

Global Ethos, Law, and Economy¹

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Abstract: This article shows interactions and intersections between the Global Ethic on one side and Law and Economy on the other side. It reflects that Law must be based on ethics and needs more and more an international approach; it reports, as an example, a partnership program between Chinese and German courts. At the same time, law and ethics became increasingly important for the world of business. This is why universal ethical principles are needed and can be found in the project Global Ethos of Hans Küng. The Global Economy Ethic Manifesto has shown the importance of this approach and the key elements for its implementation. However, implementation remains a challenge and a constant task.

Keywords: Global ethics; ethos; values; law; economy; implementation; Chinese-German Court Partnership Program

Introduction

In my short presentation, I will not attempt to present in detail the idea and the tasks of the Global Ethos Foundation. Founded in 1995 by Hans Küng, this foundation works on the vision of a global change of awareness of ethics. People depend on shared fundamental ethical values for a peaceful coexistence. Hans Küng has shown that such values are to be found in all great religious and philosophical traditions but sometimes must be raised to people's awareness. You will find more details on our homepage.²

I do see the concepts of the Global Ethos as an essential approach to overcoming present-day global problems, and I am convinced that everyone who is in a position to make a contribution to the improvement of the world must do so. This is true, as well, for the world of economy. Business companies, most of all those who operate in international competition, need global ethical and intercultural expertise, as well. At the same time, law, including the law of companies, is based on ethical principles and is providing the framework for economy everywhere.

As I have gathered experience in four decades of professional life in the fields of law and justice and, increasingly, also, in the economic sphere, I will try to highlight these two spheres in their intersections with the Global Ethic.

The Global Ethic Interacts with Law and Economy

Law and Justice

It has been known from time immemorial that law must be founded on morals. As Horace long ago said: "*Quidquid leges sine moribus.*"³ However, the precise relationship of ethics and law is, nonetheless, a subject of dispute to this day. The notion of law as an ethical minimum is no longer tenable. On the contrary, in many

¹ Presentation at the Vincentian Business Ethics Conference, New York, October 22 – 24, 2015, extended by a short report about the Chinese-German Court Partnership Program.

² www.weltethos.org

³ What good are laws without morals.

respects, legal rights and duties nowadays go far beyond ethical imperatives. At the same time, jurisprudence deals, under the heading “ethicization of the law,” with, for example, the question of whether ethics is not increasingly taking possession of law and watering it down.

When speaking of “law,” most jurists think of their own national legal system. However, the world of jurists is also becoming increasingly global. It is part of a transcultural discourse and is concerned more and more frequently with issues that call for an international perspective. However, this also assumes the need for reflection on the ethical foundations of law in other parts of the world and requires a search for values, which are binding because they are consistent with one another.

On this point, I would like to tell you about my personal, practical experience in international legal exchange and legal dialogue. At the time of German reunification, I was given the task of developing a free democratic legal system and judiciary in Saxony, one of the new federal states. After forty years of communism, two legal and cultural environments that had developed along completely different lines had to be joined together. Later, I was involved in the process of transforming some former Soviet Republics into constitutional states and members of the Council of Europe. Finally, I am entrusted for many years with the project of partnerships between Chinese and German courts, stabilizing the rule of law and modern legal thinking but supporting business and global understanding at the same time, as well.

This kind of work makes little sense and can scarcely be successful if an attempt is not made at the start to find a common value basis. My experience is that this is possible. Values can, in fact, be found with which people all over the world can identify. These are the values that *Hans Küng* has described in his World Ethos Project:

Non-violence and respect for life
Justice and solidarity
Honest and tolerance, and
Mutual esteem and partnership.

On the basis of these common values, it is not only easier to work towards a new legal system. If one works out in principle and feels, as well, how close law professionals are together on fundamental questions, then peaceful, fruitful, and cooperative work becomes possible. I want to show this, as well, in the example of another project I have been working on for several years.

The partnership between Chinese and German Courts. On April 27, 2010, the first German-Chinese Court Partnership was established. As then President of the Oberlandesgericht⁴, Stuttgart, I signed at Zhengzhou, capital of the Chinese Province of Henan, together with the President of the High Peoples Court of Justice of this province, a document establishing a formal partnership between the two courts⁵. The differences between the partners seemed to be enormous. Henan is the biggest Chinese province, having more than 100 million inhabitants, whereas the district of my court had only about 7 million citizens. More important, surely, were the differences not only in the details of law, but, as well, in basic constitutional principles.

Nevertheless, there developed rapidly astonishing openness and intensive interest between the two parties, as we didn’t put in front the differences, but the commonalities. Clearly enough, the Chinese people have an

⁴ High Appellate Court.

⁵ See China-Report 2011, p. 1.

old and deep inclination to the topic of justice, and, absent a predominating, traditional religious tradition, they are seeking a system of values for orientation. Moreover, some of the principles now recognized as global ethic rules have been first mentioned and elaborated by *Confucius*, such as the so called Golden Rule⁶.

As news spread about this inspiring cooperation, judges from other provinces wanted to be part of it, as well. There was need of a better-organized and broader-financed project. Help came from the Robert Bosch Foundation; together with the GIZ⁷, this remarkable foundation overtook this duty. Now there are already five partnerships between the High Peoples Courts in China and the High Appellate Courts in Germany, each one exchanging each year 10 judges to teach and to learn the other one's points of view, ethics, and solutions. When this article is published, the program will be most probably crowned by a partnership even between the Supreme Courts of both countries.

This project is fine for supporting global understanding. However, it helps, as well, developing the rule of law, ethics-based law, legal certainty, and modern legal thinking. By this means, it helps at the same time making business – internal and in the global exchange – much easier and more stable. Also, it turns out that jurists worldwide have to solve similar problems of living, working, and doing business together. In many cases, they come to quite similar solutions.

Cultural differences and basic consensus. Where this is not the case, it is mostly due to the specific understanding of values, which has crystallized in the different cultural environments. Such differences are a matter of course, also, among friends. Take for example the different understanding of data protection and freedom in the USA on the one hand and continental Europe on the other. Even more, there is no denying the fact of a fundamental difference between the understanding of individual rights in east and west, at least since the Enlightenment brought basic change into western thinking. Such differences must be realized and considered open-minded, but without trying to convince the other side that your own way of thinking is better or superior. They do not, however, disprove the existence of a basic stock of values enjoying global validity.

The need to live together in increasingly complex societies requires a minimum of orientation and reliability; that is to say, it requires norms. In the long socio-dynamic process of the humanization of man, value systems have developed everywhere in the world. These include relative values, which have only found recognition in a restricted cultural circle, and, also, values that are common to all mankind. UNESCO awards the title of World Cultural Heritage. The basic stock of values, which all human beings have in common, would have truly deserved this title, as the **World Values Heritage**, is the foundation of every culture.

Such a focus would anchor the values all human beings share even more strongly in the consciousness of mankind. Albert Einstein once said about truth that it resembles a statue that stands in the desert and is continually threatened with burial by the shifting sands. Active hands are needed to dig the statue out and keep it visible. This is also true about our awareness of values. We must reflect on and talk about these values in order to maintain or create a broad awareness of them, as this awareness leads to true tolerance in regard to the differences between people. It is the foundation of international law, enables fruitful discussions with one another, and converts a backward-looking "clash of civilizations" into a peaceful competition between ideas. However, the second sphere of my experience seems to me equally important today.

⁶ Ethic of reciprocity: "Never impose on others what you would not choose for yourself"; similar see, as well, *Laozi* and *Mozi*.

⁷ A German governmental organization providing services worldwide in the field of international cooperation for sustainable development (see www.giz.de)

Economic Ethics

The Manifesto for a Global Economic Ethic defines a global economic ethic in its preamble as a common fundamental vision of legitimacy, justice, and fairness. It thus explicitly includes the idea of law and its global dimension in the foundations of an economic ethic. This is certainly correct if one considers the immense significance of a continually growing international legal framework for the economy. This fits in with my professional experience, which is not directly concerned with economic ethics but with economic law. I have gathered this experience over a period of 25 years in my activities as a judge, arbitrator, and mediator in problem cases and disputes within and between enterprises and over 15 years as a member of a big company-affiliated foundation, the Robert Bosch Stiftung. There are many quotations from *Robert Bosch*, which could still be included in the foundations of business ethics today. One, which I find particularly congenial, runs: "I would prefer to lose money rather than trust." Less than ten years ago, the global economy slid into a fundamental crisis because increasingly less attention was paid to this sentence in many enterprises. Indeed, they turned it into its opposite. Klaus M. Leisinger (2010) has vividly illustrated this process in his important contribution to business and management ethics in the *Manifesto for a Global Economic Ethic*.

I am far from believing that much can be gained simply by writing codes of conduct and rules of governance. Paper is patient. In some of my cases, I have even taken the liberty of confronting managers involved in disputes with sentences from the bombastic codes on their own home pages. The majority were not even acquainted with them or had obviously never concerned themselves with their importance.

Nonetheless, such rules in written form are indispensable. However, it is not enough to hand their elaboration over to the compliance department or even to a consulting firm. I know one enterprise in which the management board itself drafted a "house of orientations" in workshops without outside assistance and, after discussing it with its staff worldwide, made the corresponding modifications. That is effective.

The "tone from the top" must, however, be sustainable and unambiguous. To this end, one enterprise I know ensured that its staff was regularly acquainted with vivid examples from the enterprise itself. Here is an example: a middle manager had the task of "landing" an important contract. He received an unethical proposal from an employee of the other side, namely information that would guarantee the award of the contract in return for cash. He did not accept, but reported back to his superiors. The enterprise decided to back out of the competition for the contract. The staff member was not only treated as if he had won the contract, but was also promoted.

On the Way to Implementation

This enterprise and this staff member obviously possess what *Patricia Werhane* calls "*moral imagination*," the ability to overcome an intellectual confinement to the direct maximization of profits. What matters is that this should not be a single case. If there were only one enterprise involved in global competition that behaved in a strictly ethical way, it would probably soon go bankrupt. Conversely, the more enterprises of this kind there are, preferably spread out over as many parts of the world as possible, the easier moral behavior will be in regard to its economic consequences and the more likely it will become the standard with the resulting pulling effects on other enterprises.

Along this road, the law makes a necessary contribution. Everywhere in the world, there are strict and often very detailed and complicated legal regulations on compliance. In all the states that I know, for example, corruption is subject to penalties, which are sometimes draconian. As has been said, this is necessary so that

the law can be rigidly implemented. However, it is obviously not sufficient. The example of corruption alone is an adequate proof of this.

Josef Wieland (2010) has shown how much the formal control must be supplemented by informal mechanisms. Ethical principles must provide the stable foundation for all compliance. They can be felt and lived, as we can rediscover them in ourselves and in our consciences. If the rules are designed to apply to a global economy, they may not simply absolutize the thinking of one cultural circle but must credibly claim validity throughout the world. The *Manifesto Global Economic Ethic* achieves this goal by invoking the principles of a global ethics.

The problem of implementation remains. We must think about it constantly, and we must work for it - also at this congress. It is a huge challenge, but there is no cause for resignation. Enterprises are learning entities. More and more of them are drawing the right conclusions from moral aberrations, which sooner or later lead to a financial disaster. We are thankful to scientists like yourselves to whom we owe precise methods, which can help us. What is more, the words of Albert Schweitzer (1923) are still valid today, with which I would like to end:

Those who wish to promote our thinking on ethics in some way are working on the coming of prosperity and peace in the world. They are pursuing higher forms of politics and national economy. And if their abilities only suffice to bring back ethical reflection again, then they have already achieved something important. All reflection on ethics leads to an elevation and stimulation of ethical convictions.

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