Coercive Competition: A New Paradigm for Culture and Conduct Risk Management

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INTRODUCTION

This Article offers a tour of a small portion of the literature that I have found particularly helpful in thinking about the importance of trust in society, about the hollowing-out of trust in our core social institutions since the Financial Crisis, and about what this means for business.

Our survival as a species has hinged on an ability to cooperate with trusted others. Our *thriving* as a species has come as a consequence of our ability to collaborate with strangers, at scale, as a presumed behavioral norm. This is a recent phenomenon, made possible by the creation of a purpose-built institutional "trust infrastructure." Without that to bind us, the very basis of shared peace and prosperity is lost. The collapse of trust in our core social institutions is therefore, in my view, the single greatest challenge of our day.

With some focus on the banking sector, I will argue that a failure of risk governance lies behind this collapse in trust, and I will offer some suggestions as to how we might do better. While by design a philosophical inquiry and exploration, this Article has a practical goal: to challenge

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precepts of modern management science; to put forth alternative theories; and to suggest that there is need—and opportunity—to establish a new paradigm for the management of risks that flow from company culture and the conduct that it promotes.

Ultimately, this is an Article about human behavior, its causes and consequences. A subject so vast does not confine itself to any one, narrow, academic swim-lane and neither do I. Rather, I have afforded myself the luxury of borrowing liberally from a range of disciplines and their associated literatures, seeking to weave a coherent narrative that allows us to ask "what are we to do?" and to posit an approach to identifying responsive ideas that at least warrant some consideration.

The Article is in three Parts: *Zeitgeist*, *Weltanschauung*, and *Gestalt*. In the first Part, *Zeitgeist*,[1] I reflect on the spirit of our times, characterized by a contest between Forces of Connection and Forces of Division. Too often we tend to think of ourselves and our institutions in an atomistic manner; we fail to recognize that we are all connected in social ecosystems. We see this in the framing of the current corporate governance debate regarding the primacy of shareholder interests versus those of stakeholders, which is merely the most recent manifestation of a decades-long debate on this topic. The terms of this debate, I shall argue, reflect a persistent failure of philosophical imagination when it comes to apprehending the nature of the firm as a social ecosystem.

In the next Part, *Weltanschauung*,[2] I argue for a different worldview; one that asks after not only *who* and *what* the firm is *for*, but one that considers anew what the firm actually *is*. I characterize it as a nexus of trust relations and argue that the robust attention to the importance of trust that we have seen in the macro-economic context needs to be matched by a study of its significance at the micro-economic level of the individual firm or organization. Inextricably bound up in this argument is an appreciation of our history as a cooperative species—one that thrives due to its unique ability to create shared networks of collective intelligence among trusted peers—as I shall discuss in some depth.

The closing Part, *Gestalt*,[3] argues for bringing a holistic appreciation of the foregoing to our study of business management, particularly to management of the non-financial risks with which any organization must contend, and most especially those that are referred to as "culture and conduct risks." I will argue that a failure to manage such risks successfully is among the principal causes of our current "Trust Crisis." And I will note that this, in turn, stems from a failure to apprehend fully the social nature

1. *Infra* Part I.
2. *Infra* Part II.
3. *Infra* Part III.

of the human animal, and the way in which our social lives shape our identities and determine the norms of behavior to which we feel *compelled* to conform.

I conclude the Article by arguing that those who are responsible for managing behavioral risk within organizations must begin by recognizing a "coercive competition" that shapes the parameters of their task. Employee conduct—or misconduct—is derived from a combination of *formal* mechanisms, such as incentive schemes and "tone from the top," and far more powerful *informal* mechanisms, such as peer norms. While these mechanisms may work in concert to induce certain behaviors, it is perhaps more often so that they work in opposition, leaving employees pulled in different directions. I shall briefly discuss new capabilities in the field of computational social science that make possible an examination of this complex interplay of formal and informal coercive systems, thus providing a powerful new means by which to manage organizations. In time, the application of such tools to the management of culture and conduct-related risks may help restore trustworthiness to our institutions and help to free us from the Distrust Trap.

It should be noted that I am not a lawyer, economist, organizational psychologist, nor an academic of any pedigree. I am just a guy who reads a lot and who is trying to make a difference. If this Article stimulates any reactions from those who may truly be called "scholar," I shall consider it a success.

I. ZEITGEIST

A. The Freak of the Universe

Homo sapiens likes to believe that it is different, special, better, *other*. We are wrong in this but perhaps understandably so. For if there is anything truly distinct about the human animal, then surely it lies in our capacity for *narrative*——and especially for that of the *inward* sort: the stories we tell ourselves about ourselves, about one another, about our world, and about our place within it.

It is central to these inner-dramas and psycho-dynamic myths that we are, each of us, doomed to play the part of the *protagonist*. In that role, we most often see our-*self*s as separate and distinct, rather than forming a part of some consequential whole. This *self*-absorption lies not just within our nature but may be the very essence of it: as that genius observer Erich Fromm put it, "Man is the only animal for whom his own existence is a problem which he has to solve and from which he cannot escape."[4] Fromm

4. ERICH FROMM, MAN FOR HIMSELF: AN INQUIRY INTO THE PSYCHOLOGY OF ETHICS 40 (1947).

traces this to the development of reason, which resulted in what he calls an "historical dichotomy":

> Self-awareness, reason and imagination have disrupted the "harmony" which characterizes animal existence. Their emergence has made man into an anomaly, into the freak of the universe. He is a part of nature, subject to her physical laws and unable to change them, yet he transcends the rest of nature. He is set *apart* while being *a part* . . . .[5]

Our error is to emphasize Fromm's "set *apart*-ness" over his "being *a part*-ness." We give primacy to the individual self over all of its brethren, over the natural world from which each and all emerge, and within which all of our narrative-*self*s are set and made possible. Instead, the human animal must be considered against all other social animals—the ants, bees, dolphins, wolves, horses, elephants, some birds, other primates (of course), and more. Like them, we emerge from and exist within fundamentally *social ecosystems*, outside of which we are most likely to perish.[6]

This is not idle philosophizing. Fromm's existential dilemma is at the very center of current civic, political, and economic crises and debates. Journalist David Brooks describes this struggle in terms of a "New Cold War," one between the *Forces of Connection* and the *Forces of Division*.[7] He chronicles an "epidemic" of alienation, loneliness, and distrust that has left our social fabric in tatters. "The chief struggle of the day," he writes, "is sociological and psychological, not ideological or economic."[8] He then adds this crucial observation: "The substrate layer of American society—*the network of relationships and connection and trust that everything else relies upon*—is failing. And the results are as bloody as any war."[9]

Business is a social endeavor, so no meaningful discussion of corporate governance can be divorced from these broader themes of connection and division. I take them, therefore, as my starting point and carry these ideas throughout the following Article, which considers them in connection with their implications for business management, allowing

5. *Id.* (emphasis added).

6. Daniel Christian Wahl, *Life's Economy is Primarily Based on Collaborative Rather Than Competitive Advantage*, MEDIUM (Feb. 1, 2017), https://medium.com/age-of-awareness/lifes-economy-is-primarily-based-on-collaborative-rather-than-competitive-advantage-e7c5f55466fd [https://perma.cc/8EPZ-8UNT].

7. David Brooks, *The New Cold War: The Forces of Division and the Forces of Connection*, N.Y. TIMES (Oct. 29, 2018), https://www.nytimes.com/2018/10/29/opinion/pittsburgh-shooting-isolation-depression.html?auth=login-email&login=email [https://perma.cc/H2UN-6GD4].

8. *Id.*

9. *Id.* (emphasis added).

me to conclude with a suggested new paradigm for culture and conduct risk management.

B. We Are Not Alone

Across the globe, business leaders appear newly alive to the idea that we are social creatures who thrive (or fail to) within "social-ecological systems"[10] or "shared communities of fate."[11] Increasingly, the "set *apart*-ness" of a given firm is seen as subsidiary to the "being *a part*-ness" of the social ecology within which these "artificial persons" reside and upon which they depend.

Blackrock's Larry Fink is credited with advancing the current tone in his January 2018 annual letter to the boards of the world's largest companies, in which he argued, "To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society."[12] Those failing in this, he warned, "will ultimately lose the license to operate from key stakeholders."[13]

Fink doubled down in his 2019 letter. Observing that we are in the midst of the largest wealth transfer in history—$24 trillion from baby boomers to millennials—he notes that the younger generation has different investment preferences than the older and places greater emphasis on environmental, social, and governance issues (ESG) that will be "increasingly material to corporate valuations."[14] Fink ties his assertions here to a remarkably *communal* view of corporate purpose: "Purpose unifies management, employees, and communities. It drives ethical behavior and creates an essential check on actions that go against the best interests of stakeholders. Purpose guides culture, provides a framework for consistent decision-making, and, ultimately, helps sustain long-term financial returns for the shareholders of your company."[15]

Fink gives corporate purpose *force*. He argues not only that purpose establishes the pre-conditions for effective corporate governance but, by inference, he asserts that only those management decisions and actions that

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10. *See* Stockholm Resilience Centre TV, *Understanding Social-Ecological Systems*, YOUTUBE (Nov. 26, 2017), https://youtu.be/1WrMK-cqmkc [https://perma.cc/9K7N-DYTW].

11. Noah Elbot, *An Expanded Community of Fate: Senior Fellow Margaret Levi on Unions and Political Action*, WATSON INST. INT'L & PUB. AFFAIRS, https://watson.brown.edu/news/explore/2013/levi [https://perma.cc/8L7T-AWUP].

12. Andrew Ross Sorkin, *BlackRock's Message: Contribute to Society, or Risk Losing Our Support*, N.Y. TIMES (Jan. 15, 2018), https://www.nytimes.com/2018/01/15/business/dealbook/blackrock-laurence-fink-letter.html [https://perma.cc/P2SL-BLWU].

13. *Id.*

14. Larry Fink, *Larry Fink's 2019 Letter to CEOs: Purpose & Profit*, BLACKROCK (2019), https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter (last visited Jan. 28, 2020).

15. *Id.*

are consistent with a firm's purpose will advance the interests of its shareholders sustainably—and thus, will *necessarily* also advance the interests of its broader stakeholder communities. Corporate purpose, in other words, articulates and enlivens the firm's ecological "being *a part*-ness."

Few have taken up this theme as passionately and thoughtfully as Oxford's Colin Mayer, who criticizes past economic orthodoxy for its failure to fully apprehend that which most enhances human well-being. "It focuses on individualism when the purpose of life derives from community," Mayer writes.[16] Through his *Future of the Corporation* program, hosted by the British Academy, Mayer is working to foment and to facilitate a "paradigm shift" in how the firm is conceived and governed.[17] He puts corporate purpose at center: "[a] company's governance is indeterminate so long as its purposes are undefined."[18]

Fink's exhortations and Mayer's activism reflect our *Zeitgeist*, which was given its most recent expression by the Business Roundtable (BRT), an association of the CEOs at America's most prominent firms. In its recently-issued *Statement on the Purpose of a Corporation*[19]—a "modernizing" update to its 1997 *Principals of Corporate Governance*—the BRT refutes the so-called Friedman Doctrine, which holds that "there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits."[20]

Consistent with Friedman, the BRT had previously maintained that "[t]he paramount duty of management and of boards of directors is to the corporation's stockholders," and that "interests of other stakeholders are relevant as a derivative of the duty to stockholders."[21] Its new *Statement* overturns decades of such "shareholder primacy" orthodoxy to assert a "multi-stakeholder model" of corporate purpose, one that commits member firms to work towards "creating value for customers, investing in employees, fostering diversity and inclusion, dealing fairly with suppliers,

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16. COLIN MAYER, PROSPERITY: BETTER BUSINESS MAKES THE GREATER GOOD 11 (2018).

17. *About Future of the Corporation*, BRITISH ACAD., https://www.thebritishacademy.ac.uk/programmes/future-of-the-corporation/about [https://perma.cc/HCV7-8GBJ]. Full disclosure: I am delighted to have been invited to play a small part in the deliberations of the community of thinkers that Professor Mayer has curated.

18. MAYER, *supra* note 16, at 19.

19. *Our Commitment: Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE, https://opportunity.businessroundtable.org/ourcommitment/ [https://perma.cc/EJN3-3DS3].

20. Milton Friedman, *A Friedman doctrine—The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 32.

21. Peter Gasca, *In This Single Statement, CEOs From the Largest U.S. Corporations Just Changed the Purpose of Business*, INC. (Aug. 20, 2019), https://www.inc.com/peter-gasca/in-this-single-statement-ceos-from-largest-us-corporations-just-changed-purpose-of-business.html [https://perma.cc/AF8D-QMJ3].

supporting communities, and protecting the environment."[22] Notably, it makes reference to all these purposes before even mentioning shareholders.[23]

The backlash to BRT's statement was as immediate as it must have been expected: unnecessary; fool-hardy; disingenuous; petty posturing driven by political calculus. "Accountability to everyone means accountability to no one," the Council of Institutional Investors fretted.[24] Though the Council accepted that it is "critical to respect stakeholders," it warned that business leaders must have "clear accountability to company owners."[25]

C. Once More, with Feeling

The debate will no doubt continue, but there is little here that is new. Rather, this current contest should be seen as a continuation of that Great Debate of the early 1930s, between Adolf A. Berle and E. Merrick Dodd, conducted amidst the Great Depression and ultimately forming the intellectual backdrop against which modern securities law took shape.

In what has since been cast as arguing for shareholder-primacy, in 1931 Berle wrote that managerial authority is "necessarily and at all times exercisable only for the ratable benefit of all shareholders as their interest appears."[26] Dodd's 1932 rejoinder effectively argued that, once given the status of legal personhood, a firm is no longer a mere aggregation of shareholders but must be seen as enjoying what is, in effect, a *civic* life with attendant civic duties. Thus, the case for stakeholder-primacy: the firm is "an economic institution which has a social service as well as a profit-making function," Dodd concludes.[27]

As others have pointed out, the two men had more in common than the nuanced views that separated them.[28] But at a time when policy-makers were concerned with restoring confidence in markets among the investing public, fluttering like two moths around a shared flame, Berle and Dodd

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22. *Our Commitment: Statement on the Purpose of a Corporation*, *supra* note 19.

23. *See* Michael Spence, *The End of Shareholder Primacy?*, PROJECT SYNDICATE (Aug. 26, 2019), https://www.project-syndicate.org/commentary/shareholder-vs-multi-stakeholder-model-by-michael-spence-2019-08 [https://perma.cc/9MHG-9A6Y].

24. *Council of Institutional Investors Responds to Business Roundtable Statement on Corporate Purpose*, COUNCIL OF INST. INV. (Aug. 19, 2019), https://www.cii.org/aug19_brt_response [https://perma.cc/3WX4-J5W3].

25. *Id.*

26. Adolf A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (1931).

27. E. Merrick Dodd, Jr., *For Whom are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1148 (1932).

28. *See* John C.C. Macintosh, *The Issues, Effects and Consequences of the Berle–Dodd Debate, 1931–1932*, ACCT., ORG. AND SOC'Y, Feb. 1999, at 139, 139–153.

were preoccupied with how best to control managers amidst what would later be called "asymmetries of information."[29] They were concerned, that is, with problems of *agency* which turned on concerns about management power.

In hindsight, the two might be seen as sides of a coin: Berle concerned for the harm that "real people"—managers—might cause the more abstruse corpus of "shareholders"; while on the flip-side, Dodd is seen as more concerned for the harm that an abstract "legal person"—the firm—might visit upon the real people who make up its community of interested stakeholders. Both were seeking to avoid harm that might occur within different parts of a *shared ecosystem*, with each prioritizing a different element.

Lacking that ecological perspective, the debate was cast in "either-or" terms, and that artificially-binary formulation persists in current echoes of the Great Debate. In the end, it was Berle who was seen to have "won" the contest, and who was asked to serve among the Brain Trust that FDR assembled and tasked with establishing the set of policy prescriptions that ultimately came together to form the *Securities Act* of 1933, and which thus established the basics for corporate law that remains with us today.[30]

II. WELTANSCHAUUNG

A. When You Change the Way You Look at Things . . .

We have inherited a rich and subtle literature in the field of corporate governance that starts by asking, "For *whom* is the firm?" (e.g., the shareholder v. stakeholder debate—a legalistic inquiry). To this, especially latterly, is added an important dialogue that starts by asking, "For *what* is the firm?"[31] (an examination of purpose—predominantly an economic inquiry). But if we are to re-examine such first-order questions,

29. Press Release, The Nobel Prize, Markets with Asymmetric Information (Oct. 10, 2001), https://www.nobelprize.org/prizes/economic-sciences/2001/press-release/ [https://perma.cc/CR9J-DY3M].

30. An interesting side-note to the Great Debate: in 1967, Berle complained that the 1933 *Securities Act* did not go far enough, and that it ultimately had "little to do with the conduct of the corporation's affairs beyond requiring regular publication of information considered accurate by accounting standards." The passage of the Sarbanes–Oxley Act following the Enron scandal thirty-years later shows this faith in the sufficiency of financial reporting to have been somewhat misplaced. *See* ADOLF A. BERLE & GARDINER C. MEANS, MODERN CORPORATION AND PRIVATE PROPERTY 303 (1933).

31. *See Big Business is Beginning to Accept Broader Social Responsibilities*: *Pursuing Shareholder Value is No Longer Enough, it Seems*, THE ECONOMIST (Aug. 22, 2019), https://www.economist.com/briefing/2019/08/22/big-business-is-beginning-to-accept-broader-social-responsibilities?cid1=cust/dailypicks1/n/bl/n/20190828n/owned/n/n/dailypicks1/n/n/NA/299647/n [https://perma.cc/ADX8-P2WN].

overturn established orthodoxies, and trial new formulations, then we are remiss if we fail to take a step farther back to ask, "What *is* the firm?" (fundamentally, a philosophical inquiry).

If Man is "the freak of the universe," then the corporate "legal person" is more freakish yet, and must too explain its own existence.[32] Since Coase penned *The Nature of the Firm*[33] in 1937, we have tended towards a bloodless, legalistic view of it as a nesting of contractual obligations that works to minimize "transaction costs."[34] In fairness, this formulation has been critiqued and debated since Coase's writing, and Coase himself felt his ideas were often misconstrued.[35] Nevertheless, this *mechanistic* perspective prevails in economic orthodoxy.[36]

Until now, when all such orthodoxies appear to be under assault, from within and without. Renowned economist Mohammed A. El-Erian sees society's loss of confidence in orthodox economics (and economists) as a consequence of the profession's predilection for "simplistic theoretical assumptions," its reliance on mathematical techniques "that prize elegance over real-world applicability," and its "routine failure" to draw on insights from behavioral science.[37] This self-selected idiographic "insularity" from other fields of inquiry leaves economics poorer and economists distrusted, writes Bank of England Chief Economist Andy Haldane.[38] "The intellectual marketplace awaits a fresh approach to the structuring of work and the good society," argues Sebastian Mallaby, fellow for international economics at the Council on Foreign Relations, in a recent piece entitled *How Economist's Faith in Markets Broke America*.[39]

32. FROMM, *supra* note 4, at 40.

33. R. H. Coase, *The Nature of the Firm,* 4 ECONOMICA 386, 386–405 (1937).

34. *See* Oliver E. Williamson, *Transaction-Cost Economics: The Governance of Contractual Relations*, 22 J. L. & ECON. 233 (1979).

35. John Cassidy, *Ronald Coase and the Misuse of Economics*, NEW YORKER (Sept. 3, 2013), https://www.newyorker.com/news/john-cassidy/ronald-coase-and-the-misuse-of-economics [https://perma.cc/E56V-UYJY].

36. It is an interesting side-note that Coase claims to have developed his theory of the firm while preparing for a series of lectures in 1932, after spending a year working in the US, at the very time of the Berle-Dodd debate. Ronald H. Coase, Prize Lecturer, Lecture to the Memory of Alfred Nobel: The Institution Structure of Production (Dec. 9, 1991), https://www.nobelprize.org/prizes/economic-sciences/1991/coase/lecture/ [https://perma.cc/RVP9-GHZR].

37. Mohamed A. El-Erian, *Why Economics Must Get Broader Before It Gets Better*, PROJECT SYNDICATE (Mar. 8, 2019), https://www.project-syndicate.org/commentary/mainstream-economics-must-learn-from-others-by-mohamed-a—el-erian-2019-03?barrier=accesspaylog (last visited Jan. 28, 2020).

38. Andrew Haldane & Arthur Turrell, *An Interdisciplinary Model for Macroeconomics*, 34 OXFORD REV. ECON. POL. 219 (2019).

39. Sebastian Mallaby, *How Economists' Faith in Markets Broke America and What it Means for Our Future*, THE ATLANTIC (Sept. 15, 2019), https://www.theatlantic.com/magazine/archive/2019/09/nicolas-lemann-binyamin-appelbaum-economics/594718/ [https://perma.cc/K4F5-ZYC7].

The law is meant to codify our ideas about how human affairs are best managed so that they work to promote our values. The law provides the scaffolding for our institutional and economic structures, but the ultimate design-work belongs to the *humanities*. We need a fleshy, humanistic theory of the firm, one that is *organic* rather than mechanistic. "In a world in which contracts are incomplete, unenforceable, or infeasible, then the ability to commit to and sustain relations of trust is critical to the scope of economic activity," argues Colin Mayer.[40] "The corporation is not a 'nexus of contracts' between the parties to the firm," he adds. "It is the opposite; it is a nexus of relations. Those relations are built on trust."[41]

Mayer is most assuredly correct, in my view. And, this "nexus of relations" formulation overcomes some of the sterility in the Berle and Dodd debate and the mechanistic emphases of Coase. But trust is not something that lends itself readily to econometric analysis. The economist's treatment of trust starts most often from a macro-economic perspective; the literature regarding the significance of trust in *micro*-economic analyses is sparse by comparison.

Trust is a phenomenon that belongs to Fromm's "being *a part*-ness," and too often this relational dynamic has been incidental to, or wholly ignored by, "serious" inquiries into the nature of the firm. But as Max Planck once said, "When you change the way you look at things, the things you look at change." And we are beginning to look at things anew.

B. Trust Issues

Economists have long acknowledged the importance of trust in economic life. Nobel Prize winner Kenneth Arrow was among the first modern economists to emphasize the significance of trust in our day-to-day transactions.[42] In 1972, he argued that "Virtually every commercial transaction has within itself an element of trust, certainly any transaction conducted over a period of time," adding—not insignificantly for my purposes here—"It can be plausibly argued that much of the economic backwardness in the world can be explained by the lack of mutual confidence."[43] Where trust is wanting, we are impoverished.

Some twenty years later, Francis Fukuyama argued for the significance of trust in the realm of economic life, defining it as, "the

40. MAYER, *supra* note 16, at 156.

41. *Id.* at 39.

42. John Stuart Mill made the far earlier observation in his *Principles of Political Economy*: "The advantage to mankind of being able to trust one another, penetrates into every crevice and cranny of human life: the economical is perhaps the smallest part of it, yet even this is incalculable." JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY 108 (Sir W.J. Ashley ed., 1848).

43. Kenneth J. Arrow, *Gifts and Exchanges*, 1 PHIL. & PUB. AFF. 343, 357 (1972).

expectation that arises within a community of regular, honest, and cooperative behavior, based on commonly shared norms, on the part of members of that community."[44] Fukuyama describes trust as a sort of informal "currency" that facilitates exchange and supports the cooperation that is central to creating and maintaining social order. Trust provides a kind of "social glue" that allows for the smooth functioning of groups, firms, organizations, and institutions.[45]

In short, trust allows for activities that would not occur without it. And while this may be true in our day-to-day transactions and for the functioning of whole economic orders, it is true also in connection with more idiosyncratic and micro-economic considerations, such as the functioning of firms and even a given firm's value in the market context. Trust is thus a "material" business consideration.

"Trust matters first because companies are at the bedrock of our communities and our economies," writes Greg Medcraft, head of the OECD's Directorate for Financial and Enterprise Affairs.[46] "But trust in business also matters because, more and more, a company's reputation is a major part of its share price and a key source of competitive advantage."[47] This is all the more so the case, Medcraft observes, when some 85% of the market value of the S&P 500 is estimated to be made up of *intangible value*. That is over $21 *trillion* in value that is largely derivative of the trust consumers place in a brand and the company behind it.[48] A recent study from Accenture ties a loss of such trust in business to a financial loss that it estimates "conservatively" at $180 billion.[49]

So, trust matters for transactions and markets, for the development and functioning of economic systems, and for the value assigned to and sustained by a firm. It is, therefore, a significant worry that Gallup reports businesses worldwide to be suffering from a crisis in trust[50]—a view heard

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44. FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY 26 (1995).

45. Karen S. Cook & Bogdan State, *Trust and Economic Organization: Class, Status and Power* (May 15, 2015) (unpublished manuscript) (on file with author); *see* FUKUYAMA, *supra* note 44, at 26.

46. *See* JEFFREY KUPFER & STEPHEN SCOTT, CULTURE & CONDUCT RISK IN THE BANKING SECTOR: WHY IT MATTERS AND WHAT REGULATORS ARE DOING TO ADDRESS IT 7 (2019).

47. *Id.*

48. *See* Bruce Berman, *$21 Trillion In U.S. Intangible Assets Is 84% of S&P 500 Value – IP Rights and Reputation Included*, IP CLOSEUP (June 4, 2019), https://ipcloseup.com/2019/06/04/21-trillion-in-u-s-intangible-asset-value-is-84-of-sp-500-value-ip-rights-and-reputation-included/ [https://perma.cc/2P6F-TX7J].

49. *See* Greg Sterling, *Study Finds Decline in 'Trust' Costs Corporations Billions in Profits*, MARKETING LAND (Nov. 5, 2018), https://marketingland.com/study-finds-decline-in-trust-costs-corporations-billions-in-profits-251186 [https://perma.cc/U473-Z3EA].

50. *See* Ghassan Khoury & Steve Crabtree, *Are Businesses Worldwide Suffering From a Trust Crisis?*, THE REAL FUTURE OF WORK (Feb. 6, 2019), https://www.gallup.com/workplace/246194/businesses-worldwide-suffering-trust-crisis.aspx [https://perma.cc/M6EL-4Q77].

throughout the last year. In its 2018 Annual Report, for instance, the IMF argued, "Global economic momentum is under pressure from a slow erosion [or] weakening of trust in institutions—and trust, of course, is the lifeblood of any economy."[51] The World Bank's annual Spring Meetings featured discussion of risks to the global financial system coming as a consequence of what participants termed the "distrust trap."[52] In an address to the General Assembly, U.N. Secretary General António Guterres argued that the world is suffering from a "Trust Deficit Disorder."[53] That theme that was echoed repeatedly in Davos as 2019 got started.[54] And again, later in the year, when the OECD announced the launch of a "Trust in Business Initiative."[55]

C. Illusions of Understanding

But while the importance of trust in the macro-economic context has won greater attention in recent years, our consideration of its importance at the micro-economic level of the firm has received comparatively far less study. Where such attention to trust is given, the tendency is to inquire into trust as a driver of brand value; that is, we focus on trust in a company from among those *outside* of it, rather than attending to the significance of trust *within* the company among those who make it up. But if Colin Mayer is correct in arguing for the firm as a "nexus of relations," then the trust dynamics that define those relations are of paramount importance. And to appreciate the *existential* significance of trust in this context, it is helpful to take a step back—a big one.

"We assume that a large brain, the use of tools, superior learning abilities and complex social structures are huge advantages," writes Yuval Noah Harari.[56] "But humans enjoyed all of these advantages for a full 2 million years during which they remained weak and marginal creatures."[57] What changed? Harari argues that an understanding of human history from the time of the Agricultural Revolution to the present really boils down to

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51. IMF, ANNUAL REPORT 2018: BUILDING A SHARED FUTURE ii (2018).

52. *Building Trust and Resilience*, IMF: SPRING MEETINGS SEMINAR EVENT (Apr. 18, 2018), https://www.imf.org/external/POS_Meetings/SeminarDetails.aspx?SeminarId=293 [https://perma.cc/RE6X-FVHM].

53. António Guterres, Secretary Gen., U.N., Address to the General Assembly (Sep. 25, 2018), https://www.un.org/sg/en/content/sg/speeches/2018-09-25/address-73rd-general-assembly [https://perma.cc/J7AC-CLRW].

54. Hadas Gold, *Trust is the New Buzzword in Davos. Here's Why*, CNN BUSINESS (Jan. 25, 2019), https://www.cnn.com/2019/01/25/business/trust-companies-davos/index.html [https://perma.cc/BV9S-743G].

55. *OECD Trust in Business Initiative*, OECD, http://www.oecd.org/daf/ca/trust-business.htm [https://perma.cc/24EE-85VH].

56. YUVAL NOAH HARARI, SAPIENS: A BRIEF HISTORY OF HUMANKIND 11 (2015).

57. *Id.*

this single question: "How did humans organize themselves in mass cooperation networks?"[58] The answer is found in our having developed a successful means for *institutionalizing* relations of trust, first with kith and kin, and later with strangers.[59]

Here, Harari emphasizes research by Robin Dunbar, the evolutionary anthropologist who gained renown for his work on the "social brain hypothesis" and its implications for human social orders.[60] For reasons that fall outside my scope here, Dunbar concludes that the nature of the human brain is such that we are able to maintain close relationships with, on average, about 150 people—the so-called "Dunbar Number." These relationships are arranged in a hierarchy of sorts, which Dunbar depicts as concentric rings marked by decreasing emotional intensity as we move farther from the center of our social worlds.[61]

"We only see each of the 100 individuals in the outer 150 layer of our social networks approximately twice a year, whereas, on average, we see each of the members of our innermost circle of 5 every other day," Dunbar has observed through a series of fascinating studies. "Between them, these five people account for around 40 per cent of all our social effort—and our emotional capital. The outermost [150] layer accounts for less than 20 per cent of our social effort," Dunbar writes.[62]

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58. *See id.* at 133.

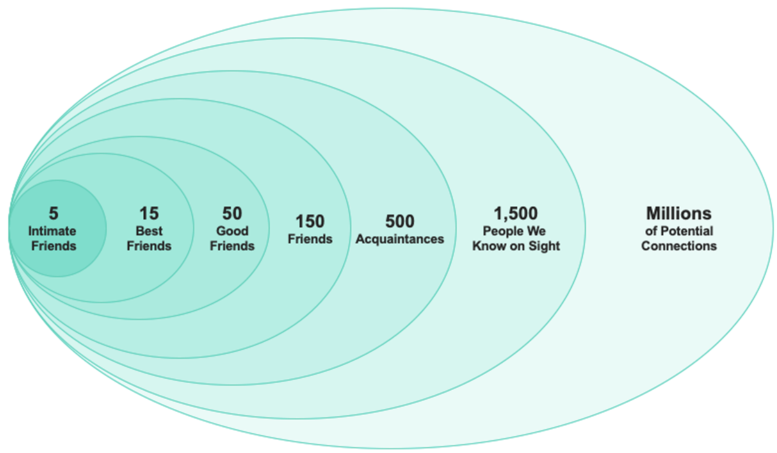
59. Herbert Gintis, *The Evolution of Human Cooperation*, EVOLUTION INST. (Jan. 11, 2012), https://evolution-institute.org/focus-article/the-evolution-of-human-cooperation/?sfns=mo [https://perma.cc/WH92-LBQ6].

60. *See generally* Robin I.M. Dunbar, *Neocortex Size as a Constraint on Group Size in Primates*, 22 J. HUM. EVOLUTION 469 (1992).

61. *See infra* Figure 1.

62. ROBIN DUNBAR, HUMAN EVOLUTION: OUR BRAINS AND BEHAVIOR 212 (2016).

Figure 1: Dunbar Dynamics



Devotion of emotional energy to a small, core cadre of trusted peers was evolutionarily advantageous. "It takes a tribe to raise a human," as Yuval Noah Harari puts it. "Evolution thus favored those capable of forming strong social ties."[63] With reference to Dunbar, Harari argues that "reliable information about who could be trusted meant that small bands could expand into larger bands and *Sapiens* could develop tighter and more sophisticated types of cooperation."[64] This was crucial to our survival as a species.

Central to our ability to *thrive* as a species is that we devised an institutional means by which to extend our circles of trust more broadly, through transitive properties of trust: I trust a guy who trusts a guy who trusts a guy.[65] "[T]rust cannot be purely bilateral: trust between any two people rests on a web of trust between each of them and the others with whom they also deal," writes economist Paul Seabright.[66] "[T]rust is the mortar for most of the encounters between strangers in a modern society," he argues.[67] It is achieved through cultural dictates that encourage and support cooperation as a behavioral norm, and those cultural dictates are enlivened through human institutions that were established specifically to serve this very function, if not always conscientiously.[68] As a result of this

63. HARARI, *supra* note 56, at 10.

64. *Id.* at 24.

65. Cristina Acedo-Carmona & Antoni Gomila, *Personal Trust Increases Cooperation Beyond General Trust*, PLOS: ONE (Aug. 21, 2014), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0105559 [https://perma.cc/N3H5-RWZL].

66. PAUL SEABRIGHT, THE COMPANY OF STRANGERS: A NATURAL HISTORY OF ECONOMIC LIFE 65 (2004).

67. *Id.* at 112.

68. *Id.* at 108.

institutionalized trust, "*Sapiens* can cooperate in extremely flexible ways with countless numbers of strangers," Harari writes. "That's why *Sapiens* rules the world."[69]

What is true of our evolutionary past is true of our current enterprises. "All the structures of which we are a part—congresses, universities, the companies where we work, our minds, even—are merely temporary collections of relations," writes Joshua Cooper Ramo.[70] And these collections of relations permit us to accomplish extraordinary things. "[I]t was the collective intelligence of human groups, not the intelligence of individual humans, that first differentiated our human ancestors from all their animal relatives," writes Massachusetts Institute of Technology's Thomas Malone.[71] He calls groups with such collective intelligence "Superminds."

Malone's Superminds permeate our social world. They are found wherever purposeful, thoughtful human endeavor is found. Even at the level of individual projects, we rely on the collective intelligence that we are able to access through others. "[I]ndividuals store very little detailed information in their heads," write Steven Sloman and Philip Fernbach in *The Knowledge Illusion*.[72] "In that sense, people are like bees and society a beehive: our intelligence resides not in individual brains but in the collective mind."[73] Indeed, "shared knowledge itself is a good marker of community membership," Dunbar observes.[74] And because our individual knowledge is enmeshed with that of others, "it is the community that shapes our beliefs and attitudes."[75]

Most often, we fail to recognize this, but it is critical to our understanding of any human undertaking. We believe that we are the sole authors of our own thinking and problem-solving. We emphasize our "being *apart*-ness." And we are wrong to do so. "Social intelligence enhanced by group selection made *Homo sapiens* the first fully dominant species in Earth's history," writes the preeminent biologist Edward O. Wilson.[76]

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69. HARARI, *supra* note 56, at 25.

70. JOSHUA COOPER RAMO, THE SEVENTH SENSE: POWER, FORTUNE, AND SURVIVAL IN THE AGE OF NETWORKS 117 (2016).

71. THOMAS W. MALONE, SUPERMINDS: THE SURPRISING POWER OF PEOPLE AND COMPUTERS THINKING TOGETHER 8 (2018).

72. STEVEN SLOMAN & PHILIP FERNBACH, THE KNOWLEDGE ILLUSION: WHY WE NEVER THINK ALONE 5 (2017).

73. *Id.*

74. ROBIN DUNBAR, HOW MANY FRIENDS DOES ONE PERSON NEED?: DUNBAR'S NUMBER AND OTHER EVOLUTIONARY QUIRKS 82 (2010).

75. SLOMAN & FERNBACH, *supra* note 72, at 16.

76. EDWARD O. WILSON, THE MEANING OF HUMAN EXISTENCE 75 (2014).

The firm's essence is that of a nexus of relationships. It functions through human ties from which a collective intelligence emerges. It is a Supermind. Or, more accurately, it is a nested aggregation of Superminds. And its performance turns on the sustained trust relationships that bind its members. "Our sense of self, our 'heart and intuition,' is actually part of what ensures that most of us will conform to group norms, promoting social harmony," writes social neuroscientist Matt Lieberman.[77] "Our self works for the group to ensure that we will fit in."[78] Unconscious of this, however, we operate with what Sloman and Fernbach call "an illusion of understanding."[79]

We must shake off this illusion, apprehend the true nature of the firm as a *community*, as a nexus of relations, and we must consider closely the trust dynamics—the *social capital*[80]—that exists and is traded among members, facilitating a "we is greater than me" psychosocial predisposition.[81] "Economists have long studied human capital as a driver of productivity in organizations," Lieberman notes, but "most studies of human capital ignore the concept of *social capital*, the social connections and social networks within the organization." Is it human capital alone that leads to productivity increase, Lieberman asks, "or does social capital play a role in catalyzing human output into optimal performance?"[82]

III. GESTALT

A. She Who Must Be Obeyed

In his 1953 essay, *The Methodology of Positive Economics*, Milton Friedman argued that economic theories should be judged by their ability to predict behavior correctly: "The only relevant test of the *validity* of a hypothesis is comparison of its predictions with experience."[83] By this measure, alas, we must judge the social sciences harshly.[84]

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77. MATTHEW D. LIEBERMAN, SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT 202 (2013).

78. *Id.*

79. SLOMAN & FERNBACH, *supra* note 72, at 8.

80. Francis Fukuyama, *Social Capital and Civil Society*, INT'L MONETARY FUND (Oct. 1, 1999), https://www.imf.org/external/pubs/ft/seminar/1999/reforms/fukuyama.htm#figI [https://perma.cc/T5KY-3YTL].

81. Michael Tomasello, *The Origins of Human Morality*, SCI. AM. (Sept. 2018), https://www.scientificamerican.com/article/the-origins-of-human-morality/ [https://perma.cc/5E85-5FYZ].

82. LIEBERMAN, *supra* note 76, at 262.

83. Mark Thoma, *Milton Friedman: The Methodology of Positive Economics*, ECONOMIST'S VIEW (Nov. 26, 2006), https://economistsview.typepad.com/economistsview/2006/11/milton_friedman_2.html [https://perma.cc/79DC-87KM].

84. *See generally* George Bragues, *The Financial Crisis and the Failure of Modern Social Science*, 3 QUALITATIVE RES. FIN. MKTS. 177 (2011).

Consider the failure of economists to anticipate the Financial Crisis, leading Britain's Queen Elizabeth to ask, famously, "why did nobody notice it?"[85] An accomplished group of British economists later wrote in reply to Her Majesty, explaining that the profession's failure to anticipate the Crisis had resulted from "a failure of the collective imagination of many bright people, both in this country and internationally, to understand the risks to the system as a whole."[86] That is, economists and risk managers had failed to take an *eco-systemic* view of the global financial system, or at least a sufficiently well-informed one.

"People expect from the social sciences—anthropology, sociology, economics, and political science—the knowledge to understand their lives and control their future. They want the power to predict," writes E. O. Wilson.[87] Yet our economic models leave us persistently flat-footed. Wilson contends that our economic models have failed us for having been "sealed off from the complexities of human behavior and the constraints imposed by the environment." For too long, studies in the social sciences have been conducted without sufficient appeal to the natural sciences, he argues. The solution lies in what Wilson refers to as *consilience*: "the linking of facts and fact-based theory across disciplines to create a common groundwork of explanation."[88]

Noble Prize-winning economist Robert Solow sounded a similar note nearly fifty years ago. "I imagine that biochemistry and biophysics got started," he wrote, "not because someone thought that biology should be interdisciplinary as a matter of principle, but because concrete research problems arose on the borderline of the biological and the chemical or physical."[89] Similarly, our deepest challenges today sit at the borderline of the social and the natural sciences.

Perhaps nowhere is this more evident than in the seemingly interminable parade of misconduct scandals that fill the headlines—particularly in the financial industry, where punitive fines for misconduct are estimated to total nearly $400 billion in the last several years.[90] How is it that these problems have not yet been managed away?

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85. Andrew Pierce, *The Queen Asks Why No One Saw the Credit Crunch Coming*, THE TELEPGRAPH (Nov. 5, 2008), https://www.telegraph.co.uk/news/uknews/theroyalfamily/3386353/The-Queen-asks-why-no-one-saw-the-credit-crunch-coming.html [https://perma.cc/4X3R-JP27].

86. Letter from Tim Besley, professor, London School of Econ. & Peter Hennessy, professor, University of London, to Her Majesty the Queen, United Kingdom (July 22, 2009), https://wwwf.imperial.ac.uk/~bin06/M3A22/queen-lse.pdf [https://perma.cc/W2QD-LXVV].

87. EDWARD O. WILSON, CONSILIENCE: THE UNITY OF KNOWLEDGE 197 (1998).

88. *Id.* at 214.

89. Robert M. Solow, *Science and Ideology in Economics*, 41 PUB. INT. 94, 101–02 (1970).

90. Elisa Martinuzzi, *The Next Round of Bank Scandals Will be Personal*, BLOOMBERG OPINION (May 20, 2019), https://www.bloomberg.com/opinion/articles/2019-05-20/bank-scandals-turn-to-non-financial-misconduct [https://perma.cc/6XXH-ARSV].

I contend that it is due to a failure to achieve *consilience* between the natural and social sciences. Instead, we embrace denuded models of human dynamics that take Fromm's "being *apart*-ness" as their starting point. We imagine solitary *Homo economicus*, rationally calculating how best to respond to one-dimensional incentives (almost always conceived of in monetary terms), aiming to maximize immediate economic utility in a mechanistic context. This leaves us believing that management science need only concern itself with setting these incentives properly and desired behaviors will follow, inevitably. As I have argued elsewhere, these ideas are manifestly, demonstrably, repeatedly, and maddeningly wrong.[91]

"The intellectual conception of the corporation from Adam Smith to the present is fundamentally wrong," Mayer veritably shouts from his pages.[92] "We economists have witnessed the failure of our profession, a failure that needs to be analyzed and fixed," writes renowned economist Luigi Zingales.[93] "The practice of management has been stuck in time for more than 30 years," Gallup laments.[94]

As Francis Bacon instructed nearly 400 years ago: "[N]ature is only to be commanded by obeying her."[95] Until we appreciate that all human behaviors are *fundamentally and unavoidably* shaped by our social nature,[96] we will manage our enterprises sub-optimally. We will manage behavioral risks sub-optimally and persistently from the back foot. Misconduct scandals will continue unabated, and the public's faith in our most essential organizations and institutions will erode further. The "Trust Crisis" will worsen.[97]

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91. Nicholas Christakis et al., *A Copernican Revolution in Culture and Conduct Risk Management*, REUTERS (Aug. 2, 2018), https://www.reuters.com/article/bc-finreg-culture-conduct-risk-managemen/a-copernican-revolution-in-culture-and-conduct-risk-management-idUSKBN1KN2BR [https://perma.cc/GSC6-3UF6].

92. MAYER, *supra* note 16, at 37.

93. LUIGI ZINGALES, A CAPITALISM FOR THE PEOPLE: RECAPTURING THE LOST GENIUS OF AMERICAN PROSPERITY 94 (2012).

94. JIM CLIFTON & JIM HARTER, IT'S THE MANAGER: GALLUP FINDS THE QUALITY OF MANAGERS AND TEAM LEADERS IS THE SINGLE BIGGEST FACTOR IN YOUR ORGANIZATION'S LONG-TERM SUCCESS 5 (2019).

95. SIR FRANCIS BACON, NOVUM ORGANUM 106 (Joseph Devey ed., P.F. Collier 1902) (1620).

96. Robert J. Aumann, *A Synthesis of Behavioural and Mainstream Economics*, NATURE HUM. BEHAV. (May 27, 2019), https://www.nature.com/articles/s41562-019-0617-3 (last visited Jan. 28, 2020).

97. *See* Sandra J. Sucher & Shalene Gupta, *The Trust Crisis*, HARV. BUS. REV. (July 23, 2019), https://hbr.org/cover-story/2019/07/the-trust-crisis [https://perma.cc/57HV-JZKZ].

B. Embracing Complexity

The problem is one of *complexity*.[98] "Knowing the parts is not equivalent to knowing the whole," complexity scientist John Miller advises. "To truly understand hives, markets, and brains, we need to understand how the *interactions* of honeybees, traders, and neurons result in system-wide, aggregate behavior."[99] And to understand firms, we need to understand the interaction dynamics among those within them.[100]

Complicated systems may have many moving parts, but they follow a fairly stable, linear set of rules, much like algorithms that follow an "if/then" logic. *Complex* systems, by contrast, are non-linear and are characterized by "a subtle dynamic interplay of positive feedback, negative feedback, and cascading chain reactions."[101] Any human organization is a complex system. We are joined in a network of interactions with others. Those interactions—*and our expectations of future interactions*—influence our behavior. This, then, influences the responsive behavior of others throughout the organization in a ripple-effect that, in turn, results in emergent *systemic change*—which, then, further (re-)shapes our interactions.

In complex systems, *emergent outcomes* arise through the interplay between any given agent with any other agent(s). Those emergent outcomes influence the subsequent behavior of all agents, who respond to one another's responses to such influence, in a ceaseless series of interactions that work either to reinforce the emergent outcomes or to prompt new ones, which alter the system yet again.[102]

Though we may be able to apprehend this network of interactions cognitively, it is hard to *operationalize* the implications of complexity in

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98. Eric Beinhocker, *Video: The Economy as a Complex and Evolving System*, INST. NEW ECON. THINKING (June 5, 2019), https://www.inet.ox.ac.uk/publications/the-economy-as-a-complex-and-evolving-system/ [https://perma.cc/J3FE-SXWD].

99. JOHN H. MILLER, A CRUDE LOOK AT THE WHOLE: THE SCIENCE OF COMPLEX SYSTEMS IN BUSINESS, LIFE, AND SOCIETY 228 (2015).

100. *See* Esko Kilpi, *Work is Interaction*, MEDIUM (Mar. 17, 2015), https://medium.com/@EskoKilpi/work-as-interaction-bfecdd8ea1a1 [https://perma.cc/6MT5-W6GZ].

101. LEN FISHER, THE PERFECT SWARM: THE SCIENCE OF COMPLEXITY IN EVERYDAY LIFE 36 (2009).

102. *See generally* Brian J. L. Berry, et al., *Adaptive Agents, Intelligence, and Emergent Human Organization: Capturing Complexity Through Agent-Based Modeling*, 99 PNAS 7187, 7187 (May 2002) ("For some years now, new approaches to the study of complex adaptive systems have offered researchers in both the physical and social sciences an important new theoretical and methodological framework for helping to understand a variety of nonlinear, dynamic systems. Complex adaptive systems are characterized often by 'agents' interacting or capable of interacting with each other in dynamic, often nonlinear and surprising ways. Most social phenomena would readily fit the description of a complex adaptive system.").

practical management processes.[103] Thus, "we tolerate complexity by failing to recognize it."[104] Traditional management science fails to acknowledge all we have learned about the principal adaptive quality of our species: its *eusociality*. And because it operates in a manner that is "sealed off from the complexities of human behavior," management science repeatedly fails us.[105]

We must learn to embrace complexity. We exist almost exclusively within *social ecologies*.[106] All of our endeavors involve coming together in *complex networks* of mutual trust.[107] We habitually join with others to form *Superminds* that extend individual capacities into evolutionarily advantageous "super-abilities" that put *Homo sapiens* at the top of the evolutionary ladder. This informs our *inner* lives of private experience: it shapes, and in many ways, defines our very *self*s. As such, *the self is social*, and the experience of our innermost individuality (our "set *apart*-ness") is largely an emergent property flowing from our existence within complex adaptive groups (our "being *a part*-ness")—groups that have their own existential imperatives.

C. The Company that Keeps You . . .

"[P]eople must belong to a tribe; they yearn to have a purpose larger than themselves," Wilson writes. "We are obliged by the deepest drives of the human spirit to make ourselves more than just animated dust, and we must have a story to tell about where we came from, and why we are here."[108]

This is Fromm's existential dilemma. And, as I have sought to argue here, the answers that we craft and pose in seeking to address it—the stories we tell ourselves and one another about "why we are here"—are necessarily *social* stories, even if we may seek to convince ourselves otherwise. Our sense of identity, our perceptions of *self*, are social constructs. We may experience them privately, but they would not exist outside the set of relations within which our *self*s are enmeshed and from which they are fashioned. We acknowledge this, albeit obliquely, when we say, "you are the company you keep." But I believe that we have this

103. *See generally* Kevin J. Dooley, *A Complex Adaptive Systems Model of Organization Change*, 1 NONLINEAR DYNAMICS, PSYCHOL., & LIFE SCI. 69 (1997).

104. SLOMAN & FERNBACH, *supra* note 72, at 35.

105. WILSON, *supra* note 76, at 214.

106. *See* Robert Foley & Clive Gamble, *The Ecology of Social Transitions in Human Evolution*, 364 PHIL. TRANSACTIONS ROYAL SOC'Y B. 3267 (2009).

107. *See* Charles Tilly, *Trust and Rule*, 33 THEORY & SOC'Y 1 (2019).

108. WILSON, *supra* note 76, at 6.

precisely backwards; rather, we should say, "you are the company that keeps you."

Wilson urges us to work towards a unity of knowledge across the social and natural sciences. So, let us consider what the social sciences have taught us: the single most powerful human drive is the drive *to belong*.[109] We see this in the earliest development of infants and children.[110] Our evolutionary history is such that social exclusion is existentially terrifying.[111] We respond to ostracism as we do to physical pain, and chronic exposure leaves us with lasting feelings of helplessness, hopelessness, and depression.[112] One study has found that, even in a game with a computer, experiencing ostracism is sufficient to trigger lower levels of self-esteem. "We interpret these results as strong evidence for a very primitive and automatic adaptive sensitivity to even the slightest hint of social exclusion," the authors conclude.[113]

And now let us consider lessons from natural science. Stanford's Robert Sapolsky is one of the leading professors of biology and neurology in the world and a recipient of the MacArthur Foundation's genius grant. Sapolsky observes that the brain region most involved in feeling fear and anxiety, the amygdala, is also the region most involved in generating aggression.[114] "The amygdala," he tells us, "is particularly sensitive to unsettling circumstances that are social."[115] The amygdala also works, in partnership with the insular cortex, to process our experience of disgust.[116] "The insula activates when we eat a cockroach or imagine doing so," Sapolsky writes.[117] And this very same cerebral circuitry engages when we experience some-*one* as disgusting. "The insula and amygdala activate when we think of the neighboring tribe as loathsome cockroaches," Sapolsky continues.[118] "This is central to how our brains process 'us' and 'them.'"[119]

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109. *See generally* R.F. Baumeister & M.R. Leary, *The Need to Belong: Desire for Interpersonal Attachments as a Fundamental Human Motivation*, 117 PSYCHOL. BULL. 497 (1995).

110. *See generally* Harriet Over, *The Origins of Belonging: Social Motivation in Infants and Young Children*, 371 PHILO. TRANS. R SOC. LOND. B BIOL. SCI. 1686 (2016).

111. *See* Kipling D. Williams, *Ostracism: The Kiss of Social Death*, 1 SOC. & PERS. PSYCHOL. COMPASS 236 (2007).

112. *See* Kipling D. Williams, *Ostracism*, 58 ANN. REV. PSYCHOL. 425, 431–32 (2006).

113. Lisa Zadro, Kipling D. Williams & Rick Richardson, *How Low Can You Go? Ostracism by a Computer Is Sufficient to Lower Self-Reported Levels of Belonging, Controlling, Self-Esteem, and Meaningful Existence*, 40 J. EXPERIMENTAL SOC. PSYCHOL. 560, 560 (2004).

114. *See* ROBERT M. SAPOLSKY, BEHAVE: THE BIOLOGY OF HUMANS AT OUR BEST AND WORST (2017).

115. *Id.* at 33–34.

116. *Id.* at 41–42.

117. *Id.* at 41.

118. *Id.* at 41–42.

119. *Id.* at 42.

Nicholas Christakis, director of Yale's Human Nature Lab, is a distinguished sociologist and medical doctor. He is deeply familiar with both the social and the natural sciences. Christakis is an optimist. In *Blueprint*, he outlines a "social suite" of human behavioral predilections that have worked throughout our species' history to promote the development of collaborative social orders.[120] However, as Christakis observes, studies find that, even when very young children are assigned to distinct teams—the red shirts and the blue shirts, in one such study—"us-versus-them" behaviors appear.[121] "In-group affection and out-group hatred seem entangled," he laments, even when group assignment is wholly arbitrary *and known to be so*.[122]

To be ostracized is to be deemed disgusting. To be deemed disgusting leads to being ostracized. We may be able to tolerate this from the neighboring tribe—"the blue shirts"—but when this occurs among those within the innermost of our Dunbar social circles, it is unbearable. Thus, we do what we must to "fit in" and to maintain in-group status; to avoid ostracism. We achieve this by cooperating with our peers and conforming to their established norms of behavior. Our social nature leads to a "normative compliance"[123] in our actions: we behave such that we may remain welcome among and embraced by our trusted peer groups within each of our social domains.

"The preponderance of the evidence—both observational and experimental—supports the hypothesis that we cooperate primarily because we crave reward (engagement) and fear punishment (exclusion) from other members of our group," writes the renowned security technologist Bruce Schneier.[124] The natural sciences and the social sciences agree: we are social beings to the core, our very identity is socially-bounded, and therefore *a threat to our social connectedness is a threat to our very identity*.[125]

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120. *See* NICHOLAS A. CHRISTAKIS, BLUEPRINT: THE EVOLUTIONARY ORIGINS OF A GOOD SOCIETY 13 (2019). Full disclosure: I am fortunate to have Nicholas as an advisor to my business and to count him as a friend.

121. *Id.* at 5.

122. Brian Gallagher, *Humans Are Wired for Good*, NAUTILUS (Aug. 22, 2019), http://nautil.us/issue/75/story/humans-are-wired-for-goodness [https://perma.cc/CBU7-SNNR].

123. *See generally* Giulia Andrighetto, Daniela Grieco & Luca Tummolini, *Perceived Legitimacy of Normative Expectations Motivates Compliance with Social Norms When Nobody Is Watching*, 6 FRONTIERS IN PSYCHOL. 1413 (2015).

124. BRUCE SCHNEIER, LIARS & OUTLIERS: ENABLING THE TRUST THAT SOCIETY NEEDS TO THRIVE 88 (2012).

125. *See generally* Michael A. Hogg, *The Search for Social Identity Leads to "Us" versus "Them"*, SCI. AM. (Sept. 1, 2019), https://www.scientificamerican.com/article/the-search-for-social-identity-leads-to-us-versus-them/ [https://perma.cc/239W-4469].

D. Identity Economics

Nobel prize-winning economist George Akerlof writes of a "missing motivation" in macroeconomic thought, arguing that traditional theories fail to give adequate attention to social norms in shaping our behavior.[126] Consideration of the imperative of normative compliance in the context of the utility function imparts a necessary balance to macroeconomics and affords "due account of the purposefulness of human decisions," he writes.[127] "Sociology is dense in examples of people's views as to how they and others should behave, their joy when they live up to those standards, and their discomfort and reactions when they fail to do so," he adds.[128] And since group norms establish a behavioral ideal, Akerlof concludes, the utility function must allow for "a loss in utility dependent on the distance of behavior from that ideal."[129]

This notion from the social science of economics comports with Dunbar's findings in the natural science of evolutionary anthropology. "Many of our solutions to the problems of survival and successful reproduction are social," he writes, "and social solutions require an intermediate step—making sure that the community pulls together."[130] In the *consilient* perspective urged upon us by Wilson, the "rational actor" is thus one who internalizes the behavioral norms of peers and acts in a manner consistent with those norms.[131]

Evidence that we act to maximize the utility of in-group status through behavioral conformity abounds, ranging from the ridiculous to the absurd. Studies find that people conform to behavioral norms even when they are wholly arbitrary, leading researchers to conclude that, "identity is not stable but is instead driven by context."[132] For instance, studies show that we tend to order more food in a restaurant if our waiter is obese: physical appearance signals a norm for excessive consumption.[133] Other studies find that, when we order the same dish as one another in a

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126. *See generally* George A. Akerlof, *The Missing Motivation in Macroeconomics*, 97 AM. ECON. REV. 5 (2007).

127. *Id.* at 31.

128. *Id.* at 10.

129. *Id.* at 8.

130. DUNBAR, *supra* note 62, at 282.

131. *See generally* Sergey Gavrilets & Peter J. Richerson, *Collective Action and the Evolution of Social Norm Internalization*, PNAS (June 6, 2017), https://www.pnas.org/content/114/23/6068 [https://perma.cc/AUA5-HQLT].

132. Campbell Pryor, Amy Perfors & Piers D.L. Howe, *Even Arbitrary Norms Influence Moral Decision-Making*, 3 NAT. HUM. BEHAV. 57, 60 (2019).

133. *See generally* Tim Döring & Brian Wansink, *The Waiter's Weight: Does a Server's BMI Relate to How Much Food Diners Order*, 49 ENV'T & BEHAV. 192 (2017).

restaurant, we are later more inclined to trust one another.[134] And when we partake of communal dishes in a shared meal, cooperation increases thereafter.[135] This "shared plates, shared minds" phenomenon both reflects and serves to promote trust and collaboration;[136] our beneficial *eusociality*.

"In economics and in the remainder of the social sciences as well, the translation from individual to aggregate behavior is the key analytic problem," writes Wilson.[137] "Yet in these disciplines the exact nature and sources of individual behavior are rarely considered."[138] What I have sought to illustrate here is that the sources of individual behavior are social. "Experiments in social psychology, and now increasingly in economics," Akerlof writes, "show that individuals' behavior depends on who people think they are."[139] Thus, if we wish to understand aggregate behavior in any organizational context, we must enquire into the *identity dynamics* that are at work—for even *individual* identity is social in nature.

The "nexus of relationships" within which we reside imprints upon us a series of contextual identities that influence how we behave in a given social or organizational setting. "A gain in identity utility can represent the enjoyment people experience when they do something that makes them fit in with a group," Akerlof observes.[140] (It is good to be *one of us*.) "It also can represent the gains from differentiating one group from another."[141] (It is good not to be *one of them*.) The conclusion is that identity utility *"derives from group processes*."[142]

"Identities reside in relations with others: you-me and us-them," Tilly tells us.[143] We are primed by evolution to maintain in-group status among networks of trusted peers, and we achieve this through *normative compliance* and a cooperative pre-disposition.[144] To fail in this is to be ostracized, to be deemed "disgusting," to be expelled from the social ecologies that shape our identities, and thus to experience a threat to our very sense of *self*(*s*).

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134. Kaitlin Woolley & Ayelet Fishbach, *A Recipe for Friendship: Similar Food Consumption Promotes Trust and Cooperation*, 27 J. CONSUMER PSYCHOL. 1, 1 (2017).

135. Kaitlin Woolley & Ayelet Fishbach, *Shared Plates, Shared Minds: Consuming from a Shared Plate Promotes Cooperation*, 30 PSYCHOL. SCI. 541, 541 (2019).

136. *See id.*

137. *Id.* at 202.

138. WILSON, *supra* note 76, at 202.

139. GEORGE A. AKERLOF & RACHEL E. KRANTON, IDENTITY ECONOMICS: HOW OUR IDENTITIES SHAPE OUR WORK, WAGES, AND WELL-BEING 28 (2010).

140. *Id.* at 24.

141. *Id.*

142. *Id.*

143. CHARLES TILLY, IDENTITIES, BOUNDARIES & SOCIAL TIES 8 (2005).

144. Michael Tomasello, *The Origins of Human Morality*, SCI. AM. (Sept. 1, 2018), https://www.scientificamerican.com/article/the-origins-of-human-morality/ [https://perma.cc/L9J2-SDWK].

Regrettably, this has a dark side: a "common is moral" heuristic. Our views of what is "right" or "wrong" depends less than we might think on personal moral views. Rather, behavior that is deemed to be "right" is that behavior which is witnessed among peers—and the more often it is seen, the more right it must be. "A selfish behavior that was common was judged as more moral than when rare," one study found, "and an altruistic behavior that was rare was judged as less moral than when common."[145]

That is, we go along to get along, and research finds that this *identity dynamic* promotes "conditional dishonesty."[146] People will cheat or act otherwise unethically—even if contrary to their own sincerely held moral views—when acting dishonestly works to preserve in-group status and their related *contextual* identity. "Dishonesty begets dishonesty."[147] Indeed, some studies find that even a single individual impacts others' dishonesty decision if they share the same social identity.[148]

This can have systemic effects across whole industries. Consider a fascinating, if depressing, study regarding something called "identity-priming."[149] The study recruited bank employees, half working in a core business unit, such as private bankers, traders, etc., and the other half coming from support units, such as risk, or human resources.[150] Recruits were asked to toss a coin ten times and report the outcomes, winning either twenty dollars or nothing for each toss depending on whether they reported "heads" or "tails."[151] They were self-reporting and knew that they were unobserved; thus the recruits were purposefully positioned so as to enable cheating while, at the same time, they were afforded the opportunity to hide behind an uncontestable claim that chance was responsible for their good fortune.[152] Related studies have shown that, most often, people fail to take full advantage of such opportunities due to the coercive force of an "honesty norm" that erodes one's positive self-image when cheating.[153]

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145. Björn Lindström et al., *The Role of a "Common is Moral" Heuristic in the Stability and Change of Moral Norms*, 147 J. EXPERIMENTAL PSYCHOL. GEN. 1, 30 (2017).

146. *See generally* Thomas Lauer & Anna Untertrifaller, Conditional Dishonesty (Feb. 1, 2019) (unpublished manuscript) (on file with Seattle University Law Review).

147. Dan Ariely & Ximena Garcia-Rada, *The Contagion of Corruption*, SCI. AM. (Sept. 1, 2019), https://www.scientificamerican.com/article/the-contagion-of-corruption/ [https://perma.cc/7XH8-93EK].

148. *See, e.g.*, Francesca Gino et al., *Contagion and Differentiation in Unethical Behavior: The Effect of One Bad Apple on the Barrel*, 20 PSYCHOL. SCI. 393, 396–97 (2009).

149. *See* Alain Cohn et al., *Business Culture and Dishonesty in the Banking Industry*, 516 NATURE 86, 87 (2014).

150. *Id.* at 86.

151. *Id.*

152. *Id.*

153. *Id.*

Here, however, the researchers entered a novel element. Before conducting the coin-toss task, participants were asked to fill out a short survey. Some were asked about their professional background (e.g., "What is your function at this bank?"), while those in the control condition were asked questions unrelated to their profession (e.g., "How many hours per week do you watch television on average?").[154] By design, for those recruits who were asked about their work, their professional identity was intentionally called to mind, or "rendered salient," for them.[155] And, as the study's authors remind us, "[i]dentities are associated with specific social norms prescribing permissible behaviours."[156]

This mattered in the study. Statistical analysis shows that the control group behaved honestly, reporting successful coin flips (and winning twenty dollars) in 51.6% of the cases—not far from the 50–50 odds.[157] Recruits whose professional identity as a banker had been primed by the survey, however, reported successful coin flips 58.2% of the time—significantly above what mere chance would permit. "Our results suggest that bank employees' compliance with the honesty norm was weakened in the professional identity condition," the study's authors write.[158]

The experiment was then repeated with a group of recruits from outside the financial industry. Again, some of the recruits had their professional identity "primed" while others did not. In this case, the identity-priming had no measurable effect: both the control group and the primed group reported substantially similar results (e.g., little to no cheating). The experiment was then run with a group of students. And again, the honesty norm was found to prevail in both the primed and the control groups. Only with *bankers* did identity-priming prompt increased cheating. "Our results suggest that the prevailing business culture in the banking industry favours dishonest behaviour and thus has contributed to the loss of the industry's reputation," the authors conclude.[159]

Damon Centola studies "social epidemiology" (that is, *behavioral contagion*) at the University of Pennsylvania. He observes a distinction between "simple contagions" that are driven by mere exposure—like ordering more food if the waiter is obese—and "complex contagions" which require certain social dynamics if behavior is to spread.[160] "The

154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.* at 87.
158. *Id.*
159. *Id.* at 88.
160. Santa Fe Institute, *SFI Community Lecture–Damon Centola–How Behavior Spreads: The Science of Complex Contagions*, YOUTUBE (Apr. 18, 2018), https://www.youtube.com/watch?v=o0fDcUJMzkI (last visited Jan. 29, 2020).

costlier, higher risk, or less familiar a behavior is, the more that the decision to adopt depends upon social confirmation," he writes.[161] Centola has found that we require "multiple *sources* of exposure" to a risky behavior before contagion effects appear. This is the "common is moral" heuristic at work: the riskier the behavior, "the more that success [of the contagion effect] depends upon close-knit networks to establish trusted relationships and provide social reinforcement for participation."[162]

Our trust networks thus enable—indeed they prompt—complex behavioral contagion. Man's "being *a part*-ness" is not an unalloyed good: behavioral imperatives that serve to sustain in-group status may promote *mis*-behavior, as judged from an out-group perspective. And behaviors that spread via complex contagion are sticky: "The factors that create resistance to a behavior before adoption may also become the reasons for sticking with it after adoption," Centola suggests.[163]

You are the company that keeps you. The groups to which we gain admittance in life shape our behavior. Initially, this is through a "peer pressure" function that activates our evolutionarily adaptive tendency towards normative compliance; thereafter, through an *internalization* of group behavioral norms. This has implications in the workplace. "Identity economics," as Akerlof terms it, "suggests that a firm operates well when employees identify with it and when their norms advance its goals."[164] But studies show that workers most often identify with their immediate workgroup, rather than with the organization as a whole.[165] And those with whom employees choose to interact, Centola tells us, is determined less so by the conscious choices of individuals and more so "by the structure of the social world they inhabit, *the identities it activates*, and the interdependence that it creates."[166]

"We live in this web of social relationships, and a lot of what we do and the satisfaction we derive comes from the web of social relationships," writes MIT's Sandy Pentland, author of *Social Physics*. "[I]f you want to get people to coordinate or change their behavior, you have to first and foremost deal with the existing web of relationships, rather than treat people as isolated individuals."[167] The persistence of *mis*-conduct scandals suggests that management science has yet to recognize this, implying a

161. DAMON CENTOLA, HOW BEHAVIOR SPREADS: THE SCIENCE OF COMPLEX CONTAGIONS 36 (2018).

162. *Id.* at 91.

163. *Id.* at 82.

164. AKERLOF & KRANTON, *supra* note 139, at 15.

165. *Id.* at 52.

166. CENTOLA, *supra* note 161, at 156 (emphasis added).

167. Jennifer Chu, *Searching for Balloons in a Social Network*, MIT NEWS (Oct. 28, 2011), http://news.mit.edu/2011/red-balloons-study-102811 [https://perma.cc/JXS3-C6B3].

particular weakness on the part of those responsible for non-financial *risk* management.

E. Resistance is Futile

The dominant theme I have sounded repeatedly throughout this Article is that the human animal is a social creature; one that thrives within collaborative ecosystems bound together most powerfully by shared trust ties. Evolution has selected for the collaborative capacity this creates. It is the basis of our astounding success as a species. And, as I have argued more fully elsewhere, once we learned how to *institutionalize* trust, to enable collaborative relations among strangers, at scale, we unlocked prosperity the likes of which were never before known.[168]

The erosion of that "trust infrastructure" therefore poses a grave threat to the basis of shared prosperity and to the peace that such prosperity helps to sustain. I believe this to be the greatest peril we face today, in a world full of perils. For without the institutional trust infrastructure that forms the basis of collaboration among strangers, at scale and as a presumed behavioral norm, we are thrust back into a *Hobbesian* world of rival tribes; one in which life is "*solitary*, poor, nasty, brutish, and short."[169]

Signs of such civilizational degradation are all around us—to include within the most prosperous of nations and within the world's "Great Democracies."[170] Reasons for the collapse in institutional trust are perhaps many, but I would submit that a central issue is a decline in successful risk governance. It may be unusual for those in risk governance roles to think of their work in such a grand context but, as economist Luigi Zingales notes, "When the fairness of the rules grows questionable and the benefits of the system are distributed too unequally, the consensus for free-market meritocracy can collapse."[171] Public corruption and corporate misconduct must be considered in this light. When "the elites" charged with running our institutions are seen repeatedly placing their interests before those of the people they are meant to serve, it is little wonder that our shared trust infrastructure erodes and that faith in "the system" is lost.[172] It is the task

168. *See* Stephen Scott & Karen Cook, *Risk Governance and the Politics of Rage*, THOMSON REUTERS (Nov. 2018), https://legal.thomsonreuters.com/en/insights/articles/risk-governance-politics-of-rage [https://perma.cc/7NRH-KGXM].

169. *See* THOMAS HOBBES, LEVIATHAN (Pelican Classics 1968) (1651).

170. Edward Luce, *Troubling Warnings for the US From the 1930s*, FIN. TIMES (Mar. 13, 2016), https://www.ft.com/content/be952500-e7a8-11e5-a09b-1f8b0d268c39 (last visited Jan. 29, 2020).

171. ZINGALES, *supra* note 93, at 19–20.

172. Ron Fournier, Sophie Quinton & National Journal, *In Nothing We Trust*, THE ATLANTIC (Apr. 19, 2012), https://www.theatlantic.com/politics/archive/2012/04/in-nothing-we-trust/461160/ [https://perma.cc/G7G2-RGZH].

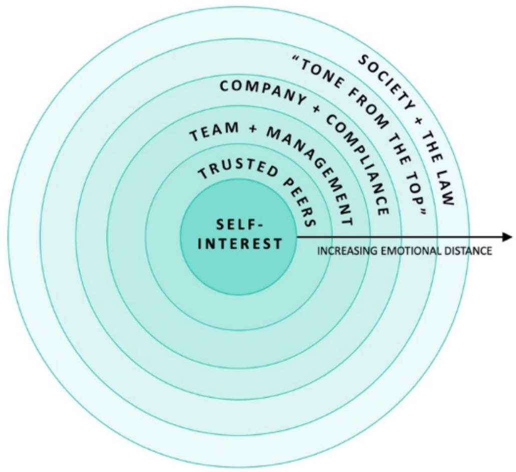
of those in risk governance roles to guard against behavior that may result in such wholesale disaffection.

Berle and Dodd were rightly concerned with the economic ecosystem of their day. Despite a different locus of emphasis (powerful managers versus shareholders for Berle; powerful "legal persons" versus stakeholders for Dodd), what the two scholars shared in common was a concern for *trust*. "Agency problems" and the troubles that flow from "asymmetries of information" are fundamentally trust problems. The need to manage such problems produces "transaction costs." Through a "nexus of contracts," Coase argued, the firm operates to minimize such costs. Legal obligations remove uncertainty, enable trust, and help to get the sand out of the gears. All well and good, as far as it goes . . .

But debates around such legal *mechanisms* reflect an implicitly mechanistic view of the firm, and this metaphor provides for far too narrow a conceptualization of its nature. The firm is more than just managers, shareholders, and some indistinct mass of interested stakeholders. It is made up of *people*—more so now, in our "knowledge economy," than was the case at the time the Berle, Dodd, and Coase were writing.[173] Rather than "a nexus of contracts," the firm must be seen as a "nexus of relations," as Mayer styles it. With Mayer, Fink observes that the firm exists to enliven a *purpose*, and the nexus of relations among the employees of a firm must work to facilitate consistent, coherent, conscious, and collaborative effort in service of that purpose. Without attention to the purpose of a firm, its governance is indeterminate, Mayer argues. And what I have hoped to add here is that the governance of a firm is equally indeterminate, or at least ineffectual, without a much fleshier appreciation of employees than *Homo economicus* permits.

173. *See* Esko Kilpi, *Complexity Revisited*, MEDIUM (July 11, 2019), https://medium.com/@EskoKilpi/complexity-revisited-31033d1c4038 [https://perma.cc/PQ6G-S5W8].

Figure 2



As Dunbar has found, humans and all primates exist within nested social worlds, with a few highly trusted peers at the center and with decreasing levels of trust and emotional investment as we extend outwards from there. This is true in the organizational context as well: individual employees come together in clusters of highly trusted peers. These peer trust networks often have little to do with the formal intended ordering of the company as envisioned in organizational charts. Rather, they constitute what has been called "the company behind the chart."[174]

As in all human social orders, employees behave so as to maintain in-group status with these trusted peers. The *culture* of a group is an *emergent property* that arise from its *complex* interdependencies and relational dynamics. Different communities of common character will convene in any organization, and each will have its own normative dictates for membership. As such, distinct *sub-cultures* will exist within the organization, and the behavioral norms of those distinct communities may and do regularly conflict.

Most critically for management, the *purpose* of these communities may or may not be consistent with the stated mission, purpose, and values of the organization within which they reside. Consider the example above from the study of identity-priming among bank employees. Those who were seen to engage in greater degrees of cheating when their identities

174. David Krackhardt & Jeffrey R. Hanson, *Informal Networks: The Company Behind the Chart*, HARV. BUS. REV. (July–Aug. 1993), https://hbr.org/1993/07/informal-networks-the-company-behind-the-chart [https://perma.cc/E6R6-9FFZ].

were "primed" were in front line roles. They were *bankers*. The same increase in cheating was not seen to occur among back-office bank employees. Same industry, same firms, but different communities, different cultures, different behavior.

This reflects a *hereditary trait* of humans: "We are compulsively driven to belong in groups or to create them as needed," Wilson writes. We regard our own group as superior, and "define our personal identities as members within them."[175] We are thus evolutionarily wired such that the pursuit of what we *perceive to be* personal desires or goals are, in fact, more often goals that serve the community in which we reside and from which our *self*s are constituted. By operating through "illusions of knowledge" and delusions of "*apart*-ness," we mask from consciousness the fact that most of our thoughts, decisions, and deeds operate in service to others: the group. Ostracism, exclusion, banishment, expulsion of any sort is *existentially* terrifying. "To be kept forcibly in solitude is to be kept in pain, and put on the road to madness,"[176] Wilson writes.

Resistance is futile. And failure to recognize this essential aspect of human nature is perhaps the great shortcoming of orthodox economics. It is why prevailing concepts of "utility maximization" fail to see *identity* as a far more powerful utility than mere financial incentive. It is why industry-standard methods of risk governance persistently fail to curb culture and conduct related risk within firms. It is why $400 billion in punitive fines for misconduct in the banking sector over the last decade have not produced desired changes in behavior among employees at individual firms. It is why trust in the sector has continued to erode.

Because its impact on society is so broad, an erosion of trust in the financial sector has wide-ranging repercussions: consider the Financial Crisis, pointed to by many as the proximate cause of the rancor that characterizes daily discourse today.[177] The restoration of trust in the financial sector should thus be seen as a socio-political imperative as much as an economic one. Such trust will not be restored until risk governance methods succeed in putting an end to wide-spread misconduct. And risk governance will fail until we embrace a fuller appreciation for Man's social nature.

Human behavior does not occur *apart* from the communities of common character of which any individual forms but *a part*. Without this understanding, the best we can ever do is to address *symptoms* of corporate

175. WILSON, *supra* note 76, at 25.

176. *Id.* at 30–31.

177. See, for instance, Joseph E. Stiglitz, *In No One We Trust*, N.Y. TIMES (Dec. 21, 2013), https://opinionator.blogs.nytimes.com/2013/12/21/in-no-one-we-trust/ [https://perma.cc/NT7C-AAEF].

malady. We must embrace the *complexity* of human systems if we wish grapple with the underlying causal forces. "The tribal rules are what matters," argues renowned organizational psychologist Ed Schein, "That's where it's really at. And that's where leadership is. It's in the group."[178]

CONCLUSION

A. Coercive Competition

In a passionate piece entitled, *Why is Economics not an Evolutionary Science?*,[179] Thorstein Veblen argued in 1898 that the field of economics was "in need of rehabilitation."[180] The discipline was "behind the times," and chiefly so for a failure to achieve what Wilson would later refer to as *consilience*.[181] The problem, for Veblen, was one of a "faulty conception of human nature"[182] on the part of the economists of his day, whose theories relied upon *Homo economicus*—an isolated "human *datum*"—leaving them blind to the fact that "the active material in which the economic process goes on is the human material of the industrial community."[183] Veblen summarizes much of what I have sought to convey here in one neat passage:

> The changes that take place in the mechanical contrivances are an expression of changes in the human factor. Changes in the material facts breed further change only through the human factor. It is in the human material that the continuity of development is to be looked for; and it is here, therefore, that the *motor forces* of the process of economic development must be studied if they are to be studied in action at all.[184]

It is "the human material" that constitutes the firm and provides "the motor force" that drives its performance. It is therefore the human material to which we must attend if we are to shape desired firm performance. "Economic action is teleological," Veblen argues.[185] It reflects the underlying *purpose* of economic actors (firms) and of those who make

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178. *See* Egon Zehnder, *In Conversation with Ed Schein: "Let's Get to Know Each Other"*, EGON ZEHNDER (July 9, 2019), https://www.egonzehnder.com/insight/in-conversation-with-ed-schein [https://perma.cc/CTC2-HWCR].

179. Thorstein Veblen, *Why is Economics Not an Evolutionary Science?*, 12 Q.J. ECON. 373, 373 (1898).

180. *Id.*

181. *Id.*

182. *Id.* at 389.

183. *Id.* at 387.

184. *Id.* at 388 (emphasis added).

185. *Id.* at 391.

them up (human beings). “All economic change is a change in the economic community,” Veblen concludes.[186]

It is time we heeded him. If we are to effectively manage and govern the firm, we must start from this conception of the firm as a nexus, not just of relations, but of relations between individuals interacting within communities, and between distinct communities (“Superminds”) interacting with one another *within any given firm*. Each community will have its own set of behavioral norms—a *culture*—which will inform the identity of its members. Compliance with these cultural dictates is mandatory to maintained group membership. Thus, individual behavior is shaped so as to promote the interests of the community, regardless of the immediately apparent interests of a given community member.

Indeed, the imperative of normative compliance shapes the behavior of individual actors so much so as to prompt behavior that is oftentimes clearly *contrary* to individual economic self-interest. Individual interests, goals, ambitions, preferences, desires, etc., may and do conflict with the behavioral dictates of the community(-ies) within which an employee operates. In such circumstances, it is community interests that most often prevail. “Identity can account for many phenomena that current economics cannot well explain,” writes Akerlof. This includes acting in ways that are detrimental to our obvious *individual* well-being and which therefore appear, at surface, to be irrational.[187]

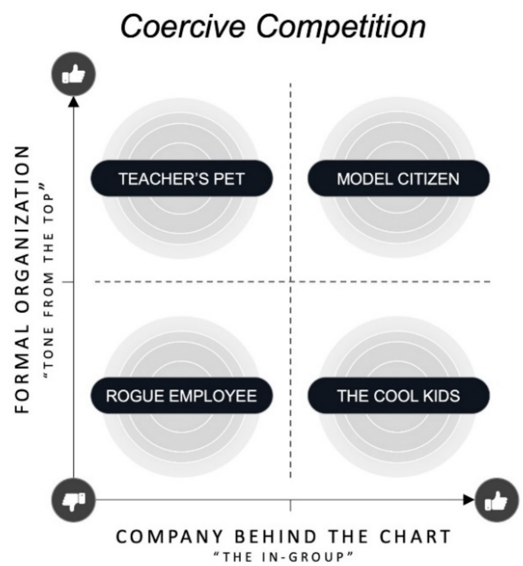
Moreover, the cultural inclinations of a given community can and do conflict with those of other communities *within the same organization*. This includes the community of senior managers, that of “the C-suite,” that of the board, and on up through to the broadest concept of the “stakeholder community.” Each of these communities of interest will assert normative force, but coercive energy dissipates the further we move away from the center of a given employee’s most densely trusted peer-network.[188] What follows from this is that each employee becomes the subject of a “coercive competition” between these distinct communities. A simple graphic illustrates how an employee may operate when torn between the cultural norms of two communities of personal relevance.

186. *Id.*

187. George A. Akerlof & Rachel E. Kranton, *Economics and Identity*, 115 Q.J. ECON. 715, 717 (2000).

188. *See supra* Figure 1.

Figure 3: Starling Dynamic Culture Model



Let the Y-axis represent normative pressures from the "formal" organization and the X-axis represent that from among more closely trusted peers. Employees will be rewarded for compliance (and punished for a lack of compliance) with normative dictates along either axis.[189] How an employee acts to balance these competing pressures produces four possible outcomes in this admittedly overly simplistic model.

- *Teacher's Pet*: The employee conforms to the normative dictates of the formal organization and rejects those of his or her more closely trusted peers. Other names commonly used to describe this individual are "climber" and "ass-kisser."
- *Rogue Employee*: The employee disregards the behavioral norms insisted upon by both the formal organization and those of his or her immediate peer group. Compliance personnel and those in "surveillance and monitoring" functions typically focus their resources here, in a hunt for the "malicious insider."
- *Model Citizen*: When the normative dictates of both the formal organization and those of one's most closely trusted peers are aligned, and an employee may act in concert with both and

189. *See supra* Figure 3.

receive applause from both constituencies, we have the ideal outcome.

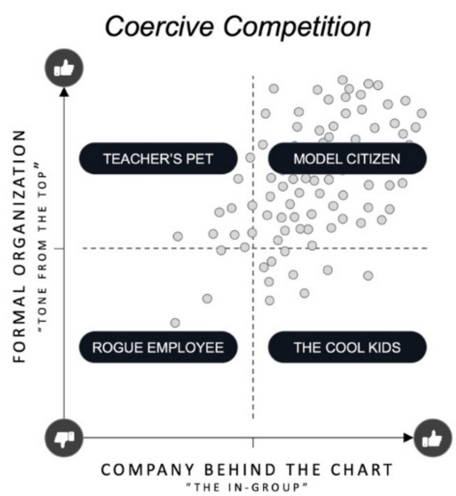
- *The Cool Kids*: When the normative dictates of the formal organization conflict with those of one's trusted peer group, the disproportionately greater weighting we give to those within the innermost of our Dunbar social circles drives us to conform to our peers' expectations at the expense of the formal organization.

Again, this is an overly simplistic model. It ignores, for instance, that the employee belongs, not just to two, but to many "communities" within the organization. The model fails to illustrate how coercive competition plays out in that matrixed context. Nevertheless, it serves well enough to illustrate the concluding point I wish to make with this Article.

I submit that *the central task* of those in risk governance roles is to establish and maintain the broadest possible *cultural coherence* among these distinct communities, conscientiously striving to minimize the degree of coercive competition to which employees are subject. At a minimum, they should seek to inquire intelligently into these dynamics.

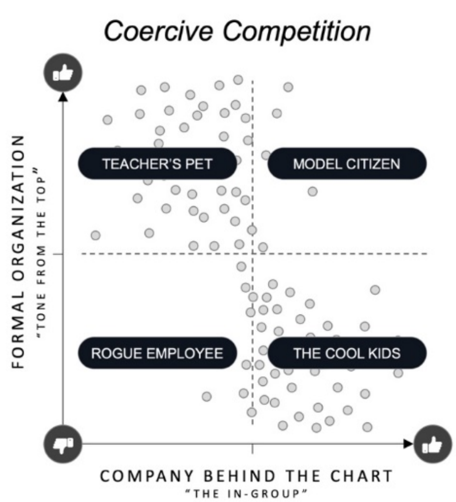
To begin, one might start by seeking to create a scatter plot that posits individual employees within each of the four quadrants in my model. The shape of that graph alone provides actionable insights. For instance, the graph below might signal a healthy firm with broad cultural cohesion (e.g., one might expect to see a graph like this in the Marine Corps).

Figure 4



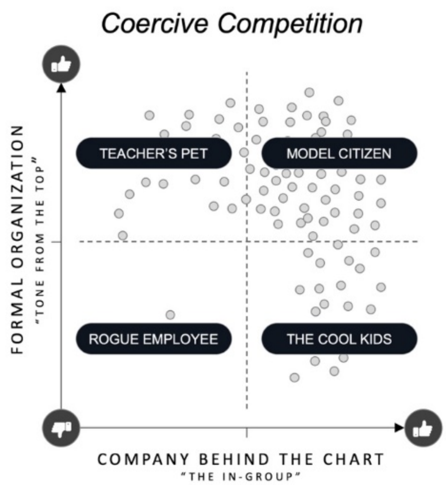
By contrast, a graph such as that below would seem to indicate a company that is at war with itself (e.g., the proverbial "nerds" versus the "jocks" in any given high school . . . ?).

Figure 5



One senior bank executive—the former COO of one of the world's leading firms—suggests in private discussions that the plot he would expect to see would likely look more like the image immediately below. ("The 'cool kids' are the ones that keep me up at night," he remarked.)

Figure 6



It is also important to keep in mind that these employees exist in networks, which can also be illustrated in the following graphical form.

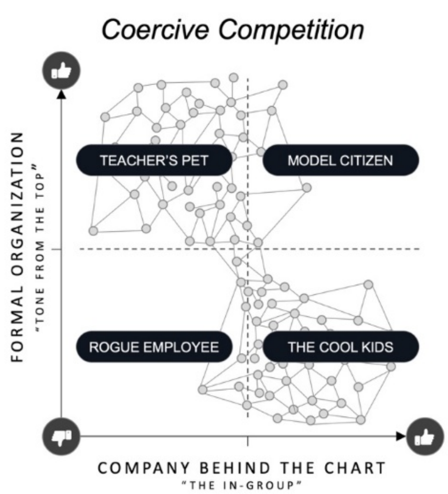


Figure 7

This is not unimportant, as Nicholas Christakis explains. "Consider the metaphor of carbon atoms. Each is identical to the next but, grouped together, different groupings have different properties. Assembled one way, the atoms form graphite—dark and soft. Assembled differently, those very same atoms form diamond—clear and hard. Group structure is deterministic."[190] The same is true for the "structure" of social networks within organizations: different structures yield different emergent properties, such as normative dictates, or "culture." This implies that both *social network structure* and the *social dynamics* of cultural compulsion warrant close scrutiny if we wish to anticipate, and shape, the "mechanisms" of organizational performance.

Security expert Bruce Schneier lists four principal mechanisms for inducing normative compliance in the organizational context, "coercive mechanisms that induce people to cooperate, act in the group interest, and follow group norms."[191]

1. **Institutional pressure**, in the form of rules or laws that induce compliant behavior through the threat of sanctions, operating among the top two quadrants in my "coercive competition" model above. It is here that we see the normative force of the formal organization, typically expressed through the incentive scheme and the compliance function at most organizations and tested for through tick-box audit exercises.
2. **Security systems**, which are designed to catch bad actors, "things that only work after the fact, like forensic and audit systems." This is the domain of surveillance and monitoring, targeting the "rogue employee" in my model above. Though the malicious insider can cause great harm, it should be noted that only a very small percentage of the population are likely to evince either the psychopathic or sociopathic tendencies necessary to wholly reject the behavioral norms of both the formal organization and those of one's immediate peer group (estimates are less than 5%[192]).
3. **Moral pressure**, which comes from "inside our own heads" and which is therefore intimately tied up with considerations of self-identity. It is here that we see an emphasis on "tone from the top" and company codes of ethics, piously rehearsed at employee

190. Nicholas Christakis et al., *A Copernican Revolution in Culture and Conduct Risk Management*, REUTERS (Aug. 2, 2018), https://www.reuters.com/article/bc-finreg-culture-conduct-risk-managemen/a-copernican-revolution-in-culture-and-conduct-risk-management-idUSKBN1KN2BR [https://perma.cc/E75B-YQTM].

191. BRUCE SCHNEIER, LIARS & OUTLIERS: ENABLING THE TRUST THAT SOCIETY NEEDS TO THRIVE 7–9 (2012).

192. WILSON, *supra* note 76, at 179.

town-hall meetings and reiterated through mandatory ethics training programs, screened for in pre-employment psychological surveys, and tested for subsequently through employee engagement surveys. To the extent that it is effective at all, this force is most likely found operating in the top-right quadrant of my model.

4. **Reputational pressure**, which Schneier describes as "a wholly different, and much stronger, type of pressure [that] comes from how others respond to our actions." This coercive mechanism functions in the top-left quadrant ("Teacher's Pet") and in the bottom-right quadrant ("The Cool Kids"). But, given what Dunbar teaches us about the decreasing emotional force we experience the farther we move from our social centers, it should be clear that the coercive power of reputation in the top-left quadrant is several orders of magnitude less than it is at the bottom-right. As I have sought to argue throughout the entirety of this Article, it is here that we find the greatest coercive force in any human social order, to include the firm. And yet, at most, it is managed through little more than "management intuition."

Our failure to manage culture and conduct-related risks within firms—in the financial sector and in most others as well—stems from a failure to recognize the behavior-shaping force of coercive competition, to appreciate that this reflects eons of evolutionary selective pressure that defines the very nature of the human animal, and to conceive of the firm as a nexus of relations across which these dynamics play out.

These ideas have macro-economic implications. "Because firms and other organizations are the backbone of all economies," Akerlof writes, "[identity economics] transforms our understanding of what makes economies work or fail."[193] And they have micro-economic implications as well. "Once organizational networks can be measured, they can be controlled," Centola writes. "The most important implication here is that managers can design organizational networks to provide a structural foundation for accelerating the dynamics of change."[194] This will necessarily involve illuminating the sources and dynamics of coercive competition within a firm, and it is to this opportunity that we must now turn our attention.

193. AKERLOF & KRANTON, *supra* note 139, at 15.
194. CENTOLA, *supra* note 161, at 130–31.

B. Where to from Here?

MIT's Tom Malone notes that no serious company would be run without some accounting system that could track and consolidate combined results across all of its disparate business units. "In the future," he writes, "it may become just as unthinkable to run a serious organization that doesn't do something similar with many other—much more subjective—kinds of information. In fact," he continues, "our great-grandchildren may find it hard to understand how the organizations we belong to in the early 21st century could have made so many of their decisions with their eyes—figuratively—closed."[195]

"As we continue to see the impact of technology and big data in other parts of financial services, one interesting question is how innovation and enhanced technology will support the measurement and management of culture," noted Kevin Stiroh, head of Supervision for the New York Federal Reserve Bank, in a recent speech. "For example, we might see firms routinely leverage broader data to make stronger predictions about potential misconduct risk . . . ."[196]

New technologies in the realm of "computational social science" offer much promise here.[197] These tools allow us to map interpersonal trust networks within organizations and to measure some of their behavior-shaping dynamics by sifting indicative—and predictive—signals from within readily available company data sets, yielding heretofore unavailable insights into the drivers of employee conduct.[198]

In an example of *consilience* that might please E. O. Wilson, these social technologies have evolved from the application of computing power in the natural sciences: computational social science is derived from earlier work in the field of computational biology,[199] which is at the root of many astonishing achievements in genetic engineering.[200] Perhaps what computational biology permits for in the realm of "precision medicine"[201]

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195. MALONE, *supra* note 71, at 222.

196. Kevin J. Stiroh, Executive Vice President of the Federal Reserve Bank of New York, Reform of Culture in Finance from Multiple Perspectives, Remarks at the GARP Risk Convention, New York City (Feb. 26, 2019) (transcript available at the Federal Reserve Bank of New York).

197. *See generally IRiSS: Center for Computational Social Science*, STAN. UNIV., https://iriss.stanford.edu/css [https://perma.cc/ZP5S-5KBJ].

198. David Lazer, et al., *Life in the Network: The Coming Age of Computational Social Science*, 323 SCI. 721, 722 (2009).

199. Florian Markowetz, *All Biology is Computational Biology*, 15 PLOS BIOLOGY 1, 2–4 (2017).

200. *See generally* James T. Macdonald et al., *Computational Design Approaches and Tools for Synthetic Biology*, 3 INTEGR. BIOL. 97 (2010).

201. *See* Kenneth S. Ramos et al., *The Impact of Bioinformatics and Computational Biology in Precision Medicine*, *in* COMPREHENSIVE TOXICOLOGY 720, 728 (2018).

might be mirrored in the field of computational social science, permitting for "precision management"? Or, at least, "precision risk management."

The power of such Computational Social Science techniques is illustrated by recent research conducted at Stanford and Berkeley,[202] where researchers sought to determine whether firm culture could be shown to be tied to specific performance outcomes and, if so, whether cultural drivers of such outcomes might leave discernible artefacts in electronic communications data such as email. "Organizational scholars have long recognized the importance of culture in shaping individual, group, and organizational success[,]"[203] the researchers had observed, but "compelling theoretical accounts of the dynamics of cultural fit and its consequences remain largely absent from the literature."[204]

In a novel approach, they looked at how new employees in an organization demonstrate "normative compliance" by adopting the norms for language use in email communications that prevail among their new peers. The researchers identified and traced three distinct "encultration trajectories" that correlated, with high predictive reliability, to specific individual and organizational outcomes. Equipped with some 10 million emails exchanged among 600 employees over a five-year period, and human resource records that included things like employee age, gender, tenure, and, for employees who had left the company, whether their departure was voluntary or involuntary, the researchers found that email language use among all new employees was initially out of step with organizational norms. However, once those norms were learned, the study discerned three common "signatures" within the data, which I will term (1) "accept and adopt," (2) "reject and eject," and (3) "reject and defect."

Employees showing the first "signature" in their electronic communication patterns—that is, those who were "normatively compliant"—were found to evince higher job satisfaction, motivation and discretionary effort, greater attachment to the company and longer tenure, as well as to deliver higher levels of both individual and firm performance outcomes. And for the other two signatures? "Newcomers who do not rapidly conform to cultural norms are rejected by their colleagues and ultimately forced to exit," the researchers found, "whereas those who had successfully enculturated earlier in their careers but subsequently

202. Amir Goldberg et al., *Enculturation Trajectories and Individual Attainment: An Interactional Language Use Model of Cultural Dynamics in Organizations* 17–20 (Institute for Research on Labor and Employment, Working Paper No. 107-16, 2016).

203. *Id.* at 1.

204. *Id.* at 2.

exhibited a decline in cultural fit appeared to be detaching from the organization and subsequently exited voluntarily."[205]

Studies of this sort demonstrate the potential for computational social science to transform how firms might investigate the cultural dynamics and behavioral predispositions among their staff by making use of commonly available and company-owned data sets. When adequately informed by learnings from behavioral science, these tools may produce deeply penetrative insights into the drivers of employee behavior and organizational outcomes.

Companies in the regulatory technology, or "RegTech," space are making use of these methodologies to identify and mitigate behavioral risks that are not sufficiently well captured by current standard metrics and governance processes, promising to transform the corporate and risk governance landscape. By illuminating the dynamics of coercive competition, behavioral "early warning systems" position firm leaders to intervene, proactively, with a view to encouraging desirable cultural and conduct norms as well as to anticipating and curbing the spread of likely behaviors inconsistent with a firm's mission or values.

"The most beautiful as well as the most ugly inclinations of man are not part of a fixed and biologically given human nature," Fromm wrote, "but result from the social process which creates man."[206] We must devise a better means of enquiring into such processes.

By bringing quantitative metrics to the qualitative challenge of human behavior, RegTech firms and other computational social science pioneers can help management to assess culture and conduct risk to an unprecedented degree, and perhaps to avoid unnecessary costs to shareholders, customers, employees and society. In so doing, they may help to restore trustworthiness to our critical social institutions.

This is the moral task of our time.

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205. *Id.* at 18.
206. ERICH FROMM, ESCAPE FROM FREEDOM 11 (1941).