

# Epistemic Corporate Culture: Knowledge, Common Knowledge, and Professional Oaths

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## INTRODUCTION

Despite its plain architecture and slightly unappealing location, the Great or St. James' Church in The Hague is one of the best-known churches in The Netherlands. Constantijn and Christiaan Huygens, two prominent representatives of Dutch Renaissance diplomacy and scholarship, were buried here. It is the place where since early seventeenth century members of the Dutch royal family have been baptized and where royal weddings took place. And it boasts an organ that has attracted attention from musicians all over Europe, including Camille Saint-Saëns and Albert Schweitzer.

On January 11, 2013, about five hundred people working in the Dutch financial services industry gathered in the Saint James Church, solemnly, and aware of the fact that they were part of something truly unique.<sup>1</sup> What was happening? In September 2008 Lehman Brothers collapsed. While the Dutch financial world was not as internationally connected as American or British finance, Dutch banks suffered serious

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1. *Bankiers leggen eed af [Bankers Take the Oath]*, RTL NIEUWS (Jan. 11, 2013), <https://www.rtlnieuws.nl/economie/artikel/3270221/bankiers-leggen-eed-af> (last visited Jan. 29, 2020) (Neth.).

blows in the crisis that followed. One bank had to be bailed out,<sup>2</sup> another was nationalized,<sup>3</sup> a third one forced to merge,<sup>4</sup> and the fourth received a fine of one billion dollars after it was discovered to be part of a massive scam involving the manipulation of the Libor.<sup>5</sup> The crisis hurt.

In the early days of the crisis, however, the Dutch financial services industry was quick and still optimistic in its reaction to the events unfolding on Wall Street. About a month after Lehman's collapse, the Netherlands Bankers Association installed a committee to advise the Dutch banking sector and government on how to respond to the crisis. In early 2009, the committee published a report with the title *Restoring Trust*, which put forward suggestions concerning corporate governance, remuneration policies, risk management, internal and external audit, the deposit-guarantee scheme, and several other topics.<sup>6</sup> Important parts of the report were turned into law. The resulting *Banking Code*, published in September 2009, operates as a code of conduct under the Dutch civil law, since January 2010.<sup>7</sup>

The suggestions made in the report were not all entirely original. Significant parts were indebted to work carried out by the Institute of International Finance, as well as by the De Larosière group created by the European Commission's president. Some of the recommendations bear great similarity to the Dutch Corporate Governance code.<sup>8</sup> The report did, however, contain a very interesting novelty that made Dutch finance's response to the crisis internationally unique: It recommended that every finance executive would pledge an oath—in bureaucratic parlance, a “moral and ethical conduct declaration.”<sup>9</sup> What happened in the church in The Hague in January 2013 was a public ceremony in which key

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2. David Jolly, *ING Receives €10 Billion from Dutch Government*, N.Y. TIMES (Oct. 19, 2008), <https://www.nytimes.com/2008/10/19/business/worldbusiness/19iht-ing.4.17084433.html> [https://perma.cc/FUQ5-T26E].

3. *Id.*

4. Maarten van Tartwijk, *Rabobank Takes Over Struggling Regional Lender*, WALL ST. J. (Apr. 2, 2012), <https://www.wsj.com/articles/SB10001424052702304023504577319612977533618> [https://perma.cc/HYZ4-LFFQ].

5. Kara Scannell, Caroline Binham & Daniel Schäfer, *Rabobank Agrees to Pay \$1bn Libor Fine*, FIN. TIMES (Oct. 29, 2013), <https://www.ft.com/content/c867fad2-40b4-11e3-ae19-00144feabdc0> [https://perma.cc/EDU3-KME4].

6. NETHERLANDS BANKERS ASS'N, ADVISORY COMMITTEE ON THE FUTURE OF BANKS IN THE NETHERLANDS, *RESTORING TRUST* (2009).

7. NETHERLANDS BANKERS ASS'N, *CODE BANKEN 3* (Trans., 2010), [https://www.nvb.nl/media/1665/000601\\_000601-code-banken-uk.pdf](https://www.nvb.nl/media/1665/000601_000601-code-banken-uk.pdf) [https://perma.cc/R4ZR-XHQX].

8. *See* CORP. GOVERNANCE CODE MONITORING COMM., *DUTCH CORPORATE GOVERNANCE CODE* (Trans., 2008), <https://www.mccg.nl/dutch-corporate-governance-code> [https://perma.cc/RQ3F-4HT4].

9. NETHERLANDS BANKERS ASS'N, *CODE BANKEN 15* (Trans., 2010), [https://www.nvb.nl/media/1665/000601\\_000601-code-banken-uk.pdf](https://www.nvb.nl/media/1665/000601_000601-code-banken-uk.pdf) [https://perma.cc/R4ZR-XHQX].

representatives of Dutch finance pledged this oath: They read the text out loud, made relevant gestures, and ended with an appeal to the assistance of God Almighty, or a secular version thereof.<sup>10</sup>

It is too easy to set this “Bankers Oath” aside as hopelessly naive. And it is probably too cynical to describe it as part of diversionary tactics designed by the finance industry. All the same, there are very good *prima facie* reasons why one should seriously question the cogency of oaths as instruments to manage corporate culture. To declare that one will act with integrity, obey the law, put client interests first, keep secret what one was entrusted, and not to abuse one’s knowledge—people who follow these precepts will follow them without an oath, and those who do not follow them will not change their attitude by swearing an oath. Oaths are useless. Or so it may seem.

While oaths may well be the oldest ethics instrument (the Hippocratic Oath dates back to 400 B.C.), they seemed to have lost much of their appeal during the twentieth century—except for the Physicians Oath and the Oath of Office. Yet interestingly, the Dutch initiative was part of a reinvigoration of oaths, as is witnessed by the fact that we now have: the University Manager’s Oath, the Fiduciary Oath of the National Association of Personal Financial Advisors, the Financial Hippocratic Oath, the Financial Modeler’s Oath, the Banking and Finance Oath, the Asset Manager’s Oath, the Microbanker’s Oath, the Attorney’s Oath, the Engineer’s Hippocratic Oath, the Enterprise Architect’s Professional Oath, the Oath of the Pharmacist, the Veterinarian’s Oath, the Knowledge Engineer’s Oath, the Pledge of the Computing Professional, the Public Health Oath, the Social Work Professional Oath, and the Scientist’s Oath.<sup>11</sup> We also have the Economist’s Oath, developed by U.S. economist George DeMartino, which comes as part of an elaborately argued code of ethics for the economics profession.<sup>12</sup> And we have what is certainly the most prominent oath to date, the MBA Oath, which was developed by Max Anderson and Peter Escher in 2010—two Harvard Business School graduates, and which has attracted more than 11,000 signatories at the moment of writing this Article.<sup>13</sup> Moreover, the Dutch government was

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10. *Bankers Take Oath*, *supra* note 1.

11. See generally Boudewijn de Bruin, *Pledging Integrity: Oaths as Forms of Business Management*, 136 J. BUS. ETHICS 23, 31–32 (2014).

12. See generally GEORGE F. DEMARTINO, *THE ECONOMIST’S OATH* (2011).

13. MAX ANDERSON & PETER ESCHER, *THE MBA OATH: SETTING A HIGHER STANDARD FOR BUSINESS LEADERS* (2010); *MBA Oath Schools and Signers*, MBA OATH, <https://mbaoath.org/view/oath-signers> [<https://perma.cc/XM5M-DWJK>].

not alone to suggest an oath for finance; the British government,<sup>14</sup> the Australian Banking and Finance Ethics panel,<sup>15</sup> and individuals such as investor James Montier, Barry Morgan, the Archbishop of Wales, and HSBC chairman Douglas Flint<sup>16</sup> have proffered similar ideas. Also, before the MBA Oath, oaths for the business world had already been suggested in discussions at the 2002 World Economic Forum in Geneva, and in an early publication in a key scholarly journal in business ethics.<sup>17</sup>

This Article does not assume that professional oaths accomplish what they are intended to do. Yet, I believe that oaths can fulfill important functions once they are crafted as part of carefully designed, more comprehensive approaches to managing ethical culture. Or better, I believe that by investigating more closely what an oath really is and what its preconditions are, we may gain insights that will help to change corporate culture for the better, even if companies do not wish to adopt oaths to manage ethics.

Methodologically, this Article is grounded in various strands of philosophical research. In particular, I build on work from political philosophy on the value of freedom, and on work from epistemology (the philosophical theory of knowledge) on the value of knowledge and common knowledge (which borrows from economics to some extent). I strive to keep technicalities to a minimum to make my argument accessible to a wide range of interested readers and to highlight the main idea of this Article. However, a disclaimer must be made that philosophy is a conceptual rather than an empirical discipline, and as a result it has its own style of researching and writing that distinguishes it, sometimes starkly, from social science and legal scholarship.

The starting point of this investigation is that for a business to thrive, it needs freedom. Laws curtail an enterprise's freedom in the sense that they make certain courses of action highly unattractive. Laws make certain actions costly through punishments, fines, and other credible threats, provided the laws are sufficiently strictly enforced. Ethical climate and culture, personal integrity, moral values, and corporate virtues, by

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14. Tim Webb, *Hippocratic Oath' for Bank Workers Meets with Skepticism*, THE GUARDIAN (Apr. 18, 2010), <https://www.theguardian.com/business/2010/apr/18/banking-business-code-of-conduct> [https://perma.cc/33LK-5B85].

15. George Lekakis, *Industry Ponders 'Oath' with Exit Clause*, BANKING DAY (Jul. 30, 2012), [https://www.bankingday.com/nl06\\_news\\_selected.php?selkey=13503](https://www.bankingday.com/nl06_news_selected.php?selkey=13503) [https://perma.cc/V4EU-KYVM].

16. Louisa Peacock, *HSBC: Banks Should 'Reward Staff Who Escalate Concerns'*, THE TELEGRAPH (Apr. 22, 2013), <https://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10011061/HSBC-Banks-should-reward-staff-who-escalate-concerns> [https://perma.cc/VGY6-A98B].

17. Jai Ghorpade, *Ethics in MBA Programs: The Rhetoric, the Reality, and a Plan of Action*, 10 J. BUS. ETHICS 891, 903 (1991).

contrast, are meant to steer people towards ethical choices without limiting freedom. Naturally, approaches based in ethics are less immediately forceful instruments to influence behavior than the interventionist approach of changing behavior by means of laws and fines. Yet, it is also true that we cannot do without them. One cannot legislate everything away, even if one were to adopt entirely dictatorial management styles. That is, there is a sense in which the freedom to act unethically is an essential given we have to accept and perhaps even embrace. This underscores why ethical corporate culture is so important.

The remainder of this Article is structured as follows. I first consider two arguments for the value of freedom and show that they only work if particular epistemic assumptions are made, that is, assumptions about the knowledge that agents have about their freedom (opportunity sets, likely consequences of available actions) and about the demands of morality. Next, I will examine what makes knowledge more valuable than mere true belief (knowledge offers stability that belief generally lacks). This stability is one reason why knowledge of freedom and knowledge about morality are important epistemic preconditions of corporate culture. Subsequently, this Article will consider “common” knowledge, which is a social concept focused on an individual’s knowledge about other people’s knowledge. By investigating “speech acts,” such as promising, I show that a second precondition of good corporate culture is common knowledge of norms and values. As a case study, I consider professional oaths, as they stand out as mechanisms generating common knowledge. I conclude by discussing a number of potential managerial implications.

## I. FREEDOM

What is freedom? Opinions diverge, ranging from a conception of freedom as the absence of interference or the absence of illicit domination, over a definition of freedom in terms of the mere existence of opportunities or options, to conceptions holding on to the view that a person’s freedom is primarily determined by the extent to which he or she is able to realize an authentic self. Such conceptions have variably been called “negative freedom” (absence of interference), “republican freedom” (absence of domination), “positive freedom” (self-realization), or the standard economic conception of freedom in terms of “opportunity sets.”<sup>18</sup> What is stated in this Article applies generally to all conceptions of freedom. For expository purposes, however, the economist’s conception of freedom is best suited. Therefore, this Article assumes that the extent of one’s

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18. See generally Ian Carter, *Positive and Negative Liberty*, STAN. ENCYCLOPEDIA PHIL. (Aug. 2, 2016), <https://plato.stanford.edu/entries/liberty-positive-negative/> [<https://perma.cc/M9JP-J975>].

freedom is measured by the number of actions in one's opportunity set, and ignores charges about measurability or conceptual cogency or "economism."<sup>19</sup>

The value of freedom can be easily explained using standard economics vocabulary. An economic agent is characterized along two dimensions. The first dimension is the agent's beliefs about what the world actually looks like. More specifically, the first dimension is about the actions the agent can select as well as likely consequences of these actions—i.e., beliefs about the agent's opportunity set. These beliefs may be incorrect or incomplete and based on good or bad evidence. Stated another way, the world may be very different from what the agent believes it to be. The second dimension is the agent's desires, that is, preferences about what the world should look like from the agent's point of view. More precisely, it is an ordering of all possible states of the world. The ordering of the possibilities is done by assigning a numerical value to all possible states of the world in a way that satisfies certain standard (but not unequivocally accepted) axioms.<sup>20</sup>

Ideally, the agent would ensure that the best ranked world occurs. This is not always feasible, however. The best world may not be a world that is possible as one of the consequences to any of the agent's available actions. No action from the agent's opportunity set will in that case lead to the best world. It may also be among the potential consequences of one or more available actions, but only arise with probability less than one. The best world is where I win €1 million. But the only action that might make this probable is buying a lottery ticket. This action only minimally raises the probability of success.

What a rational economic agent does is therefore not so much to maximize the probability that the best possible outcome arises—because that might involve buying as many lottery tickets as I can afford. Rather, a rational agent maximizes expected utility, where the utility of each potential consequence of an action is weighted by the subjective probability the agent assigns to it.

If this is the way that we consider an economic agent's decision situation, then it is easy to see that increasing freedom increases expected utility (or to be more precise, it does not decrease, and potentially increases it). Here is why: If one adds an action to an opportunity set, then either among its potential consequences there is one that the agent prefers over everything that he or she was so far capable of accomplishing, and, in that case, there has been a strict increase in expected utility; or the action

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19. For a measure of freedom, see generally IAN CARTER, A MEASURE OF FREEDOM (1999).

20. For some history, see Ivan Moscatti, *Retrospectives: How Economists Came to Accept Expected Utility Theory: The Case of Samuelson and Savage*, 30 J. ECON. PERSP. 219 (2016).

delivers consequences that are just as good—or worse—than what the agent can already accomplish with the actions in the original opportunity set. But then the added action does not decrease expected utility. Increasing freedom, then, increases an agent's desire satisfaction. Consequently, to the extent that we value desire satisfaction, we have reason to value freedom.<sup>21</sup> Call this argument for the value of freedom the *argument from desire satisfaction*.

Reducing the value of freedom to the value of desire satisfaction, the argument from desire satisfaction does not show that freedom is intrinsically valuable, or valuable per se. It only shows that freedom is instrumentally valuable, namely, to the extent that it fosters desire satisfaction. Although there is considerable disagreement among philosophers about whether this is the only argument for freedom's value (or whether it is even a good argument), and alternatives have suggested that the value of freedom is based in such things as moral responsibility, autonomy, authenticity, or in John Stuart Mill's famous "experiments of living,"<sup>22</sup> there is no need to decide here. What is important is to show that, as it stands, we can improve the argument by taking an epistemic (i.e., informational) perspective on human decision-making.

What is the issue? Start with the agent's beliefs again. Since beliefs are not necessarily true and complete, there may be considerable mismatch between what agents believe about their opportunity sets and what these sets look like in reality. For example, you may believe you can take the train to London St. Pancras, but if you are unaware of a strike or an accident that bars the trains from arriving in London, this belief will not contribute to satisfying your desire to reach London. This obstacle may even frustrate the realization of that desire because you may be motivated to forego the opportunity to get a car lift from a friend. As a result, in order for freedom to contribute to desire satisfaction, we need to have correct beliefs about our opportunity set, that is, about the available actions and the probabilities with which their consequences arise.

While theoretically this observation is not very surprising, it has high practical relevance. There is a lot we lack knowledge about, sometimes with minor consequences for our desire satisfaction, but sometimes significantly affecting it. Just to illustrate, research demonstrates that a significant number of people fail to claim social security benefits they are entitled to, such as housing and school subsidies, because they are unaware

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21. For a qualification of this statement using philosophical logic see Lou Goble, *A Logic of Good, Should, and Would: Part I*, 19 J. PHIL. LOGIC 169 (1990).

22. See generally ALEXANDER BROWN, PERSONAL RESPONSIBILITY: WHY IT MATTERS (2009); MATTHEW H. KRAMER, THE QUALITY OF FREEDOM (2003); CARTER, *supra* note 19.

of them.<sup>23</sup> If you forego €300 a month in housing subsidies, you cannot use them for something else, say, piano lessons or a vacation. As a result, your opportunity set is smaller than it would have been had you claimed the subsidy. More precisely, your opportunity set is larger than you *think* it is.

If we accept this line of reasoning, it is easy to see that the argument from desire satisfaction is not so much an argument for freedom, but rather an argument for freedom you are aware of. It is an argument for fostering freedom *and* freedom-with-knowledge. It is an argument that sometimes making a person's opportunity set bigger is not as effective in raising desire satisfaction as extending that person's knowledge about his or her opportunity set. Mandatory education, governmental information campaigns, the obligation to inform one's customers about the characteristics of one's products or services, and informed consent requirements in health care—these are only a few examples of how freedom-with-knowledge can be realized in practice. This is underscored, for instance, by recent research showing that information campaigns concerning social benefit programs do indeed increase take-up.<sup>24</sup>

The ethical relevance of the argument from desire satisfaction is straightforward: To the extent that your preferences reflect a commitment to morality, extending your opportunity set leads to better ethical outcomes. It boosts your moral desire satisfaction, so to speak. But we are not all saints. Freedom also increases when *unethical* actions are added to one's opportunity set. Would it be valuable not to add such actions—or even to remove unethical options? Sometimes it is better to remove unethical options, and a host of compliance rules and procedures do exactly this. Actions can be literally made impossible or punishment can be added. In both cases, the opportunity set changes: either the performance of the unethical action is no longer possible or performing it *without suffering punishment* is no longer possible.

Yet eliminating unethical options comes at a cost that is best explained by turning to a second argument for freedom's value called the *argument from moral responsibility*.<sup>25</sup> It has the exact same logical form as the argument from desire satisfaction, except “moral responsibility” is substituted for “desire satisfaction.” The idea behind this argument is that increasing the size of a person's opportunity set increases the extent to which he or she exercises moral responsibility. The standard example,

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23. See generally Tuomas Matikka & Tuuli Paukkeri, *Does Information Increase the Take-Up of Social Benefits? Evidence from a New Benefit Program* (VATT Inst. Econ. Res., Working Papers No. 83, 2016).

24. *Id.*

25. See generally BROWN, *supra* note 22.



credited to the philosopher Thomas Hurka, compares two people who have both chosen to pursue a career in teaching.<sup>26</sup> Yet, their opportunity sets are not the same. The first person has the possibility of choosing a career in ten available careers; the second, only in teaching.<sup>27</sup> The idea is that the first person, not the second, is responsible for *not* having chosen a career in any of the other possibilities.<sup>28</sup> By choosing teaching, she excluded, for example, law and medicine (unlike the second person).<sup>29</sup> This shows that adding options to an opportunity set increases your responsibility in the sense that it makes the set of outcomes you exclude larger.

The observation summarized in the previous sentence has clear ethical relevance. In the absence of any tempting unethical alternatives, it makes little sense to praise someone for acting ethically; there was no benefit for acting unethically. People are only praised for acting ethically if they could have acted unethically; more precisely, people are only praised for acting ethically if they knew that they could have acted unethically, and even more so if there is temptation to do so.

Now if this sounds like a platitude, it is important to underscore why the practice of praising and blaming people appropriately is key to ethical culture. In the philosophical literature, two positions about the value of praise and blame can be distinguished.<sup>30</sup> A “merit-based” view contends that there is a certain intrinsic value in praising a person that deserves praise (and conversely, in blaming a person that deserves blame).<sup>31</sup> A “consequentialist” position focuses on the potential consequences of there being a practice in place of praising and blaming.<sup>32</sup> For example, the merit-based view may explain why we praise athletes for their accomplishments. We do not award gold medals because we expect this to create an incentive for people to perform maximally in, say, a marathon, as there is generally nothing valuable instrumentally in people running long distances quickly. The consequentialist position may be more attractive than the merit-based view when it comes to ethical action. This idea is based on the fact that praise and blame are types of feedback regarding people’s decisions that reinforce desirable actions and change undesirable actions. While people may respond quite differently to praise and blame in different contexts, it is undeniably the case that in a well-functioning corporate culture

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26. See Thomas Hurka, *Why Value Autonomy?*, in *DRAWING MORALS: ESSAYS IN ETHICAL THEORY* 143 (2011).

27. *Id.*

28. *Id.*

29. *Id.*

30. Andrew Eshleman, *Moral Responsibility*, *STAN. ENCYCLOPEDIA PHIL.* (Jan. 6, 2001), <https://plato.stanford.edu/archives/fall2019/entries/moral-responsibility/> [<https://perma.cc/4GN8-86NJ>].

31. *Id.*

32. *Id.*

employees obtain continuous feedback on what they do.<sup>33</sup> As a result, the argument from moral responsibility teaches us that if the space for failure is limited, in the sense that the opportunity set is small, the space for genuine feedback is also limited. As every educator knows, learning involves failure, and to fail, one needs the opportunity to fail. A bad parent is one who removes any possibility of their child failing, and thus, any opportunity for learning from his or her failures.

If feedback works well, people gain ethical knowledge. Human beings may be born with certain innate ethical norms and values; however, moral education plays a crucial role in growing up to be a virtuous adult human being.<sup>34</sup> A tradition in philosophy and moral psychology going back at least as far as Aristotle states that virtue requires constant learning, constant maintenance, and constant feedback.<sup>35</sup> We learn in new situations, and we practice virtue in common situations. We learn from role models, and we hope to be examples for others. We reflect, analyze, debate, deliberate, judge, intend, act, succeed or fail, and learn again. That is how we gain knowledge of the demands of morality. The argument from moral responsibility is essential to understanding how people learn. In summary, we need to know our opportunity set; however, we also need to know what consequences morality supports, as well as which consequences we should morally try to avoid. In economic parlance, we need to know what preference orderings are compatible with what morality demands, and which ones not. We need what I call *knowledge about freedom* and *knowledge about morality*.

## II. KNOWLEDGE

An ethical culture endows people with knowledge about freedom and morality. In a sense, what it means for a culture to qualify as “ethical” is that its members possess such knowledge and act on it. Thinking about ethical culture may benefit from contemplating the difference between *belief* and *knowledge*, and that is what will be considered now. Beliefs, in the way philosophers use the term, may be false, they may be true by sheer luck (e.g., when a “wild guess” happens to be correct), and they may be true and based on evidence that justifies them (a reasoned and researched belief that is correct).<sup>36</sup> Roughly, only the third kind of belief counts as knowledge. Accepting this distinction, an obvious philosophical question

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33. See Robert S. Fudge & John L. Schlacter, *Motivating Employees to Act Ethically: An Expectancy Theory Approach*, 18 J. BUS. ETHICS 295, 301 (1999).

34. See Marcia Homiak, *Moral Character*, STAN. ENCYCLOPEDIA PHIL. (Jan. 15, 2003), <https://plato.stanford.edu/archives/fall2019/entries/moral-character/> [https://perma.cc/3NGA-ZD9V].

35. *Id.*

36. See generally DUNCAN PRITCHARD, WHAT IS THIS THING CALLED KNOWLEDGE? (2006).

is: it is natural to prefer mere true belief over false belief, but why would you prefer the third type, justified true belief, over mere true belief? Why would you want more than the truth?

In a famous passage in the *Meno*, Plato considers the difference between knowledge and belief.<sup>37</sup> He makes the familiar point that a belief may be true by luck. For example, if I make a wild guess about the number of participants in a seminar room and the guess turns out correct, it is incorrect to describe me as having possessed knowledge about the number of participants. In this example, the guess was just lucky, nothing more than that. Plato argues that in order for a true belief to be credited as genuine knowledge, the belief must be based on evidence that makes it justifiable for us to adopt the belief.<sup>38</sup> In the example above, if I had counted the number of participants, or if the organizers of the seminar had informed me about the number of participants that they had counted, I would have had evidence for my belief, and so I would have been justified in holding that belief.

It may be hard to see why it matters to human agency whether a person has a belief that is merely true by luck or whether he or she possesses knowledge. Whether my belief about freedom and morality is true by luck or evidence, I will perform the action that maximizes expected utility, where my utility function conforms to what I believe (or know) to be moral. In either case, I have the same expectations. I will select the same action, irrespective of whether I have mere true belief or genuine knowledge about freedom and morality.

Philosophers, however, tend to disagree with such a line of reasoning for the following reason.<sup>39</sup> Imagine, as Plato does in the *Meno*, that you want to walk to the city of Larisa. In one scenario, you know the way; in another, you only have a true belief about it. Suppose somewhere en route to Larisa, the road turns back for a fairly long time, in what may seem to you to be the wrong direction. Will you conclude that you have taken the wrong way? In the scenario in which you possess a mere true belief about the route to Larisa, based on a wild guess, you may indeed conclude that your wild guess was wrong. You may return and fail to reach Larisa. In the scenario where you possess knowledge about the way to Larisa, however, you have evidence that justifies your belief about the way to Larisa. Someone may have told you that this is the right way to Larisa, you may have checked a map, or you may have walked the road before. While you see that the road is indeed going in the wrong direction, you will not

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37. W. R. M. LAMB, PLATO: LACHES, PROTAGORAS, MENO, EUTHYDEMUS 97A–98A (1924).

38. *Id.*

39. See generally PRITCHARD, *supra* note 33.

conclude that you have to return. You will keep on walking because you *know* you will reach Larisa if you do so, and so you reach Larisa.

Plato describes the difference between mere true belief and knowledge as follows: knowledge is more stable than mere true belief because, unlike a wild guess, it is “fastened” to the evidence.<sup>40</sup> It is this stability—of knowledge being tied to the truth—that makes knowledge preferable over belief, not only from a purely epistemological point of view but also instrumentally in the sense that it makes it more likely that we reach our goals.

I believe that the distinction between belief and knowledge—theoretical as it may appear—has crucial relevance to corporate ethical culture. Those of us who have consulted with businesses on ethics management have certainly met employees—or perhaps even compliance officers—who are unable to explain the rationale underlying laws, rules, principles, or norms, even though they are aware of them, and act on them. This may concern apparently small things (why should I state my affiliations on this particular disclosure form?). It may concern general principles that a firm espouses (why is it that we do not invest in nuclear power?). Or it may concern a firm’s mission (why is it that our mission is to “empower” customers to “stay a step ahead in life and in business,” as the Dutch ING Group has?).<sup>41</sup> Following the above logic, when some individual cannot answer such questions, his or her knowledge about corporate values must be diagnosed as insufficiently stable. If the individual knows the rule, but not the rationale behind the rule, he or she will likely not know how to act in the spirit of the rule in a case where applying the rule is less than straightforward. The individual may be unable to articulate new rules for new cases and less successful in motivating newcomers to follow the rule. If the individual sees the rule in isolation, and not as an element of a larger corporate culture and as norms that govern corporate behavior, the individual will essentially fail to see the values underlying it and the culture stimulating it.

This is not meant to be pedantic or “intellectualist.” Quite to the contrary, knowledge is a very wide concept that includes things that go far beyond the encyclopedia or the rules book. It includes implicit and tacit understanding, imaginative wisdom, practical communicative and empathic skills, and business experience; because all these things, and many others, provide people with insights, evidence, and justification that allows them to see more broadly what acting with integrity means.

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40. LAMB, *supra* note 37, at 98a.

41. *Purpose & Strategy*, ING, <https://www.ing.com/About-us/Profile/Purpose-strategy.htm> [<https://perma.cc/S6H5-635Z>].

It is common in business ethics to distinguish between principle-based and rule-based approaches to changing corporate culture.<sup>42</sup> The implicit suggestion here is that a principle-based approach is often preferable because it leads exactly to what I have described here as valuable: understanding, knowledge, and justification.<sup>43</sup> From a philosophical point of view, however, this can only be part of the story: both approaches will fail in creating a stable corporate culture as long as they generate mere true beliefs rather than genuine knowledge. Principles without knowledge are just as empty as rules without knowledge.

Before taking the next step from individual knowledge to social, common knowledge, let me take stock. I started with a solemn, public ceremony during which a group of prominent financials pledged an oath, and I took this as inspiration to investigate ethical climate and culture in organizations. I then introduced a key theoretical starting point of the investigation to the effect that ethics—ethical action—presupposes freedom, not only in the sense that freedom provides you with the opportunities for ethical action but also with opportunities to assume moral responsibility for deciding against unethical actions. I briefly noted the relevance of this to fostering ethical culture in organizations through feedback: People praise and blame each other for things they do, but this cannot be done effectively without knowledge about freedom. I subsequently considered the difference between belief and knowledge and showed that because knowledge requires evidence and justification, it is more stable than belief: It is less easily lost when one is confronted with what looks like counter-evidence. Finally, I assessed the value of possessing knowledge about corporate rules and principles and showed why such knowledge is important to corporate culture. In sum, I argued that an ethical corporate culture entails knowledge about freedom and morality.

### III. COMMON KNOWLEDGE

While knowledge about freedom and morality is necessary, we need more for corporate culture to flourish. We need what philosophers and economists call “common knowledge.”<sup>44</sup> That is the purpose of the current section. So far, I have discussed knowledge possessed by individuals. Common knowledge, however, is a social concept that describes

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42. See generally Surendra Arjoon, *Striking a Balance Between Rules and Principles-Based Approaches for Effective Governance: A Risks-Based Approach*, 68 J. BUS. ETHICS 53 (2006).

43. See generally Edwin M. Hartman, *Reconciliation in Business Ethics: Some Advice from Aristotle*, 18 BUS. ETHICS Q. 253 (2008).

44. See generally BOUDEWIJN DE BRUIN, *EXPLAINING GAMES: THE EPISTEMIC PROGRAMME IN GAME THEORY* (2010).

someone's knowledge about another person's knowledge. It brings additional benefits to corporate culture.

To introduce the notion of common knowledge, imagine a team of workers meeting in a conference room with a traditional roundtable setting. The chairperson makes an announcement that the CEO of the company has decided to step down. Everyone in the room hears it, so everyone now knows that the CEO has decided to step down. Equally, everyone knows that everyone else has heard the announcement, so everyone knows that everyone knows the CEO is about to step down. The preceding realization has material consequences. For instance, suppose that after the meeting, one team member asks another, "Did you expect her to step down?" Then the addressee of the question immediately understands what her interlocutor is referring to, and moreover, the interlocutor can assume that when she asks precisely this question, the addressee understands what she refers to.

We call the sort of knowledge that arises after a public announcement of the kind above "common knowledge."<sup>45</sup> Formally, it may be thought of as an infinite conjunction of increasingly complex propositions obtained by sequentially adding "everyone knows" to the previous proposition, even if economists and logicians have developed intricate ways that do not require the use of potentially mysterious infinite constructs.<sup>46</sup> The example illustrates that common knowledge facilitates communication: for a speaker to use a particular term successfully in communication with a particular hearer, there has to be common knowledge among them about the meaning of the term. If I consider it possible that you will interpret my use of the word "library" as referring to a bookshop (for instance, because I think you, a French speaker beginning to speak English, may be misguided by the French *librairie*, "bookshop"), it is irrational for me to use "library" if I want to talk about a library with you.

It is helpful to distinguish a number of functions that common knowledge may fulfill. A standard example in economics concerns common knowledge in a situation where two agents are engaged in strategic interaction, or in economic parlance: a normal form game.<sup>47</sup> The concept of opportunity can be used as a way to characterize such

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45. See Morris F. Friedell, *On the Structure of Shared Awareness*, 14 BEHAV. SCI. 19–20 (1969). See generally Jane Heal, *Common Knowledge*, 28 PHIL. Q. 116 (1978); Peter Vanderschraaf, *Common Knowledge*, STAN. ENCYCLOPEDIA PHIL. (Aug. 18, 2001), <https://plato.stanford.edu/entries/common-knowledge/> [https://perma.cc/N3GR-QSDE].

46. See, e.g., Jon Barwise, *Three Views of Common Knowledge*, in PROCEEDINGS OF THE SECOND CONFERENCE ON THEORETICAL ASPECTS OF REASONING ABOUT KNOWLEDGE 365–79 (Moshe Y. Vardi ed., 1988).

47. See generally Adam Brandenburger, *Knowledge and Equilibrium in Games*, 6 J. ECON. PERSP. 83 (1992).

situations. What has to be included in the model is the fact that the consequences of the actions that are available to me depend on what actions you choose. That is why we actually include two opportunity sets, with a range of outcomes over which we both have preferences, and where these preferences do not always coincide. See the example here below.

		<i>Agent T</i>		
		K	L	M
<i>Agent S</i>	A	0,3	3,2	3,1
	B	1,3	2,2	2,1
	C	0,0	1,1	1,0

Agent S can select actions A, B, or C. Agent T has K, L, and M in the opportunity set. If S selects A, and T selects K, they arrive at a situation that is most preferred for T (who gets three units of utility) and least preferred for S (who gets zero units of utility).

What will the players do? Each will try to reason about what their opponent will do. T may reason that S will not select C because whatever action T selects, S will earn one unit of utility more by selecting B rather than C. So, T will focus on what is best given that S selects A or B. The result of this is that T will now be able to reason that K is optimal because if S plays A or B, selecting K ensures three units of utility for T as opposed to L (only two units) and M (only one unit).

Suppose that S knows that T knows what S's preferences are. Then this means that S knows that T will choose a best response to A and B only and that T will reason that K is optimal. S can now reason further and determine the best course of action: select B, which is going to yield one unit of utility, as opposed to zero units that playing A or C would yield. As a result, in the end the outcome is that S selects B, and T selects K.

The details of this line of reasoning are unimportant. The key observation is that this kind of reasoning does not come off the ground if the two agents lack common knowledge of the structure of the game ("common knowledge of utility," and of each other's maximizing expected utility, that is, "common knowledge of rationality"). It has to be *common* knowledge. It is insufficient that I only know your preferences, because if I think that you believe that I may not know your preferences, then I will not be able to internalize your reasoning about me—that is, to think about your predictions of my behavior. And predicting the opponent's behavior is exactly what happens here. It is a kind of higher-order reasoning where we put ourselves in the position of others reasoning about us. This is a cognitively demanding task. There is evidence that only cognitively advanced mammals are able to engage in this type of

reasoning, while human babies cannot do it.<sup>48</sup> And as the example shows, common knowledge of utility and rationality is what generates these beliefs.

This example is drawn from economics. It is formal and neat, but it is also perhaps a bit stilted and unrealistic. However, this should not detract from the fact that common knowledge is of enormous business importance. A concrete example studied in economics is the Super Bowl, which attracts the largest number of television viewers every year in the U.S.<sup>49</sup> The question: Why do companies pay enormous amounts of money to buy only a minute of time to advertise around the event? Is this an innocuous, or even silly, question? At first sight, perhaps it is: Typically, a marketing campaign is more effective if more people see it.

But as some economists have argued,<sup>50</sup> the Super Bowl offers a second attraction to marketers that warrants paying significantly more than could be explained only on the basis of the sheer number of viewers: it is the American instrument *par excellence* to create common knowledge. You not only know that many people watch it, but you also know that many people know that many people watch it, and so on. How could that be relevant? A famous example is a campaign launched in the 1984 Super Bowl by Apple Computer.<sup>51</sup> Apple introduced an entirely new computer called the “Macintosh” (Mac). It was patently clear that the Mac would not be compatible with the then-prominent personal computer (PC), which was working with MS-DOS. Software developed for the PC would clearly be useless for the Mac. As a result, it was also clear that buying a Mac would only satisfy your desires if sufficiently many others did so as well, because only then software companies would have an incentive to develop software for the Mac. There will always be early adopters (“lighthouse customers”) who do not care much about such things. They are willing to take the risk, or they just want to be the first to buy a new gadget. However, the majority of consumers want to wait until they see that the technology is sufficiently widely adopted. It is this process that airing an ad during the Super Bowl speeds up, and the mechanism is that it creates common knowledge. Consumers who are slower to adopt know that a significant number of gadget-happy early adopters will buy the computer merely on the basis of having watched the ad, and this may give more cautious, slower adopters the confidence needed to buy the computer themselves.

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48. See generally Sylvain Sirois & Iain Jackson, *Social Cognition in Infancy: A Critical Review of Research on Higher Order Abilities*, 4 EUR. J. DEV. PSYCHOL. 46 (2007).

49. MICHAEL SUK-YOUNG CHWE, RATIONAL RITUAL: CULTURE, COORDINATION, AND COMMON KNOWLEDGE, 45–49 (2001).

50. See *id.* at 45.

51. *Id.* at 86.



Playing a strategic game or deciding whether to buy a Macintosh are essentially individual activities, despite the fact that the outcome of one agent's actions depends on what others do. But common knowledge is also essential when we perform actions together. Turning to this topic brings us closer to the main motivation that underlies this discussion of common knowledge: ethical climate and culture. A simple example first: two people going to the opera together. How do they do that? Sue wants to go to the opera with Tanya, and Tanya wants to go to the opera with Sue. Sue does not want to go to the opera if Tanya does not go, and Tanya does not want to go if Sue does not go. Suppose they have not communicated about the opera. Will they go? Surely not. So, what should they communicate? Sue *cannot* truthfully say, "I am going to the opera, and it would be lovely if you joined me," because she is not *unconditionally* going to the opera. Would it help if she said, "I am going to the opera if you go to the opera"? Not quite, because in order for this to work, Tanya would have to respond by saying something like, "I am going to the opera," but that would not be quite right, because Tanya is not *unconditionally* going to the opera either; she is only going to the opera if Sue is going to the opera too.

An artificial problem? Not at all! Two armies jointly attacking the enemy, two soccer players coordinating with one assisting the other to score a goal, two people about to jump into rough waters to rescue a drowning adult—making the start as an army, a player, or the first person jumping into the water, carries a significant risk: The others might not join you. So how are you going to ensure that they do join? The answer is to create common knowledge of sorts. The mechanism is not complex—if it were, joint action would be rare. If there is common knowledge of "joint readiness"<sup>52</sup> among Sue and Tanya, the army, the soccer player, or the rescuers, then it can be assured that the other will join. So how do Sue and Tanya create common knowledge of joint readiness? Sue might ask Tanya: "What about going to the opera tonight?" If Tanya answers: "Yes, let us go," then joint readiness has been made common knowledge. They will go.

Now consider promising. Often—but not always—a promise is a promise to someone about something that concerns that someone. Following a tradition of philosophical and linguistic inquiry that goes back to the British philosopher John Austin,<sup>53</sup> promising is a "speech act": the mere uttering of the words "I promise" creates an obligation for the promisor towards the promisee or promisees. Promising, then, is not just speech—it is also an action. Saying "I do" during a wedding ceremony (at

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52. M. GILBERT, ON SOCIAL FACTS 198 (1989).

53. J. L. Austin, *Performative Utterances*, in PHILOSOPHICAL PAPERS 253–52 (J. Urmson & G.J. Warnock eds., 1979).

the right point in time and by the right person) is another example of a speech act. The core idea is that speech acts do not intend to describe the world, but rather change the world.

I promise to you that I will bring back the book tomorrow, or I promise to you that I will repair your car. Sometimes a promise is about something that does not directly concern the person to whom the promise is made. I promise to my boss that I will take good care of our customer's car. But that is often at least also a promise to my boss; the customer has entrusted her car to my boss, and my boss entrusts the car to me to be mended, and I promise that I will take good care of it.

It is typically hard to promise something to someone if that someone is absent, or if that someone could not sufficiently easily find out about the promise. How could I promise that I will take good care of your car if you are not there when I make the promise? A private promise is not very useful. I can surely make a firm commitment to myself that I am going to take good care of your car. That is far from ethically insignificant, of course. Yet, the reason why a private promise is largely lacking sense is that it is part of the logic of a promise that it makes something common knowledge among the promisor and promisee. A promise has to be heard by the promisee, that is, it has to be received, it has to be acknowledged, and this has to be common knowledge between the promisor and promisee. If I promise to you that I will take good care of your car, then the result is that you know that I have promised to do so, and I know that you know that, and so on. A result of this type of acknowledgment is that my commitment to take good care of your car becomes stronger. If I only privately commit myself to do something, I know that as soon as I do not do it, no one will notice the discrepancy between the earlier commitment and my current decision not to carry out the action. If, by contrast, I have promised to repair your car, and then I do not do it, it is clear to you that I broke my promise—and it is clear to me that this will be clear to you. Promising creates expectations in the promisee because it generates a publicly acknowledged commitment. These expectations add additional force to the promisor's commitment.

It is important to see where that extra force comes from. One might think that a promise creates an extra obligation over and above the obligations that a private commitment might generate. That is not necessarily true. There are innumerable obligations we have vis-à-vis other people that have never been made the explicit topic of a promise. I have never promised anyone to drive carefully, for instance, but I could do that. This would not create an additional obligation, though. This applies, for instance, to cases where people promise to follow the law—or swear an oath containing a statement to that effect. This is not to say that

promises may not create obligations; but to the extent that they create obligations, they create obligations that without the promise would not be there. If I promise to repair your car or take good care of your dog, I create a new obligation.

Yet, whether or not a promise reiterates an existing obligation or creates a new one, it strengthens the expectations that the promisee will have vis-à-vis the promisor. The promisee knows that the promisor will expect the promisee to feel let down if the promisor reneged on the promise and that the promisor cannot, for instance, find an excuse on the grounds that the promisor was unaware of the obligation: for the promisee knows that the promisor knows that the promisee was present when the promisor made the promise. The effect of the public character of the promise is, therefore, perhaps more psychological than moral. That common knowledge of the promise is established creates additional reasons for the promisor not to disappoint the expectations of the promisee.

#### IV. PROFESSIONAL OATHS

##### *A. Characteristics*

The typical professional oath is a promise, with the profession's beneficiaries serving as the promisees (or sometimes also society at large).<sup>54</sup> Oaths typically satisfy a number of conditions, the effect of which is to generate high-quality common knowledge,<sup>55</sup> or so I argue. To begin with, oaths have a highly public character. The example with which I started this Article offers the case in point: a ceremony, in a central and well-known church in The Netherlands, with many people attending, covered by national television and other media. The publicity of an oath also comes to the fore in the way that individual oath-taking is documented. The MBA Oath, for instance, while there is no standard ceremony involved, has a high degree of publicity because all signatories are listed online. Moreover, even though an oath-taking ceremony is not public in the medical profession, the way this profession is set up in countries such as The Netherlands and France makes sure that (interested) patients know that every medical practitioner has pledged (a version of) the Hippocratic Oath.<sup>56</sup> The ceremonial aspect of oath-taking reinforces

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51. Kostas Amiridis, *The Shadow of Sophocles: Tragedy and the Ethics of Leadership*, 28 BUS. ETHICS Q. 15, 18–19 (2018).

55. See generally Daniel P. Sulmasy, *What is an Oath and Why Should a Physician Swear One?*, 20 THEORETICAL MED. & BIOETHICS 329 (1999) (for some of these conditions but without reference to common knowledge).

53. Boudewijn de Bruin, *Pledging Integrity: Oaths as Forms of Business Management*, 136 J. BUS. ETHICS 23, 24 (2016).

this point. An oath sworn during a ceremony is less easily forgotten than an oath sworn in between two business meetings, and the ceremonial gestures that often accompany oath-taking reinforce recall. An oath-taking ceremony has to be a unique and memorable event. Some business schools have, therefore, organized ceremonies for graduates to pledge the MBA Oath.<sup>57</sup> These oath-taking ceremonies are common knowledge generators just like the Super Bowl or the round table announcement about the CEO's decision to step down.

We should expect the content of an oath to be a general commitment. It would be ineffective to swear an oath every time you promised. There would be too many oaths to make a lasting impression. I promise to take good care of your dog, but I swear that I will never harm anyone, as the original Hippocratic Oath has it. A result of this generality is that breaking an oath will negatively affect the promisor's moral standing as a whole person, rather than as, say, a good dog-sitter. It affects the oath-taker's *integrity*, a concept that is a key element of business ethics management, capturing the sense of people having themselves together.<sup>58</sup> Swearing the MBA Oath, for instance, commits one to ensuring that one's "personal behavior will be an example of integrity, consistent with the values that [one] publicly espouse[s]."<sup>59</sup> To the extent that people wish to maintain a positive view of their own moral standing, an oath provides them with a higher degree of moral motivation than a promise. Moreover, it seems plausible to say that the negative effects of breaking a promise concern the promisor's trustworthiness in the first place vis-à-vis the type of actions the promise is about (dog-sitting, say). Breaking a dog-sitting promise is less likely to affect the promisee's perception of the promisor's overall trustworthiness—and even less, his or her overall integrity. We are used to assigning different degrees of trust to promises about actions in different domains, made by one and the same promisor, based on what we have come to learn about the promisor's trustworthiness in these domains. But while such distinctions make sense for trust and assignments of trustworthiness, they do not make good sense for evaluations of a person's moral standing.

The above is underscored by the fact that we tend to find that breaking a promise may become excusable (or even normatively expected) when relevant events intervene. If I have promised my daughter to pick up her bicycle on the way home, but just when I wanted to leave a colleague

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57. *Id.* at 31.

58. Julie Ragatz & Ronald Duska, *Financial Codes of Ethics*, reprinted in FINANCE ETHICS: CRITICAL ISSUES IN THEORY AND PRACTICE 297, 301 (John R. Boatright ed., 2010).

59. *MBA Oath—Legacy Version*, THE MBA OATH, <http://mbaoath.org/about/translations-of-the-oath/> [<https://perma.cc/P43C-R8ZJ>].

stopped by my office to tell me about a serious incident with a student, I may be excused (and perhaps even required) to break that promise, irrespective of whether my daughter will accept my reasons. The promise to pick up the bike was little more than an expression of an intention. I said, “I promise,” but if I had said “I will,” “I plan,” or “I intend,” I would almost have said the same thing. Oaths, by contrast, are not expressions of intentions or plans. Breaking them surely decreases trust. Yet the more pronounced effects concern one’s general moral standing.

The fact that the commitment made through an oath in general does not mean that a good professional oath should not be very concrete and explicit about who its intended beneficiaries are. This goes often hand-in-hand with stating, as part of the oath, what the function is that the oath-taker fulfills socially as a professional. The Hippocratic Oath, for instance, stresses the admittedly unsurprising fact that the primary concern of the medical profession is the health of patients.<sup>60</sup> Oaths that insufficiently describe beneficiaries clearly risk losing binding force. If it is unclear who is the intended beneficiary—the promisee—one may legitimately expect oath-takers to exploit the vagueness in the definition of the beneficiaries to exculpate themselves in particular cases and to deny that people raising complaints against them are in fact among the intended beneficiaries of the oath.

This may sound slightly theoretical, so let me illustrate. The MBA Oath mentions a whole array of beneficiaries, including shareholders, employees, consumers, civil society, government, and the natural environment.<sup>61</sup> It excludes, however, suppliers and competitors. These stakeholders are indeed easily forgotten.<sup>62</sup> Yet law and business ethics contain numerous provisions protecting them,<sup>63</sup> and no manager taking an MBA Oath should assume that suppliers and competitors can be ignored or that their concerns are less important than the stakeholders explicitly mentioned in the oath.

I turn now to two more contentious elements of oaths: a stipulation of the consequences of oath-breaking and an invocation of a transcendent entity. Oaths no longer contain such phrases as, “May I suffer a painful and ignominious death if I fail to carry out my solemn oath to defend the honor of the King,”<sup>64</sup> and for good reasons. Francis Hutcheson’s definition of an oath as a “religious act in which for confirmation of something

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60. Sulmasy, *supra* note 52, at 337–38.

61. *See generally* ANDERSON & ESCHER, *supra* note 13 (explaining the MBA oath).

62. *See generally* Laura J. Spence, Anne-Marie Coles & Lisa Harris, *The Forgotten Stakeholder? Ethics and Social Responsibility in Relation to Competitors*, 106 BUS. & SOC’Y REV. 331, 331 (2002).

63. *See generally* R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (1984).

64. Sulmasy, *supra* note 52, at 333.

doubtful, we invoke God as witness and avenger . . .” no longer applies either.<sup>65</sup> To some extent, however, one must wonder if a twenty-first-century update of these two elements—a description of a sanction on oath-breaking and a reference to a transcendent entity—might be preferable. The goal of the first type of phrase is to stipulate what happens if the oath is broken. Generally, professional oaths are part of larger systems of laws and internal rules that do in fact stipulate sanctions on transgressions.<sup>66</sup> However, it may add to the strength of an oath if the repercussions of breaking an oath are made common knowledge among promisor and promisee, that is, between professionals and society at large. Oath-takers may then know that society expects them, for instance, to confront a disciplinary council in the case of oath-breaking and that it will be a matter of public scrutiny whether these disciplinary councils fulfill their tasks with sufficient energy and vigor. Another reason why it may be good to create common knowledge and inform society about the sanctions and repercussions that oath-breakers face is that this allows society to judge the effectivity of the incentives thus created. If oath-breaking leads to expulsion from the profession no matter what, this certainly does more to boost compliance than if oath-breakers have to suspend their activities only for a month or so.

Considering the difference between oaths and promises offers another perspective on sanctions and repercussions. Since oaths involve the person’s integrity, that is, his or her moral standing as a person as a whole, repercussions of oath-breaking can be more general in the sense of being less dependent on the precise way in which the oath was broken. Without implying a judgment about merits, it is worth pointing out that in the wake of the global financial crisis, several countries have started examining the possibility of introducing jail sentences for high-level finance professionals, even though so far only one person has been put behind bars.<sup>67</sup> Whether including the threat of jail—or perhaps more realistically “dismissal with disgrace”—in an oath would be a good idea is, however, something that should be further examined.

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65. FRANCIS HUTCHESON, A SHORT INTRODUCTION TO MORAL PHILOSOPHY 203 (Luigi Turco & Robert Foulis eds., 2007).

66. See generally PAOLO PRODI & ELISABETH MÜLLER-LUCKNER, GLAUBE UND EID: TREUEFORMELN, GLAUBENSBEKENNTNISSE UND SOZIALDISZIPLINIERUNG ZWISCHEN MITTELALTER UND NEUZEIT [FAITH AND OATH: FAITHFUL FORMULAS, CREEDS, AND SOCIAL DISCIPLINE BETWEEN MEDIEVAL AND MODERN TIMES] (1993).

67. See generally WHITE-COLLAR CRIME IN IRELAND: LAW AND POLICY (Joe McGrath ed., 2019).

The Dutch Bankers Oath ends with one of two sentences: “So help me God!” or “This I pledge and promise!”<sup>68</sup> The choice is up to the oath-taker. Traditionally, most oaths have referred to something transcendental, such as a religious deity or other objects or concepts held in high regard, such as a religious text or constitution.<sup>69</sup> In a religious context, this created an additional witness to the oath-taking, or in terms of the model that I am proposing here, it made God a participant in common knowledge. If God—or any transcendent entity held in high regard—knows that you have committed yourself to do something, this gives you an additional, religious reason to stick to it. In a more secular context, such arguments may become less persuasive. We will soon see, however, that some psychological research suggests that even non-religious people may undergo the additional motivating force of pledging by a transcendent entity.<sup>70</sup>

### B. Fostering Professionalism

What function can professional oaths reasonably be expected to fulfill? One function is that they may foster professionalism. It has been observed that a solemn oath-taking ceremony is a kind of *rite de passage* concluding a professional’s formal training.<sup>71</sup> This observation not only emphasizes the fact that members of a profession share a body of specific technical knowledge, expertise, and skills, but also calls attention to a set of norms and values that are specific to the profession.<sup>72</sup> The oath brings out to the open that members of the profession can count upon each other to possess these skills and to subscribe to these norms and values. It is not so much that the oath here creates common knowledge among practitioners; formal professional training has already generated such common knowledge. The point is rather that the oath makes things *salient* to practitioners. Work in medical ethics shows that when the intended beneficiaries are aware of the oath, the oath creates reasons for

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68. *The Banker’s Oath*, TUCHTRECHT BANKEN (emphasis omitted), <https://www.tuchtrechtbanken.nl/en/the-bankers-oath> [<https://perma.cc/Q6RG-DLNB>].

69. See generally PRODI & MÜLLER-LUCKNER, *supra* note 66.

70. See DAN ARIELY, THE (HONEST) TRUTH ABOUT DISHONESTY: HOW WE LIE TO EVERYONE—ESPECIALLY OURSELVES 44–45 (2012).

71. See William Exton Jr., *Ethical and Moral Considerations and the Principle of Excellence in Management Consulting*, 1 J. BUS. ETHICS 211, 215 (1982); Raanan Gillon, *White Coat Ceremonies for New Medical Students*, 26 J. MED. ETHICS 83, 83–84 (2000); Baris Parkan, *Professionalism: A Virtue or Estrangement From Self-Activity?*, 78 J. BUS. ETHICS 77, 78 (2008).

72. See Rakesh Khurana & Nitin Nohria, *It’s Time to Make Management a True Profession*, HARV. BUS. REV., Oct. 2008, at 76–77; Robert M. Veatch & Cheryl C. Macpherson, *Medical School Oath-Taking: The Moral Controversy*, 21 J. CLINICAL ETHICS 335, 335–45 (2010).

beneficiaries to trust and expect that professionals will conform to professional standards of expertise and integrity.<sup>73</sup>

### C. Facilitating Moral Deliberation

Apart from fostering professionalism, oaths may also facilitate moral deliberation. Common knowledge plays a role again in this assertion. As research in medical ethics shows, the Hippocratic Oath functions as an instrument for moral analysis for individual medical practitioners and moral deliberation among colleagues.<sup>74</sup> This function is underscored by the fact that doctors and medical ethicists use the Hippocratic Oath as a source of information and inspiration in debates about diverse topics such as euthanasia and physician-assisted suicide,<sup>75</sup> health insurance reforms,<sup>76</sup> the role of physicians in professional sports,<sup>77</sup> quality control in hospitals,<sup>78</sup> and many others.

The force of common knowledge becomes clear when one considers the way in which oaths stimulate moral deliberation among professionals. Common knowledge makes ethical reasons within the oath salient, which allows the debate to focus on particular aspects of the problem at hand. It creates, so to speak, a set of “default” moral reasons or considerations that must be addressed in any case. The consequence is not only that moral deliberation among professionals will typically center around the key values of the profession, but also that additional strong reasons must be provided in favor of the relevance of any argument that is *not* backed by the oath. The Hippocratic Oath, for instance, does not specify anything about cost efficiency: the health of the patient is the first and foremost concern. A result of this information gap is that the participants who

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73. See Lisa Keränen, *The Hippocratic Oath as Epideictic Rhetoric: Reanimating Medicine's Past for Its Future*, 22 J. MED. HUMAN. 55, 65–66 (2001); See Clifford Perlis & Noah Shannon, *Role of Professional Organizations in Setting and Enforcing Ethical Norms*, 30 CLINICS DERMATOLOGY 156, 157 (2012).

74. See generally STEVEN H. MILES, *THE HIPPOCRATIC OATH AND THE ETHICS OF MEDICINE* (2004); Ursula Hartenberger, David Lorenz & Thomas Lützkendorf, *A Shared Built Environment: Professional Identity Through Education and Training*, 41 BUILDING RES. & INFO. 60 (2013); Robert A. Pearlman, *The Value of an Oath of Professional Conduct: Process, Content, or Both?*, 1 J. CLINICAL ETHICS 292 (1990).

75. See Linda L. Emanuel, *Facing Requests for Physician-Assisted Suicide*, 280 J. AM. MED. ASS'N 643, 643 (1998).

76. See generally Leonard G. Gomella, *Health Care Reform: The Carrot, the Stick, and the Hippocratic Oath*, 19 CAN. J. UROLOGY 6324 (2012); Mark H. Waymack, *Health Care as a Business: The Ethic of Hippocrates Versus the Ethic of Managed Care*, 9 BUS. & PROF. ETHICS J. 69, 69–78 (1990).

77. See Andrew C. Hohenstein, Comment, *Team Physicians: Adhering to the Hippocratic Oath or Just Plain Hypocrites?*, 19 MARQ. SPORTS L. REV. 579, 611 (2009).

78. See generally DONALD E. LIGHTER & DOUGLAS C. FAIR, *QUALITY MANAGEMENT IN HEALTH CARE: PRINCIPLES AND METHODS* (2000).



introduce financial considerations bear the burden of proof during any discussion about the costs of healthcare informed by the Hippocratic Oath.

#### *D. Enhancing Compliance*

For most beneficiaries, the most pressing issue in the end is whether the oath (or any other business ethics instrument) induces compliance. So far, I have stressed the relevance of two things: knowledge and common knowledge. We saw that promises generate common knowledge among the promisor and the promisee, and that this common knowledge increases the binding force of the commitment made through the promise because, among other things, it creates expectations in the promisee that the promisor is aware of. To the extent that oaths are promises, they generate common knowledge of this type. Clearly, however, the act of promising may be more or less successful in making normative expectations common knowledge. I may mumble words. You may not pay full attention. I may not be entirely sincere, or I may fail to see that you cannot hear my promise. These nuances would make for a more “secret” or “private” affair, which, as I argued, does not capture the central social sense of promising, as it fails to meet the requirement that a promise can be publicly acknowledged by the promisee.

The idea now is that the above characteristics of the oath offer mechanisms to bring the commitment expressed in the oath into the open in a way that increases the chance of successfully establishing common knowledge. This goal is certainly no guarantee. Oaths may also misfire. But the solemn ceremonial character of oath-taking, the fact that it is public and open to witnesses—potentially strengthened by the invocation of transcendent entities—increases the likelihood that common knowledge is established and maintained. By pledging the oath, the oath-taker openly and publicly creates expectations among the beneficiaries, which form an additional reason to keep the commitments specified in the oath—additional in the sense that the commitment itself specifies reasons, and the oath-taking creates extra reasons, as I argued above. It is quite reasonable to assume, as I did above, that people are generally interested in maintaining a view of themselves as individuals of sufficiently high moral standing; they are keen not only to view themselves as moral individuals, but also to be viewed by others as moral individuals. As a result, once a commitment becomes common knowledge, an extra reason exists to keep the commitment. Breaking the commitment not only decreases one’s own view of their moral standing, but also causes those who were aware of the commitment to make their own judgments about that person’s moral standing.

If this concept sounds a tad theoretical, think about how it may help us to keep some resolutions by making them common knowledge among family and friends. We want to save face, we want to show the strength of our commitment to our friends; we have, in a sense, partly externalized our internal motivation. We not only have an interest in keeping our commitment to go to the gym more often for our own benefit, but we are now also interested in keeping this commitment because we want to avoid appearing weak-willed in the eyes of friends and family. We may want to avoid their criticism or their sarcasm. It is an interesting question whether this phenomenon is to be analyzed as offering a truly external reason to perform a good action on par with offering financial incentives for acting with integrity, or whether this interest is still part of a larger set of internal motives. But that is an issue that I will sidestep here.

There is some empirical evidence that oaths indeed accomplish what they are meant to, and some of the research points in a direction that confirms the mechanism I have postulated above.<sup>79</sup> I should say, however, that the evidence is fairly scant, and that some evidence does counter the idea that oaths are effective as ways of managing ethics.<sup>80</sup> There is also some evidence that sharing one's intentions (as in the resolution example above) may not help to keep them.<sup>81</sup> Clearly, much more empirical work is needed on this subject, and I only offer a conceptual argument here. I should perhaps repeat another disclaimer: oaths are a case study. My arguments are, I believe, easily generalized to other, perhaps more common, forms of ethics management using such things as stakeholder dialogue, ethics training, and codes of conduct. I also want to show in this Article that these other more common forms can benefit from considering the epistemic aspects of human decision-making: the value of knowledge about freedom and morality, and the value of common knowledge of commitments.

Next, let me turn to some potentially relevant empirical work. Some research concerns virginity pledges, where oath-takers pledge not to engage in premarital sexual intercourse. These turn out to work best in a community of people that mutually reinforces compliance.<sup>82</sup> Such a community may work because it monitors compliance, but it also

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79. For review of the evidence, see Boudewijn de Bruin, *Pledging Integrity: Oaths as Forms of Business Management*, 136 J. BUS. ETHICS 24, 30 (2016).

80. *Id.*

81. See Peter M. Gollwitzer et al., *When Intentions Go Public: Does Social Reality Widen the Intention-Behavior Gap?*, 20 PSYCHOL. SCI. 612, 613 (2009).

82. Peter Bearman & Hannah Bruckner, *Promising the Future: Virginity Pledges and First Intercourse*, 106 AM. J. SOC. 859, 869–71 (2001). See generally Antoinette Landor & Leslie Simons, *Why Virginity Pledges Succeed or Fail: The Moderating Effect of Religious Commitment Versus Religious Participation*, 23 J. CHILD & FAM. STUD. 1102, 1102–13 (2014).

reinvigorates the public acknowledgement of the commitment. It keeps common knowledge alive.

Dan Ariely recounted an oft-quoted case offering anecdotal evidence that transcendental references may be effective even in fairly secular environments.<sup>83</sup> He described a Middle Tennessee State University professor who made students swear that they would not cheat, and if they did, “they ‘would be sorry for the rest of their lives and go to Hell . . . .’”<sup>84</sup> Ariely noted that despite the highly controversial approach taken by the professor, the oath as such may be successful, as it makes the oath-takers visualize the stakes as “very high,” even for those who “did not necessarily believe in Hell.”<sup>85</sup>

Less anecdotal evidence exists to the effect that oaths make people more likely to tell the truth, even though some of that research only involves children.<sup>86</sup> Moreover, apart from the above-mentioned virginity pledges, pledges to eat healthy food,<sup>87</sup> not to smoke,<sup>88</sup> or to reveal one’s actual preferences in a second bid auction<sup>89</sup> seem to have at least some positive effect on behavior. Yet, evidence is assuredly mixed,<sup>90</sup> and research on professional oaths is still in its infancy. Moreover, oaths may have undesirable side effects. A pledge to tell the truth makes people more likely to tell the truth indeed, but does not decrease the probability of making a false statement.<sup>91</sup> In the context of corporate ethics, a potentially undesirable effect of emphasizing “doing good” may be that it primarily inspires ethical behavior at the “philanthropic” level, at the expense of shareholders, employees, or consumers. Similarly, oaths may be taken as

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83. DAN ARIELY, *THE HONEST TRUTH ABOUT DISHONESTY: HOW WE LIE TO EVERYONE—ESPECIALLY OURSELVES* 44–45 (2012).

84. *Id.* at 44.

85. *Id.*

86. See Thomas Stevens, Maryam Tabatabaei & Daniel Lass, *Oaths and Hypothetical Bias*, 127 *J. ENVTL. MGMT.* 135 (2013). See generally Thomas D. Lyon & Joyce S. Dorado, *Truth Induction in Young Maltreated Children: The Effects of Oath-Taking and Reassurance on True and False Disclosure*, 32 *CHILD ABUSE & NEGLECT INT’L J.* 738 (2008).

87. See generally Sekar Raju, Priyali Rajagopal & Timothy J. Gilbride, *Marketing Healthful Eating to Children: The Effectiveness of Incentives, Pledges, and Competitions*, 24 *J. MARKETING* 93 (2010).

88. J. H. Hallaq, *The Pledge as an Instrument of Behavioral Change*, 98 *J. SOC. PSYCHOL.* 147 (1976).

89. See generally Nicolas Jacquemet et al., *Preference Elicitation Under Oath*, 65 *J. ENV’T ECON. & MGMT.* 1 (2013).

90. Christophe Van Linden & Kris Hardies, *Entrance Requirements to the Audit Profession Within the EU and Audit Quality*, 22 *INT’L J. AUDITING* 360 (2018).

91. See generally Thomas D. Lyon & Joyce S. Dorado, *Truth Induction in Young Maltreated Children: The Effects of Oath-Taking and Reassurance on True and False Disclosure*, 32 *CHILD ABUSE & NEGLECT INT’L J.* 738 (2008).

an indication of untrustworthiness rather than as a promotion of trust.<sup>92</sup> Some research also shows that publicity may negatively affect compliance.<sup>93</sup>

In the end, the question of whether oaths are successful instruments to generate compliance through common knowledge is out in the open. I do still believe that I have offered strong reasons to seriously consider the value of common knowledge in managing ethics in organizations, even if admittedly concrete suggestions for implementing this idea are still to be produced.

### CONCLUSION

Professional oaths have been hailed as giving an “ethical foundation” to business<sup>94</sup> and as embodying “powerful idealism,”<sup>95</sup> but they have also been denounced as inviting “a violation of fiduciary responsibilities” and a “misplaced response.”<sup>96</sup> And, indeed, how likely is it that after you have sworn an oath you will be able to recall the text for the rest of your life? One might even think that oaths *harm* integrity. Well-meaning professionals may see an oath as a condescending expression of distrust in their ability to judge and act ethically and may, therefore, become cynical as a result. Since oaths summarize what is already contained in laws or codes of conduct, they may be seen as redundant or as stating the obvious. Oaths may be found to create an unjustified illusion of trustworthiness. And, perhaps most seriously, they might lead to moral error. As we saw, the MBA Oath deals with many of a business’s stakeholders in great detail, but it does not address the concerns of competitors and suppliers—which are admittedly easily forgotten, but unjustifiably so.<sup>97</sup> Similarly, many oaths contain prescriptions to keep secret what one is entrusted with. However, this is unhelpful, if not straightforwardly confusing, when, for example, revealing secret client data may save lives. However laudable

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92. See generally Matthew Braham & Friedel Bolle, *A Difficulty with Oaths: On Trust, Trustworthiness, and Signalling*, 22 EUR. J.L. & ECON. 219 (2006).

93. See generally Melina M. Bersamin et al., *Promising to Wait: Virginity Pledges and Adolescent Sexual Behavior*, 36 J. ADOLESCENT HEALTH 428 (2005).

94. Barry Morgan, *MBA Oath Provides an Ethical Foundation*, FIN. TIMES (Feb. 6, 2011), <https://www.ft.com/content/5c7b7592-307c-11e0-9de3-00144feabdc0> [<https://perma.cc/P5ZN-RAHH>].

95. Edward J. O’Boyle, *Anderson and Escher’s The MBA Oath: Review Essay*, 101 J. BUS. ETHICS 285, 288 (2011).

96. See Theo Vermaelen, quoted by Roger Thompson, *The MBA Oath Debate*, HARV. BUS. SCH. (Feb. 19, 2010), <https://www.alumni.hbs.edu/stories/Pages/story-bulletin.aspx?num=1862> [<https://perma.cc/6FY4-969V>].

97. See generally Laura J. Spence, Anne-Marie Coles & Lisa Harris, *The Forgotten Stakeholder? Ethics and Social Responsibility in Relation to Competitors*, 106 BUS. & SOC’Y REV. 331, 331–352 (2001).

such pronouncements are, they are probably best not afforded a role in an oath.

A more practical objection is that generating sufficiently widespread awareness of the oath among its intended beneficiaries may be difficult. A small-scale investigation around the Bankers Oath in its early years showed that consumers were very unlikely to stumble upon information about the oath.<sup>98</sup> Before the larger event in The Hague, if you had not seen or read the news, you would not have learned about the oath; at least, logging on to your online banking portal would do nothing in that regard.<sup>99</sup> But despite attention on national television and in national newspapers, even The Hague event failed to reach most Dutch citizens.

A final objection is that proposing a professional oath for businesspeople commits oneself to an unjustified assumption that business (banking, financial advice, management, etc.) is a profession. Some scholars have indeed made suggestions in that direction,<sup>100</sup> but their arguments may not convince everyone. One problem with such a view is that, unlike genuine professions such as medicine, business and management do not rest on a body of specialized technical knowledge and transferable skills that are acquired through years of training, maintained and improved over a career, and further developed based on research carried out primarily by members of the profession themselves. Surely workers in the banking industry (or the chemical industry, for that matter) require specific and highly technical knowledge. But the knowledge is fairly general: my knowledge of financial economics may qualify me for a job in a bank, but also for academic work. If we were to zoom in on management as a profession,<sup>101</sup> we would see that training is often of little importance. Despite what professors may believe, one can become a great manager or businessperson without attending business school. A medical career without medical school, by contrast, is out of the question.

What is the answer? Back to the Bankers Oath: Surely the Dutch realized that pledging integrity cannot be more than the starting point to incorporate ethics into the financial industry as a whole. The oath, though meant to be highly visible, was only a small part of a new and perhaps even more innovative regulation.<sup>102</sup> Bank executives were explicitly

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98. See generally Boudewijn de Bruin, *Professional Oaths in the Financial Services Industry*, in BUSINESS AND CORPORATE INTEGRITY: SUSTAINING ORGANIZATIONAL ETHICS, COMPLIANCE AND TRUST 121–40 (Robert C. Chandler ed., 2014).

99. See *id.*

100. See Rakesh Khurana & Nitin Nohria, *It's Time to Make Management a True Profession*, HARV. BUS. REV., Oct. 2008, at 70–77.

101. *Id.* See generally ANDERSON & ESCHER, *supra* note 13.

102. Discussed by Stephen Scott and Ciaran Walker in this issue. Stephen Scott, *Trust and Technology: A New Paradigm for Culture and Conduct Risk Management*, 43 SEATTLE U. L. REV.

obligated to develop concrete policies to ensure that the principles embodied in the Banking Code and the Bankers Oath were translated into concrete and consistent practice within their organizations. The point is not to deny that its public and open character—its common knowledge generating potential—may make an oath a primary or central instrument to showcase an organization's or industry's commitment to ethics. The Dutch Bankers Oath, for instance, is the public embodiment of the Dutch Banking Code. It is a kind of public summary of the key norms and values that inspire it and the key commitments and duties that it creates.

To summarize, I have argued for the following three epistemic (informational) claims:

1. Knowledge of freedom increases the chances that people satisfy desires and assume moral responsibility for their actions.
2. Knowledge of morality increases the chances that the desires people satisfy conform to morality.
3. Common knowledge of moral commitments increases the chances that people stick to the moral commitments they make.

I have used oaths primarily to illustrate (3), but I believe oaths also address (1) and (2). I conclude by making a number of observations about how we may manage ethics in organizations more generally in ways that incorporate the insights behind all three claims. In other words, I explore how the epistemic insights garnered so far can help us to incorporate integrity into organizations.

A traditional, but still useful, model of ethical decision-making distinguishes four stages.<sup>103</sup> One must first “recognize” the issue at stake and conceptualize it as calling for ethical reflection. Reflection then leads to a “judgment” about what action morality requires in this particular case, which is followed, if at all, by the formation of an “intention” to actually perform the action or actions that one judges to be right. Finally, if one carries out the intention, the result is actual ethical “behavior.” Things may go wrong at any of the four stages. I may fail to recognize because of a lack of sensitivity, awareness, concentration, or empathy. I may recognize but fail to judge because of lack of time, resources, ethical knowledge and expertise, or distraction. I may judge but not form a commitment or intention because I do not want to due to countervailing, selfish reasons. And, I may intend but not act because of weakness of will or forgetfulness.

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765 (2020); Ciaran Walker, *Role of the Board in Improving Culture in Financial Services Firms*, 43 SEATTLE U. L. REV. 721 (2020).

103. See generally JAMES R. REST, *MORAL DEVELOPMENT: ADVANCES IN RESEARCH AND THEORY* (1986).

Ethics management addresses all four levels: mission statements, corporate codes of conduct, ethics officers, compliance teams, ethics committees, ethics hotlines, CSR departments, ethics training, culture change programs, integrity consultants—these instruments are all in the end meant to make people recognize, judge, intend, and act with integrity. The epistemic perspective, I believe, offers a more general way to assess such initiatives and to make suggestions for improving them. The idea is simple: in order to recognize an issue as ethically laden and to form a judgment about what morality requires, you need knowledge about its potential consequences. You need knowledge about the alternatives, because as long as there are no alternatives, morality has little to say. You need knowledge about the consequences of these alternatives to weigh them against each other. In sum, you need knowledge about freedom and knowledge about morality.

Knowledge about morality is often lacking. The way a case is presented to us may considerably distort our thinking about the “moral intensity” of the issue at stake through five factors.<sup>104</sup> We tend to focus on consequences of great *magnitude* (a large accident such as an airplane crash versus a small accident involving employees on the work floor), that have relatively large *probabilities*, which are *concentrated* among a group of people (airplane crash versus many distinct car accidents), over which there is *social consensus* as to what morality prescribes, and which are sufficiently close to us socially, culturally, temporally, and so on (*temporal immediacy* and *proximity*). But if we focus on things that cause us to experience great moral intensity, then we are likely to be misled. Or, in behavioral economics terminology, we will suffer from cognitive bias.<sup>105</sup> Acquiring deeper knowledge is a way to counter such bias and avoid being misled, because if we deepen our knowledge of the alternatives, their consequences, and their morality, we are less likely to be influenced by irrelevant considerations that otherwise may have given an issue unjustifiably high (or low) moral intensity.

Here is one concrete suggestion how we can do so: It is well-known from the literature on corporate social responsibility that some stakeholders are more prominent in corporate decision-making than others.<sup>106</sup> What determines the chances of a stakeholder being recognized, and being included in ethical judgment, is proportional to the extent to

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104. See generally Thomas M. Jones, *Ethical Decision Making by Individuals in Organizations: An Issue-Contingent Model*, 16 ACAD. MGMT. REV. 366 (1991).

105. See generally DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011).

106. See generally Ronald K. Mitchell, Bradley R. Agle & Donna J. Wood, *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, 22 ACAD. MGMT. REV. 853 (1997).

which management sees the stakeholder as possessing *power*, and sees their claims as *legitimate* and sufficiently *urgent*.<sup>107</sup> Needless to say, however, there is often a clear discrepancy between management's perceptions of power, legitimacy, and urgency, and what an impartial moral view would have to say on the matter. It may be laudable that HSBC's Malaysian Forest Dialogue engages with stakeholders such as the World Wildlife Fund.<sup>108</sup> But how sure can we be that the interests of poor individual farmers, say, or small enterprises, are also recognized and included in their ethical judgments, intentions, and actions?

An epistemic perspective helps here by urging decision-makers to perform extensive impartial research in order to ultimately act with integrity. This solution may sound innocuous. It is meant to be very wide-ranging. I am inclined to think that when you have experienced ethical debates in organizations, you must conclude that a great deal of moral decision-making in business suffers from a lack of knowledge about relevant facts. This conclusion is actually true both in businesses and in NGOs (witness the unsavory way in which Greenpeace failed to do justice to dissenting opinions in the Brent Star case).<sup>109</sup> Stakeholder engagement may go some way to expand one's knowledge,<sup>110</sup> but more is clearly needed.

I have elsewhere recommended the use of Deliberative Polling® as an alternative. Although this tool that was designed by political scientists and communication scholars primarily to boost buy-in in political decision-making,<sup>111</sup> it may provide value in business contexts as well.<sup>112</sup> Suppose I need to decide about an issue and want to obtain information. I can send around a questionnaire to gather input, and then perhaps decide the issue in a majoritarian fashion; however, people may fill out questionnaires with different levels of expertise and knowledge of the issue, which may significantly decrease the reliability of the procedure. The idea behind a deliberative poll is that it brings people together to discuss, to engage experts, to learn from each other, to revise their views,

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107. *Id.*

108. Boudewijn de Bruin, *Ethics Management in Banking and Finance*, in *CAPITAL FAILURE: REBUILDING TRUST IN FINANCIAL SERVICES* 261 (Nick Morris & David Vines eds., 2014).

109. See generally John Elkington & Shelly Fennell, *Partners for Sustainability*, 24 *GREENER MGMT. INT'L* 48 (1998).

110. Cathy L. Hartman & Edwin R. Stafford, *Green Alliances: Building New Business with Environmental Groups*, 30 *LONG RANGE PLAN.* 184, 184 (1997).

111. See generally JAMES S. FISHKIN, *DEMOCRACY WHEN THE PEOPLE ARE THINKING: REVITALIZING OUR POLITICS THROUGH PUBLIC DELIBERATION* (2018).

112. See James Fishkin, *The Deliberative Corporation*, *MGMT. INNOVATION EXCH.* (July 18, 2011), <https://www.managementexchange.com/hack/deliberative-corporation> [https://perma.cc/Y32B-D6N9].



and then to vote. The vote will then reflect the “considered judgments” of the participants.

Although decision-makers should exercise care to avoid bias in selecting participants, the precise setting of the poll forces decision-makers to more carefully gather information than the usually quite rigidly structured stakeholder dialogues most businesses organize today. Deliberative polls confront decision-makers with details about the experiences, fears, and concerns of individual stakeholders, thus creating knowledge about freedom and morality. This tactic gives a voice to stakeholders that might otherwise be forgotten. And while a deliberative poll will look very different from the oath-taking ceremony this Article started with—it will not typically take place in a church; it will be less solemn, less formalized, and less ceremonial—it may well have a greater impact.

I hope to have accomplished two things in this Article. First, to use philosophical insights on knowledge and common knowledge to argue that moral decision-making requires knowledge (rather than mere belief) about opportunities, their likely consequences, and their morality, and that ethical culture benefits from common knowledge because as common knowledge encourages people to keep their commitments, it generates normative expectations in the beneficiaries of these commitments. Ultimately, as people have awareness of these normative expectations, they recognize additional reasons to take action.

Second, I hope to have shown in considerable detail how one business ethics instrument accomplishes these aims (particularly the aim of generating common knowledge). I have argued that oaths foster professionalism, moral deliberation, and ethical action exactly because they generate the relevant epistemic conditions. This approach is abstract for sure. But I am convinced that this abstract perspective has the potential to inform and inspire considerable change in the way we manage corporate culture in the twenty-first century.