonment, lack of trust, teenage births, obesity, drug abuse, and poor educational performance of schoolchildren.

<sup>110</sup> J Rosés and N Wolf, 'The Return of Regional Inequality: Europe from 1900 to Today' VoxEU, 14 March 2018.

<sup>111</sup> C Lakner and B Milanovic, 'Global Income Distribution: From the Fall of the Berlin Wall to the Great Recession' *World Bank Economic Review*, 30(2) (July 2016).

<sup>112</sup> M Sandbu, *The Economics of Belonging. A Radical Plan to Win Back the Left Behind and Achieve Prosperity for All* (Princeton University Press, 2020), 19-20.

income and wealth became ever more unequal.<sup>113</sup> Since 1980, average pretax income of the bottom 60% of US workers has remained static or declined in real terms.<sup>114</sup> In 1965 ratio of CEO to worker pay in USA was 20:1: by 2018 it was 312:1.<sup>115</sup> In Britain, the ratio of rewards of CEOs to average employees moved from 45 to 1 in 1998, to 120 to 1 in 2010. The UK is one of the most geographically unequal countries in the developed world.<sup>116</sup>

Many leading political and economic commentators have identified the perceptions by groups of individuals that their expectations of prosperity have been thwarted, and they have been left behind and left without voice, as major ongoing drivers of insecurity. This is why inequalities between people need to be addressed, since they have major consequences in destabilising social, political and economic stability and prosperity. Examples include the need to ‘level up’ the prosperity of geographical areas within a country,<sup>117</sup> as well as feelings that elites are extracting unfair rent (from ‘fat cat’ bosses and investors, to multinationals that pay little tax in most countries where they extract profits, to rich countries’ perceived exploitation of poor countries). This is also why a comprehensive approach to fairness in social, business, environmental and governance issues is critical.<sup>118</sup> Rebuilding confident and respectful individuals and communities is critical.<sup>119</sup>

Sir Paul Collier’s analysis of the state of capitalism strongly emphasised the need for ethical values to lie at the foundation of societies, which should be based on reciprocal obligations rather than individual rights.<sup>120</sup> He said that ‘Deep rifts are tearing apart the fabric of our societies. Place has become a dimension of the new grievances.’ He argued that ‘*Economic man* is utterly selfish and infinitely greedy, caring about nobody but himself.’ He argued that John Rawls’ ideas on rights identified through reason, specifically on whether their essential purpose was inclusion of all in society on an equal basis, was antipathetic to the inclusive matching of rights to obligations achieved. Citing Jonathan Haidt’s finding that the same values cherished by people around the world (loyalty, fairness, liberty, hierarchy, care and sanctity), Collier argued that morality derives from values, rather than reason: Fairness and loyalty support *reciprocity*.

Given the fact that our style of society and our achievement of our purposes, goals and outcomes are in our own hands, we need to ask ‘What sort of society do we want to live in?’ but also ‘What sort of society, forms or organisation and institutions, and mode business and social interrelation will achieve our purposes, objective and outcomes?’ For example, is American adversarial legalism an admirable model? Jonathan Sacks, the former Chief Rabbi, called for a shift from the self-centred to the social: ‘It is about ‘Us’ not ‘Me’; about ‘We’ not ‘I’.’<sup>121</sup> Mark Carney argues that the essential values needed for societies at present are *dynamism, resilience, sustainability, fairness, responsibility, solidarity and humility*.<sup>122</sup> Carney noted that failures in fairness and responsibility are at the heart of how institutions

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<sup>113</sup> *An Economy for the 99%* (Oxfam, 2017); M Mazzucato, *The Value of Everything. Making and Taking in the Global Economy* (Allen Lane, 2018), 129 and figures 10 (income inequality) and 11 (household debt).

<sup>114</sup> A Giridharadas, *Winners Take All: The Elite Charade of Changing the World* (Allen Lane, 2019).

<sup>115</sup> ‘CEO compensation surged in 2017’ Economic Policy Institute, 16 August 2018.

<sup>116</sup> A Davenport and B Zaranko, *Levelling up: where and how* (Institute for Fiscal Studies, 2020).

<sup>117</sup> *Strong and prosperous communities. The Local Government White Paper* (Department for Communities and Local Government, 2006); A Etzioni, *The New Golden Rule: Community and Morality in a Democratic Society* (Basic Books, 1996); *Levelling Up White Paper* (2021).

<sup>118</sup> K Raworth, *Doughnut Economics. Seven Ways to Think Like a 21<sup>st</sup>-Century Economist* (Random House Business, 2017).

<sup>119</sup> K Harrison-Broninski, *Supercommunities. A handbook for the 21<sup>st</sup> century* (Meghan-Kiffer Press, 2021).

<sup>120</sup> P Collier, *The Future of Capitalism* (Allen Lane, 2018).

<sup>121</sup> J Sacks, *Morality: Restoring the Common Good in Divided Times* (Hodder and Stoughton, 2020).

<sup>122</sup> M Carney, *Value(s)* (William Collins, 2021).

decline, citing work by Niall Ferguson<sup>123</sup> and Mancur Olson.<sup>124</sup> Minouche Shafik has argued that the 20<sup>th</sup> century's social contract between people needs to be rebuilt.<sup>125</sup>

#### D. ELEMENTS OF THE MODEL

The science reviewed above has identified that essential elements of how we should cooperate effectively are the ethical values that are observed, especially values of fairness and justice, the purposes and outcomes that are delivered, the ability to produce a convincing body of consistent evidence that demonstrates that an actor can be trusted, and the existence of institutions that support ethical cooperation and differentiate those who can be trusted from others and that permit respectful involvement of all stakeholders in co-creation and cooperation. We now summarise ideas on how to implement these elements in a number of contexts. This analysis is inevitably at a high level and more detailed development is needed but through co-created involvement.

#### Agreeing Ethical Values: A Code of Practice

The *substance and modes of behaviour* underpinning our relationships should be clearly stated as being based on society's ethical values. This makes clear *how* we will value and judge our common behaviours and relationships, based on our inherent feelings that differentiate fairness and justice from their opposites. It drives how we select who we will cooperate with and at what level of intensity. Ethical values and evidence of the associated behaviours differentiate ethical democratic societies from authoritarian repressive regimes, and honest, well-intentioned citizens from criminals. The fundamental issue is *how* we give effect to the basic human values of fairness and justice. What does this mean in practice? This includes whether we seek to sanction breaches (fines, amputation or execution) or whether we seek to identify root causes of problems and support changes in behaviour and culture, thereby reducing risk.

Having an ethical purpose and culture is essential for a successful business.<sup>126</sup> Many businesses have produced statements of corporate purpose and values, which have long been regarded as essential.<sup>127</sup> This movement towards not just including social purpose with economic purpose for business but also ethical values as means of behaviour, underpin moves to adopt Stewardship Codes for asset owners and managers<sup>128</sup> and business leaders' adoption of a stakeholder model of corporations in 2019 by 181 CEOs of major U.S. corporations.<sup>129</sup>

The common agreed principles on how humans agree to cooperate in an organisation (eg business, institution, club, community) or in a system (eg nation, regulatory system, community, club) should be produced, such as in a **Code of Ethical Practice**. In regulation by states to protect citizens, the mode is to transcend regulating through rules and enforcement, or to regulate the culture of other organisations, but to achieve intended outcomes through ethical values: 'Regulating *through ethical culture*'. This approach has extensive support in the science of behaviour and the findings of studies into effective organisations and supportive regulation.

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<sup>123</sup> N Ferguson, *The Great Degeneration: How Institutions Decay and Economies Die* (Penguin, 2014).

<sup>124</sup> M Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (Yale University Press, 1984).

<sup>125</sup> M Shafik, *What We Owe Each Other. A New Social Contract* (The Bodley Head, 2021).

<sup>126</sup> *The UK Corporate Governance Code* (Financial Reporting Council, 2018).

<sup>127</sup> T Deal and A Kennedy, *Corporate Cultures: The Rites and Rituals of Corporate Life* (Addison-Wesley, 1982); J Mackey and R Sisoda, *Conscious Capitalism. Liberating the Heroic Spirit of Business* (Boston, Harvard Business Review Press, 2014), 47.

<sup>128</sup> *The UK Stewardship Code* (Financial Reporting Council, 2020); the first Stewardship Code was 2012.

<sup>129</sup> *Statement on the Purpose of a Corporation* (U.S. Business Roundtable, 2019) at [www.opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf](http://www.opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf)

The operation of a complete system can go further and be subject to a systemic **Operating Code of Practice** that records the agreed elements of the purposes and outcomes, functions, roles and responsibilities of different actors, how they will interrelate and achieve the common purposes and outcomes, relevant evidence and metrics that will be produced to demonstrate performance, and accountability mechanisms.

### Stakeholder Involvement and Co-Creation

Human endeavour involves multiple individuals and organisations. It is well recognised, for example, that many stakeholders are involved in the affairs and success of a commercial organisation—not just owners, managers and staff but also suppliers, customers, communities. A stakeholder is not someone who might be affected by an organisation. Every stakeholder has a *role* to play, however modest, and a *responsibility* to perform that role so as to contribute to achieving the common purposes, objectives and outcomes. For example, the function of consumers and users is not just to consume and use but they also have a *responsibility* as citizens of society to feed back information on the extent to which outcomes are achieved (eg on safety, efficacy and performance of products and services and good or bad service behaviour). The system must equally be designed to make it easy for people to identify and feed back information, for the relevant database to be optimal in size, and for it not to be exploited.

This model is based on *co-creation* by all actors who demonstrate that they share the ethical purposes, mode of engagement, and achievement of outcomes that are shared by the other stakeholders.

A systemic approach involves that all actors respect the *role* of others, however minor their role or contribution. This is based on adult-adult relationships, not in which, say, a regulator regards itself as outside or above the system. the requirements of ethical governance, transparency, culture, behaviour, competence, outcome-focus, risk-basis and appropriate interventions apply to all.<sup>130</sup> However, the respect should be based on evidence that actors can be trusted to perform their roles in accordance with their responsibilities.

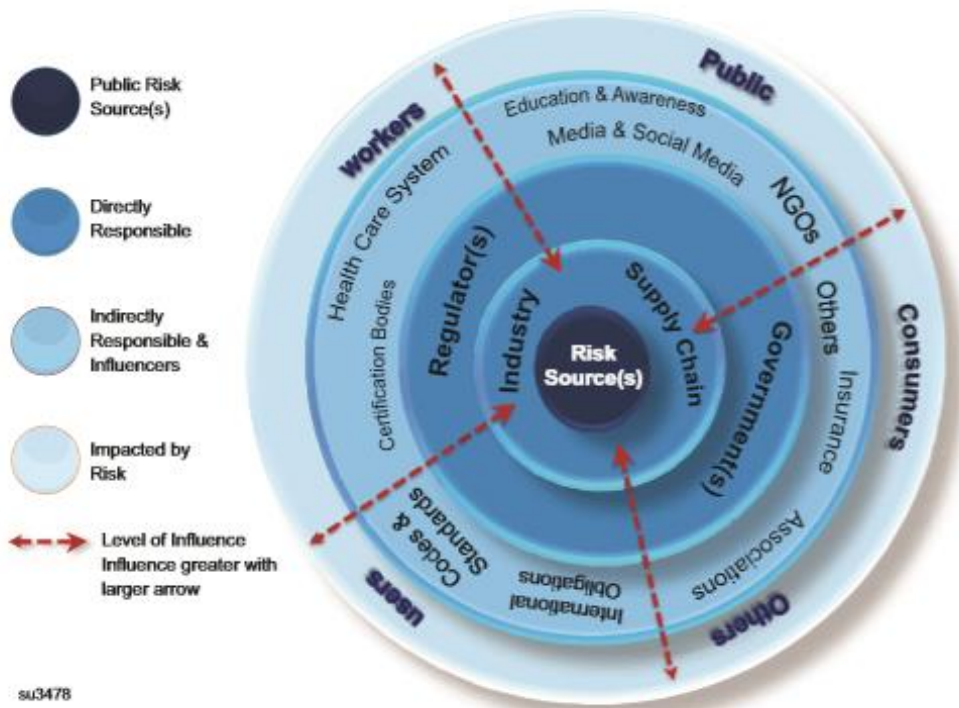
The system should support shared common involvement recognising the differing levels of intensity of different stakeholders, illustrated by different shades of blue in this model from a Standard on managing public risk.<sup>131</sup>

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<sup>130</sup> G Russell and C Hodges (eds), *Regulatory Delivery* (Hart, 2019).

<sup>131</sup> CAN/UL2984:2019 *National Standard of Canada: Standard for Management of Public Risks—Principles and Guidelines* (Standards Council of Canada, 2019), Figure 2, p 18.

Public Risk Management – Multi-Stakeholder Context



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NGOs = Nongovernment Organizations

**International Cooperation: Shared Goals**

In the current state of the world, systemic threats such as threats to human existence from climate change, pandemics and war have clearly been shown to need increased and serious cooperation on an international scale not previously realised. Multiple institutions for international cooperation exist at global and regional levels but vary in their support and effectiveness. The importance of bodies such as the WHO and WTO should be clear. International oversight mechanisms exist, such as the Financial Action Task Force.<sup>132</sup>

Statements of values and purposes need to be refreshed and implemented. Statements of adherence to ethical values, together with collation of a body of evidence, should drive the extent of trust and cooperation between nations.

The United Nations’ Sustainable Development Goals (SDGs)<sup>133</sup> are the current benchmark that encompasses the range of social, humanitarian, environmental and economic goals, and these should be included in all public and private statements of purposes.

**UN Sustainable Development Goals**

- Goal 1. End poverty in all its forms everywhere
- Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture
- Goal 3. Ensure healthy lives and promote well-being for all at all ages
- Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all

<sup>132</sup> <http://www.fatf-gafi.org/>

<sup>133</sup> *Guide to Corporate Sustainability: Shaping a Sustainable Future* (United Nations Global Compact) (United Nations, 2015), <http://sustainabledevelopment.un.org/>

Goal 5. Achieve gender equality and empower all women and girls  
 Goal 6. Ensure availability and sustainable management of water and sanitation for all  
 Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all  
 Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all  
 Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation  
 Goal 10. Reduce inequality within and among countries  
 Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable  
 Goal 12. Ensure sustainable consumption and production patterns  
 Goal 13. Take urgent action to combat climate change and its impacts\*  
 Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development  
 Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss  
 Goal 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  
 Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development

However, nations and commercial, governmental and social organisations vary in the extent to which they have adopted the SDGs. A sense of shared purpose is necessary through formal adoption of these goals and of the mode of cooperating to achieve them, namely on the basis of shared ethical values. An interesting example is the *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business* published by the Government of India in 2011 that starts with ethics, transparency and accountability.<sup>134</sup>

### Cooperation in Communities

Daron Acemoglu and James Robinson's historical work has shown the need for mutual support between inclusive political institutions and inclusive economic institutions.<sup>135</sup> It is striking that both right and left leaning political thinkers have emphasised the importance of strong local communities. The foundation of Roger Scruton's conception of conservatism rests on personal social groups (such as the family and local civil associations), and a sense of a shared place (the love of and a feeling for home, which he called oikophilia), generating a sense of tradition, local loyalties and customs, and effective institutions of a self-governing society with inherent accountability.<sup>136</sup>

Marianna Mazzucato,<sup>137</sup> Paul Collier<sup>138</sup> and Jonathan Sacks<sup>139</sup> have all called for firm steps to be taken to renew the institutions and means of social engagement in families, organisations, society, communities, markets and nations—plus the inclusion of the extra element of moral standards. Adrian Pabst calls for renewal of individuals through feeling dignity in belonging to communities and civic

<sup>134</sup> *Report of the Committee on Business Responsibility Reporting* (Ministry of Corporate Affairs, Government of India, 2011).

<sup>135</sup> D Acemoglu and JA Robinson, *Why Nations Fail. The Origins of Power, Prosperity and Poverty* (Profile Books, 2012), 333, 430.

<sup>136</sup> R Scruton, *Green Philosophy. How to think seriously about the Planet* (Atlantic Books, 2009). His concept is based on the Greek *oikos*, the household, and he praises the German concept of *Heimat*. Stirred up by witnessing French student riots in 1968, Scruton developed three ideas from Edmund Burke's thoughts in response to the 'geometrical' politics of French revolutionaries: respect for the dead, the 'little platoon', and the voice of tradition. His thoughts on the effectiveness of the law of tort in delivering accountability have since been undermined by empirical evidence: see C Hodges, *Law and Corporate Behaviour* (Hart, 2015).

<sup>137</sup> M Mazzucato, *The Entrepreneurial State. Debunking Public vs Private Sector Myths* (Penguin, 2018 (originally 2013)).

<sup>138</sup> P Collier, *The Future of Capitalism* (Allen Lane, 2018).

<sup>139</sup> J Sacks, *Morality: Restoring the Common Good in Divided Times* (Hodder and Stoughton, 2020).



institutions with wider community ownership and self-governance of intermediary institutions such as professional associations, trade unions, universities and free hospitals.<sup>140</sup>

This line of thinking, coupled with the Dunbar number's limitation on the size of groups that support cooperation, has clear implications for the size of communities that are subject to local government. Ensuring that regional governments are not too small or large, and can exercise multiple inter-related powers, is important for generating shared senses of belonging and effective outcomes. This rationale supports calls that England should be organised on four 'mega regions' (North, Midlands, South East, South West), based on spatial plan models that coordinate industrial strategy, infrastructure planning & local economic development.<sup>141</sup> It would resolve the issue of devolution in relation to Scotland, Wales and Northern Ireland.

The wide development of new forms of democracy across nations was notably highlighted by the OECD in a 2017 Recommendation on open government,<sup>142</sup> defining the policy as 'a culture of governance that promotes the principles of transparency, integrity, accountability and stakeholder participation in support of democracy and growth'. The OECD's 2020 report,<sup>143</sup> based on 289 case studies from 282 countries, notes that politicians, policy makers, civil society organisations, and citizens have begun to reflect on how collective public decisions should be taken in the twenty-first century and new mechanisms have been emerging.

It is interesting to note the durability of the Women's Institute movement from 1897 in Canada and rooted in Britain since 1913.<sup>144</sup> More recently, Vivek Murthy, whose book is ostensibly about the damage to health and society by loneliness, cites<sup>145</sup> the strength that results from the *moai* social system in Japan (involving the creation of links between people of all ages involving mutual social and even financial support),<sup>146</sup> a community of the elderly in Goolwa, South Australia, the Village Movement in Boston, and the spread on Men's Sheds.<sup>147</sup>

### Cooperation within Organisations

Cooperation within organisations is supported where all the individuals involved share the same purposes, mode of ethical, respectful working, and the same passion for achieving the ethical outcomes. It has long been recognised in business that cooperation between all those involved in an enterprise is a requirement to achieve a shared, or certain, end.<sup>148</sup> It is striking that ethical businesses find that internal

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<sup>140</sup> A Pabst, *The Demons of Liberal Democracy* (Polity Press, 2019); citing J Milbank and A Pabst, *The Politics of Virtue: Post-Liberalism and the Human Future* (Rowman & Littlefield International, 2016), 179-204.

<sup>141</sup> A One Powerhouse framework for national convergence and prosperity *A Vision for Britain. Planned* (The One Powerhouse Consortium and the Royal Society for the encouragement of Arts Manufactures and Commerce, 2020).

<sup>142</sup> OECD Recommendation on Open Government (OECD, 2017). See earlier *Open Government. The Global Context and the Way Forward* (OECD, 2016).

<sup>143</sup> *Innovative Citizen Participation and New Democratic Institutions. Catching the Deliberative Wave* (OECD, 2020).

<sup>144</sup> S Cohen, *The Women's Institute* (Shire Publications, 2011).

<sup>145</sup> VH Murthy, *Together. Loneliness, Health and What Happens When We Find Connection* (Profile Books & Wellcome Collection, 2021), 71-150

<sup>146</sup> D Buettner, *The Blue Zones: Lessons for Living Longer from the People who Lived the Longest* (National Geographic Society, 2010).

<sup>147</sup> B Golding, *The Men's Shed Movement: The Company of Men* (Common Ground Publishing, 2015).

<sup>148</sup> CI Barnard, *The Functions of the Executive* (The President and Fellows of Harvard, 1938), 4; T Peters and RH Waterman Jr, *In Search of Excellence: Lessons from America's Best-Run Companies* (New York, Harper & Row, 1982); J Collins and JI Porras, *Built to Last: Successful Habits of Visionary Companies* (HarperCollins, 1994, 12ed 2005); LS Paine, *Vale Shift. Why Companies Must Merge Social and Financial Imperatives to Achieve Superior Performance* (McGraw-Hill, 2003).

organisational structures tend to be flat rather than hierarchical, and decisions are made by empowered staff, rather than by a limited number of managers.<sup>149</sup>

Output and sharing of information that might be embarrassing is supported by an open, trusting and ethical environment of psychological safety.<sup>150</sup> Authoritarian or repressive environments depress cooperation, productivity, output, compliance, sharing of important information and ideas. Businesses have applied these lessons to managerial styles over several decades, with notable successes where they have been taken seriously, and the mode should now be extended more widely. The system should primarily provide support to competence, autonomy and relatedness in psychological and material ways, including training, information, discussion and analysis.

Cooperation is supported by productive engagement. This type of relationship is built on supporting trust and intrinsic motivation of individuals (as opposed to attempts at authoritarian control or ‘enforcement’). Again, businesses have relied on trust evidence in commerce for centuries, supported by trading history, contracts, enforcement through courts, regulatory requirements, accreditation of compliance with standards and requirements, and so on. However, production of reliable evidence to support trust is seriously undermined by innovations such as international platforms and some historical mechanisms (courts etc) are outdated. So the system should aim to provide evidence that people and organisations can be trusted. New ways of doing this can be added to traditional means.

An ethical organisation has to be based on ethical values in its internal and external relationships. This has implications for a respectful, fair, open and just culture of behaviour between colleagues, psychological safety, an absence of any kind of abuse, fairness in recognition and sharing reward, adoption of energising goals covering the objectives of all stakeholders, avoidance of distorting objectives, and a responsive approach to problems.

The Ethical Business Practice (EBP) model prescribes two organisational frameworks:<sup>151</sup>

- (a) a Cultural and Leadership Framework, which covers the foundation, people and careers, people and ethos, and aligned systems and processes, in which ‘ethics is everyone’s responsibility’ and managing the organisational culture is an essential task of management and a concern of all staff and investors, and
- (b) an Ethics and Compliance Framework, which establishes the shared ethical values of those working in the organisation, and produces compliance is an outcome rather than an approach.

A number of practices carry significant risk, and should be avoided, such as

- (a) confusing staff with conflicting or overriding targets (crowding out),
- (b) focusing staff attention significantly on financial targets for themselves and their remuneration,
- (c) not allowing enough time for reflection and co-creative consideration before acting,
- (d) arbitrary termination of employment for those who fail to reach financial targets,
- (e) authoritarian, unfair and abusive cultures.

### **Building Common Purposes, Values and Outcomes in Markets and Businesses The Outcome-Based Cooperation Model**

The basic two purposes of endeavours in capitalist markets are *prosperity* and *protection* (rather than growth). There has historically been an unresolved tension between those two overarching purposes/goals. An integrated cooperative model would seek to recognise and align them, raising and reconciling conflicts in advance rather than to be navigated *in medias res*.

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<sup>149</sup> C Hodges and R Steinholtz, *Ethical Business Practice and Regulation: A Behavioural and Values-Based Approach to Compliance and Enforcement* (Hart, 2017), ch 9.

<sup>150</sup> AC Edmondson, *The Fearless Organization* (John Wiley & Sons, Inc., 2019).

<sup>151</sup> C Hodges and R Steinholtz, *Ethical Business Practice and Regulation: A Behavioural and Values-Based Approach to Compliance and Enforcement* (Hart, 2017).

We are transitioning to a new stakeholder capitalism model. Major effort is underway to broaden corporate purpose to include social purposes,<sup>152</sup> involving an obligation on directors to establish a ‘company’s purpose, values and strategy, and satisfy itself that these and its culture are aligned’<sup>153</sup> and a basis in legislation.<sup>154</sup>

Ethical values and the simple value of fairness are, however, fundamental. They differentiate between states, societies, businesses and groups—such as an authoritarian repressive regime from an open, inclusive one. For this reason, one ‘better business’ model specifies Five Principles for a Purpose Driven Business:<sup>155</sup>

- Honest and fair with customers and suppliers
- A good citizen
- A responsible and responsive employer
- A guardian for future generations
- Has a purpose which delivers long-term sustainable performance.

This thinking has led to a diversification in corporate models, including social enterprise firms,<sup>156</sup> ‘community interest companies’,<sup>157</sup> multi-national ‘B Corps’<sup>158</sup> and a FairShares model.<sup>159</sup>

An holistic approach has been identified to valuing and accounting for and rewarding all aspects of a business’ activities that have internal or external affect—human capital, social capital, natural capital as well as shared financial capital— called the Economics of Mutuality.<sup>160</sup>

Major businesses and high-risk regulatory systems have for some time focused on open, cooperative, fair, just and effective cultures. Public sector organisations are adopting similar models.<sup>161</sup> There is mounting evidence that these shared ethical cooperative cultures deliver desired outcomes and identify and respond quickly to crises. This is what is needed.

The **Outcome-Based Cooperation Regulation** (OBCR) model combines the scientific and research evidence on how to do this. It aims to:

- Achieve our common goals of prosperity, growth, innovation, sustainability and protection.
- Support good businesses to achieve success.
- Ensure a fair market, by taking action against crooks, rogues, scammers, etc.

Its key elements are to co-create and agree common purposes, desired outcomes, applicable ethical values that govern the mode of behaviours; to cooperate on the basis of evidence produced by actors

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<sup>152</sup> C Mayer, *Firm Commitment: Why the corporation is failing us and how to restore trust in it* (Oxford, Oxford University Press, 2013); C Mayer, *Prosperity* (Oxford University Press, 2019); *Principles for Purposeful Business. How to deliver the framework for the Future of the Corporation* (The British Academy, 2019); *The Enacting Purpose Initiative. Report #2* (European Purpose Initiative, 2021).

<sup>153</sup> *The UK Corporate Governance Code* (Financial Reporting Council, 2018). For similar provisions in relation to asset owners and asset managers, see *The UK Stewardship Code 2020* (Financial Reporting Council, 2019).

<sup>154</sup> Draft Better Business Bill 2021.

<sup>155</sup> *How Can Businesses Contribute To People’s Health? A guide for leaders* (A Blueprint for Better Business and The Health Foundation, 2018).

<sup>156</sup> *State of Social Enterprise Survey 2015* (Social Enterprise UK, 2015).

<sup>157</sup> See <http://www.gov.uk/government/organisations/office-of-the-regulator-of-community-interest-companies>. Companies (Audit, Investigations and Community Enterprise) Act 2004 and Community Interest Company Regulations 2005 (S.I. 2005/1788), as amended by the Community Interest Company (Amendment) Regulations 2009 (S.I. 2009/1942) and Community Interest Companies (Amendment) Regulations 2014 (S.I. 2014/2483). See S Lloyd, ‘Transcript: Creating the CIC’ (2010) 35 *Vermont Law Rev.* 31.

<sup>158</sup> See <http://bcorporation.net/>

<sup>159</sup> R Ridley-Duff, *The Case for FairShares* (FairShares Association, 2015).

<sup>160</sup> B Roche and J Jakub, *Completing Capitalism. Heal Business to Heal the World* (Berrett-Koehler Publishers, 2017).

<sup>161</sup> *R&D People and Culture Strategy People at the Heart of R&D* (BEIS, 2021).

that they can be trusted; to work together in identifying and solving problems, thereby reducing risk and improving performance; to adopt a supportive approach to those who show they can be trusted and to take appropriate steps to provide protection against the actions of those who do not. The major elements are explained below.

### **An Evidence-Based Model of Purposes and Outcomes: Intentions, Behaviours, Culture**

The system, and the information it generates from all relevant sources, should be designed to identify those who intend to and do perform their roles and responsibilities in contributing to the common purposes and outcomes, and avoidance of, or reduction of risk of, undesired outcomes—and identifying those who do not. Do people, individually and collectively in groups, have these intentions and produce these outcomes? This is demonstrated by evidence, ideally a body of evidence built up over time from different relevant sources, that forms a consistent and convincing body of evidence on which to found trust in future actions.

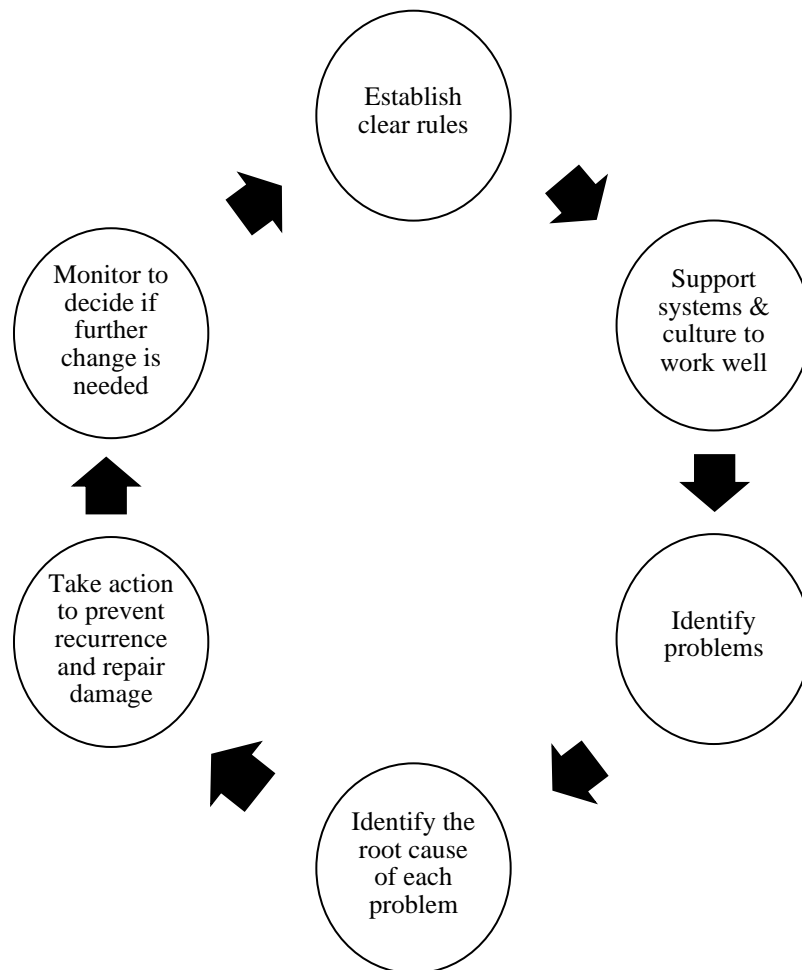
The sources and types of evidence are expanding from just statements of motivation, evidence of quality management systems, compliance with rules, to now encompass evidence of commitment to purposes and ethical values, ethical organisational culture and achievement of the purposes and goals. The nature of evidence and metrics needs to be discussed and agreed as relevant to particular circumstances as they evolve. It can, thus be made relevant and proportionate to the benefits and risks of the endeavour, such as covering particular competence and capability that differentiates between large complex organisations and SMEs. This recognises differences in roles and responsibilities.

### **A Market and Regulatory Problem-Solving Model**

In a cooperative regulatory model, every actor/stakeholder has a role, assumes responsibility for performance of that role, and is accountable for such performance and contribution to the core functions that are necessary for maintaining performance in achievement of the basic purposes and outcomes. The basic functions include problem identification and solving:<sup>162</sup>

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<sup>162</sup> C Hodges, 'Mass Collective Redress: Consumer ADR and Regulatory Techniques' (2015) 23 *European Review of Private Law* 829-874; C Hodges, 'Consumer ombudsmen: better regulation and dispute resolution' (2015) 15(4) *ERA Forum* 593.



This system is operated constantly, responding to fresh information. The system is operated by institutions and mechanisms that deliver effectively all of the *functions*. For example, the identification of problems will be achieved partly by open cultures that support information flow in an environment of psychological safety (and no blame) and by data collection and feedback mechanisms from operators (businesses) third party certification and accreditation, and user feedback (eg for consumers through Ombudsmen platforms). The operation of the system is, of course, predicated on the expectation that all actors will cooperate in achieving the purposes and outcomes based on commitment to the shared ethical values, and that evidence will differentiate those who do so from those who do not.

### **A Co-Creation Model in Regulation and Markets: Allocating the Functions to Institutions**

In the traditional mode, the basic functions are: create a regulator, make rules, inspect and identify breaches of rules, impose sanctions, interrogate regulators (but not usually others). The background assumptions include: people behave rationally; people’s behaviour should be controlled by getting them to comply with rules; imposing sanctions deters future breaches. Those assumptions, and hence that model, have crumbled under the findings of scientific and empirical social research.

In traditional legal and regulatory systems, laws are made by national authorities (eg proposed by Ministers and approved by Parliaments) and *imposed and enforced* on subjects. Thus, oversight of the design and operation of the system has traditionally been the function of Ministers, civil servants and Parliaments. Given the refocusing of the overall model, these institutions would evolve.

In a cooperative system, the purposes and outcomes, the ethical values and principles by which they will be achieved, the roles and responsibilities of all actors, and their objectives and metrics that will demonstrate commitment and accountability, are all *co-created* and jointly scrutinised.

The model involves a number of functions:

- A. Agreeing the shared purposes and outcomes.
- B. Agreeing the system design and allocation of roles and responsibilities.
- C. Agreeing the mode of engagement in an overarching Code of Ethical Conduct.
- D. Agreeing the strategic objectives and outcomes (desired and undesired) for succeeding time periods.
- E. Agreeing the means of demonstrating ethical contribution to the purposes and outcomes, and periodic strategic objectives, and the metrics for measuring success.
- F. Performing allocated roles, sharing relevant information on contribution, achievement, trust and performance, and agreeing and implementing changes.
- G. Data capture and circulation, oversight and evaluation of data, and on relevant change, intervention and improvement.
- H. Reviewing and scrutinising the operation of the system as a whole.

The institutions needed to support the functions and roles in this model are:

- (a) An inclusive System Governance Body, agreeing the purposes and outcomes and overseeing whether the *system* delivers them and whether changes need to be made.
- (b) An inclusive body for agreeing the *Code of Ethical Practice* for the actors in the system, and relevant rules, co-created by all actor stakeholders.
- (c) A regulatory authority to oversee the performance by actors of their behaviours in achievement of the purposes and outcomes, and to support change or intervene to protect where necessary.
- (d) An Ombudsman to support resolution of complaints about behaviour and culture, to hold aggregated data on system performance, and to be able to assist in achieving changes in behaviour and culture.
- (e) Judges to interpret the legal rules.

All of these institutions need to function together as elements of a single integrated system. In practice, sectoral divisions also need to be coordinated, such as between different regulatory authorities and oversight or Code bodies. Any differences in approach between different areas should be justified and clear.

*Agreement on the fundamental purposes, outcomes, and applicable ethical values of the system as a whole, its ethical mode of engagement, and scrutiny* (Functions A-C and H). This might traditionally be a role for Parliament, but in a co-creation model, new elements arise beyond the traditional and more generalised functions of making ‘policy and rules’. The fundamental tenet is that the function involves *all stakeholders*, such as citizens, civil organisations, those subject to regulation. Accordingly, new mechanisms for democratic involvement, voice, representation debate, negotiation and agreement can be envisaged. However, a mechanism is needed for achieving a binding outcome in the event of lack of complete consensus, so a voting system of delegates (traditionally MPs) or other representatives would be necessary. Hence, there should be a **System Governance Body** (SBG) or assembly comprising full stakeholder representation. It should be a cooperative, co-creative body, not a representative Parliament or regulator imposed over private or public actors. Ministers should be involved in this body, and its function would be to set the parameters for the system and make sure that the system works as a whole. A linked system Commissioner could also be useful as an independent voice representing all but especially civil society (cf the Small Business Commissioner and the new Patient Commissioner for the NHS) and be able to take an objective overview.

The SGB undertakes early scrutiny of regulatory proposals as well as of the effectiveness of the system. Both the initial scrutiny and the operational scrutiny need to encompass not just the anticipated economic benefits and costs but also the shared purposes, objectives and outcomes of the regulation and its delivery aspects, i.e. the extent to which it can be delivered in practice. That final aspect includes

analysis, by experts and those subject to the regulation, on *how* its purposes and outcomes can be delivered, including *whether* and the *extent to which* they can be delivered. That will include operational, behavioural, cultural aspects.

The starting point should be to agree the balance between prosperity and protection: the purposes, objectives and desired outcomes and unacceptable outcomes. The next phase is mechanistic: how are these aims to be achieved, and what will success look like? There should also be extensive examination of any existing instruments that can already serve the intent of policy proposals. Within that debate, aspects such as deliverability, proportionality and cost-benefit balance will become clear. Achieving initial agreement on the policy will and mechanisms will assist in defining the level of detail that is necessary and at what level—in legal rules, in standards, guidance, codes and so on—and what evidence actors can and should produce to demonstrate that they can be trusted and the extent to which the objectives are being achieved, thereby providing accountability and identifying further actions. Early agreement will also generate ownership of the regulation by regulatees, assisting implementation and performance.

The operational regulatory functions would be undertaken by a **regulatory authority** (RA). This should have operational independence from the SGB but governance involving all stakeholders. It should be responsible for making and updating the rules. There are two types of rules: first, legal rules containing rights and responsibilities that can be enforced by the state (by the action taken by the regulator or through the courts) and, second, the behavioural norms, contained in a **Code of Ethical Practice**, co-created by all stakeholders with secretariat provided by the RA. This model will involve and empower all the private actors but also bind them into owning the achievement of the public purposes and generate intrinsic motivation and self-governance, keeping formal interventions available for where needed. The RA could benefit from having the considerable flexibility of being a not-for-profit body, such as a Delegated Administrative Authority, which has been used successfully in Canada. The regulator has responsibility for appropriate operational intervention, ranging from inspections, supportive actions to harder enforcement action.

The **Ombudsman** has several roles:

- (a) A focus for impartial but reliable information, advice and support to businesses, consumers and others. A single reliable website would be coordinated with provision of local support through Business Hubs and local authorities. Some sectors are already close to this.
- (b) A portal and human support providing advice, assistance, and IT- and AI-supported ‘early facilitated dispute resolution’ impartially to any party based on issues of behaviour under the Code of Ethical Practice. Pathways are increasingly being shortened by Ombudsmen acting as companies’ outsourced complaints-handling functions, thereby telescoping the, timing and cost.
- (c) Collection of aggregated data on market behaviour and issues, collating all information from whatever source that identifies practices, issues and problems, and feeding it back to regulators, providers and customers so as to drive evidence-based interventions, changes and formal action.
- (d) Impartial support services based on the data evidence to assist in effecting changes in performance, behaviour and culture that prevent and reduce future problems. the support would be reliable but informal.

The Ombudsman provides micro redress and rectification and also macro regulatory data. It needs to be independent from industry, to maintain trust, although with governance involving all stakeholders. There should be a single sectoral Ombudsman, to provide simplicity and clarity of where people should go for help, and to maximise the data set. The data must be controlled by a non-commercial body, so the Ombudsman has to be not-for-profit.

**Judges**, whether in courts or tribunals, decide issues of interpretation of law, legal rights and obligations. The system would involve reference of files and issues between ombudsmen, regulators and courts so that a relevant instant issue is decided by the relevant authority and then applied systemically by the relevant (other) state authority in a consistent and coordinated fashion.

All of these functions and bodies should be linked better so as to operate in a more coordinated manner as an integral system. Each of them is essential, but the system cannot operate effectively without any of them, and they need to work together to deliver effective operational outcomes.

One objective of this model is to target appropriate knowledge and professional expertise to relevant functions—such as generating effective behaviour, controls and responses to problems and crises, as including policy making as well as operational performance. Thus, for example, the model involves significant delegation of operational power from Ministers to regulators. This would be accompanied by clear governance, transparency and accountability. There would be a consequential shift in the role and operation of civil servants involved in policymaking and oversight, since Ministerial roles and responsibilities would evolve.

However, a major benefit for business would be the reduction in ‘regulatory burden’ that would come from the integral involvement in agreeing purposes, objectives, outcomes and ethical values. That should deliver greater flexibility in achieving the outcomes, and hence proportionality.

### **Redefining Interventions for Delivering Protection**

As noted above, people will obey a social rule if they perceive that the substance of the rule is fair, it has been made through a fair process, and is applied fairly to and by all. This has been demonstrated in relation to public law<sup>163</sup> and in private organisations.<sup>164</sup> The key elements here are fairness, perception of observance, and legitimacy.

Historical terminology for these effects has used language of punishment, enforcement, deterrence. However, fresh understanding, language and methodology are now available and appropriate. Thus, we should be talking about interventions and consequences aimed at achieving the purposes of prosperity and protection.

The cooperative model does not lessen the need for strong interventions to protect society when harms occur—quite the contrary. Tools to measure the performance of quality systems are well familiar. Various new tools are emerging to assist with evaluating culture.

The purposes and outcomes of intervention are to optimise achievement of the common purposes and outcomes—particularly adequate protection from harm, as well as observance of fair behaviour, compliance with the rules, improving performance (over and above the standard set by rules), and reducing risk. The also encompass purposes of identifying issues, sharing the information about problems, cooperating in identifying root causes and implementing effective changes, ongoing monitoring, rectifying errors, repairing and making redress—all as swiftly and cooperatively as possible.

The regulator should have as wide a toolbox of ‘enforcement’ powers as possible aimed at achieving the desired purposes and outcomes—and preventing the undesired outcomes. Traditional ‘enforcement’ tools remain relevant where deliberate harm or risk are intended but are only one type of tool, and

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<sup>163</sup> TR Tyler, JD Casper and B Fisher, ‘Maintaining Allegiance towards Political Authorities: The Role of Prior Attitudes and the Use of Fair Procedures’ (1989) 33(3) *American Journal of Political Science* 629; TR Tyler, ‘Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform’ (1997) 45(4) *The American Journal of Comparative Law* 871; TR Tyler, ‘Social Justice: Outcome and Procedure’ (2000) 35(2) *International Journal of Psychology* 117-125. ....

<sup>164</sup> R Cropanzano, DE Rupp, CJ Mohler and M Schminke, ‘Three roads to organizational justice’ (2001) 20 *Research in Personnel and Human Resources Management* 1–113; R Cropanzano, B Goldman and R Folger, ‘Deontic justice: the role of moral principles in workplace fairness’ (2003) 24 *Journal of Organizational Behaviour* 1019-1024; CT Kulik and Y Li, ‘The Fork in the Road: Diversity Management and Organizational Justice’ in RS Cropanzano and ML Ambrose (eds), *The Oxford Handbook of Justice in the Workplace* (Oxford University Press, 2015); R Miles, *Culture Audit in Financial Services* (KoganPage, 2121).



another critically important set of tools will involve using cooperative relationships to achieve effective changes in behaviour and culture and reduction of risk (there is extensive evidence on the effectiveness of such tools, but it is often overlooked).

The regulator should have a sophisticated differentiated and ethically based approach to selecting which intervention (formal or informal) to use in which circumstances. The key to achieving changes in behaviour and performance lies in *how* interventions are done, rather than in traditional ‘enforcement’ through sanctions and deterrence. The Ethical Code is a critical tool here.

A cooperative model aims to transcend rules and compliance, and to constantly improve performance and extend boundaries.

### Some Examples

This model can transform a number of traditional areas, briefly illustrated here. Adopting agreed purposes and outcomes, an ethical (open, just) culture, agreed roles and responsibilities, evidence of trust and performance, a problem-solving model, supported by relevant institutions, should generate

- a) More cohesive and fairer communities. This should generate stronger community solidarity and social trust, which will drive achievement of local plans for engagement with local integrated social, commercial, and environmental goals.
- b) Fair behaviour in workplaces, especially through a Code of Ethical Practice and independent feedback system. This should transform centuries of owner-worker conflict, involving common purposes, and fair working culture and reward.
- c) Innovative ideas *within* an enterprise (as well as ‘compliance’ or achieving high performance) and also an enlightened approach within a regulator, but also
- d) Swift and effective regulatory approval, market access and supervision (i.e. achievement of productivity and protection) in the relationships between regulator and enterprise (or more of both of them on each side). Thus, the success of sandboxes or ‘regulatory light’ regimes (eg for SMEs) would be based on trust (evidence of capability, competence, resource, intention and outcomes), ethics, evidence, relationships, close working and monitoring of outcomes and ‘side effects’.
- e) A cooperative mode of dispute resolution, bringing people together rather than dividing them through adversarialism, and producing learning through captured data and analysis that can drive learning and improved performance.

### E. CONCLUSIONS

A cooperative ethical model should increase performance, production, productivity, innovation, early identification of problems, and protection. It should lead to proportionate regulation, ‘regulation light’ and sandbox approaches, and it should solve the ‘too much red tape’ problem.<sup>165</sup> It should lead to significant support for SMEs. It should achieve effective ‘levelling up’ and ‘building back better’.<sup>166</sup>

The co-creation approach is a means of strengthening both the social licence of business operations aimed at prosperity and the social mandate for delivering protection. But it does so by re-inventing traditional regulation (rules-inspect-breaches-sanctions-assume deterrence) by supporting those who

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<sup>165</sup> I Duncan Smith, T Villers and G Freeman, *Taskforce on Innovation, Growth and Regulatory Reform* (June 2021). See subsequently: *The Benefits of Brexit: How the UK is taking advantage of leaving the EU* (HM Government, 2022); *Reforming the Framework for Better Regulation Summary of Responses to the Consultation* (BEIS, 2022).

<sup>166</sup> [Build Back Better: our plan for growth](#) (HM Treasury, 2021).

are well-intentioned (enlisting society's ethical values and principles with the state's common goals of prosperity, growth and protection).

This approach can be applied widely:

- regulation as a concept, supporting closer working in low-intensity-rules (ie inherent proportionality matching the risk of the activity with relevant competences), enabling sandboxes and development of innovative ideas through new approval processes that establish adequate protection.
- a principles-plus-outcomes approach encourages excellence and constant improvement in performance (rather than just compliance with the standard set by a rules-based system).
- transforming productivity of SMEs, with a refocused Small Business system, including Local Authorities, Trading Standards, sectoral regulators, technical support, a single data platform and Ombudsman.
- delivering fair employment (avoiding workplace disputes through a Code, supported by a fused ACAS-ET pathway and Labour Regulator, rather than partisan workers-employers confrontation).
- people working in large organisations (where many companies best already do it).
- dispute resolution (Ombudsmen applying Codes of ethical practice, rather than adversarial and costly litigation; the former can be largely funded by private sector, saving public expenditure).

It is not enough for there to be *some* cooperation. The continuation in relationships and exchanges of elements of distrust or poor behaviour will undermine achievement of the goals and outcomes that we want. So, we need to support *strong* trust and *holistic* ethical practice if we are to be successful in crafting cohesive, vibrant and productive communities, productive and innovative commerce, and effective institutions, regulation and dispute resolution, and a happy planet. We need to aim to be able to generate strong social capital through opportunities for common engagement and discussion on objectives, values, performance, and achievement. Relationships need to be trustworthy and respectful all the time, and in relation to all aspects. Having some degree of trust in politicians, administrators, managers, companies and neighbours is not enough—we will only maximise our achievements if we are holistic and fully engaged.

The key elements of this model are:

- (a) to support people to improve.
- (b) building trust – through producing a convincing and adequate body of evidence that people have good intentions, competences, understanding, resources, and will do the right thing (based on ethical values), such as asking for help, reporting problems, cooperating to implement fixes.
- (c) reliance on intrinsic motivation with supportive interventions rather than externally imposed authoritarian control.
- (d) involving everyone (all stakeholders) in a collaborative co-creative exercise.

Actions to strengthen the cooperative model.

- (a) Share and align purposes.
- (b) Share and align ethical values and principles.
- (c) Define the desired (and undesired) goals and outcomes.
- (d) Define the roles, functions and responsibilities of all stakeholders.
- (e) Support all stakeholders to perform their roles with open accountability.
- (f) Create and sustain structures to support ethical behaviour, production of evidence that one can be trusted, and debate conflicts.
- (g) Evaluate behaviour to determine if it is ethical and aimed to achieve common purposes and objectives.
- (h) Evaluate culture: Show improvements over time.
- (i) Measure whether the desired outcomes are delivered and undesired outcomes are avoided? Show improvements over time.
- (j) Involve all stakeholders in the design, operation and evaluation of the system: Co-creation and co-evaluation.

In relation to the major systemic risks identified above, we should strengthen cooperation as an essential means of resistance to threats to destabilisation:

- (a) International perceptions of threat – driving cybersecurity, terrorism.
- (b) Threats to life and health – disease, migration.
- (c) Socio-economic perceptions of threat – inequality, lack of economic security.
- (d) Build communities – start with the right size of populations to generate social community; governance of some issues in some countries are too large or too small.
- (e) Avoid perceptions of closed elites: moderate between expertise, competence, knowledge, involvement, values, feelings.