

**Erasmus Universiteit Rotterdam**

**Rotterdam School of Management**

**Reflectively advocating candor in business  
decision-making.**

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## Abstract

Cando(u)r, inherently good as it is, is a very complex word. Although sometimes wrapped in semi-similar expressions (like transparency) society seems to want more of it. Looking at this demand from the social contract theory perspective, society should indeed be able to check businesses on their license to operate. However in business, consumers are often left in the dark, standing behind closed boardroom doors, unable to see who is deciding on ethical matters. Could a consumer then make a deliberate decision about which business to facilitate? There is no standard for candor in ethical decision-making in business but there is, in the judicial domain for judge decision-making. This standard is twofold, it refers both to the action of the decision-making itself and to the openness about how to arrive to the decision, making considered arguments public. This standard is here used to conceptualize and operationalize a standard for candor in ethical business decision-making, by obtaining a reflective equilibrium, looking at the justification for it, and with that, inspire thinking about ethical behavior in business, while at the same time presenting a possible tool for business decision-makers who would in fact want to make ethical decisions candidly.

*Keywords: Judicial Candor, Candor in Business, Decision-making, Reflective Equilibrium, Social Contract Theory, Moral Reasoning, Business Ethics.*

## 1. Introduction.

To substantiate why advocating candor<sup>1</sup> in business decision-making would be of relevance at all, various examples from within the business domain will be displayed as there indeed is a problem with candor, or better yet, the lack thereof. The word candor in general is a word with a very complex set of possible meanings. In the judicial domain candor plays a major role and although the term 'judicial candor', specifically in judge decision-making, is not a technical legal term there is a standard to be found. The line of valid reasoning and argumentation used to get to this standard makes that it will serve as a model to conceptualize and operationalize a standard for ethical business decision-making. By using the method of reflective equilibrium, which is a desired end point after deliberate consideration of arguments, pro's and con's regarding candor in business decision-making will come forth. The reflective equilibrium has been celebrated and criticized for its usefulness on inquiries on moral and non moral matters. Therefore, to justify the choice for this method, the method itself will be thoroughly discussed by looking at its background all

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<sup>1</sup> Also candour, chiefly English (Oxford Learners Dictionaries, 2019). The slightly shorter variant of the word namely candor will be used, for that exact reason, related definitions are equal.

the way from Aristotle (Aristoteles, trans. 2015, E.N. VI 1142a31-b24) spoke of thoughts and deliberations as a form of research, to a method as a justification of rules of inductive logic by Goodman (1983). John Rawls elaborated on the method using it as a way to construct a theory of (general) justice. To demonstrate the applicability of the method in research, the work of Neelke Doorn (2009) will be included. She presents a variety of conducted research using the reflective equilibrium as a method for practical solutions. Van Thiel and Van Delden (2010) propose an adjusted version of the reflective equilibrium by suggesting bringing empirical data into the equation. The latter will be taken into consideration while going thru the method and process of reflective equilibrium as will be demonstrated.

The main argument presented in favor of candor in business decision-making is accountability which, also in the judicial domain, plays a very dominant roll. The accountability argument derives from the social contract theory, a background theory used to explain both the origin and existence (license to operate) of businesses, law, government and society itself. This theory will be discussed starting from the ideas of the classic philosophers Aristotle and Plato. Then, by taking a leap in time, the seventeenth century revival of the social contract will be discussed, starting off with Hobbes and Locke who wrote their ideas on the matter in the background of their turbulent times. Another leap in time leads to the theory of justice as presented by John Rawls in 1971 (1999), who used the reflective equilibrium as a method of constructing his idea(l) of justice. Donaldson and Dunfee (1999) transport the idea of the social contract into the business domain. Thompson and Hart (2006) go even further as they intent to offer practical insights by introducing a psychological contract approach to the social theory enabling them to zoom in on how social contracts can exist between two individuals. By this they demonstrate how social contracts impact day-to-day interaction (2006: 229). The latter perspective by Thompson and Hart is used in this context, because whether the hypothetical existence of social contracts may be recognized or not, real consequences flow from individual decisions (either hindered by a hypothetical contract or not). In case these decisions and their decision-makers would be visible, accountability comes back around the corner. To set up a standard for candor in decision-making in business a step could be made to rule out hiding behind boardroom doors and spokespersons. If an individual is in a position to make an ethical decision, should this person not at least be to be held accountable for the decision made, on moral grounds? This could only happen though if these decisions would be made

candidly (and public, a distinction that should not be).

The term 'advocating' in the title of this work is not used by accident. It is a judicial term only in this 'case' it is used ambiguously (as could be the case for 'case', in this case). On one hand the term advocating is used to make a subtle connection to the judicial domain as thoughts on candor from this judicial domain will be used as a model to conceptualize and operationalize a standard for candor in business decision-making. However, on the other hand, the term advocating is used in a non legal way, to express the eagerness to argue for something. This is an immediate reminder of the possible difficulty of words, contexts and frame of reference a specific individual might have. The latter, combined with the deep dive that will be made into semantics and historic meaning of concepts and words (like candor and lying) asks at least for a reference to hermeneutics (or the art of interpretation) as mentioned by Van den Bersselaar (2016: 101-2). The hermeneutic domain is focused on understanding human expression and condition in their original sense or meaning. These expressions can be seen both as individual or collective outings in numerous variants like art, political movements and legal codes or contracts (Van den Bersselaar, 2016: 102). When discussing the contract theory this especially is the case when looking at the historic timeframe in which the social contract theory took off in the seventeenth century. The presented so called 'Slade-case' will be put in context and brought in connection with the thoughts and interpretations of contracts in law at the time. This early, very real connection between explicit contracts in law and the hypothetical social contract theory provides a basis for justification of using the standard of candor in the judicial domain to conceptualize and operationalize a standard for candor in ethical decision-making in business.

The word candor in general is a word with a very complex set of possible meanings. The way it is used in the judicial domain in court ruling does not make it any less complex. On the one hand it means decisions should be made candidly (as in 'just' and 'right' as can be), on the other hand it means the arguments that were used leading up to the decision should be made public. The standard and thoughts presented by influential and established scholars from the judicial domain will be discussed and used to conceptualize and operationalize a standard for ethical business decision-making, looking reflectively to background theories.

## **1.1 Why this attempt to look deeper into candor linked to the business domain?**

In a rational universe, organizations and individuals would embrace transparency on both ethical and practical grounds, as the state in which it is easiest to accomplish one's goals. But that is rarely the case. Even as global forces tug us toward greater openness, powerful countervailing forces tend to stymie candor and transparency. Since many of these forces are unconscious and reflect deep-seated human fears and desires, it is worth looking at them more closely. (Bennis, Goleman and O'Toole, 2008: 20)

Candor gets defined by the majority of leading dictionaries as the quality of being open, sincere and honest (see Merriam-Webster's (Learners) Dictionary, 2019, Oxford Learners Dictionaries, 2019 and Cambridge Dictionary, 2019). Openness, sincerity and honesty are all words that regularly pass by in different domains and contexts, for instance in reporting (media), journalistic behavior and political or legal statements. In business the word transparency is often used, referring, in most cases to full disclosure of financial information towards share/stakeholders (O'Toole & Bennis, 2009). The previously mentioned words and related actions like being open, candid or transparent are often used like they are interchangeable, without respecting the origins and the profound differences there are to be found. For a greater understanding these differences, mainly between candor (being candid) and transparency (being transparent) will be discussed later. The use of terms that might at first glance be semi-alike is increasing as the public seems to be more interested in openness and transparency. Even in sports, heavily related to business in all kinds of ways, it is a hot item. Due to innovation it is now possible to make use of very accurate digital equipment that is able to zoom in on a sports-game-situation like a bee on a tiny flower. This possibility made way for the introduction of the Video Assistant Referee (hereafter VAR). However, even when making use of that VAR some decisions are still perceived not to be 'fair' or 'just' by the audience which can cause moral outrage. In various sports, however, there are developments to be found seeking to be more transparent. Not only because of previous match fixing, but also because of an urgent call of the public for more



substantiation. Even when the presence of a VAR would be possible in all matches, still there is the everlasting debate; when should it be used (Burrows, 2019)? Some sports, like tennis, allow players to challenge a referee call. Other sports, like soccer, still depend on the referee that has to make a call between continuity of the game or interference and requesting VAR. Because of a serious signal from the audience and multiple foreign examples, the Dutch soccer association (KNVB) is now setting up a trial to make the VAR replay live and public, even disclosing considerations leading up to the final decisions (KNVB, 2019). Being candid about the deliberations might add to a better understanding of the audience and more consistency in refereeing, because of extended carefulness due to self preservation/regulation of the referee, however, as will be presented later, not all individuals are able to rationally make decisions and not all are able to rationally accept them. The search and longing for a consistency in refereeing will be an ongoing process and will always be at odds with the desire of game continuity.

Although sports are in fact linked to business it is not what most people think about when referring to the business domain. However the topics like transparency and candor are also increasingly being discussed in that business domain (like corporations and organizations). Openness about financial data, corporate social accountability or moral and ethical behavior form topics of public discussion, fed by an increasing focus on social awareness and sustainability. Often society only refers to these words when there is a lack thereof though, for example during times of crisis and scandals. Are all the (business) cards on the table all the time and is the consumer able to see these cards at all? Does the consumer even have the right to see all the cards? Should they want to know everything or do they already ask too many questions? How much information could one ask for? Or is there a minimal amount of information to be demanded? Which information is desirable, and where should one be able to find it?

“Transparency of corporations, markets and other societal subsystems has increasingly become a globally shared ideal within policy circles both nongovernmental and governmental” (Dubbink, 2007: 287). Evidently there are all kinds of regulations regarding transparency in business, mainly in the area of compliance and financial reporting. Businesses are obligated by law to provide a minimal amount of openness however one could ask oneself if those minimal requirements are not too minimal. Would it not be fair and desirable to provide society, the customer and consumer, with more information than

strictly obligated by law, in order to be able to know what kind of company they might be doing business with? Is it not essential to have additional information to be able to make a conscience decision to bring your business to a certain company and therefore facilitate it?

## **1.2 Scientific relevance.**

The field of business ethics is in search of a way to improve ethical behavior and thinking of business managers. The improvement attempt extends to all aspects of business, from label design to the quality of business relationships (Green & Donovan, 2010). Green and Donovan (2010) present three implications regarding the methods to be used for inquiry, teaching and practice of business ethics. Implications linked to the goal of improving the managers' ethical thinking. The first implication these scholars name is that business ethics ". . . is a morally intentioned activity. It starts from the assumption that business firms *should* act ethically and that the people who direct them should likewise express and develop a commitment to ethical conduct" (Green & Donovan 2010: 21). Theology, Liberal arts, philosophy and law domains provide a base for that assumption. The second implication they mention is that almost all ethically based theories acknowledge the fact that there is a need for understanding context and consequences of moral decisions, specifically in the domain of business ethics, where decisions to be made can have gigantic consequences (2010: 22). These potential consequences should up front be well understood. The last implication Green and Donovan portray is the eminent focus on the individual business decision-maker while these individuals act within a system. Business schools groom individual leaders and educational examples are given about individual misconduct while the system itself may have played a facilitating role towards the individual misconduct (Green & Donovan, 2010: 22). Bringing thoughts and methods from the moral philosophy domain into business ethics can cause for practical difficulties, like when two different theories are practically contradictory. Green and Donovan wonder: "Is theory meant to guide decision making" (2010: 24)? Business ethics make use of thoughts on morality and right behavior from different areas and domains to ultimately improve the business manager's ethical thinking. So when ethical decisions are to be made it at least would be progress if the manager knows it is an ethical decision to begin with. When decisions need no substantiation it might be less attractive to deliberately and ethically go back and forth (reflective equilibrium) between all pro's and con's, or to arrive at a

reasonable coherent whole, before taking the decision. If substantiation is however needed, because arguments in decision-making should be made public, this might evoke or stimulate self regulatory behavior of business managers. If you cannot 'sell' your decision to the public, if arguments leading up to the decision do not seem to be rational and reasonable enough to be perceived as valid, one could wonder whether it, in fact, was the best ethical decision. It is not a common understanding that companies publicly share their ethical decisions, including argumentation leading up to them, yet they might have tremendous effects on society. Do the individual members of society not have the right to know? Is it not necessary to be able to question a company's license to operate? There are markets to be found with perverse incentives, almost demanding immoral behavior. "It will take a massive leap in consciousness before we will see a more nurturing, respectful, ethical set of behaviors in the corporate management culture" (Strandell, 1991: 15). In an attempt to contribute to the business ethics' mission of business managers' ethical thinking and behavior a concept from the judicial domain is introduced. In the judicial domain there are some interesting thoughts and ideas to be found on candor regarding decision-making by judges. The topic is abundantly discussed in the judicial domain because of its apparent complexity. Although not all similarities between judge decision-making and business decision-making may stick out to everyone as very obvious, there are general elements to be found in courts, legal systems and businesses that could lead to wonder about the usefulness of the domain specific standard of candor from the judicial domain as a model to conceptualize and operationalize a standard for candor in ethical business decision-making.

## **2. Semantics of candor and lying.**

### **2.1 Why use candor as opposed to other related and used words?**

Although there are plenty of words with semi-similar meaning, the word candor will prevail in this context amongst others due to the fact the term is linked to a theory which is to be found in justice. There has been a well deliberated use of the word candor as opposed to semi-correlating words in the decision-making of judges. It is much discussed and refers to the amount of insight judges are willing or are compelled to give about the arguments taken into consideration leading up to a ruling. While for example transparency and candor are often mixed up and used as synonymous, they in fact are not. The word candor is connected

to and inherent to good and just behavior as later will be discussed, while the origin of transparency (not per se negatively but certainly on a more shallow level) finds itself in a different playing field.

Transparency, the term often used in the business domain might look seemingly closely related to candor, however, there are some profound differences to be found. Transparency has gained more and more interest in the business domain, and it often specifically relates to being open about financial data. Although more and more questions are being raised whether other forms of transparency should not be obligatory as well, for example in The Netherlands. The Dutch government initiated a study to investigate the possible positive effects of obligatory transparency regarding information about corruption, bribery, environmental behavior and consequences (Van Oorschot, Sewell & Van Der Esch, 2018: 8). This type of transparency or openness (also often used in this context although it is not interchangeable per se due to profound differences as well) however, is not the kind of openness the word candor presumes to entail. Candor entails both openness and openheartedness and leaves no room for lying, deceit or concealment. The context of candor that will be discussed is focused on the candidness about how one arrives at a decision, so that no arguments either with positive or negative weight keep hidden and will be knowable to the public (whoever that public might be). A lack of candor offers room for lying, not speaking the truth or at least partial concealment. How this is a problem and why it should be addressed in business will be discussed further. First a throw back to the origin of both candor and transparency will be made to mark the profound difference between the two. Although the use of dictionaries, even etymological ones, as a resource are not always considered to be of relevance the following origins retrieved from Partridge (2006) must be addressed for it will support the line of reasoning later when the opposing matter of candor and lying will be made. The choice for using this specific Partridge volume flows from the following. "The usefulness of this volume as a work of handy reference for the English teacher or scholar can hardly be overestimated" (Pei, 1959: 303).

*Candour*, AE [America English] *candor*, comes, the former through F [French], the latter direct from L. [Latin] *candor*, itself from *candere*. . . to glow white, akin to Gr [Greek] *kandaros*. . . a live coal, and Skt [Sanskrit] *candrás*. . . shining, shining-white. . . candidate: those who sought Roman office wore a white toga.(Partridge, 2006: 74)

If then a step further would be made, one could see that the term white, as meant in the etymological dictionary is originally seen as good, pure and other words related to cleanliness, goodness and just behavior as will be visible in the later displayed thesaurus expressions. Increasingly interesting is the link that has been made with *candidate*: “those who sought Roman office wore a white toga” (Partridge, 2006: 74). It implies for the *candidate* for Roman office to be inherently candid and this pleads for the choice of the term *candor* in judge decision-making.

Then looking at the origin of transparency, “*Transparence, transparency, transparent* . . . from MF-F [Medieval French – French], derives from ML [Medieval Latin] *transparent* . . . *transparēre*, to show or appear (L [Latin] *parēre*) though (*trans, across, beyond*) . . .” Partridge, 2006: 734). Transparency reflects a type of clear vision and not so much a right behavior. It might be obvious there is in fact a difference between the origins of *candor* and transparency, but a sidestep to involve open(ness) needs to be made as well. For instance it is possible to be apparently transparent but not open at all. The metaphor used in the online article by De Winter “*Is transparant hetzelfde als open?*” (2017) is very graphic. It presents the difference between a transparent window and an open window. Whereas you can see through a transparent window, you will still not be able to see what is hidden behind the couch in the room or speak with the people inside the room. In case the window would in fact be open, you could possibly step into the room, look around (even behind the couch) and talk to the people inside. Could you perhaps be completely open about your immoral behavior? If you are just talking about openness this might be the case, but are you really being candid if your behavior is immoral?

## 2.2 Candor as a word with meaning.

To understand the eminent difficulty of the main character 'candor', a deep dive into semantics needs to be made. As goes for many words, the English vocabulary provides enough options to find words with semi-similar meaning, as is the case with the word candor (and candid, the act of being candor). To demonstrate the difficulty and potential traps of the word, Rogets' thesaurus<sup>2</sup> (1880), the most authoritative work known in the English language (both in America and United Kingdom) will be used (Visual Thesaurus, 2008). Thesauruses intent to provide a collection of words surrounding the ideas they express. In case of the work of Roget, the scholar links idea-words with text-words, these ideas are classified as a synonym and antonym collection, for instance, black stands next to white (Roget, 1911: 152). The words find themselves divided into different classes, divisions and sections. In order to see the relevance for deeper investigation of the word candor and its counterparty lying later, these divisions will be enclosed. The thesaurus is specifically used in this context to reveal the opposing stands between candor and lying and the inherent explicit, relatively positive and negative connotations connecting them. What could be abstracted from the classification of the thesaurus is that both candor and lying only exist next to each other. Words connected to candor have without exception all positive connotations while all words connected to lying have, without exception all negative connotations. The word candor can be, depending on the context be interchangeable, but is possibly not limited to the following:

- **Thesaurus**

- o **Class IV words relating to the intellectual faculties**

- **Section II Modes of communications**

- . . . Veracity. . . truthfulness, frankness. . . truth, sincerity, candor, honesty, fidelity. . . unvarnished tale; light of truth. . . not lie. . . not deceive. . . sincere, candid, frank, open, straightforward, unreserved; open hearted, true hearted, simplehearted; honest, trustworthy. . . outspoken, ingenuous. . . (artless). . . undisguised. . . in plain words. . . in truth, with truth, of a truth, in good truth. . . honor bright. . . with no nonsense, in sooth, sooth to say, bona fide. . . without equivocation; cartes sur table, from the bottom of one's heart. (Roget, 1911: 209)

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<sup>2</sup> Thesaurus is originating from the Greek word *thèsauros*, meaning treasure chamber (Vickery, 1960: 181).

- **Thesaurus**

○ **Class V words relating to the voluntary powers**

▪ **Division (1) individual Volition**

• **Section III. Voluntary Action**

○ **2. Complex voluntary action**

. . . Artlessness. . . nature, simplicity; innocence . . . bonhomie, naïveté, abandon, candor, sincerity; singleness of purpose, singleness of heart; honesty . . . plain speaking; epanchement. . . be artless. . . wear one's heart upon his sleeves for daws to peck at; think aloud; speak out, speak one's mind; be free with one, call a spade a spade. (Roget, 1911: 288)

- **Thesaurus**

○ **Class IV words relating to the sentiment and moral powers**

▪ **Section IV moral affections**

• **Moral conditions**

. . . integrity, rectitude; uprightness . . . honesty, faith; honor . . . good faith, bona fides; purity, clean hands . . . fairness . . . fair play, justice, equity, impartiality, principle; grace . . . constancy; faithfulness . . . fidelity, loyalty; incorruption, trustworthiness . . . truth, candor, singleness of heart; veracity . . . tender conscience . . . (sense of duty) . . . delicacy, nicety. . . point of honor; punctuality. dignity . . . (repute) . . . respectableness . . . be honorable . . . deal honorably, deal squarely, deal impartially, deal fairly; speak the truth . . . do one's duty . . . (virtue) . . . honest as daylight; veracious . . . constant . . . incorruptible. straightforward . . . (ingenuous) . . . frank, candid, openhearted. conscientious, rightminded; highprincipled; scrupulous; strict; nice, punctilious, correct, punctual; respectable, reputable; gentlemanlike. inviolable, inviolate; unviolated, unbroken, unbetrayed; unbought, unbribed. innocent . . . pure, stainless; unstained, unperjured . . . uncorrupted . . . with clean hands. (Roget, 1911: 413)

See appendix I for the complete overview of Rogets' texts regarding to candor. Not one of these words captures all possible meaning of the word candor. To put it differently, these words do not all carry the exact same load or connotation. Mind especially the words from the moral conditions section as typically morally right behavior many of which also are to be presumed to be inherent to the office of judge. The previous examples illustrate the difficulty of words, meaning and contexts. The word candor specifically appears to be very

rich and multi interpretable. A candid statement does not have to be perceived as being fair per se. It does however not allow the statement to be false. If a company (individual decision-maker within a company) makes the possibly morally-questionable decision to have their product processed in a country with lower wages and lower regard for maximum working hours this does not mean they cannot be candid about the decision, however, was the decision itself made candidly? This nuance will make its re-entrée when arriving at the candor in judicial decision-making. Either being candid (transparent or open, because this only entails the outcome of a decision-making process) about the outcome, or being candid about the decision-making process itself (candor as intended by judicial decision-making) both will add to the possibility for the consumer to make a more conscious and deliberate decision. A lack of candor offers room for concealment or hiding which offers room for unwanted behavior and lack of moral accountability. Although lying is not the concept of focus in this treatise, the importance of a lack of candor must be addressed because when there is a lack of candor there is room for opposite, immoral behavior, like lying (see below why lying as opposed to other related words).

### **2.3 Lying as a word with meaning.**

When talking about candor and ethics, one could imagine to soon end up talking about the amount of desirability of candor in multiple contexts. It links heavily to thoughts on morality and general human interaction. It is not easily imaginable that most people would prefer a society without any form of candor. Although there are numerous words that could have been named as opposites of candor or being candid, the term lying will be used here on the one hand because it has been called candors' counterparty in the judicial domain (Shapiro, 1987: 732). On the other hand, lying is mostly seen as bad (as opposed to candor which is almost always seen as good) and functions as an umbrella term for related unwanted and morally wrong behavior. It has been a topic of discussion for thousands of years, as will be mentioned later. Diving into the semantics of lying could easily lead to an entire forest of books, explaining minor differences between types of lies and their possible harmfulness. For example, one of the most discussed terms; the 'white lie' (Bok, 1979), which refers to a seemingly trivial lie, usually told to avoid hurting someone else's feelings. Mind the use of white, reminding the reference to white as in good to be found in the origin of candor, therefore presuming the lie to be not as bad as a normal, not as 'white' lie. In fact the term



‘white lie’, taking the background and meaning of both words in consideration could possibly be seen as inherently contradictory. The lying mentioned as the opposite of candor or being candid though refers to intentional misleading or concealing and intentionally not telling the truth or avoiding full disclosure. Wherever candor is found within the Roget (1911) thesaurus, the evil counterparty (or words connected to it) lying stands next to it, whether it is in the area of; modes of communication, complex voluntary actions or moral conditions. So, candor in the thesaurus does not exist without its counterparty nearby. It can be, depending on the context be interchangeable, but possibly not limited to the following:

- **Thesaurus**

○ **Class IV words relating to the intellectual faculties**

▪ **Section II Modes of communications**

. . . Falsehood . . . falseness; falsity, falsification; deception . . . untruth . . . guile; lying . . . untruth . . . guile; lying . . . misrepresentation; mendacity, perjury . . . forgery, invention, fabrication; subreption; perversion of truth, suppression of truth . . . perversion, distortion, false coloring; exaggeration . . . prevarication, equivocation, shuffling, fencing, evasion, fraud . . . (lie) . . . mystification . . . (concealment) . . . simulation . . . (imitation) . . . decit . . . pretending, malingering . . . hollowness; mere show, mere outside; duplicity, double dealing, insincerity, hypocrisy . . . organized hypocrisy; crocodile tears . . . charlatanism. (Roget, 1911: 209)

- **Thesaurus**

○ **Class V words relating to the voluntary powers**

▪ **Division (1) individual Volition**

• **Section III. Voluntary Action**

○ **2. Complex voluntary action**

. . . Cunning; craft . . . artificiality; maneuvering; temporization; chicanery; sharp practice, knavery, jugglery; concealment . . . guile, doubling, duplicity . . . (falsehood) . . . foul play . . . backstairs influence art . . . artifice; device, machination; plot . . . (plan) . . . maneuver, stratagem, dodge, artful dodge, wile; trick, trickery deception . . . ruse . . . evasion; white lie (untruth) . . . juggle . . . tricks

of the trade . . . contrive . . . maneuver; intrigue . . . double, stoop to conquer . . . snatch a verdict . . . undermine . . . play tricks with . . . crafty . . . subtle, feline . . . designing, contriving; intriguing . . . strategic . . . timeserving; artificial; trick . . . insidious, stealthy; underhand . . . deceitful . . . crooked. (Roget, 1911: 288)

- **Thesaurus**

o **Class IV words relating to the sentiment and moral powers**

▪ **Section IV moral affections**

• **Moral conditions**

. . . Improbability . . . dishonesty . . . deviation from rectitude; disgrace . . . fraud . . . (deception) lying . . . bad faith . . . mala fides . . . infidelity; faithlessness . . . betrayal . . . breach of trust . . . disloyalty, treason, high treason . . . shabbiness . . . baseness . . . abjection, debasement, turpitude, moral turpitude . . . treachery, double dealing; unfairness . . . knavery, roguery, rascality, foul play; jobbery; graft; venality, nepotism; corruption . . . fishy transaction . . . be dishonest . . . play false . . . betray . . . (lie) . . . disgrace oneself . . . dishonor oneself . . . demean oneself; derogate . . . sneak, . . . unscrupulous; fraudulent . . . disgraceful . . . (disreputable) . . . falsehearted . . . unfair . . . double-faced . . . dark; slippery; treacherous . . . foul, base, vile, ignominious . . . abject, mean, shabby, little, paltry, dirty, scurvy, scabby, sneaking, groveling, scrubby, rascally . . . beneath one . . . baseminded . . . undignified . . . degrading . . . ungentlemanly . . . unknightly, unchivalric . . . inglorious . . . corrupt, venal; debased . . . false, unfaithful, disloyal; untrustworthy; trustless . . . lost to shame. (Roget, 1911: 413)

See appendix II for the complete overview of Roget's texts regarding lying. Especially mind the moral conditions section, unlike in the case with words related to candor, these are all words linked to behavior and moral conditions presumably not to be found in the office of judge. On the contrary, these are moral conditions often related to offences ending up in court. All the words linked to lying, tend to be negative and have to deal with a serious negative connotation on a moral level. This implies that practices related to it are equally seen as bad and connected to unpleasant and undesired behavior. All the words related to lying are, by definition, at least excluding the presence of candor or the 'good' behavior linked to it. Lying is not the concept of focus in this treatise, however, the importance of a lack of candor must be addressed. When there is no candor to be found, it offers room for

opposite behavior and conduct. The presence of either lying or candid behavior cannot be seen apart as the two mutually seem to exclude each other. How that is a problem will be discussed.

## **2.4 Thoughts on lying from a philosophical perspective.**

In the area of philosophy a lot has been written about being candid and lying. One position that is generally perceived as extreme and nonrealistic is the Kantian view that lying is always strictly forbidden (Rousselière, 2018: 215). Kant makes a distinction between lies in ethical and juristic sense and in the sense of right. All have in common that lying is “. . . making an untruthful statement with the intention that that statement be believed to be true” (Martin, 2009: 203). Kant hereby does require that a statement needs to be made, therefore deception by omission and or concealment are not considered a lie (Martin, 2009: 204). When looking at the counter party candor, omission and or concealment are seen as not being fully candid. In other words, these are sliding somewhere along the scale between lying and being absolute candid, while technically one would just not be candid. Aristotle in the fourth century BC also stated that all lies are by definition base (*phaulon*) and bad (*kakon*) although he finds that some lies are to be found specifically shameful while others are not (Aristoteles, 2015, E.N.). The reason this classic philosopher is mentioned here is the following “. . . Aristotle’s claim is similar to the contemporary view which maintains that lies have an initial negative weight because in the absence of special considerations, truth is preferable to lies” (Zembaty, 1993: 24). Most philosophers, although always questioning about what the ‘truth’ really is, do insist on the truth and prevail it over lies and deceit (Martin, 2009: 15). “. . . dishonesty has always been perceived in our culture, and in all cultures but the most bizarre, as a central human vice. . . . Dishonesty is a form of injustice, a vice” (Coady, 1992: 7-12). One could ask what is right and what is not and therefore wrong?

## **2.5 Lying in business.**

Like the forest of books that could be written about the word lie and the act of lying, the same goes for the list of companies (people within companies) that have been caught doing it. A couple of vivid examples are Enron, WorldCom, Parmalat, Tyco International,

HealthSouth (Hof, 2013) and the more recent debacle of Theranos (Loannidis, 2016). The latter was a fraudulent company with a lying CEO. The both founder and CEO was lying to investors and the rest of the medical world about a new life changing blood diagnosing aid. In this specific case harm was not only done financially but also non materialistic. High frequent visitors of blood diagnose centers and medics really got their hopes up for the new and promising device, which when turned down, let to moral outrage.

All of the earlier mentioned companies have in common that they were billion dollar businesses listed on a major stock exchange greatly based on lies. These lies have, at least, cost serious financial trouble to a great deal of share/stakeholders. Specific individuals within these companies were, or are yet to be held accountable for providing false information on which business and investment decisions were made, but only on legal grounds. The cause of these scandals may not solely be found in personal greed or poor moral standards though. There is a system that presents possibilities and even presumably encourages certain businesses results regardless the means leading up to them (Eekhoorn & Graafland, 2011: 360). But does the system itself not form part of a social contract like businesses do? And do businesses as previously discussed not still exist only by the presence and merit of individuals? Strandell (1991) even states that one could speak of social contracts between the 'big' listed companies and 'the rest'; "There is an implicit social contract that management of our publicly held corporations have with shareholders, customers and employees . . ." (Strandell, 1991: 15).

Being candid and lying seem to be total opposites of each other. Both are plagued however with subtle and not so subtle nuances, like a 'white lie' versus a lie that could ruin someone's life and being candid about entering a new business relationship with a new partner, excluding the fact this new partner does business in countries with little regard for human rights. Is using the word candor still permitted in the latter case?

### **3. A lack of candor.**

#### **3.1 The problem with candor in decision-making processes in business.**

A lack of candor in business can cause serious financial consequences, both positive and negative. The focus here will be mainly towards the social and ethical implications that

candor and the lack thereof may have. In day-to-day situations customers are faced with decision-making about spending their money. Where am I going to get my groceries today? Shall I buy stocks? And if I do which ones shall I buy? Where shall I book my next holiday and flight? The decisions that are being made leading up to this individual buying, trading or doing business at all are based on a series of factors. In case of determining where to get your groceries for example, some of those factors might be money, environmental awareness or the desire to contribute to fair trade. Some people will decide to let the cheapest product enter their cart, because they have mouths to feed and a humble budget. Others will choose that same specific cheap product not because it is the cheapest, but simply because they like the taste of it, regardless the price. Some of the factors seem pretty clear and straightforward. As a consumer you know the price, and in case we keep talking about food you probably will know, or can figure out the taste of the product and the ingredients it contains. Only it will be a lot harder, if not impossible to know for example, in a hypothetical-chocolate-bar-situation, what arguments were discussed in the boardroom of the producer, to eventually result in child labor and even child dead because of the toxic fumes in the factory, producing low priced wrappers that you as a consumer will rip off your purchased chocolate bar without thinking twice about it. It is really difficult to find out what arguments would be used in taking ethical, moral decisions in businesses. Maybe it was a very conscious however not ethical decision to keep the wrapper costs low, not taking into consideration the possible consequences for factory employees. Maybe nobody even considered this was an ethical decision at all to begin with. If the question, where can we produce at the lowest costs, is not connected to the question, do we know and care what kind of employer we want to be in regards to employee wellbeing, should the company then even be allowed to conduct business? The point here is that consumers do not always know all there is to know about the product they are purchasing. When individuals in companies choose to make an unethical decision the company might lose their right to exist (license to operate flowing from the social contract theory, will be discussed later on). However, if there is no need to be candid about such decisions, the real arguments will be kept hidden. This is how the customer only sees the delicious chocolate bar to get their quick sugar fix while they actually contribute and facilitate the company to produce a literally killing snack. When the information is not available the consumer is left in the dark and cannot make a conscious decision even if they wanted to. This hypothetical situation may seem pretty

exaggerated however there are tons of non-fictional examples to be found. “More wide-ranging ethical issues can add significantly to the complexity of consumer decisions” (Shaw & Shui, 2010: 1486). Shaw and Shui note that consumers tend to purchase goods and services from businesses that are perceived by society as socially responsible and even tend to boycott businesses that are perceived to be socially irresponsible (2010: 1486). That might be so, but this is about perceived ideas about business conduct. When there is no way of knowing how ethical business decisions have been made, how can the consumer really make a decision to be in business with a certain company? For example, take a foundation that collects money for medical research. Are all of the foundations open about the percentage of money spent on the actual research? Do they substantiate why they made a decision to only use a minimal percentage? If they would be able to show with rational and valid arguments as to why they made this decision, then the consumer could take a conscience decision too and either grant them their money or not.

Misconduct and unethical decision-making often stay hidden for consumers but may in fact even lead to violations of human rights. The reasons behind that type of conduct can vary and it might not even have been an intentional violation (Bernaz, 2017). Bernaz (2017) stresses upon an increased awareness of policy makers and business leaders because laws do not always prevent this kind of violations. Being candid about arguments used in ethical decision-making might at least contribute to more insight and offer a more fair opportunity to make conscience consumer decisions.

### **3.2 The problem with candor in decision-making processes in the judicial domain.**

Court rulings can, if the judge sees fit to do so, be explained and substantiated, however not all judges will always abundantly provide insights on their internal decision-making processes. Besides the fact judges are compelled to protect and preserve the dignity, impartiality and independence of their office, and therefore, in order to maintain judicial credibility sometimes elaborate on their decisions, there is no obligatory candor for judges, as a technical legal term<sup>3</sup> (Fallon, 2017: 2272). Not all semi-alike cases will be judged equally, in the sense that, although two different rulings and arguments might be perfectly

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<sup>3</sup> Dealing with the existing tension between judicial candor and other competing values is a struggle both in The United States and the Council of Europe’s judiciaries (Bader – Grinsburg, 1990: 134).

valid and within legal frameworks, the outcome is always based on internal processes and considerations by an individual, the judge. An example of why this could be problematic comes from a cry for more consistency in compensation amounts for victims by the Dutch victim support agency (Slachtofferhulp, 2019). There are some general guidelines to be found regarding the allocation of compensation but there are, according to the agency in-explainable differences in amounts. They have asked for more substantiation in case compensation is allocated to attribute to more consistency in rulings between different cases and judges (Slachtofferhulp, 2019).

Holding the office (of being a judge) entails that one should treat all equal cases alike, however not all judges are in fact alike, and even though the office should be independent one cannot rule out the fact the office is held by men and decision-making is burdened with all that embodies human nature. Having to provide more insight in the decision-making process and considered arguments (obligatory candor) could possibly lead to increased deliberate rational thinking. Something that obviously always should be expected of judges to begin with, but again, even judges cannot rule out their own state of being human.

### **3.3 Business and judicial decision-making entangled for the lack of candor in both areas.**

A vivid and rather sad example of a combination of both judicial approaches and business malpractices is to be found in the Dutch monitoring report on human traffic offenders 2013-2017 (Bolhaar, Nationaal Rapporteur, 2018). What stands out in the report is the mentioning of the lack of sufficient argumentation by judges. A lack of enough argumentation for others to be able to see a clear line in imposed punishments. There is absolutely no clarity about which specific arguments have led to a relatively higher or lower punishment in semi-alike cases. At the same time the report shows that a lot of malpractices might stay hidden because of limited possibilities to 'catch' the offenders. The report concludes there is a need for more context bound tools. In other words, judges, the judicial domain and the general public could possibly benefit from a 'decision-tree-like' tool to ease more consistent rulings. The report advises to investigate the factors of influence for judges in their considerations leading up to a ruling (Bolhaar, Nationaal Rapporteur, 2018: 190-

191). In the report an explicit case is displayed. A Dutch restaurant owner hires a Chinese cook and sees the man is transported from China to The Netherlands. The owner needed to pay a rather large deposit to the Chinese intermediary agency. The 'employee' was depending on the restaurant owner for shelter and additional necessities. The man never really gets paid though. The bank account in his name was requested by the restaurant owner and is managed by this same owner, therefore the 'employee' does not have access to his 'earned' money and is deprived of his liberty (Bolhaar, Nationaal Rapporteur, 2018: 47-48). The restaurant had to close its doors after a period of five months and the Chinese cook disappeared for a couple of days. When he came back, the man was assaulted and his passport was taken from him (by the former owner of the restaurant). The 'victim' asked the former restaurant owner to find a new job for him, the former employer did so and kept taking money from the 'victims' account during a couple of months. After a certain period of time, the former owner passed the bank account card to the new 'employer'. The case came to court and although it might seem like a straightforward malpractice situation and elements of human trafficking were indeed recognized, the Amsterdam court ruled out this was a case of exploitation and human trafficking. The former employer was not convicted for either one of them<sup>4</sup>. The case went higher up to the Supreme Court "Hoge Raad" and they agreed with the ruling of the Amsterdam Court. In a semi-similar case however the Amsterdam Court did convict the 'employer' for exploitation and human trafficking. The monitoring report concludes that court rulings, at least in this context, are not consistent enough and more insights need to be gained (Bolhaar, Nationaal Rapporteur, 2018: 190-191).

To connect the previous example of the Chinese restaurant to the candor-in-business-situation, the following question arises: When you enter a Chinese restaurant and order your favorite take-away-meal, would you still do that with the same eagerness in case you would know the kitchen is being occupied by 'employees' held hostage by the owner, by taking away the 'employees' passports and deny them access to their bank accounts? At first glance this example may seem in violation of the law, however individual interpretation may lead to various outcomes in court ruling, if in fact a law was violated. In any case,

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<sup>4</sup> The former restaurant owner was however convicted for theft, the defendant got 180 hours of community service and was obligated to repay the money that was taken from the former employee (Bolhaar, Nationaal Rapporteur, 2018: 48).



regardless of the several potentially law violating acts, business was driven a certain way. People may have different opinions on the topic and it is imaginable that some will consider this a form of exploiting and probably would not want to, even in the slightest way, be part of facilitating the possibility of conducting this practice by keeping the business running. However the average Chinese-food-lover will not likely conduct a thorough investigation to see if the restaurant where his/her money is trade for food, treats their employees decently (no matter what his/her personal beliefs are about what 'decently' means in this context). Even when there is not even a question of potential violation of any kind of law, an individual may still have second thoughts on wanting to 'support' operations which they would not condone on moral grounds if they knew about them beforehand.

Evidently not all hidden business decisions are doomy and gloomy per se. Many of them will be kept in the dark, not because of decisions that cannot bear the light of day, but because of the ever eager competition out there. Either way, a lot of business decisions stay hidden behind closed doors, which basically provides a safety net for the actual decision-makers. Looking at the judicial domain, judges may 'hide' behind their office because they are not compelled to always be candid and abundantly argue their rulings. Concealed decision-making can take place in business and in court and in both domains you could argue if that is in fact a desirable situation. For obvious reasons the argumentation of judges in court ruling is much discussed, namely no one would want a dishonest or ill-considering judge, not even the potential bad guys (and girls).

### **3.4 Why connect judicial candor to candor in business?**

Both the judicial and the business domain have a tremendous effect on everyday life and society. Also both are contractual domains by nature. It is hard, if not impossible, to even think of society without a form of either one of them. Looking at society from a social contract theory perspective, judicial and business systems only exist because of the result of a trade off, because of 'the greater good' of society. So, if a case can be made for judges to be more open or candid about their internal argumentation could one be made for ethical business-decisions as well baring in mind the act of being candid is inherently connected and identifiable with general good and just behavior? Also, in the academic world the mutual influence between business ethics and law is nothing new regarding educational theory, background and methods. For instance, the educational 'case'-method was initially

designed for legal education. This method makes for abstract theory to be understood in a real situation. It was adapted and is still used in business education to translate abstract theory into a real business situation (Green & Donovan, 2010).

#### **4. Research purpose.**

Given the previous mentioned examples one could state there is a need for more candor in business, it would make sense to set up a standard for candor in business. The legal or judicial system provides such a profound presence in society, like businesses do, it makes one wonder. Could thoughts on the candor matter from the judicial domain be used as a model for a standard in the business domain? The research purpose here is to:

**Conceptualize and operationalize a standard for candor in ethical business decision-making modeled on the standard for judicial candor in judge decision-making.**

In order to be able to do that the reflective equilibrium method (and process) will be used to look into the matter of judicial candor and the arguments as to why to use the thoughts from the judicial domain as a model. By looking at the existing (hidden) obligatory candor and the heavily discussed possible extension of it, a concept for a standard in ethical business decision-making will be proposed modeled on the standard in the judicial domain. As judges have an obligation to protect and defend their office, decision-makers in businesses have an obligation to maintain their license to operate, in order to be able to do so there is a need for a standard of candor in business decision-making.

When society allows and facilitates businesses to exist, shouldn't candor in ethical business decision-making be obligatory? And if so, who is going to do the checks and balances in order to not let a form of obligatory candor be a mere empty desire? Answers to these questions might call for profound investigation and justification, and in case the answer to these questions would be positively met, it would presumably not directly enthusiastically be shared by the average business owner or decision-maker due to cost-benefit-analysis-like-situations. The goal here, therefore, will not be to handover a permanent solution for ethical decision-making and a system to control the matter. On the one hand, it is meant to inspire thinking beyond domain specific borders to broaden the pool of information available. Not so much to understand ethics within businesses (and people in business) but

to improve them, the way business ethics as a field intends to do according to Green and Donovan (2010: 21). And on the other hand the goal is to narrow thoughts down to one of the most basic elements of human interaction and moral (un)just behavior, like lying and being candid by conceptualizing and operationalizing a standard based on the standard in judicial decision-making by judges.

The fundamental concepts of lying and being candid have occupied not only the minds of great thinkers of the past and present. Not a single person in the world is able to stay unaffected from the consequences of either one, whether in a pro-active (lying or be candid) or a passive way (be lied to, or not spoken the whole truth to or to be approached candidly). Most people would not blink twice if a business owner, decision-maker would lie (depending on the gravity), only if a judge would be caught on a lie during a ruling this might cause reason to blink and blink hard. However the consequences might be equally severe. By taking thoughts on candor from the judicial domain and present the arguments in favor of using them in the business domain, the goal is to feed the discussion on candor in business decision-making while presenting a type of reasoning that might lead to a reflective equilibrium, an understandable, reasonable and justifiable endpoint in deliberation, that will not only serve as a way of presenting this treatise on candor, it also presents a possible tool for those who would like to indeed be candid in their business decision-making. To ask for more candor in the sense of more substantiation, presenting valid arguments in ethical decision-making should lead to a greater fairness toward customers and should lead to the possibility of being able to make more conscience deliberations as a customer.

. . . as society has increasingly been described as a consumer culture, the notions of consumers as voters, consumers as activists and dissenters, and consumers as voluntary simplifiers and downshifter have appeared. It is this shift in consumer attitudes with regard to their voluntarily simplified levels of consumption that have an important impact on marketing practices.” (Shaw, Newholm, 2002: 168)

This statement shows the importance of at least creating more awareness regarding ethics in general and in business specifically.

## **5. Theoretical framework.**

For the entanglement of the used method, theories and the corresponding concepts in this treatise the theory section is somewhat amplified. The method of reflective equilibrium forms part of a larger theory of justice that, on its one, also forms part of a larger background theory, the social contract theory. Although the method could be seen and considered apart from the theory it makes for a more coherent whole to combine them in the theory section (previous deliberations and thoughts presented do also already form part of the reflective part of the reflective equilibrium). Within the field of business ethics there is a clear distinction to be found between two research approaches, namely the empirical and the normative approach (Donaldson & Dunfee, 1999: 9). Trevino and Weaver point out that the differences between these approaches are to be found in the underlying scholarly engagement (1994: 114-118). The normative ethicists normally use a language “. . . that involves critical rational analysis of arguments . . . [whereas] empirical researchers use a language of description and empirical methods to measure, explain, and predict behavior in organizations” (Green & Donovan, 2010). Yet the tension that comes with it is also characterizing the field of business ethics (Green & Donovan, 2010). The reflective equilibrium as will be described is an example of a normative approach, it will however be complemented with secondary empirical data.

### **5.1 Research method.**

Conceptualizing a standard for ethical business decision-making demands a clear overview of thoughts (Verschuren & Doorewaard, 2015: 249). This will be done by conscious deliberations on the research method itself and the social contract (background) theory which binds the judicial and the business domain together. The treatise itself will be a display of an iterative process as meant by Easterby-Smith, Thorpe and Jackson (2015: 6), to protect the line of reasoning and be able to operationalize it for ethical business decision-making. In the areas of social sciences and psychology, domains that will be used here, research design often gets hindered by semi-immeasurable phenomena. Concepts might be unclear at first glance only by operationalizing them they become graspable, better understandable and presumably measurable.

### **5.1.1 Research description.**

This rather theoretical treatise will mainly make use of secondary literature and supportive secondary results of empirical data. The research at hand is most definitely off the beaten business-and-management-research track by not conducting explicit research in the form of processed interviews, gathered qualitative data or cases studies. But what is traditional and unique to business administration (Veerman & Essers, 1988: 14)? Scholars Veerman and Essers state that looking at theory behind theory contributes to an open attitude towards other scientific disciplines, which can stimulate open-mindedness and could lead to new or non-traditional problem definitions and new or at least non-traditional methods (1988, 14-16). Theory and literature from the fields of philosophy, business ethics and justice will be compared, analyzed and complemented with existing examples and empirical data from secondary conducted research. The method to be used, in order to do so, is the reflective equilibrium, going back and forth between considered judgments to ultimately form a coherent whole (Daniels, 1996). This method requires deliberate revising of thoughts, beliefs and rules like one could require a judge to be doing with arguments leading up to a ruling, business decision-makers before deciding on an ethical matter and consumers deciding on where to bring their business or not.

The title to this work might already expose some form of bias from the writer. This might be so on a couple of levels. First of all an internal need and longing for truth and fairness and a sense of justice are, although not always convenient, ever internally present. Since the discussed subject 'candor in business' and the connection to justice (in this case in the sense of fairness not in law) is to be made, there might be a case of confirmation bias. As will be discussed, the method of reflective equilibrium itself faced some critiques of being subjective by nature, this critique however does not per se rule out the credibility and usability, as a way to form coherent thoughts containing valid and reasonable arguments.

### **5.2 Reflective Equilibrium.**

As previously mentioned the method of reflective equilibrium will not only serve as a method of examining the justification of extending the idea using thoughts on candor in decision-making by judges and the considerations about being candid about arguments leading up to these decisions to ethical decision-making in business. It also kindly provides a

possible tool if in fact it would seem a reasonably good enough idea to require candor in ethical decision-making in business based on the justification for candor in the judicial domain. It would seem rather brutal to plea for candor in decision-making without suggesting a tool to possibly reasonably reach ethical decisions and adequately substantiated them.

Ethical judgments differ in kind from scientific measurements such as cholesterol levels . . . or . . . the best treatment for a particular medical problem. As Aristotle noted long ago, we ought only to expect of the subject matter the level of precision that it allows, and the subject matter of ethics, he notes, allows for less precision than other sciences such as physics or biology . . . the quality of any ethical judgment will be influenced by the information available and the time available for the judgment. (Donaldson & Dunfee, 1999: 195)

A reflective equilibrium is mostly seen as the final arrival of a highly deliberate process of an 'agent' in; where beliefs about an area of inquiry both moral and non-moral are revised and reflected (Daniels, 1996). Choosing the method of reflective equilibrium is based primarily but not solely on the fact it was ones introduced as a way to justify moral principles in philosophy. As both lying and being candid are words and acts directly linked to (im-)moral and (un-)ethical behavior, it only makes sense to introduce this most commonly used method for seeking justification of moral judgments (Depaul, 2013). In addition, the very act of court ruling is a sum of considerations and (internal/external) justifications. As will be demonstrated, a form of obligatory candor could possibly motivate an increase of rational deliberate revision of arguments, even in the case of judge deliberation while one could and should expect this deliberation to be part of, and inherent to the office itself. Also, society consisting of consumers need to at least have all information available to be capable to make conscious decisions to contribute to the existence of business. If the consumer would not be able, or chooses not to, reflectively consider the just- or rightness of their business relation, than at least they would have been presented the possibility. Last, since the reflective equilibrium is so vastly connected to the idea of social contract theories it will add to a better understanding of the matter. It's a way of deliberating between circumstances, conditions, personal judgments and moral principles to arrive at what is morally justified

(Rawls, 1991).

One of the great challenges in the domain of moral philosophy is the concept of moral truth. It turns out to be extremely difficult to talk about an absolute moral truth and how to obtain it. Moral truth cannot be separated from moral conceptions and Rawls claims that it seems to appear as if people are being influenced by these conceptions (1974-5: 19-21). In order to investigate the substantive moral conceptions people would have under suitably 'ideal' conditions, Rawls proposes the reflective equilibrium as a method for moral justification (Rawls, 1974-5: 7). Although he was the one introducing the term reflective equilibrium, Rawls was not the first to describe the method. Aristotle specifically mentioned the importance of deliberation as a useful process and points out that it is in fact a method of research (Aristoteles, trans. 2015, E.N. VI 1142a31-b24). The classic philosopher refers to it as a rational, conscious mental process, performed by an individual to solve practical problems. This thought process should, when conducted correctly, take time and should lead to an end point, the end point being a rational decision (Aristoteles, trans. 2015, E.N. VI 1142b25- 1143a18). Nelson Goodman (1983) proposed an adjusted approach to justify rules of inference in logic. A point of debate, specifically within ethics is that the reflective equilibrium is not so much a method to revise moral judgment but rather a method to justify moral judgment (Daniels, 1996). The method is widely used as 'the' method for moral justification both for applied and normative ethics (Maagt, 2017: 444). "The expression reflective equilibrium refers to both the process and the result of moral reasoning" (Van Thiel & Van Delden, 2010: 184). Besides this distinction between process and result, Doorn displays a threefold purpose of the method namely a justificatory, descriptive and constructive purpose (2009: 131). While using the method of reflective equilibrium the agent (moral theorist) intends to form a scheme of (other peoples') principles that represent moral conceptions, attitudes and sensibility. Evidently these conceptions are not likely to exactly align and therefore Rawls (1971) suggests leaving out all but main conceptions in moral philosophy, tradition and or established writers. Include one's own thoughts on the matter is also accepted, as long as this is done not from a moral theorist perspective but from an individual with a specific conception perspective. Rawls (1971) set up a couple of rules in order to proceed. Each conviction to be considered should hold some valid level of credibility. A systematic organization could be found when these convictions would be evaluated and if necessary be revised, adapted or left out a coherent scheme. Any revision

done by the agent should be “with conviction and confidence”, also when consequences of certain principles reveal themselves in practice (Rawls, 1974-5: 8). The reflective equilibrium can, according to Rawls be broken down in to two variants, the narrow and the wide. Whereas the first refers to the use and understanding of one’s own initial moral judgments the latter requires an attempt of disruption of the obtained narrow reflective equilibrium by including more radical challenges and their supporting arguments (DePaul, 2013). The wide reflective equilibrium therefore is as it were a way to find out what is right. Not only within one’s own beliefs and moral compass, it must lead to broadly accepted justifiable choices (Daniels, 1996). Reaching the end point of the process of reflecting is reaching an equilibrium, also spoken of as moral objectivity (Kim & Donaldson, 2018: 7). The end point though would be a hypothetical end point as Rawls acknowledges “. . . that it is not realistic that we will actually consider all such conceptions [, being all feasible moral conceptions] and arguments (Kelly & McGrath, 2010: 334).

Rawls (1971) claims that ‘justice as fairness’ is the result of wide reflective equilibrium, also referred to as individual justification broken down into three levels of consideration namely: “. . . 1) considered moral judgments about particular cases or situation; 2) moral principles; and 3) descriptive and normative background theories” (Doorn, 2009: 129). In order to give the method credibility on the level of justification, Daniels (1996) proposed all three levels of consideration should be open to revision and should seek for coherence between both moral and non-moral beliefs, including background theories in the reflective process (Doorn, 2009: 129). One of the most discussed critiques of Rawls’ original idea of the reflective equilibrium is that subjectivism is supposedly inherent to the method (Van Thiel & Van Delden, 2010). “Moral reasoning [like going thru the process of, and using the reflective equilibrium as a method] identifies acts, character, and states of affairs as good or right in themselves, not good or right in virtue of some empirical fact . . .” (Kim & Donaldson, 2018). Van Thiel and Van Delden therefore propose a variant of the reflective equilibrium bringing the idea of using accentuated empirical data into the equation as, “. . . it seems that general moral principles alone cannot generate the justificatory power that is needed for moral decision making . . .” (2010: 184). The modified model they present is the so called “. . . normative-empirical reflective equilibrium . . .” (2010: 183), given the combination of empirical and normative elements. Further they discuss a meaningful question regarding moral reasoning in general: “. . . what



is the status of the outcome of the reasoning process?” (Van Thiel & Van Delden, 2010: 183). The scholars hereby propose a

. . . good reasoning-justified outcome strategy . . . this strategy is built on a reasoning process in which the reason-giving force of each element is tested and weighed. The thinker has to work towards a coherent view in which only the elements with sufficient justificatory power are retained. If the thinker decides that the elements fit into a coherent view, a reflective equilibrium is reached. (Van Thiel & Van Delden, 2010: 183)

The empirical data that can be brought into the equation is meant to inform about “. . . the facts and circumstances in which a moral judgment has to be reached” (2010: 191). A limitation acknowledged by Depaul (1993: 144) for moral agents in the process is that they might have much experience in different fields but still have to deal with the fact they themselves are a limited source. He suggested moral thinking agents to broaden their moral scope by engaging in different activities such as reading literature and visit theatre and museums. This has been done for the reflective equilibrium at hand in this treatise for at least the literature-reading-part Depaul (1993) mentions. Although ethics and grand background theories like the social contract theory currently form part of the curriculum in multiple business schools (the amount of it depending on personal choices) the literature that has been taken in and has been reviewed far extends discussed topics and specific relevance, to gain additional insights. The process of the equilibrium itself makes an individual want to snowball thru relevant literature and forces to obtain an understandable logic and therefore bring in mere reasonable arguments. In an attempt to add to the credibility and validity of the line of reasoning there has been made use of illustrative examples, valid argumentation and secondary empirical data as mentioned by Van Thiel and Van Delden (2010). The goal is to reach a wide reflective equilibrium using it as both a process and as a result of moral reasoning combined with background theories and secondary empirical data results, to inspire thinking beyond domain specific borders, broaden the pool of information available and it should lead to a conceptualization and operationalization of a standard for ethical business decision-making, modeled on the standard for judicial candor in judge decision-making.

An increase of the interdisciplinary use of insights between social science and applied/practical ethics especially took a flight from the nineteen eighties. As society and applied ethicists are confronted with new complex issues like multiculturalism and rapidly changing developments in technology traditional ethical theories often did not seem to suffice in search of answers. Additional insights from social science was used (Doorn, 2009: 127). Doorn (2009) states that this crossing-over of insights between the two disciplines increased the amount of descriptive methodology for philosophers. This empirical shift in applied ethics led to more context-sensitive methodologies. It indeed contributed to knowledge towards ethical decision-making only the theoretical grounding faded more and more into the background (Doorn, 2009: 127). "Recent insights show that ethical dilemmas often require a search for individual justification within a context of conflicting moral frameworks" (Doorn, 2009: 127). Integrating interests of different types of stakeholders with different moral frameworks is an ongoing issue (Doorn, 2009: 128). The reflective equilibrium as presented by Rawls (1999) and adjusted variants (see, Daniels, 1996 and, Van Thiel and Van Delden, 2010) are interesting and quite usable for they do not merely grant full power to either moral theory on the one hand or empirical data on the other hand, the approaches are all very well supported by theory and because of the lack of a preconceived preference to either one (moral theory or empirical data) the decision made could count on a higher level of support (Doorn, 2009: 128). However the ". . . actual application of these approaches is still relatively rare . . . insights in the actual 'performance' and the potential obstacles for application is lacking" (Doorn, 2009: 128). This latter citation in combination with the proven potential contributiveness makes it even more interesting using this reflective equilibrium method to address a practical and philosophical problem while at the same time displaying it as a possible practical tool for that exact problem. Although various forms of Rawls' original reflective equilibrium exist they can all be used in different types of contexts, ". . . although derived with a justificatory purpose, is sometime used as a framework for structuring discussion and debate, with the aim of coming to a justified agreement. The method could then be used . . . as a means to attain a coherent basis for decision-making . . ." (Doorn, 2009: 130). The reflective equilibrium can be used in a descriptive matter or with a constructive purpose, the first derives its explanatory power from cognitive and epistemic considerations, in the latter those considerations are of less importance, the effectiveness of the constructive or practical purpose could be judged on

practical grounds (Doorn, 2009: 130). If people share a moral commitment to a basic structure of society it is very well possible within democratic societies that people live together despite the existence of incompatible and even conflicting moral values (Doorn, 2009: 130). This moral commitment to principles of fairness was introduced by Rawls as the concept of 'overlapping consensus' (Rawls, 1999). For example when thinking about ethical business-decisions, no matter what view one might have on the freedom and legitimacy of businesses, there will be an overlapping consensus that a decision that seems very logical in a cost-analysis will be overruled in case it would be clear there would be human lives at stake by the decision. This overlapping principle alone could provide reason enough to demand a standard for candor in ethical business decision-making.

### **5.3 Background theory: The Social Contract Theory.**

Whether there is tension to be found between game continuity and candor in sports; Independence, accountability and candor in justice; Accountability, competition and candor in business; the general public, society, never seems to be against more candor. When taking it a step further and looking from the perspective that justice and businesses only get to exist due to that society, one could even suggest the public might have a right to demand candor in decision-making processes in order to be able to make their own conscious decision. This will be explained by taking a look at the social contract theory and its applicableness in business. Discussion of the theory will end in its most narrow form, on an individual level. The level decision-makers, in business and in justice, will find themselves in. The theory will explain why both domains are connected in essence and why it might not be a particularly bad idea to see if thoughts on candor in the judicial domain could provide insights for thinking about business decision-making, and could stand as a model for a standard of candor in the business domain.

#### **5.3.1 Hobbes and Locke.**

An influential piece of work, *Leviathan*, written by Thomas Hobbes in the seventeenth century first mentioned the social contract theory (Hobbes, 1996). His description of the contract presents a justification for the very existence of a government, which is, according

to Hobbes a creation of men, as opposed to the former idea of common society of his time, that it would be a creation by God. Hobbes states that people must enter into a social contract as it is a law of nature to do so (Kary, 1999: 82). Hobbes' view on the laws of nature, could be seen as approaching scientific laws regarding behavior as he describes his observations on human nature in relation to what type of behavior would be best to tend to individuals natural needs and desires, self-interests (Kary, 1999: 83). He also mentions the moral obligations that we as a species have. Hobbes' social contract is focused on the idea of putting an end to everlasting conflicts and competition which are, according to Hobbes intrinsic to human nature (Hobbes, 1996). The latter thought broke with the Aristotelian tradition and idea that men could be seen as political animals and that social relationships are inherent to its nature (Mulgan, 1974: 438). Although Locke, a social contract theorist later that century had a specifically other view than Hobbes did on the natural rights of individuals that, hence the philosopher, derive from natural law (Riley, 1982: 62), they both stress the importance of voluntariness, or will if you will (Riley, 1982: 9). Although historical context is not to be seen as a full explanation or satisfying origin of ideas and philosophies it cannot be ruled out either. The ideas of both Hobbes and Locke about the social contract theory could be seen in light of the background of seventeenth century England, in which they both partially lived and constructed their ideas (Kary, 1999: 73). The root of the social contract theory even has been traced back to the fourth century BC (Gough, 1957: 10-15), ". . . to the Platonic dialogues, where, in the dialogue *Crito*, Socrates justifies his refusal to escape his own death sentence by referring to a hypothetical agreement made between himself and the Athenian state" (Dunfee & Donaldson, 1995: 89), with the emphasis on 'hypothetical agreement'. For both Plato and numerous social contract theorists ". . . the social contract constitutes an agreement even as it lacks written or spoken words" (Dunfee & Donaldson, 1995: 89). Obviously there is a very large period of time between the fourth century BC and the seventeenth century after. There seems to be an overlap in the way both Hobbes and Locke presented the hypothetical consent in social contracts and the way contracts were constructed in law within the seventeenth century (Kary, 1999: 77). Kary states the concept of a contract finds its origin in law to begin with and that this concept was ". . . preserved in political theory long after law evolved different ideas . . ." (1999: 77). A vast difference in understanding and effective reality of contracts could make it difficult for temporary theorists to grasp the idea of a hypothetical contract, while in the

seventeenth century (England) hypothetical contracts and the obligations and rights derived from it were pretty self-evident. This was mainly due to the early seventeenth century so-called Slade-case which formed a precedent in accepting promises (and therefore will) as a valid, if not necessary element when speaking of contracts (Kary, 1999: 79). The importance of elaborating on this Slade-case lies in the possible link to be found between the social contract theory tradition, law and businesses.

### **5.3.2 The Slade-case.**

To provide context, the Slade (versus Morley) - case (England) will be briefly described to be followed with a treatise about the events leading up to the landmark case and the consequences of the eventual ruling.

Plaintiff Slade (represented by Edward Coke) claimed that Morley, the Defendant, asked to sow and grow wheat and rye. In return the Defendant would be paying the Plaintiff a fixed amount of money. Plaintiff did execute the sowing and growing and then sued the Defendant because of a breach of oral agreement as the Defendant did not pay the promised fixed amount, arguing there was no contract to perform only the bargaining between Defendant and Plaintiff (Sechler, 2011: 179-180).

The case needs to be placed in historical context in order to be able to recognize its landmark-status. A trip back to the fourteenth century is required. As Tjittes states, the feudal system in medieval times (England) and the agricultural economics arising from it made for a relatively static society in which individuals were not seen as actual individuals but as an integral part of it, people were born into pre-set classes (1991: 62-63). Trade was limited and hindered by constraints, for instance there was little freedom (Tjittes, 1991: 63). Law in that period of time reflected this class-based social order, granting obligations and rights by heavily leaning on the status classification of for example feudal relationships and family. The upcoming economic movement mercantilism<sup>5</sup> in the late sixteenth and seventeenth century brought a change in this status-based set up of society. At the same time the individual that previously only was seen as part of that society began to get more and more attention as an actual individual (Wilson, 1993: 290). It seems difficult to trace

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<sup>5</sup> Mercantilism, economic theory and practice of governmental interference (in the sixteenth and seventeenth century in Europe) to regulate national economy by actively stimulate international trade and gain power to be able to outrun other countries (Vaggi & Groenewegen (2003).

back the exact cause of this increased focus on the individual but possible explanations could be found in economic growth, freedom and linked concepts like *laissez-faire*<sup>6</sup> (Tjittes, 1991: 63). The beginning of the seventeenth century was, in common-law-contract-thinking, marked by the Slade-case because of the formalization of the transition from a status-based to a contract-based society (Wilson, 1993: 281). This was reflected by the increasing importance of what an individual did and which legal relationships were entered (contracting) by choice, as opposed to where a person came from or was born into (status) (Wilson, 1993: 282). The legal term *assumpsit*, “. . . literally, he promised . . .” (Wilson, 1993: 281), was already in use from the fourteenth century up to the late sixteenth however until the Slade-case formalized its amplified use, it was mainly used as a remedy for contractors who executed a contract badly (Kary, 1999: 78). At the time however, promising did not play an extensive role in common law as for instance in a debt situation. A debtor owed. Not because of an implied promise to pay but because it was inherent to a certain relationship (for example between a land-lord and tenant (Kary, 1999: 90). Debt was an obvious obligation naturally flowing from a specific transaction. There was no need for an explicit declaration or promise to follow up on the debt as “. . . the covenant was binding because of the formality of a sealed document . . .” (Kary, 1999:78), and not for the exchange that had taken place (Kary, 1999: 78). The Slade-case that took place in late sixteenth and early seventeenth century (England) radically broke with this take by allowing a possible claim on *assumpsit* (promise) in contracting, even in debt related cases (Kary, 1999: 78). This specific case was argued on four different occasions during a six year period before different courts when ultimately it was discussed in 1602 “. . . by all the judges of England in the old-fashioned Court of Exchequer Chamber”<sup>7</sup> (Ibbetson, 1984: 302). The result of the ruling (and reaffirmation of the initial view of the King’s Bench) was that *assumpsit* (promise) was a legitimate alternative to debt (Ibbetson, 1984: 303). The much discussed ruling served as ground for sanctioning ‘implied contracts’, even when an explicit compensation was not formally formulated, *assumpsit* (or the promise) then became an inevitable element if not the basis for contractual accountability (Tjittes, 1991: 73). Growing trade relations in the

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<sup>6</sup> Free market economy idea that the government should not interfere and let the economy work as an invisible force leading to a desirable situation in society, literal translation ‘let you go’ (Tjittes, 1991: 63).

<sup>7</sup> The Exchequer Chamber was established in 1585 and gave judges of the Common Pleas the power and theoretical supremacy to sit with the Barons of the Court of Exchequer and reverse or overthrown decisions made by the Kings Bench (Ibbetson, 1984: 299).

early seventeenth century and the need for simple enforceable agreements without too much bureaucracy accelerated this new role that *assumpsit* got to play in contract law (Tjittes, 1991: 73).

The theories on social contracts by Hobbes and Locke could be seen as part of the transition in society of their time, where relationships began to shift to be based on free will instead of based on naturally existing rights and duties (Atiyah, 1979: 41-42). The Slade-case demonstrates the entanglement and interactive movements between governments, business, society and law.

### **5.3.3 The Social Contract Theory after the seventeenth century.**

Philosophers, Rousseau, Kant and many others each with their own nuances and takes on human nature and free will continued covering the topic of political legitimacy (Riley: 1982). The general idea and red thread of the social contract is that governments exist solely because of a tacit, voluntary trade-off between freedom and a level of protection. This idea therefore provides “. . . legitimacy of government and of the State” (Donaldson & Dunfee, 1995: 89). Kant was the first to introduce the original idea of the “Idea of reason” (Riley, 1973: 450). That very word “idea” is what sets Kant apart from the contract theory tradition as he states that the social contract is not based on an actual touchable contract signed by all parties, no, it is an idea of reason that provides “. . . a standard for judging the accuracy of states and their laws. . . . A notion of a state which corresponds to the Idea of a social contract . . . which is not an empty figment of imagination, but the eternal norm for all civil constitutions whatsoever” (Riley, 1973: 450).

### **5.3.4 Rawls’ Social Contract Theory (of Justice).**

In line with the social contract theory John Rawls wrote his own theory on (of) justice in the twentieth century, and proposed a thought experiment on how these contracts could be fairly and just constructed (Rawls, 1999). He suggests that individuals should come to agreement by looking at certain issues from an ‘*original position*’, covert with a, in Rawls’ words, ‘veil of ignorance’. A position without any notion of: the individuals own place in society, the current state of that society and without a clue of their own (in)capabilities. Decisions made in this manner would lead, according to Rawls, to utter justice. The method

of wide-reflective equilibrium was developed to defend Rawls' theory on justice (Doorn, 2009: 128). His intention was . . . "to develop a criterion of justice that would be agreed upon by all under conditions that are fair to all . . . specifying the fair terms of social corporation between free and equal citizens" (Doorn, 2009: 128).

At the heart of the social contract effort is a simple assumption, namely, that we can understand better the obligations of key social institutions, such as business or government, by attempting to understand what is entailed in a fair agreement or "contract" between those institutions and society, and also in the implicit contracts that exist among different communities and institutions within society. (Donaldson & Dunfee, 1999: 17)

This statement reflects the inherent connection there is to be found on the one hand between governmental institutions like the (inter-)national Courts and businesses and on the other hand the connection they both have with society. While Rawls (1974-5) resurrected and adapted the social contract idea, around the nineteen eighties of the previous century, the classical legal contract developed at the same time (Ramia, 2002: 51). A new terminology came to use, 'new contractualism', a concept used to frame the increased use and development of contractual devices inherent to changing society (Yeatman, 1995).

## **5.4 The Social Contract Theory and Business.**

### **5.4.1 The Integrative Social Contracts Theory.**

Whereas the social contract theory has been widely acknowledged and used within social and political philosophy for over a long time, it only relatively recently has been introduced to the field of business ethics (Douglas, 2000: 101). Donaldson and Dunfee did make this link and developed the "Integrative Social Contracts Theory" (1999). Given the inherently contractual nature of business it might seem like an evident link to be made however most social contract theories tend to be logical and applicable on a strictly theoretical level, while business in general needs more concrete answers (Douglas, 2000: 101). The moral aspect of the social contracts lead some to believe, like Dunfee that: "extant social contracts provide a



source for moral guidance” (Fort, 2000: 383). On the other hand Donaldson leans towards a more morally based philosophy. The two visions combined resulted into a model that could be effectively used in the (ethical) decision-making process in business. The model was set up to be internationally applicable however Donaldson and Dunfee do recognize the issue of conflicting ethical standards and the impossibility to obtain an ultimate standardized global moral framework for business ethics (1999: 28-32). They intent to mitigate this cultural relativism problem by introducing three different concepts. “Authentic norms . . . priority rules . . . [and] . . . hypernorms” (Douglas, 2000: 101). The latter is referred to by Donaldson & Dunfee as “. . . settled understandings of deep moral values (1999: 27). . . . the root of what is ethical for humanity (1999: 44). . . . underlying senses of right and wrong (1999: 27). . . . universal principles (1999: 49) [and]. . . . key limits on moral free space” (1999: 49). Meaning as much as there are some ethical norms and boundaries not to be breached ever. Like the overlapping consensus as meant by Rawls (1999). Without any form of basic morality, a lack of respect for property and promises could take the upper hand as well as using violence for monetary gains. It could be very well possible an economic chaos would arise, which already has been the case, for nations without institutions to uphold some form of an ethical basic structure (Donaldson & Dunfee, 1999: 28).

Within the integrative social contracts theory a distinction is made between ‘macro’- and ‘micro-social’ contracts. However, “All particular or ‘micro-social’ contracts, whether they exist at the national, industry, or at a corporate level, must conform to a hypothetical ‘macro-social’ contract that lays down objective moral boundaries for any social contracting” (Donaldson & Dunfee, 1999: 6). The micro-social contract reflects a real agreement (that might be informal but none the less real) within a community while the macro-contract reflects a hypothetical agreement requiring the agreement, even though hypothetically to be among rational members of the community. These types of contracts are meant to “. . . establish objective background standards for social interaction” (Donaldson & Dunfee, 1999: 19).

Although Donaldson and Dunfee (1999) developed the integrative social contracts theory or model to specifically cross borders and be functionally applicable in the business domain, there is also criticism to be found in the field of business ethics. The main critique is based on the idea that in order for a theory to produce better results it should be adapted

or altered keeping in mind the specifics related and inherent to, in this case the business domain (Wempe, 2004: 332).

#### **5.4.2 Psychological Contract approach within The Social Contract Theory.**

Thompson and Hart state that: “Social contract theory’s transcendent hypothetical agreements seem somehow too static and detached to guide those who navigate the complexity of practical moral dilemmas” (2006: 229). They believe even the micro-social concept is not zoomed in enough to actually be useful in the ‘real’ world in the matter of contractarian ethical theory and therefore they propose to make use of the psychological contract approach and add a “. . . nano-level of analysis . . .” (2006: 230). The scholars use this ‘nano’ term to refer to the most specific and focused analysis possible in this context, which is analysis on an individual level. Businesses do not make business decisions, people do, even when they decide to use empirical, analyzed data to guide them towards a specific direction. And not people as in ‘the people’, no, decisions are being made by actual individuals. Decisions individuals might make could be under the influence of all kinds of pressure and or various data driven powers, but the fact remains, an individual person makes a decision. In the psychology domain scholars usually refer to ‘micro-level’ analysis when talking about the individual level however in the social contract theory context this term often is used to refer to sub societies, like organizations or specific industries within society as a whole, as previously displayed in the representation of the integrative social contracts theory (Donaldson & Dunfee, 1999). To avoid any kind of confusion Thompson and Hart will stick to the term nano-level analysis. According to these scholars; “It is at this nano-level that people construct individualized accounts of their own obligations within context-bound social institutions” (2006: 230). Table I, as presented below, contains the plotted nano-level to provide insight.

Table I

<b>Level of contract</b>	<b>Locus of decision</b>	<b>Source of authenticity</b>	<b>Role of context in determining right behavior</b>	<b>Outcome derived from the contract</b>
Macro	Principles gleaned from an “original position”, etc.	Hypernorms	Irrelevant	Universal Principles
Micro	Organizations interacting with their environment	Adaptations in moral free space	Moderate	Cultural values
Nano	Individuals within organizations	Social construction and sense making	Strong	Behavioral norms

Table I (Note: Reprinted from “Psychological Contracts: A Nano-Level Perspective on Social Contract Theory”, by Thompson, J., & Hart, D. (2006) *Journal of Business Ethics*, 68 (3), 231.)

The existing literature portraying psychological contracts, on which Thompson and Hart base their nano-level within the social contract theory, presumes that individuals cognitively form a spectrum of perceived obligations between institutions in their scope and themselves. As these obligations are perceived and therefore perhaps in some cases only real in the eyes (and thoughts) of the beholder, they might even contradict formal and written contracts (Thompson & Hart, 2006: 230). Within organizations these perceived contracts may also be problematic for the internal ethical point of view. Namely individuals (business employers and employees) might fundamentally disagree on the “. . . moral basis of obligation between them” (Thompson & Hart, 2006: 232). A breach of perceived moral ‘obligation’ (by either the employer or the employee) does not necessarily have to be a breach of general moral values looked upon from under the previously mentioned “. . . veil of ignorance. . . . [leading to the] original position . . .” (Rawls, 1999: 11). This could eventually lead to cause opportunistic behavior both from the employers’ and employees’ perspective. If people feel badly and/or wrongfully treated, even when they are not really, this might lead to moral outrage (Thompson and Hart, 2006: 323). Even though the moral outrage could potentially be irrational and not commonly accepted to be acceptable it could lead to microscopic changes over time as: “Individuals contribute to societal expectations of right and wrong behavior through their decisions and actions, yet individual ideas or

expectations about right and wrong are also influenced by the accumulation of these same decisions” (Thompson & Hart, 2006: 233). Here a discrepancy between the macro- and nano-level approach is to be found. When solely focusing on the individual (nano-) level you might see a blurring of moral authority so heavily pressed upon by the macro- social contracting, which provides general moral guidance historically based and so profoundly embedded in human existence that it cannot be altered overnight, as new expectations cannot instantly be created (Thompson & Hart, 2006: 233). The reason for the discrepancy is that real life situations and day-to-day human interaction cannot always and by every individual be looked upon as would be the case when rationally looking at the same situation in the hypothetical social contract theory manner. Reality is that organizations and businesses inhabit real individuals who might not be considered able to look and act in all situations and with every decision in a “reasonable” way as intended by Rawls (1999). Thompson and Hart “. . . demonstrate how a psychological contract approach offers practical insight into the impact of social contracting on day-to-day human interaction” (2006: 229), as “. . . one reason for the slippage in moral authority is that real actors cannot live up to the ideal of disinterested rationality required by social contract theory” (2006: 233).

Some analysts claim that coming with the new contractualism one could speak of contract states that have been created, a trend that began in the nineteen eighties, which means a shift has been made by public organizations toward a model compared to the private sector (Ramia, 2002: 53). Public management “. . . has its inspiration in various perspectives . . . the agency theory . . . based on law and policy. . . . Public choice theory. . . . Focusing as it does on rationality and self-interest in decision-making processes of individuals and individual corporate actors . . . transactional-cost analysis . . . which is part of the so-called ‘new institutional economics’” (Ramia, 2002: 53). The presumed contractual freedom could be seen as an illusion due to the unchecked free market forces (Ramia, 2002: 54). The theoretical understanding of the new contractualism and pinpointing what it is and what it entails exactly is, as Yeatman states, highly debatable (1998: 227). As society and technical developments continue to evolve (or devolve), a need for evolution in both contract law and social contract thinking will be inevitable as has been the case for, for example, the industrial revolution and the shift from mainly public to merely private corporations. (Which inevitably raises questions, like how will people eventually deal or

contract with artificial intelligence? Both from an ethical and lawful (as they do not mutually exclude one another) point of view.)

## **5.5 Tying Society, Business, Law and Government together by The Social Contract Theory.**

Donaldson and Dunfee state that “With social contracts, one is no longer limited to seeking ethical guidance from highly generalized statements such as, “Corporate CEOs should act in a way that reflects integrity and high moral character”. Their ethical responsibilities can be interpreted, rather, through the implicit agreements or social contracts that channel the lifeblood of the activities: their relationships with their shareholders, customers, employees, and the state” (1999: 17-18). That might be so, but who is to judge if in fact social contracts (in business) have not been breached? There are few companies to be found to explicitly give an insight into their considerations leading up to ethical decisions with possible great impact. As long as boardroom doors stay closed and decisions (ethical or not) can be made in the dark and without public substantiation it will be very difficult to tell, for whoever should be able to tell.

The various interpretations and uses of the classic social contract theory demonstrate that both governmental institutions and businesses only get to exist by the hypothetical, implicit and sometimes explicit existence of social contracts even up to the most personal level possible, the contract that can exist between two individuals, whether in office (judge) or in a business related situation of employee and employer.

When looking at the social contract in business and the authentic ethical norms as proposed by Donaldson & Dunfee law critics could state that focusing and depending on these norms is not necessary per se “. . . because law provides a fully sufficient basis for ethical judgments. . . . [in other words] if it’s legal, it’s ethical . . .” (1999: 156). That statement presumes that law provides a fulfilling or adequate limiting framework for ethical behavior. This would mean, if no (corporate) law is violated the act in itself would be considered ethical per definition. As Donaldson and Dunfee put it, the law is seen as a constrictor of behavior yet it is also used as a factor to take in consideration while drawing-up a cost-benefit-analysis (1999: 158). What is the probability to get caught, what could the consequences be and what will this unlawful decision bring to the table if staying

undetected? However, law is not the only constrictor out there, “. . . social and (ethical) norms of behavior may often be more powerful influences on behavior than formal law” (Donaldson & Dunfee, 1999: 158). The law and the legal system were never intended to serve as an “. . . definite guide for moral standards, nor is there clear evidence that it is an efficient substitute for extralegal morality” (Donaldson & Dunfee 1999: 158). But it seems clear at least the law does influence ethics, surely in the case of the integrative social contracts theory as presented by Donaldson and Dunfee (1999: 159). What about the other way around? Can ethical norms influence adaptations and changes of the law?

Our moral standards are sometimes incorporated into the law when enough of us feel that a moral standard should be enforced by the pressures of a legal system; and laws, on the other hand, are sometimes criticized and eliminated when it becomes clear that they blatantly violate our moral standards. (Velasquez, 1998: 38)

This for example has been the case in South Africa where the court played a significant role in the democratic consolidation<sup>8</sup>. “By carefully managing public perceptions of their appropriate role in national politics, the theory runs, constitutional courts may be able to expand the range of democratic rights that they are able to enforce. In turn this may contribute to improvements in the functioning of the democratic systems in ways that sustain the court’s democracy-strengthening capacity over time” (Roux, 2016: 6). This example does not only serve as an example of the external influence of society but also adds to the case to be made for judicial independence which will be discussed later.

## **6. Building for the candor-in-business-case using thoughts on the matter from the judicial domain.**

### **6.1 Candor in the judicial domain**

Before specifying the meaning and use of candor in the judicial domain it is necessary to address the following. Evidently legal systems and principles are not completely identical around the world. Judicial systems may differ, however there are some general principles of

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<sup>8</sup> Democratic consolidation stands for the maturing of a new democracy without external shock, no relapse to authoritarianism is possible (Roux, 2016).

law. Principles only accepted in limited countries and States of the world are not to be seen as general principles of law (Akehurst, 1976: 818-819). “Legal systems are grouped in families; the law in most English speaking countries is very similar, just as the law in most Latin American countries is very similar” (Akehurst, 1976: 818). Besides general principles of law there are also general thoughts on the conduct of judges, the desired and to be aspired behavior. In case a specific idea or thought will be discussed later on, name and origin will be specified. Most stated examples will origin from the Netherlands although a lot of literature is based on the English and American legal systems. The general ideas behind the just conduct of judges and ideas on candor in court are however generally applicable. To prevent any confusion only data from acknowledged democratic systems will be used.

In the judicial domain the multi interpretable aspect of candor as a word and as the act of being candid (or not), caused a lot of discussion and served as a fertile breeding ground for scientific reviews of the matter. There are various treacherous hooks and angles to the word and its use within the judicial domain. In fact, one could conclude it appears to be fairly difficult to be candid about candor in justice.

One who asks whether, and to what extent, judges have an obligation of candor must at least attempt to explain what he means by candor. This turns out, not surprisingly, to be a daunting assignment, one that calls not only for an effort at definition but for distinction of some related concepts and problems. (Shapiro, 1987: 732)

“Judicial candor can be a baffling concept” (Fallon, 2017: 2266). The word is used in the judicial domain, both in legal form as in non-legal form and in different areas. On one the hand, there is an obligation to be candid to some extent for lawyers and defendants and on the other hand, there is the to be expected, but not legally bound obligation of candor in decision-making by judges in court rulings. The latter will be discussed more thoroughly given the comparison that is to be made later on between judges and senior leadership in (public) companies. Shapiro points out, fair enough, that candor or being candid only exists by the grace of its evil counterparty: lying (and all other, related, words with semi-similar meaning) (1987: 732). In case one would acknowledge the existence of these counterparties this could lead to another difficulty. Both words contain a form of action and seem to

require either a conscious or unconscious decision. Even doing nothing could be considered a choice. And there you go, you might be unconsciously lying or you might be unconsciously be candid whereas you on the other hand also may very well consciously be lying or be candid. As interesting as these vocabulary orientated observations and questions may be, the message in general seems clear enough for now. Candor is not an easy word or topic nor is it explained in a sentence or two. Diving deeper and more focused into the meaning and use of the word in the specific act of decision-making by judges in court will help to understand the bridge that later will be made to business decision-making and candor.

Fallon refers to the distinction Rawls (1999) makes between conceptions and concepts and points out that the term candor might not easily fully slide into either one of those separate boxes (Fallon, 2017: 2272). As previously seen in the discussion regarding the word (judicial) candor, some words and phenomena are difficult to describe, let alone fully comprehend. Another term used within legal contexts that faces likewise issues is *jus cogens*, or in correct Latin *ius cogens*. The literal translation from the original Latin is peremptory norm<sup>9</sup> (Bianchi, 2008). This term is mentioned as an example by Donaldson and Dunfee to refer to the profoundness of moral consensus, and as an example of the equivalent of their so called hypernorms to be found in international law (1999: 50). Only here it is used as a demonstration of the complexity of some existing and used legal terms with normative meaning without too much formal, black on white, set in stone writing and consensus on what the whole (avoiding concept/conception) of *ius cogens* contains. Both *ius cogens* and judicial candor are terms used in the judicial domain without a clear and straight forward definition while able to add weight to the figurative scale of lady justice.

In the specific area of court ruling by judges one could speak of some kind of form of 'obligatory candor'. To elaborate this obligatory candor further it is necessary to understand the fact that each country, region and even district or city may make use of their own set of rules within the national legal framework. Most national legal frameworks derive from ancient laws adapted to ongoing developments. A recent Dutch example will be presented here to clarify this statement. In 2016 a directive of the European Parliament and of the Council was released (Directive (EU), 2016) on the accessibility of the websites and mobile

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<sup>9</sup> A compelling law or norm from which no derogation is permitted, accepted by the international community of states as a norm that remain its compelling state even in case a specific state or union did not explicitly recognize it (Bianchi, 2008).



applications of public sector bodies. This directive stated that all individual nationalities should somehow implement this guideline in their national legislation. In The Netherlands this resulted in a temporary; though binding legal measure, *“Algemene Maatregel Van Bestuur”*. This measure is intended to later be part of the proposed *“Wet Digitale Overheid”* freely translated as Digital Government Act (Raad Van State, 2018). However before this Act could be effectively implemented, the national government will use existing laws to make sure the new Act will not be contradictory in any way. The first article of the Dutch constitution (Grondwet<sup>10</sup>) states, freely translated, that all equal cases should be treated equally. Discrimination, no matter on what ground, is not allowed. *“Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan”*(The principle of equality). In order for the new Act to be implemented one must see it will not be in conflict with this constitution. People with inability to access digital environments should not have to find themselves in a disadvantaged position due to the proposed law. This generally much discussed and used principle of equality, Article 1 of the Dutch constitution, does not only serve as an example of the legislation procedures in the Netherlands, it will for fill another purpose leading up to the further explanation of *“obligatory candor”* in court ruling.

Whereas Shapiro on the one hand refers to the lack of candor as a deliberate avoidance of telling the truth; *“The problem of candor, ones again, arises only when the individual judge writes or support a statement he does not believe to be so”* (Shapiro, 1987: 736). On the other hand he takes a broader look at candor by believing that *“. . . candor is to the judicial process what notice is to fair procedure”* (Shapiro, 1987: 750). He states that an obligation to candor could be absolute, and fidelity of judges can only be rightfully measured when all they state and opinion is truly believed by themselves. Although his focus is mainly on the difference between truthfulness and lying, Shapiro’s article presents some interesting thoughts on judicial candor. However the fact that there might already be some kind of obligatory candor gets partially overlooked. Reaching back to the principle of equality, the few phrases this Article 1 contains, already implies and requires a certain amount of candor. Imagine a court case in which a ruling has been made by a judge and this

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<sup>10</sup> For an extensive official overview see: <https://wetten.overheid.nl/BWBR0001840/2018-12-21>

ruling potentially conflicts with the principle of equality, the judge cannot overlook this potential conflict and therefore must explain and substantiate the arguments that have been taking into consideration to not undermine her or his own authority (office). In a way this example could possibly be considered a form of obligatory candor. Evidently equivalent examples are to be found in other countries and judicial systems. Besides national legal frameworks there are multiple international agreements and associations that stress upon right and just behavior of judges for example the internationally acknowledged New-Delhi Standards (New-Delhi Standards, 1982). Article F.41 of this Standard (1982) states that, “A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary”. Could this be an outspoken desire, request to, if possible, be candid in order to preserve dignity, like in the previous example? Can the office preserve dignity if rulings exist of a lack of candor or at least be perceived by the public as not to be candid? Potential obligation of candor is therefore not only to be found in existing, written laws; moreover it appears to be an ethical issue closely linked to moral behavior. Candor does not exist as a technical legal term for judges, which makes it difficult to define (Fallon, 2017: 2272). Not less interesting though, on the contrary. Again, candor is not a legal term however, the act of being candid is implied by the very existence of judicial systems and existing common ethical thoughts on these judicial systems (mind the before mentioned *candidate* for Roman office dressed in white). The question that arises in Fallon’s Theory of Judicial Candor (2017) is: Can and should candor be obligatory for judges in court ruling within the judicial domain? He presents a distinction between ‘obligatory judicial candor’ and an ‘ideal of judicial candor’ (2017: 2269). With his essay *A theory of judicial candor* Fallon intends to reframe former debate, but the greatest contribution lies in the fact he sets up a template for thinking about judicial candor (Fallon, 2017: 2265). His work demonstrates the discussion on judicial candor should begin with “. . . familiar patterns of linguistic usage, but [in the essay he] insisted that analysis cannot stop there” (2017: 2264). Further, Fallon promotes “. . . needed discussion of how some conceptualizations of judicial candor might promote sharper moral analysis than other would” (2017: 2265). His theory demonstrates that judicial candor can and should be seen as both a moral and a legal concept, which means the concept also should have moral and legal obligations. “Recognition that judges have moral as well as legal obligations of candor requires a re-conceptualization of the obligation of candor – in both its legal and moral senses – as

subject to exceptions” (Fallon, 2017: 2317). This idea of bringing moral obligation into the equation does not form part of the current standard for judicial candor however there is an obvious need for more discussion about the topic. Fallon (2017) is not the first to discuss the topic of an increased form of ‘obligation’ of candor. Idleman (1995) carefully discussed the potential justification of obligation. Whereas Professor Shapiro (1987) is heavily stressing upon the virtue of candor in the judicial domain, Idleman’s model is leaning towards an at least conscience approach, not shy of being hesitant to be discrete as opposed to be fully and abundantly open about all arguments used in the decision-making process (Hageman, 2015: 412).

## **6.2 Justification for judicial candor.**

Idleman (1995) presents an exposition of nine arguments to be considered in order to be able to decide if obligatory candor would be justifiable for the office of judge. Idleman labels the arguments ‘conventional wisdom’ and seeks to wiggle the validity and internal logic by presenting counter arguments. Before presenting these arguments it is vital to keep in mind the human factor in judging. It’s an act, or activity burdened with the entire body of the human condition (Idleman, 1995: 1333). The methodology Idleman presents to discuss the arguments, or as the scholar calls them, rationales, has the reflective-equilibrium-feel to it as first he sets out the general known, most persuasive and commonly accepted arguments pro-candor to review and test them later by introducing alternative thoughts and counter arguments. He seeks to uncover the possible internal theoretical limitations and fails of each rationale, to later, after the internal analyses, also consider possible extrinsic elements against candor that could or should be involved in the discussion toward the desirability of it (Idleman, 1995: 1334). The rationales presented starting with accountability (1995: 1335). Candor would entail the possibility to keep judges accountable in relation to others. As accountability is seen as one of the most evident and mentioned argument in favor of candor this rationale will be elaborated in more detail than the other rationales. The reason accountability counts as an argument is that, it “. . . draws upon our most basic conceptions of fair and honest government . . .” (Idleman, 1995: 1338). The critique Idleman immediately portrays using this argument pro-candor is based on the tension between two coexisting ideals in justice, namely accountability and judicial independence. The latter is necessary to

achieve impartial decision-making, a basic requirement for any lawful and pro-equal treatment judicial system. Besides that specific argument there is also the creative legal evolution aspect that could be in danger (Idleman , 1995: 1338). Having to be fully candid could lead to limitations in creating precedents. “Judicial reasoning is part and parcel of the performance of the broader court, in the sense that information about reasoning can, on the one hand, be used to improve a judge’s technique, but on the other hand, is an important form of (legal and political) accountability in terms of the right to a fair trial and public hearing” (Bencze, M. et al., 2018). Governmental accountability is heavily embedded in the democratic political order, without it, that order would cease to exist. Within constitutional orders all authority is essentially granted by society (Idleman, 1995: 1338). Then there is the second rationale, power. Candor would lead to a level restrain the judicial power as all would be public and judged by the public, the same public that grants the institutional power to begin with (1995: 1345). Power is followed by the quality argument as candor could lead to ‘more, ‘better’ rationalized decision-making and written statements, more candor could possibly lead to some kind of self regulatory behavior of judges, as more arguments and insight would be given (Idleman, 1995: 1350). Potentially it could lead to more consistency in rulings. Being more candid would lead to more authoritativeness, the forth rationale (1995: 1353). While Idleman is not convinced the fifth rationale, justification could be considered a to be a merely convincing one pro-candor (in case it would stand alone), the scholar refers to the conventional wisdom that “. . . one of the major reasons judges ought to provide opinions in the first place is to fulfill their obligation to the parties in the case” (1995: 1357). The defendant needs to be assured of a reasoned and persuasive opinion. This basic ‘right’ is for the actual defendant whose property, liberty or life could be influenced by a ruling. The limitation Idleman presents of the pro-candor part in justice lies in the fact that the demanded amount of candor needs only to address the parties involved. The logic behind it only stresses upon being candid and provide enough ‘truth’ to support the ruling to the actual defendants (1995: 1357). Fallon argues that previous contributors to the literature have failed to make a distinction between the “. . . obligation of judicial candor and the ideal of judicial candor . . .” (Fallon, 2017: 2266). He proposes to imagine judicial candor to exist along a spectrum. With on the minimal bottom of the spectrum the ‘obligatory candor’ (hidden in the minimal requirements of just conduct of judges) and the basic rights of defendants. In that light this might underline the

statement of Idleman claiming the justification rationale if it would stand alone might not be convincing enough to be considered merely pro-candor (in justice that is) (1995: 1358). Candor could justify court ruling to all parties involved and to all parties with other interests in the judicial procedures and processes, hence the sixth argument, notice (1995: 1358). Being (more) candid, could serve as a way to test and purify within the office of judge, the seventh rationale, catharsis (1995: 1367). The penultimate argument progress is mentioned for it presents the possibility of open discussion, candor could lead to progress, evolution and deepening of justice and more specific in the area of the judge decision-making process (1995: 1370). Ninth and last rationale is moral duty (1995: 1373). It is a general understanding that being candid is a virtue, not being candid is not. Moral duty, this last argument, is intrinsically ethical to begin with. Idleman argues that candor is a moral obligation for all humans, which does not resolve simply by taking on the office of judge (1995: 1373). Even more so, one might even expect a higher level of morally just behavior of individuals with greater responsibility and power than average, like judges and business decision-makers. This rationale explains the intrinsic goodness and desirability of candor on either a theological (proper ends) or deontological level (proper means) (Idleman, 1995: 1374). However generic ethical principles are not always reflecting one-on-one in professional ethics. Idleman states that “. . . we have deliberately fabricated a wall of separation, if you will, between the professional ethical realm and the non-professional ethical realm.”(1995: 1374). This ‘wall’ is created by the formal rules, codes and canons created for and by professional ethics for example in law, politics and obviously the business domain. This means that even when candor is commonly accepted to be a moral principle it might not always be reflected seamlessly in a professional domain. In any case candor or the amount of it is almost always related to a cost-benefit-analysis (Idleman, 1995: 1376). In private situations this might be on a rather informal level. Like, what will the consequence be for me if I candidly speak about the fact his/her outfit look quiet hideous in my opinion, as opposed to just say nothing at all? However, in the case of the business domain, there are legions of true and literal cost-benefit analysis examples to be found. Will substantiating this decision and the arguments leading up to them benefit the company or not?

More candor within the judicial domain could serve as an example and make for educational references. Idleman presents multiple counter arguments for each rationale to

diminish the pro-part of it. In case of the rationales accountability and power he mainly uses the counter argument of independence of judges.

. . . even if we could demonstrate that candor is an efficacious means toward achieving judicial accountability, we would still lack a basis for deciding when the gain in accountability is worth the loss in independence. Accountability, after all, is not clearly more important than either impartiality or creative legal evolution. (Idleman, 1995: 1341)

Idleman proposes a model, a three stage process, to determine the ‘appropriateness’ or ‘correct’ level of candor within any specific case (1995: 1399). He does so by introducing and relying upon the term prudence. First stage is to see if one of the rationales could be considered to be pro-candor. The second stage to see if there are any independent reasons for the avoidance of candor and if there are any would they be strong enough to ‘overrule’ the pro-rationales. The third and last stage sees if prudential considerations are in favor of avoidance of candor, keeping in mind the logical pro-candor rationales and their own limitations. Now prudence is a virtue one might hope find in all that hold the office of judge (Idleman, 1995: 1399). The Idleman model still really relies upon logical, rational, prudent and just behavior, supposed to be inherent to the office of judge. Idleman himself raises the question in and about his own article: “Would this Article’s prudential theory of candor, if employed consistently, lead to more or less candor overall on the part of judges?” (1995: 1406), as it clearly also reveals the complexity and ambiguousness of being candid in judge decision-making. The standard however that has been recognized in the judicial domain is that judges cannot make statements of rulings without enough substantiation to not undermine their office. This standard will be used to model the conceptualization and operationalization for a standard in ethical decision-making.

### **6.3 Justification for candor in business decision-making.**

The pro-candor argument accountability Idleman (1995) presents will be discussed from an ethical business decision-making point of view. To limit the analysis, the focus will be on the rationale accountability, as it is one of the most compelling arguments in the discussion towards more candor in decision-making (Idleman, 1995: 1335). As shown by discussing the social contract theory, businesses exist, due to explicit legal - and implicit hypothetical contracts with society. This requires accountability. When taking the social contract theory into consideration in combination with the existence of corporations; “The internal processes for reaching decisions in these corporations, as well as the external impacts flowing from such decisions, are properly the concern of society as a whole” (Leader, 2014: 354). There are multiple tools and devices created to stimulate and intent to make a corporation a more responsible entity for example to install laws against pollution, abundantly enthusiastic attitudes regarding creative accounting and underpayment of employees (below minimum wages). This at the same time serves as an example of the way society, government, business and law influence each other. The effort toward improving corporate accountability also might be seen as a tool to enforce responsibility (Leader, 2014: 354). Leader mentions the difference between external and internal perspectives on corporate accountability. Where the first perspective faces society as an outsider, and is accountable for the damage it does to society, the latter aims at a shift towards the inside of the corporation “. . . and changing its constitution, its objectives, and the principles conferring legitimacy on it” (Leader, 2014: 355). This could then lead to a shift to which the corporation is accountable and what that means for what the entity is obligated to do for them. Like for instance take well considered ethical decisions and provide the valid argumentation leading up to that decision. This internal perspective could lead to questions as “. . . should employees be entitled to direct representation on the Board of Directors? . . . If yes, should they also be entitled to a share in company profits? . . . should the company properly take responsibility for the impact of its working practices on the family lives of its employees?” (Leader, 2014: 355). And of course then questions could be formulated for others than the actual employees who could in fact be affected by what a corporation might do (Leader, 2014: 355). When taking the internal perspective in consideration, questions about external accountability can arise again but with an additional twist. The example

Leader presents has an imminent moralistic feel to it. “. . . a pharmaceutical company must not injure health with its products, but should it be held accountable if it refuses to sell a drug at a price that will give access to a cure for a serious disease to the population of an impoverished country?” (Leader, 2014: 355).

The system around free markets can in some cases create a base for structures with perverse incentives, like contracts to coordinate collaborations including targets and bonuses (Hornman, 2016: 399). In literature many examples are to be found of companies that portray themselves as good and straightforward employers but in the end all is of secondary importance after making profits. These ‘amoral calculations’ or, cold cost-benefit-analyses could knowingly lead to decisions with severe consequences (Hornman, 2016: 19). “The social contract with employees is being broken” (Strandell, 1991: 15). Strandell believes that management negligence leads to a downward spiral regarding morale, pride and loyalty within company culture and employee behavior (1991: 15). All aspects that can further influence unwanted and amoral behavior in general, if remained unattended. Most examples of general accountability in business however, refer to the accountability towards share/stakeholders and profit gain. Here accountability entails the possibility to hold an individual accountable for an ethical business decision. In case these decisions would be made public, including the arguments leading up to the decision it would demand these arguments to at least be logical, reasonable, rational and valid. In small businesses, managers and legal entities are often to be found in the same individual, however in large organizations some managers have no legal responsibility and therefore often might feel less compelled to act accordingly (Hornman, 2016: 16). Even in case of violations these managers will not often be held accountable on a strict legal level, due to for example complex hierarchic structures within the company. In case these managers would make ethical decisions and had to be candid about the arguments leading up to them it, the incentive to make the ‘right’ or ‘just’ decision might increase as this person could be challenged on moral grounds. Here a parallel between judges and business decision-makers could be drawn as both often cannot be legally held accountable, for laws and organizational settings protect them from persecution. However when argumentation leading up to respectively a ruling or business-decision would be made public, and therefore makes the individual making the decision morally accountable some self-regulatory behavior could be inflicted.



The two most known approaches regarding the question in whose interest a corporation should operate are, the theory of property and the theory of citizenship. The first is referring to share/stakeholders, as having property rights. "Some argue that the company should serve the interests of those having property rights that it must respect" (Leader, 2014: 356). On more than one occasion (share) owners are only able to be aware of their position by reading the newspaper properly (Leader, 2014: 358). This means there might be a lack of available information which in its turn makes it hard to be able to make well informed and conscience decisions for share and stakeholders. As Van Thiel and Van Delden (2010) suggest empirical research might provide additional weight to the method of reflective equilibrium. To possibly make a case from the stakeholder position the example of the Rittenhouse Ranking (Rittenhous, 2018) can be taken into the equation. Rittenhouse developed an analytic tool called *Financial Linguistics*, this tool recognizes the strength and importance of both words and numbers and combines them to ". . . identify tangible and intangible drivers of shareholder value" (2018: 2). They started to integrate linguistics because of the central role it plays in human behavior. The measurement tool *Candor Analytics* systematically evaluates and ranks companies by in-depth analyzing corporate communications, it allows researchers to code key elements to measure candor ". . . a proxy for corporate trustworthiness" (Rittenhouse, 2018: 3), as candor was also named by Warren Buffet<sup>11</sup> as one of the fifteen key principles for companies operating manual (Rittenhouse, 2018: 3). The importance of corporate communications also came thru in the *International Corporate Communication Practices and Trends Study* conducted in 2009 (Michael, B. Goodman:) in which one of the key findings was:

The alignment of messages with action demonstrates a 'commitment to candor and consistency' in the contemporary environment of ever increasing transparency and disclosure. Ethics and values offer a strong base for a culture of accountability, and increased public

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<sup>11</sup> Warren Buffet..."the stock market's Shakespeare, a financial writer who puts everyone else to shame...too-good-to-be-true capitalist...who built Berkshire Hathaway into the most successful investment vehicle in history...his secret is to have no secrets...his reports should be taught in school – not only in business school but also in high school and...Sunday school" (Cramer, 2004: 71). Surely these last statements were made by an individual possible subjective writer, but the status of Warren Buffet and his constant reminder and appeal on candor are legend, hence the Rittenhouse reference (2018) to explanatory notes about the candor analytic tool.

scrutiny leads to better decision-making, 'enabling an ethical culture'.  
(Goodman, 2010: 139)

Research had been conducted among publicly-trade companies located in the United States of America. The study evolved from the annual *Conference on Corporate Communication*, that was initiated in 1988 as an opportunity for both corporate communicators (to bring additional value to their companies) and scholars (to share knowledge and research) (Goodman, 2010: 139). One of the reasons to conduct the research among public companies is that they, according to the researchers have, “. . . a greater understanding that their 'license to operate' comes from public approval and is maintained by public trust” (Goodman, 2010: 137). This could be connected to the social contract theory as society allows companies to exist. Whereas Goodman (and the research team Genest & research assistants Cayo & Sin Yee) sought to identify key finding in corporate communications (2010), the Rittenhouse (2018) analytical tool manages to interpret these communications. To effectively measure the amount of candor in executive outings Rittenhouse distinguishes seven categories: “1) Capital Stewardship; 2) Strategy; 3) Accountability; 4) Vision; 5) Leadership; 6) Stakeholder Relationships; and 7) Candor” (Rittenhouse, 2018: 3). They also identify and take into the equation negative candor which they call “Fact-deficient, Obfuscating, Generalities. . . . [like] platitudes, clichés, corporate jargon, Orwellian nonsense, and confusing statements that lack important context” (Rittenhouse, 2018: 3). That so-called negative candor makes for deduction points. The annual Rittenhouse ranking of Standard & Poor's 500<sup>12</sup> shows a trend of highest-ranked outperformance and lowest-ranked underperformance that persisted constantly over the last 10 years, meaning that high scores on the candor ranking has a positive correlation to business results (Rittenhouse, 2018: 5-6). From a shareholder perspective it seems to be, based on this annual ranking, not counterproductive or even lucrative to ask for more candor in business in general therefore including candidness in ethical decision-making. The incentive and perspective of this stakeholder position stands out against the arguments deriving from the social contract theory but nonetheless the arguments are pro-candor and cannot be left out of the deliberate considerations leading up to a possible equilibrium. The input might even

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<sup>12</sup> Stock index USA also S&P or SXP (S&P Global, 2019).

seem superfluous as the arguments against candor cannot even be overthrown by free market thinking as ethical decisions remain ethical decisions regardless the economic tendencies. A shareholder is willing to invest and therefore willing to engage in a certain company and with that take risks. These risks also demand responsibilities from the company he or she is investing in. However the same type of reasoning is being used by the ones opposing the theory. The opponents would like to involve other stakeholders, other than shareholders, by claiming that not only the individuals who are effectively holding shares are the ones to be considered. Besides the investors there are also individuals who have contributed otherwise to the company as for instance employees who are taking risks “. . . by investing time and effort in the company” (Leader, 2014: 357). This approach would entail a limited amount of stakeholders, only the ones invested with either money or property. In the light of the social contract theory argumentation, the stakeholder as citizen approach might seem more coherent. “The company, it is argued, has an essentially social purpose. . . . The stakeholder arrives here not via his position as an investor of property, but via his or her general rights as a citizen” (Leader, 2014: 358).

When looking at accountability with a social contract perspective in mind, one could argue that not only the government, justice and corporations are to be held accountable. The other party, in this case the individuals in society, might be held accountable as well, as they hypothetically and sometimes explicitly (contracts by law) gave their consent for the existence of these institutions. This would imply that information on which one can base decisions and give consents, needs to be available and at least not be hidden, which often is the case. And if the information is not available then could the individual still be held accountable for its condoning and facilitating the existence of the institutions? Or is the story then spiraling back to those institutions again? Accountability is proclaimed to be the most compelling argument or rationale in the case to be made pro-candidness yet its origin is to be found in the social contract theory and therefore the contract theory tradition cannot be left out of the equation.

## **7. Conclusions and discussions.**

“Ethics is not something at the periphery affecting only relatively insignificant matters. Instead, it goes to the heart of human behavior and relationships” (Donaldson & Dunfee, 1999: 158). There is a growing general public demand for more candor, so heavily linked to moral and ethical behavior. Although it is used, and maybe abused in various ways, it is safe to say that candor is a tricky yet inherently good word. Not only does it refer to good and just behavior it refers to goodness itself. Whereas other words, intentionally or not have been used as if they were interchangeable, like transparency and openness, this clearly is not the case. Leaving semantics behind, the research purpose has been to:

**Conceptualize and operationalize a standard for candor in ethical business decision-making, modeled on the standard for judicial candor in judge decision-making.**

By using the method and process of reflective equilibrium, a coherent set of beliefs, backed up by literature and theories has been reached in search for justification of advocating more candor in ethical decision-making in business. In fact diving into the background of the social contract theory could make one wonder, how come it is possible that corporations ever got to operate so much in the dark on the level they sometimes do? Is there is a case to be made for more candidness, could thoughts about this topic from the judicial domain provide some insights? Also referring back to the social contract theory, the answer rolling out of reflectively looking at the literature and theory behind judicial candor is yes. Specifically when deep diving in the presented rationale accountability. The standard of judicial candor refers to deliberate considerations and asks to substantiate decisions to enforce the already to be expected deliberate attitude that should be inherent to the office of judge. Although defining judicial candor itself seems fairly difficult, one element of it prominently sticks out. Judges may, under no circumstances undermine their office. The same might reasonably be expected from decision-makers in corporations in order to be able to check the operation on its license to operate. In addition, asking for more candor could possibly lead to self regulatory behavior due to the possibility of being personally addressed on moral grounds. In order to be candid about arguments leading up to a decision one needs to come up with valid and reasonable enough arguments, as demonstrated by using the process and method of reflective equilibrium.

Whenever companies, or individuals within that company, do not have to be candid about their arguments in decision-making it seems fairly easy to operate in the dark. Individuals cannot always be held legally accountable because it is the company, the business or the board that makes the decision, not a specific accountable individual. It is so that companies are perfectly able to present a wonderful façade, a fatamorgana as it were, that simply resolves into dust when coming to close or digging to deep. The decision-makers can stay hidden and arguments can stay concealed due to a lack of candor in the decision-making process, leaving the so much needed reasonableness of argumentation out of the equation. If only the outcome would be presented (often referred to as transparency), then why bother construct and present a logical reasonable argumentative case leading up to the decision? The social contract theory construct, exists not only between larger entities like corporations, governments and society it also exists between individuals that form part of those entities. Emphasizing on individual accountability and responsibility to live up to the hypothetical contracts, either on a decision-making (judge or business) or consumer level by setting a standard for candor could at least inspire (self) reflection on moral or ethical matters. If such an argumentation would be presented though, one would be in need of a method or a process that can reveal and stimulate the moral reasoning behind it. This does not necessarily mean that outcomes of deliberations could not somehow be contradictory, it would allow however for others in their turn (consumers) to make more deliberate and conscious decisions. The reflective equilibrium method and process to arrive at this conclusion, at the same time offers a possible tool for those who are willing to conduct a candid operation and live up to the license to operate. It offers a possibility to address individuals on moral grounds which is likely to force the individual to base the decision at least on logical, rational and reasonable argumentation.

The (explicit) legal contracts and hypothetical (social) contracts society has with both government and economic institutions like companies imply that morally wrong behavior is not acceptable and morally right behavior is. This can refer to the overlapping consensus Rawls mentions (1999). But somehow society allows for ethical decision-making processes to stay hidden which makes it difficult to make deliberate and substantiated decisions themselves. In justice there has been a discussion for over a long time if it is justified to ask for more candidness from judges, more substantiation, giving insight in the conscience deliberations leading up to ruling. Not only for the benefit of the defendant, but also to

increase the internal awareness of judges and inflict or provoke a form of self regulatory behavior. And with that, create a more consistent, 'fair' ruling. If valid argumentation is asked for it almost forces one to revise and end up in a logical, rational and reasonable equilibrium. The standard presented in the judicial domain for judge ruling states that a judge should at least be candid enough to not undermine her or his office. This standard served as a model to conceptualize and operationalize a standard for ethical business decision-making. Although businesses and court seem to be worlds apart there are more similarities to be found than meets the eye at first glance. The contractual nature of both, the justification of their existence and the great impact they can have on society for example. As demonstrated there is an interactional movement between government, businesses, society and law. This interaction best be towards a more just and right system. Being candid about arguments used in ethical decision-making might at least contribute to more insights and offer a more fair opportunity to make conscience consumer decisions. Thinking about morality, ethics and the difference between good and bad behavior, and presenting these thoughts in a coherent fashion could lead to at least inspire thinking about the topics further, like business ethics intent to do. More candor in decision-making the way candor was intended in the judicial domain regarding providing insights in argumentation leading up to decisions could possible benefit ethical decision-making in business, as it would require deliberate considerations leading up to valid and reasonable argumentation. A lack of candor on the other hand leaves the door open for business doors to stay closed, with all its possible consequences.

## **8. Limitations.**

The individual level (or nano-level, as presented by Thompson & Hart, 2006) of the social contract theory could refer to all individual decision-makers in a social context, both individual judges in the judicial domain and individual business decision-makers in the business domain. However a point that needs to be made here is that although both are obliged to stay within the boundaries of the (local) law, both might find themselves in conflict when making decisions that fit within the boundaries but still have a possible unethical feel to it. When having to be open about this struggle and the used arguments leading up to a decision this might add to a public discussion about the current state of law

and business conduct. That is a discussion that did fall out of the scope of this research, but might be of interest.

Although the practicality of social contract theory has been slightly discussed the practicality of obligatory candor has been left alone for a great part. Even within the judicial domain thoughts on the matter of practicality are being heavily discussed however there is no coherent conclusion to be found yet. The standard is, although complex in some aspects quiet clear, judges can and may not undermine their office, this requires a minimum of candidness about their decision-making. The discussion around the candor topic in the judicial domain does not stop there. Some scholars advocate for more candor or candidness by judges about their decision-making and some are in favor to not be open about revealing all argumentations and deliberations. The additional arguments and aims towards an ideal amount of candor (if candor could be spoken of in amounts...) have been left out for the greater part of the treatise.

What also fell out of the scope of this research is, if in fact a standard of candor in ethical decision-making in business would be made obligatory, how could that be done and who would be responsible for the check and balance? This is a valid question that also remains unanswered.

Then the topic of reasonableness, on various occasions 'reasonable arguments' was used, reasonable as intended by Rawls (1991). However what is exactly to be considered reasonable? And a valid line of reasoning, when does one reach this valid line of reasoning? These are questions relevant enough to be looked at further.

## **9. Suggested further research.**

The nine rationales as presented by Idleman (1995) have been narrowed down to the most compelling argument pro-candor, accountability. Further research could dive deeper into the other rationales and see how these arguments could add to the conceptualization and operationalization of a standard for ethical business decision-making.

To conduct an empirical research it could be interesting to see what the effects of candor in ethical business decision-making would be in a controlled setting. Would the same decisions have been made in case substantiation would be obligatory and had to be

argumentatively logical, rational and reasonable? Also would it matter if perverse incentives would be present, as is the case for many real-life organizational settings?



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## Appendices

### Appendix I

#### Thesaurus (Roget, 1911) on candor.

- **Thesaurus**

- **Class IV words relating to the intellectual faculties**

- **Section II Modes of communications**

543. Veracity.N. veracity; truthfulness, frankness, &c. adj.; truth, sincerity, candor, honesty, fidelity; plain dealing, bona fides; love of truth; probity &c. 939; ingenuousness &c (artlessness) 703.the truth the whole truth and nothing but the truth; honest truth, sober truth &c (fact) 494; unvarnished tale; light of truth.V. speak the truth, tell the truth; speak by the card; paint in its true colors, show oneself in one's true colors; make a clean breast &c (disclose) 529; speak one's mind &c. (be blunt) 703; not lie &c 544, not deceive &c. 545.Adj. truthful, true; veracious, veridical; scrupulous &c (honorable)939; sincere, candid, frank, open, straightforward, unreserved; open hearted, true hearted, simplehearted; honest, trustworthy; undissembling &c (dissemble &c 544); guileless, pure; truthloving; unperjured; true blue, as good as one's word; unaffected, unfeigned, bona fide; outspoken, ingenuous &c (artless) 703; undisguised &c (real) 494.Adv. truly &c (really) 494; in plain words &c 703; in truth, with truth, of a truth, in good truth; as the dial to the sun, as the needle to the pole; honor bright; troth; in good sooth, in good earnest; unfeignedly, with no nonsense, in sooth, sooth to say, bona fide, in foro conscientiae; without equivocation; cartes sur table, from the bottom of one's heart; by my troth &c (affirmation) 535.Phr. di il vero a affronterai il diavolo; Dichtung und Wahrheit; esto guod esse videris; magna est veritas et praevallet; "that golden key that opes the palace of eternity" [Milton]; veritas odium parit; veritatis simplex oratio est; verite sans peur. (Roget, 1911: 209)

- **Thesaurus**

- **Class V words relating to the voluntary powers**

- **Division (1) individual Volition**

- **Section III. Voluntary Action**

- **2. Complex voluntary action**

703. Artlessness. N. artlessness &c. adj; nature, simplicity; innocence &c. 946; bonhomie, naivete, abandon, candor, sincerity; singleness of purpose, singleness of heart; honesty &c. 939; plain speaking; epanchement. rough diamond, matter of fact man; le palais de verite; enfant terrible.V. be artless &c. adj; look one in the face; wear one's heart upon his sleeves for daws to peck at; think aloud; speak out, speak one's mind; be free with one, call a spade a spade. (Roget, 1911: 288)

- **Thesaurus**
  - **Class IV words relating to the sentiment and moral powers**
    - **Section IV moral affections**
      - **Moral conditions**

939. Probity. N. probity, integrity, rectitude; uprightness &c. adj.; honesty, faith; honor; bonne foi, good faith, bona fides; purity, clean hands. fairness &c. adj.; fair play, justice, equity, impartiality, principle; grace. constancy; faithfulness &c. adj.; fidelity, loyalty; incorruption, incorruptibility. trustworthiness &c. adj.; truth, candor, singleness of heart; veracity &c. 543; tender conscience &c. (sense of duty) 926. punctilio, delicacy, nicety; scrupulosity, scrupulousness &c. adj.; scruple; point, point of honor; punctuality. dignity &c. (repute) 873; respectability, respectableness &c. adj; gentilhomme, gentleman; man of honor, man of his word; fidus Achates, preux chevalier, galantuomo; truepenny, trump, brick; true Briton; white man \* [U.S.]. court of honor, a fair field and no favor; argumentum ad verecundiam. V. be honorable &c. adj.; deal honorably, deal squarely, deal impartially, deal fairly; speak the truth &c. (veracity) 543; draw a straight furrow; tell the truth and shame the Devil, vitam impendere vero; show a proper spirit, make a point of; do one's duty &c. (virtue) 944. redeem one's pledge &c. 926; keep one's promise, be as good as one's promise, be as good as one's word; keep faith with, not fail. give and take, audire alteram partem, give the Devil his due, put the saddle on the right horse. redound to one's honor. Adj. upright; honest, honest as daylight; veracious &c. 543; virtuous &c. 944; honorable; fair, right, just, equitable, impartial, evenhanded, square; fair and aboveboard, open and aboveboard; white \* [U.S.]. constant, constant as the northern star; faithful, loyal, staunch; true, true blue, true to one's colors, true to the core, true as the needle to the pole; "marble constant" [Antony and Cleopatra]; truehearted, trusty, trustworthy; as good as one's word, to be depended on, incorruptible. straightforward &c. (ingenuous) 703; frank, candid, openhearted. conscientious, tenderconscienced, rightminded; highprincipled, highminded; scrupulous, religious, strict; nice, punctilious, correct, punctual; respectable, reputable; gentlemanlike. inviolable, inviolate; unviolated, unbroken, unbetraysed; unbought, unbribed. innocent &c. 946; pure, stainless; unstained, untarnished, unsullied, untainted, unperjured; uncorrupt, uncorrupted; undefiled, undepraved, undebauched; integer vitae scelerisque purus [Horace]; justus et tenax propositi [Horace]. chivalrous, jealous of honor, sans peur et sans reproche; high spirited. supramundane, unworldly, overscrupulous. Adv. honorable &c. adj.; bona fide; on the square, in good faith, honor bright, foro conscientiae, with clean hands. (Roget, 1911: 413)

## Appendix II

### Thesaurus (Roget, 1911) on lying.

- **Thesaurus**

- **Class IV words relating to the intellectual faculties**

#### Section II Modes of communications

544. Falsehood. N. falsehood, falseness; falsity, falsification; deception &c. 545; untruth &c 546; guile; lying &c. 454; untruth &c 546; guile; lying &c. v. misrepresentation; mendacity, perjury, false swearing; forgery, invention, fabrication; subreption; covin.perversion of truth, suppression of truth; suppressio veri; perversion, distortion, false coloring; exaggeration &c 549; prevarication, equivocation, shuffling, fencing, evasion, fraud; suggestio falsi &c (lie)546; mystification &c (concealment) 528; simulation &c (imitation) 19; dissimulation, dissembling; decit; blague.sham; pretense, pretending, malingering.lip homage, lip service; mouth honor; hollowness; mere show, mere outside; duplicity, double dealing, insincerity, hypocrisy, cant, humbug; jesuitism, jesuitry; pharisaism; Machiavelism, "organized hypocrisy"; crocodile tears, mealymouthedness, quackery; charlatanism, charlatanry; gammon; bunkum, bumcombe, flam; bam\*, flimflam, cajolery, flattery; Judas kiss; perfidy &c (bad faith) 940; il volto sciotlo i pensieri stretti.(Roget, 1911: 209)

- **Thesaurus**

- **Class V words relating to the voluntary powers**

- **Division (1) individual Volition**

- **Section III. Voluntary Action**

- **2. Complex voluntary action**

702. Cunning. N. cunning, craft; cunningness, craftiness &c. adj.; subtlety, artificiality; maneuvering &c. v.; temporization; circumvention.chicane, chicanery; sharp practice, knavery, jugglery; concealment &c.528; guile, doubling, duplicity &c. (falsehood) 544; foul play.diplomacy, politics; Machiavelism; jobbery, backstairs influence.art, artifice; device, machination; plot &c. (plan) 626; maneuver, stratagem, dodge, artful dodge, wile; trick, trickery &c.(deception) 545; ruse, ruse de guerre; finesse, side blow, thin end of the wedge, shift, go by, subterfuge, evasion; white lie &c (untruth) 546; juggle, tour de force; tricks of the trade, tricks upon travelers; espieglerie; net, trap &c. 545.Ulysses, Machiavel, sly boots, fox, reynard; Scotchman; Jew, Yankee; intriguer, intrigant; floater [U.S.], Indian giver [U.S.], keener [U.S.], repeater [U.S. politics].V. be cunning &c. adj.; have cut one's eyeteeth; contrive &c (plan)626; live by one's wits; maneuver; intrigue, gerrymander, finesse, double, temporize, stoop to conquer, reculer pour mieux sauter,



circumvent, steal a march upon; overreach &c. 545; throw off one's guard; surprise &c. 508; snatch a verdict; waylay, undermine, introduce the thin end of the wedge; play a deep game, play tricks with; ambiguas in vulgum spargere voces; flatter, make things pleasant; have an ax to grind. Adj. cunning, crafty, artful; skillful &c. 698; subtle, feline, vulpine; cunning as a fox, cunning as a serpent; deep, deep laid; profound; designing, contriving; intriguing &c.v.; strategic, diplomatic, politic, Machiavelian, timeserving; artificial; tricky, tricky; wily, sly, slim, insidious, stealthy; underhand &c (hidden) 528; subdolous; deceitful &c.545; crooked; arch, pawky, shrewd, acute; sharp, sharp as a needle|!; canny, astute, leery, knowing, up to snuff, too clever by half, not to be caught with chaff. Adv. cunningly &c. adj.; sliily, on the sly, by a side wind. Phr. diamond cut diamond; a' bis ou a blanc; fin contre fin; "something is rotten in the state of Denmark" [Hamlet]. (Roget, 1911: 288)

- **Thesaurus**

○ **Class IV words relating to the sentiment and moral powers**

▪ **Section IV moral affections**

• **Moral conditions**

940. Improbability. N. improbity; dishonesty, dishonor; deviation from rectitude; disgrace &c. (disrepute) 874; fraud &c. (deception) 545; lying &c. 544; bad faith, Punic faith; mala fides, Punica fides; infidelity; faithlessness &c. adj.; Judas kiss, betrayal. breach of promise, breach of trust, breach of faith; proditio|, disloyalty, treason, high treason; apostacy &c. (tergiversation) 607; nonobservance &c. 773. shabbiness &c. adj.; villany; baseness &c. adj.; abjection, debasement, turpitude, moral turpitude, laxity, trimming, shuffling. perfidy; perfidiousness &c. adj.; treachery, double dealing; unfairness &c. adj.; knavery, roguery, rascality, foul play; jobbing, jobbery; graft; venality, nepotism; corruption, job, shuffle, fishy transaction; barratry, sharp practice, heads I win tails you lose; mouth honor &c. (flattery) 933. V. be dishonest &c. adj.; play false; break one's word, break one's faith, break one's promise; jilt, betray, forswear; shuffle &c. (lie) 544; live by one's wits, sail near the wind. disgrace oneself, dishonor oneself, demean oneself; derogate, stoop, grovel, sneak, lose caste; sell oneself, go over to the enemy; seal one's infamy. Adj. dishonest, dishonorable; unconscientious, unscrupulous; fraudulent &c. 545; knavish; disgraceful &c. (disreputable) 974; wicked &c. 945. falsehearted, disingenuous; unfair, onesided; double, doublehearted, doubletongued, doublefaced; timeserving, crooked, tortuous, insidious, Machiavelian, dark, slippery; fishy; perfidious, treacherous, perjured. infamous, arrant, foul, base, vile, ignominious, blackguard. contemptible, abject, mean, shabby, little, paltry, dirty, scurvy, scabby, sneaking, groveling, scrubby, rascally, pettifogging; beneath one. low-

minded, lowthoughted; baseminded.undignified, indign|; unbecoming, unbeseeming, unbefitting; derogatory, degrading; infra dignitatem; ungentlemanly, ungentlemanlike; unknighly, unchivalric, unmanly, unhandsome; recreant, inglorious.corrupt, venal; debased, mongrel.faithless, of bad faith, false, unfaithful, disloyal; untrustworthy; trustless, trothless; lost to shame, dead to honor; barratrous.Adv. dishonestly &c. adj.; mala fide, like a thief in the night, by crooked paths.Int. O tempora! O mores! [Cicero].Phr. corruptissima respublica plurimae leges [Tacitus].#941. Knave. N. knave, rogue; Scapin, rascal; Lazarillo de Tormes; bad man &c. 949; blackguard &c. 949; barrater, barrator; shyster [U.S..].traitor, betrayer, archtraitor, conspirator, Judas, Catiline; reptile, serpent, snake in the grass, wolf in sheep's clothing, sneak, Jerry Sneak, squealer\*, telltale, mischiefmaker; trimmer, renegade &c. (tergiversation) 607; truant, recreant; sycophant &c. (servility) 886 . (Roget, 1911: 413)