

Christoph Luetge · Nikil Mukerji *Editors*

Order Ethics: An Ethical Framework for the Social Market Economy

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Introduction

The past few decades have confronted businesspeople, politicians and citizens with many moral issues of great concern. The worldwide financial crisis that followed the collapse of the American subprime mortgage market is merely one prominent example. The complex problems that are given rise to by hunger and poverty, global warming, corruption and international crime are others. These issues raise ethical questions that affect society as a whole and the way in which we organize it. Many people look towards economic and business ethics to find answers. The conception of Order Ethics, to which the present volume is devoted, seeks to organize such answers in a systematic way that is consistent with both economic and philosophical theories.

What is Order Ethics? Order Ethics (“Ordnungsethik” in German) originated as a theory in the German-speaking debate on business ethics during the 1980s and 1990s. Karl Homann, who held the first chair of business ethics in Germany, was its main proponent. Since then, Order Ethics has developed and widened its scope. But since its beginning, the concept of the market’s order framework, or framework of rules, has played a central role.

This will be elaborated in the contributions contained in this volume. As Wittgenstein remarked, the meaning of a term is the way in which it is used, so accordingly, those who are interested in learning more about Order Ethics should look towards the contributions collected here. In a nutshell, however, the Order Ethics approach can be summarized in the following way.

Order Ethics—An Ethical Approach for the Social Market Economy

The main thrust behind Order Ethics can best be described by pointing to a feature that sets Order Ethics apart from many (though certainly not all) other views of economic and business ethics. Many approaches to business ethics tend to blame

ethical problems on unethical individuals. Accordingly, theorists who subscribe to them usually propose to solve these problems through interventionist measures, i.e. *against* the market. In their view, the main task of an ethicist is to identify the moral shortcomings of the market and find individual culprits. Order ethicists have adopted a different strategy. They aimed to devise ethical systems *for* the market. This strategy stresses the importance of the social order where markets work in a way that is analogous to the German concept of Order Politics (or “Ordnungspolitik”, which is the German term). The idea behind Order Politics is not to intervene directly into the market, but to provide a regulatory institutional framework in which markets function properly and for mutual benefit. Similarly, Order Ethics asks how markets can be regulated in order to bring to fruition moral ideals. This feature of the order-ethical approach is worth stressing. As the contributions that are contained in this volume illustrate, it opens up new perspectives on ethical problems that are blocked in many conventional views of economic and business ethics.

An Overview of the Book

The volume falls into two sections: The first section on theoretical foundations addresses fundamental questions of Order Ethics, the economic, social and philosophical background.

A. Theoretical Foundations of Order Ethics

Fundamentals

Christoph Luetge opens up the subsection on fundamentals. In Chapter “[Contractarian Foundations of Order Ethics](#)”, he investigates the philosophical foundations of Order Ethics. Luetge connects Order Ethics to the social contract tradition in philosophy. He discusses the relation to other contract-based approaches as well as the historical and systematic conditions of the Order Ethics approach. In particular, he points to the role of competition as a mechanism that serves ethical purposes.

In Chapter “[The Ordonomic Approach to Order Ethics](#)”, **Ingo Pies** takes a closer look at the economic basis of Order Ethics. Homing in on a contrast between Order Ethics and a traditional ethics, Pies explains that—from an economic perspective—the latter focuses on individual motives of action and needs an ethics of the institutional order that provides a moral analysis of the framework of rules. One aspect that looms large in Pies’ analysis is the problem of incentives. He argues that traditional ethics neglects the incentive properties of the social order and that there

is a need for an Order Ethics, which fills this void. Pies then introduces a narrower version of Order Ethics—the ordonomic approach—before he illustrates its application through a number of case studies.

Karl Homann discusses theory strategies in business ethics in Chapter “[Theory Strategies of Business Ethics](#)”. He diagnoses a general lack of methodological reflection in the discipline as a whole and thus finds it worthwhile to back up and consider the methodology problem in more detail. He distinguishes between two fundamental strategies that one can adopt in business ethics. The first regards ethical and economic thinking as being fundamentally opposed to one another. It insists on the primacy of ethics over economics and calls for a “disruption” of the economic logic. The second, which in Homann’s view ultimately leads to an endorsement of Order Ethics, regards the two realms as reconcilable. After introducing these two views, Homann addresses their respective strengths and weaknesses. He argues that there are advantages and disadvantages on both sides, but ultimately argues for the second strategy because only this second strategy allows us to implement ethical norms in modern societies.

Economic and Social Background

The subsection on the economic and social background of Order Ethics begins with the Chapter “[A Critique of Welfare Economics](#)” by **Martin Leschke**, who presents a critique of welfare economics. Historically, welfare economics started out within a classic utilitarian system of thought, which aimed at evaluating how the allocation of goods and resources through market systems affects the well-being of individuals. Modern welfare economic analysis, however, has dropped certain utilitarian tenets, most importantly the idea of cardinal utility and interpersonal unit-comparability. This has made it less objectionable. Nowadays welfare economists tend to share with most order ethicists the idea that social welfare should be measured and compared in terms of the Pareto criterion. If at least some are made better off and nobody is made worse off, then this constitutes a social improvement. Nevertheless, Leschke criticizes welfare economics. After a short discussion of the Pareto criterion and its problems, Leschke focuses, in particular, on welfare economics’ neglect of regulatory aspects. Welfare economics, Leschke argues, does not take into account how the rules that constitute the market system come into being. This, he believes, constitutes a blind spot worthy of criticism.

In Chapter “[Order Ethics—An Experimental Perspective](#)”, **Hannes Rusch** and **Matthias Uhl** approach Order Ethics from an experimental perspective. They highlight an aspect of Order Ethics that is generally emphasized by its adherents, viz. the question of how moral rules can be implemented. This aspect of Order Ethics, as Rusch and Uhl argue, makes it particularly amenable to empirical considerations. They support their claim by a number of examples that they draw from investigations in experimental economics. As they explain, these studies can answer certain questions related to the implementation of moral norms. Rusch and Uhl

insist that Order Ethics is not at odds with experimental findings. Instead, it benefits from and contributes to them.

Chapter “[Order Ethics and Situationist Psychology](#)” by **Michael von Grundherr** also focuses on how empirical findings affect Order Ethics. Unlike Rusch and Uhl, however, he focuses on a specific issue, by considering research in social psychology that deals with “situations”. Situationism is an empirical psychological theory that seeks to explain human behaviour. As Grundherr points out, we tend to view character traits as the main determinants of behaviour. Whenever someone acts in a morally reprehensible way we ascribe this to their flawed character. Situationism, however, claims that aspects of the situation play a much greater role than individual character traits. Grundherr reviews the empirical findings underpinning situationism (by Milgram, Zimbardo, Isen/Levin and others) and argues that they lend support to Order Ethics.

In Chapter “[Order Ethics, Economics and Game Theory](#)”, **Nikil Mukerji** and **Christoph Schumacher** offer a concise introduction to the methodology of Order Ethics and highlight how it connects aspects of economic theory and, in particular, game theory with traditional ethical considerations. Their discussion is conducted along the lines of five basic propositions, which are used to characterize the methodological approach of Order Ethics. Later on in the volume (Chapter “[Is the Minimum Wage Ethically Justifiable? An Order-Ethical Answer](#)”), they illustrate how their proposed methodology can be applied to a practical ethical question, viz. whether minimum wage laws are morally justifiable.

Chapter “[Biblical Economics and Order Ethics: Constitutional Economic and Institutional Economic Roots of the Old Testament](#)” by **Sigmund Wagner-Tsukamoto** concludes the subsection on the economic and social background of Order Ethics. It analyses order-ethical concepts like the idea of a dilemma structure or the homo-economicus model against the background of Old Testament stories. He concludes that these stories can, in fact, be interpreted as containing many of the ideas that order ethicists routinely work with. And he argues that they add to the credibility of Order Ethics.

Philosophical Background

The subsection on the philosophical background of Order Ethics begins with the Chapter “[Order Ethics and the Problem of Social Glue](#)” by **Christoph Luetge**. Luetge discusses in detail the philosophical background of Order Ethics in relation to prominent philosophical theories, in particular, those of Jürgen Habermas, John Rawls, David Gauthier and others. Luetge’s article is devoted to the central question of whether societies in the globalized world need some kind of social glue to remain stable. He argues that from an Order Ethics perspective mutual benefits suffice.

The two ensuing chapters take on the issue of justice. In Chapter “[Rawls, Order Ethics, and Rawlsian Order Ethics](#)”, **Ludwig Heider** and **Nikil Mukerji** discuss

how Order Ethics relates to justice. They focus on John Rawls's conception of "Justice as Fairness" (JF) and compare its components with relevant aspects of the order-ethical approach. The two theories, Heider and Mukerji argue, are surprisingly compatible in various respects. They also analyse how far order ethicists disagree with Rawls and why. The main source of disagreement, they believe, lies in a claim that is central to the order ethical system, *viz.* the requirement of incentive-compatible implementability. It purports that an ethical norm can be normatively valid only if individuals have a self-interested motive to support it. This idea conflicts with the Rawlsian view because there are cases where it is not clear, from the standpoint of self-interest, why everybody should support its moral demands. If the claim of incentive-compatible implementability is, in fact, correct, then a proponent of JF would have to reform her views. Heider and Mukerji suggest how she could do that while salvaging the heart of her normative system as a "regulative idea". The conception that would result from this reformation may be seen as a new variant of Order Ethics, which the authors propose to call "Rawlsian Order Ethics".

In Chapter "[Boost up and Merge with: Order Ethics in the Light of Recent Developments in Justice Theory](#)", **Michael G. Festl** discusses Order Ethics against the background recent developments in justice theory. He diagnoses that a new paradigm is emerging in justice theory, which he attributes mainly to recent work by Amartya Sen and Alex Honneth. Their views depart from what Festl calls the "Rawlsian Standard Approach", which proposes to deduce and then to apply principles of perfect justice—an approach that has come to be known as "ideal theory". In contrast, Sen, Honneth and Festl himself seek to identify injustices based on norms that are already implemented through social practices. Festl believes that these ideas bear a striking resemblance to certain aspects of order ethicists and suggests how they may be combined with what Festl considers the driving idea behind Order Ethics.

In Chapter "[Deconstructive Ethics: Handling Human Plurality \(Shaped\) by Normative \(Enabling\) Conditions](#)", **Tatjana Schönwälder-Kuntze** references Order Ethics back to the Continental European tradition in philosophy, in particular, to Nietzsche and to French philosophers (such as Foucault and Sartre). Her aim was to ground Order Ethics in a much deeper rooted tradition of philosophy.

In Chapter "[Contrasting the Behavioural Business Ethics Approach and the Institutional Economic Approach to Business Ethics: Insights from the Study of Quaker Employers](#)", which concludes the subsection on the philosophical foundations of Order Ethics, **Sigmund Wagner-Tsukamoto** contrasts the order-ethical view (which he refers to as an "institutional business ethics") with behavioural models of business ethics. His main claim is that Order Ethics, which is informed by economic insights, is more promising. Though the behavioural approach can work in certain institutional environments that incentivize it, it must fail in others. Wagner-Tsukamoto illustrates this using the example of Quaker ethics. According to him, Quaker ethics can be seen as an instance of a behavioural ethics, which largely ignores the economic determinants of human behaviour. Quaker employers found that the implementation of their behavioural ethics approach worked in some

instances, but not in others, which can be explained by an economic inquiry into the underlying incentive structures. This analysis shows that Quaker ethics failed when it was ill-aligned with the economic determinants of human behaviour, which is anticipated by Order Ethics.

B. Problems of Business Ethics from an Order Ethics Perspective

The second section discusses Order Ethics against the background of a number of examples from business ethics, starting with the Chapter “[The Constitution of Responsibility: Toward an Ordonomic Framework for Interpreting \(Corporate Social\) Responsibility in Different Social Settings](#)” by **Markus Beckmann** and **Ingo Pies**. They address the concept of responsibility and argue that the term is usually used in a problematic way. Therefore, they seek to explicate responsibility using the means of constitutional economics and ordonomics (which, as Pies has argued in the third chapter, is a special version of Order Ethics). From a constitutional economic perspective, as Beckmann and Pies explain, responsibility can be divided into “within-game responsibility” at the sub-constitutional level and “context-of-game responsibility” at the constitutional level. The ordonomic perspectives yield further differentiations. Beckmann and Pies suggest the notion of “context-of-game responsibility” to comprise both a “governance responsibility” (related to institutional reform for mutual advantage) and a “discourse responsibility” to explore shared interests and the potential for reforms that benefit all. Finally, Beckmann and Pies stress that responsibilities at the constitutional level do not rest on the shoulders of government actors only, but also on those of corporations and NGOs.

In Chapter “[Companies as Political Actors: A Positioning Between Ordo-Responsibility and Systems Responsibility](#)”, **Ludger Heidbrink** picks up where Beckmann and Pies left off. He addresses companies in their role as political agents and likewise considers them from a responsibility perspective. He asks which consequences are entailed by the increased shift of responsibility from governmental agents to non-governmental agents (i.e. companies) and to which extent it is legitimate for companies to adopt them. Like Beckmann and Pies, Heidbrink thinks that companies have a “within-game responsibility” and a “context-of-game responsibility”. However, he believes that the ordonomic perspective, from which these types of responsibility derive, is insufficient. He believes that companies possess, in addition, a “systems responsibility” for maintaining the conditions of the social system they act in, which the ordonomic perspective is unable to account for. Companies should accept a systems responsibility too, Heidbrink argues, because it is in their long-term interest, not only to secure economic benefits through mutually beneficial rule changes, but also to avoid social crises.

Nikil Mukerji and **Christoph Schumacher** take on the issue of minimum wage legislation in Chapter “[Is the Minimum Wage Ethically Justifiable? An Order-Ethical Answer](#)”. They ask whether the minimum wage is ethically justifiable and

attempt to answer this question from an order-ethical perspective. To this end, Mukerji and Schumacher develop two simple game-theoretical models for different types of labour markets and derive policy implications from an order-ethical viewpoint. Their investigation yields a twofold conclusion. First, order ethicists should prefer a tax-funded wage subsidy over minimum wages if they assume that labour markets are perfectly competitive. Second, Order Ethics suggests that the minimum wage can be ethically justified if employers have monopsony power in the wage setting process. Mukerji and Schumacher conclude, therefore, that Order Ethics neither favours nor disfavours the minimum wage. Rather, it implies conditions under which this form of labour market regulation is justified and, hence, allows empirical knowledge to play a great role in answering ethical questions that arise in the context of the minimum wage debate. This, they argue, illustrates one of Order Ethics' strengths, *viz.* the fact that it tends to de-ideologize the debate about ethical issues.

In Chapter “[Sustainability from an Order Ethics Perspective](#)”, **Markus Beckmann** addresses issues of sustainability and examines them with a view on their societal relevance from an Order Ethics perspective. He argues that there are considerable commonalities and overlaps between the idea of sustainability and the order-ethical framework and that the notion itself can best be understood if one adopts an order-ethical view of it. Furthermore, Beckmann argues that fleshing out the sustainability concept in terms of Order Ethics casts new light on Order Ethics itself and provides valuable insights.

Nikolaus Knoepffler and **Martin O'Malley** address the problem complex of medical ethics in Chapter “[An Ordonomic Perspective in Medical Ethics](#)”, by going through a number of classical approaches to medical ethics—the Hippocratic Oath, the Christian tradition, the 4-principles approach, utilitarian ethics and human rights views. As the authors explain, all of these address themselves to individual moral agents and focus on their individual moral choices. This makes them to some extent inadequate as approaches to medical ethics because they have to rely on moralistic rules and individual blaming. Knoepffler and O'Malley argue that an Order Ethics or ordonomic perspective on medical ethics is more adequate and illustrate this using a number of practical and highly relevant examples (e.g. the allocation of organs and scarce resources in the healthcare sector). These examples bring out the importance of institutions and incentives scheme in the resolution of these ethical problems. Nevertheless, Knoepffler and O'Malley believe that an integrated approach between the ordonomic view and conventional individual-focused moral conceptions is viable as an approach to medical ethics.

Chapter “[Ethics and the Development of Reputation Risk at Goldman Sachs 2008–2010](#)” by **Ford Shanahan** and **Peter Seele** analyses, by the way of a case study, how ethical misdemeanour can affect the reputation of a company and constitute a considerable business risk. The authors focus on Goldman Sachs in the years 2008–2011. They think that ethics is an important factor, which can considerably affect corporate performance. According to them, ethics violations can, furthermore, threaten the survival of a company. In particular, Shanahan and Seele have the issue of trust in mind, which is, of course, of utmost importance in the

financial section. As they explain, allegations according to which Goldman Sachs misled investors and governments in their business dealings hurt them in two ways: First, they led to substantial financial settlements and, second, they damaged the company's reputation in the eye of the public.

In the final Chapter "[Executive Compensation](#)" **Christoph Luetge** addresses a topic that regularly sparks public uproars, *viz.* executive compensation. He examines a number of arguments for high executive compensation and discusses both good and bad ones. He concludes, tentatively, that there is, in general, a justification for high executive compensation as long as certain conditions obtain (e.g. no fraud or breach of fiduciary duties).

The conclusions put forward in this volume will certainly not be unanimously accepted. However, we rejoice at a wealth of viewpoints and welcome new views particularly if they conflict with received wisdom. For it is only if divergent theses collide and get submitted to rigorous scrutiny that we can hope to find truly promising answers to the pressing moral questions that we face today. We hope that the papers we are presenting herewith will be greeted in that spirit.

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Part I
Theoretical Foundations of Order
Ethics—Fundamentals