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LETTER FROM THE EDITOR

It is with great pleasure that I present to students, faculty and friends of the Philosophy, Politics and Economics major the third issue of SPICE. The staff selected these five articles based on the quality of the work, the interesting nature of their content, and the diversity of their topics. As the major continues to grow in excellence and popularity, we trust that the journal will serve as a reminder of the wide range of areas of concentration within the Philosophy, Politics and Economics department.

The production of this journal has been an effort of many individuals. This year, as in prior ones, we received many quality examples of undergraduate work. We thank those who submitted articles for their interest. I am also grateful to this year’s staff of editors who have committed a lot of time during the past months of selecting articles, editing them and working on the journal’s design. I am particularly proud of this year’s staff for their dedication to the project despite long-distance communication and numerous other academic and extracurricular commitments.

Lastly, the rest of the board and I are very grateful to Dr. Sumantra Sen. His assistance provided steady encouragement throughout the entire process.

The board and I hope that you enjoy reading the following articles. It is our wish that they stimulate further dialogue both within and beyond the major.

Sincerely,

Caroline Repko
Editor-in-Chief
Introduction

In the world of poverty reduction initiatives, few projects have engendered as much enthusiasm as microfinance. The movement has changed the lives and captured the attention of millions of people. As the industry continues to grow and develop, it is worth examining the ways in which it can be advanced. Scaling up is one change that has the potential to significantly increase the welfare impact of microfinance. The intent of this paper is to demonstrate that the African context provides fertile ground for microfinance initiatives, and that African microfinance institutions can apply best practices and scale up to meet the objective of substantial welfare impact. An analysis of a case study from Kenya illustrates this point.

What is Microfinance?

Microfinance is the term used to describe the provision of financial services to those excluded from the traditional financial services industry. Without access to credit and other financial products, individuals face limited ability to acquire assets, start businesses, finance emergency needs, and insure themselves against illnesses and disasters. Thus, a lack of access to financial services seriously undermines, if not precludes, the possibility of a stable and prosperous life, giving those concerned with social justice good reason to be interested in finding a way to provide these services.

The individuals beyond the frontier of access to formal financial services are those who demand very small loans, who lack collateral, who are victims of cultural bias, and/or for whom it is deemed too costly to assess financial risk. This group includes the poor, rural inhabitants, women, and the uneducated – categories which are often positively correlated. Most microfinance initiatives envision themselves as poverty reduction mechanisms and thus focus on reaching poor individuals. In addition to being poor, most borrowers are women, and most are from rural areas, because these are the people
who typically face the highest barriers to access to formal finance.

Microfinance has enjoyed an explosive increase in popularity in recent years, so much so that the United Nations declared 2005 the International Year of Microcredit. This prominence comes from the fact that certain well-established microfinance initiatives have been shown to have a remarkably positive impact on the welfare of those they serve, which has lead many to consider the industry to be an important and effective vehicle for poverty reduction and the empowerment of poor people – particularly of poor women – worldwide. The industry has enjoyed exponential growth since it began to formalize in the 1970s, and today it provides financial services to millions of individuals.

The most widely recognized innovator in microfinance is Professor Muhammad Yunus, founder of the Grameen Bank in Bangladesh and winner of the 2006 Nobel Peace Prize. The Grameen Bank pioneered the idea of solidarity groups of four or five members, where micro-loans are granted individuals and guaranteed by the group. Since members of the group are jointly liable for repayment, risk is mitigated by the sway of peer-pressure and social capital serves as a form of collateral.

Many credit unions, rural banks, and NGO projects launched microcredit programs in Africa in the 1980s – with varying degrees of success. In general, these programs were quite small and suffered from a lack of financial sustainability. As the industry has matured and benefited from increasingly deep and specialized research, microfinance has grown rapidly in many African countries, “particularly where [formal] financial system development has been slowed by war, poor economic performance, or government control.”

**Africa: Fertile Ground for Microfinance**

Alleviating the widespread and abject poverty that exists across the world is a challenge that has eluded the international community for decades, but efforts with this aim have been particularly frustrated in Sub-Saharan Africa, where poverty is the deepest of anywhere in the world. Although the region currently accounts for only 10 percent of the world’s population, it contains 30 percent of the world’s poor. Half of its population spends less than $1 (all monetary figures are in US dollars) a day on basic necessities, a proportion that is double the world average, and Sub-Saharan Africa is the
only region in the world where poverty is expected to grow in coming years.4 In addition, Africa ranks at or near the bottom in global comparisons of social indicators of development such as literacy, life expectancy, and health care.5 The region and too many of its inhabitants are clearly struggling.

The reasons for which the task of poverty reduction in Africa has been so complicated and elusive are surely dynamic, many, and far from well understood, but some analysts have identified the region’s slow and erratic economic growth as the single most significant obstacle to progress in this aim.6 The region as a whole has suffered from what has been described as a permanent crisis. These macroeconomic troubles are underscored by the fact that the region includes fifteen of the world’s twenty poorest countries.7

The international community has responded to the slow growth of African economies by channeling aid to the region; from the late 1950s to the early 1990s, Africa saw a steady and, at times, rapid increase in aid. However, aid has not been successful in its stated aim of fostering development in Sub-Saharan Africa, despite the good intentions of donors. To the contrary, the aid regime has had unintended but seriously detrimental effects on development in Africa. It has engendered a dangerous dependency in recipient nations, and has actually slowed down the implementation of necessary policy reform by helping to sustain existing policies and weak governments.8

In addition to being unsuccessful, official development assistance (ODA) has been erratic. While the volatility of aid is a problem in itself because it frustrates development projects, the root cause of this volatility has entailed further, arguably greater problems. The primary reason for which ODA has been so inconsistent is that it often has been contingent upon compliance with structural adjustment conditionalities imposed by the IMF and the World Bank. Structural adjustment programs condition aid upon economic and political reforms intended to develop capitalist markets, foster private investment, and promote good government, thereby initiating a “trickle down” effect that eventually confer economic benefits upon the entire population. “Eventually” is the operative word. Such economic reforms typically include the abolition of subsidies for agriculture, health, and education, imposing austerity measures on those already burdened by poverty. As a result, critics of the program have argued that a disproportionate amount of the costs of structural adjustment have been
borne by the poor.

Structural adjustment is also controversial because it has been associated with an “apparent assault on sovereignty represented by the ‘reform or else’ approach.”9 This issue has been recognized, and the dialogue of development assistance has shifted to one encouraging homegrown strategies for fostering development and alleviating poverty. One the one side, African leaders are calling for and touting homegrown initiatives. On the other, the international financial institutions have at least passively acknowledged this. When the Bretton Woods Institutions’ Heavily Indebted Poor Countries (HIPC) Initiative was restructured in 1999, the Policy Framework Paper, supplied by the financial institutions, was replaced with a Poverty Reduction Paper, composed and submitted by governments as part of the application for debt relief. With this modification, “the intention was signaled for Africans to be more involved in identifying and prioritizing problems as well as developing homegrown solutions in order to obtain the commitment of implementing agents to reforms.”10 The motivation for this new emphasis on devising homegrown solutions is fundamentally similar to the spirit of microfinance; specifically, the initiatives share a commitment to helping Africans help themselves.

The clear need for a new approach to poverty reduction, coupled with the compatibility of the expressed desire for African’s to assume control of their countries’ economic development and microfinance’s distinctive capacity to empower its clients to lift themselves out of poverty, makes microfinance a viable poverty reduction strategy for Africa.

Best Practices

Defining the Objectives of Microfinance

The spirit of microfinance, as it was envisioned by its founders and is maintained by most of its proponents, is intimately related to its identity as a poverty reduction initiative. This identity, coupled with its ability to have a positive welfare impact on the poor, may lead some to the hasty conclusion that the social goal of microfinance – namely, maximizing its welfare impact – is the operative goal of microfinance. However, welfare impact is particularly difficult to measure and evaluate. This difficulty stems in part from the fungible nature of capital, because once a loan is granted it becomes nearly
impossible to track exactly where the funds trickle down to, and thus how and to what degree the impact of these funds is felt.\textsuperscript{11}

When public or donor funds are used to support microfinance initiatives, which they nearly always are, an additional factor complicates the assessment of its impact. A comprehensive assessment of impact entails weighing benefits against costs. Thus, understanding a program’s complex and many benefits is only half of the equation. Analysts also need to determine whether a microfinance program is cost effective in delivering services compared with other programs. In other words, understanding the costs of microfinance is a matter of evaluating the opportunity costs of forgone investments in other public programs, such as public education.

Measuring the impacts of financial services is a highly complicated issue. Put into economic terms, the social goal of microfinance is to “maximize the expected social value of the project minus social cost discounted through time, taking into consideration the net gain of users from loans and deposits, the profits or losses of the microfinance organization, and the social opportunity cost of the resources used.”\textsuperscript{12} Clearly, this is not a simple task; it involves an intimate understanding of the impacts of microfinance on its clients and on the communities in which they operate, as well as an understanding of the communities themselves.

There is a different way of thinking about the objective of microfinance. The levels of sustainability and outreach achieved by a microfinance institution can approximate its impact. Sustainability or financial sustainability is the ability of a microfinance institution to generate enough income to cover its costs, and outreach refers jointly to the number of clients served (breadth of outreach) and to clients’ relative poverty (depth of outreach). Initially, microfinance focused primarily on improving the outreach of microfinance initiatives to the poor. However, as the industry has matured and empirical data has been collected to better inform beliefs about best practices, the objective of sustainability has taken on greater weight.

Sustainability is important for at least three reasons. The first is a function of its direct relationship with welfare impact. Striving for financial sustainability forces MFIs to be sensitive to client demand and induces them to improve products, operations, and outreach. Better financial products, in turn,
generate greater economic benefits for clients, and thus greater impact.\textsuperscript{13}

The second reason for caring about sustainability is a function of its relationship with outreach. Financial sustainability is essential in order to achieve maximum outreach, though this relationship is often masked by an observed trade-off between sustainability and outreach. This trade-off is a product of high cost of serving very poor clients. Transaction costs are high for obtaining information about the creditworthiness of poor clients; this is a large part of the reason why the poor have been excluded from the traditional financial industry. Since transaction costs have a large fixed-cost component, unit costs for smaller savings deposits or smaller loans are significantly higher than those for larger financial transactions. This law of decreasing unit transaction costs with increasing transaction size generates the trade-off between improved outreach to the poor and financial sustainability.\textsuperscript{14}

However, this trade-off is not absolute. Institutions must achieve the financial goal of long-term sustainability first, as a precondition for achieving more broadly available financial services for the poor.\textsuperscript{15} Achieving sustainability allows MFIs to operate in the long run, or achieve permanence. Permanence creates confidence among clients and assures them that it is worthwhile to remain clients in the long run, thereby leading to increased outreach. Accordingly, even when the goal is maximum outreach, financial sustainability should be the primary policy objective for microfinance institutions.

Finally, achieving financial sustainability has inherent value, because it significantly influences the standing of an institution in the international financial industry and community at large. Sustainability is essentially becoming independent from the donor subsidies that typify young microfinance projects. Such independence is essential if MFIs are to be recognized as integral members of the financial system, able to mobilize commercial borrowings and operate in the long-run.\textsuperscript{16}

In summary, the policy objective of sustainability contributes to microfinance’s social goal of welfare impact and to expanding outreach. It is also inherently desirable, because it confers improved standing among donors, governments and members of the traditional financial industry. Consequently, the goal of achieving sustainability guides much of best practice recommendations in microfinance.
How to Best Achieve These Objectives

According to Robert Peck Christen, the author of the chapter “Keys to financial sustainability” in Strategic Issues in Microfinance, there are five key practices that lead to financial sustainability. The first is interest rate policies, which must set rates high enough to cover costs. The second practice is high loan portfolio standards, with a focus on keeping loan losses below 5 percent of the institution’s average annual portfolio. Good management with a strong productivity orientation is the third of the crucial pathways to financial sustainability. Also, MFIs must engage in effective liquidity management. Finally, diversifying the financial products offered to clients contributes to sustainability.

Interest Rate Policy

The most important key to financial viability in microfinance is the interest rate policy adopted by the program. Interest and fee income must be sufficient to cover the institutions’ costs. To do so usually requires charging interest rates above the market rate. While charging a higher interest rate on loans to the poor than on those to more wealthy consumers of traditional financial products may seem an odd approach for a project that is fundamentally about narrowing the gap in wealth between these two groups, this practice is necessary to cover the high costs associated with issuing many small loans. However, the relatively high interest rate is actually quite low compared to what is otherwise available to the poor from traditional village money lenders, who typically charge well over 100 percent interest.

A significant defect in the interest rate policies of most microfinance programs is their failure to assign an inflation cost to their equity over time. As a result, equity is eroded in real terms as the institution generates only nominal profits each fiscal year. This problem is particularly pronounced in countries whose experience with inflation is short and the pattern is poorly understood, because both program managers and clients resist imposing inflation adjusted rates as they seem to be too high. However, given that administrative costs consume a much higher share of earnings in an MFI than in a conventional commercial bank, microfinance programs cannot operate without subsidies unless they charge higher rates of interest, adjusted for inflation.17
High Loan Portfolio Standards

The second key to long-term financial viability of microfinance programs is maintaining very high portfolio quality standards. Late payment problems are costly to MFIs in two ways. First, “loans that are not repaid pass directly through the profit and loss statement as an expense.”18 The resulting increase in interest charges to cover loan losses could lead to the establishment of rates so high as to render the institution uncompetitive.

Secondly, late payments result in other types of expenses to MFIs, such as lost interest income and increased staff costs, as staff must spend time chasing past dues that could have been dedicated to other, more profitable tasks. Given the very small size of individual loans, the additional cost of chasing past-dues often exceeds the capital amount recovered, even when late payment penalties and interests are taken into account. The lesson from this is that institutions that fail to keep loan losses at low levels (below 5 percent of their average annual portfolio) will face financial consequences that move them away from, and not towards, financial sustainability. Therefore, loan portfolio standards must be kept high.

Strong Productivity Orientation

Sustainable microfinance institutions all demonstrate a strong corporate culture with a focus on efficient practices and productivity enhancement. Implementing community or peer group structures contributes to high productivity. As previously mentioned, this strategy addresses issues inherent to the clientele of microfinance, such as limited collateral and information asymmetries regarding repayment capacity. The capacity of group structures to solve the asymmetrical information problem significantly reduces transaction costs, as costly risk assessment does not have to be undertaken by MFI staff. The particular form of community involvement varies across institutions. Some have adopted the Grameen model of solidarity groups comprised of four or five participants who are jointly and equally responsible for the entire loan’s repayment. Another model is village banking programs, which utilize larger groups of around thirty clients to generate social pressure and gather necessary information for credit decisions. These systems allow individual credit decisions to be made on the basis of information
that is not available to traditional financial institutions, and in a way that is financially sustainable for even the tiniest of loans.¹⁹ Successful programs also use a graduated lending scale to mitigate risk, basing their assessment of ability to repay on prior credit performance. This is often implemented by starting new clients off with small, less risky loans and then moving them into larger loan sizes as they demonstrate a capacity and willingness to repay.

Another important aspect of productivity-oriented programs is the administration of microfinance services through a decentralized structure. This structure is generally characterized by performance-based incentive systems for staff and efficient technology for tracking loans quickly and accurately.²⁰

The third and final aspect of productivity-based programs is the attention to building human and physical infrastructure appropriate for the nature of the services provided. Programs that originate as donor-based projects, where outreach, not sustainability, is the immediate operational objective, have the funds to secure a relatively expensive human infrastructure composed of highly qualified individuals. In many settings, the basic operational functions of the programs could be carried out by less prepared individuals at a lower total cost. Therefore, MFIs must take care to fill positions in a cost-effective way.

**Effective Liquidity Management**

Funding is one of the most complicated issues microfinance institutions face. Both donors and MFIs need to implement measures aimed at effective liquidity management in order to enhance financial viability in the long term. Microfinance programs need to enhance their capacity to make adequate financial projections. On the donor side, agencies must be committed to disbursing on schedule while not imposing counterproductive requirements, such as the constraint that MFIs must draw down fully before receiving additional funds.

Another approach to effective liquidity management is the mobilization of local savings. However, this requires the MFI to incorporate savings products and restructure as a savings-based organization, which is a considerable change for those institutions that are strictly credit based. Yet,
long-run financial sustainability of microfinance undoubtedly requires programs to obtain funds from local savings pools.\textsuperscript{21} This point leads directly to the next and final aspect of microfinance best practices.

\textit{Diversifying Products/ Offering Complementary Services}

The final step towards achieving financial sustainability is the diversification of the product mix offered to clients. Savings products, as previously noted, contribute to sustainability as, subject to legal and regulatory restrictions, they can be mobilized to generate liquidity; when developing savings products for the rural poor, microfinance institutions ought to place more emphasis on liquidity and low transaction costs than on attractive interest rates.\textsuperscript{22} In addition to generating liquidity, expanding the range of financial services offered by the MFI allows the MFI to accommodate its clients’ changing demands over time. This shift in demand, often referred to as the graduation process, occurs as clients’ economic activities grow and their standard of living improves. They graduate from demanding small and short-term to larger and medium-term credit and deposit services. By diversifying the product mix, MFIs can serve the very poor as well as those closer to and just above the poverty line, who are less risky and demand larger, more profitable loans. Thus, serving as many socioeconomic categories of household as possible increases the profitability of MFIs services, lowers the portfolio’s risk, and promotes client retention, which in turn promotes growth of the institution and protects against asymmetric information. In fact, building a long-term relationship with clients by taking into account their graduation process is, for an MFI, the best protection against asymmetric information.\textsuperscript{23}

Another type of service linked to improved sustainability is educational or consulting programs for borrowers. Structured financial assistance to clients and business or marketing services raise the profitability of loan-financed projects, which in turn leads to high repayment rates.\textsuperscript{24} Expanding the services offered by the MFI to include savings and support is an important part of best practices.

\textit{Case Study: K-Rep}\textsuperscript{25}

A case study from Kenya demonstrates that African microfinance institutions can apply
best practices to meet the objective of financial sustainability, which in turn promotes the greatest possible welfare impact. The Kenyan Rural Enterprises Project (K-Rep) underwent several changes in structure before arriving at its current institutional form. It was born out of a project launched by World Education, Inc., a U.S.-based NGO, in 1984. The project was funded by the U.S. Agency for International Development (USAID), and its mission was to provide grants, training, and technical assistance to address the needs of NGOs involved in developing small and microenterprises in Kenya.

After four years of operation the project was found to have limited development impact and to be cost inefficient. As a result, USAID decided to pull its funding. This crisis prompted the project’s board and management to implement changes in its practices and structure in the aim of achieving financial sustainability.

The first change was a modification of the initiative’s mission. In addition to operating as a service provider to other NGOs, the board decided to develop its own loan portfolio. It also sought other donors and transformed the project into a Kenyan-owned institution. K-Rep launched its own lending program in September 1990. The program was modeled after the Grameen Bank’s solidarity group lending method.

The institution underwent another change in mission in 1994, directing more of its attention to lending directly to low-income communities. It also began to address concerns about its long-term financial sustainability, its growth, its continued dependence on donors, and the appropriateness of the NGO institutional form.

In 1996 K-Rep instituted a back-to-basics program, retraining its credit officers and reemphasizing its commitment to poverty reduction and the microenterprise sector. Compulsory savings requirements were also modified. Under the new collateral requirements, savings increased and delinquency rates fell drastically. It became clear to K-Rep’s board that increasing savings was both desirable as a service to customers and necessary to finance further scaling up and to ensure K-Rep’s long-term self-sufficiency.

K-Rep first entertained the idea of transforming to a regulated financial institution in 1994, when it prepared a concept paper on possible commercialization. The board believed that there were at least
four factors limiting the institution’s potential outreach. First, the NGO structure precluded access to additional sources of capital. Second, there was an unproductive tension between the activities of the Financial Services Division and those of the Nonfinancial Services Division. Cross-subsidization of nonfinancial services from lending operations was impeding the scaling up of lending activities, and the growth of the microlending program was overshadowing research and the potential expansion of nonfinancial services. Third, the savings of K-Rep’s customers were deposited in commercial banks, but neither K-Rep nor its customers could access loans from the banks. Restructuring as a commercial bank would afford K-Rep the capacity to hold its own deposits. Finally, transformation was believed to help ensure the permanence of K-Rep’s microcredit program by improving governance and increasing profitability.

Once K-Rep made the decision to transform itself into a commercial bank, it underwent an extensive restructuring intended to preserve K-Rep’s original vision of providing both financial and nonfinancial services to the poor, while improving the efficiency of each activity. The new structure, adopted in December 1999, involved the creation of three new legal entities. It separated K-Rep’s banking, research and consulting activities into three separate institutions and affiliated these institutions under a holding company.

The transformation to a commercial banking institution brought a new set of challenges. First, K-Rep Bank had the new experience of operating under stringent regulatory requirements. As an NGO, K-Rep was not subject to the sort of rigorous regulation governing commercial banks in Kenya. When it transformed to a commercial bank, K-Rep found itself subject to new regulations and heightened scrutiny.

K-Rep dealt with this challenge by creating a dialogue about microfinance with the Central Bank. Management familiarized Bank officials with microfinance regulation in other countries, lobbied for a Microfinance Regulation Bill (which was approved by the cabinet in 2004), and encouraged the Central Bank to establish a microfinance unit within its supervision department (established in 2004).

The Central Bank’s prioritization of maximizing profits rather than outreach suggests another
major obstacle brought about by K-Rep’s commercialization: the risk of mission drift. K-Rep’s mission is, “to empower low-income people, promote their participation in the development process, and enhance their quality of life.” The board recognized the risk that commercial banking considerations would lead K-Rep Bank to serve higher income customers at the expense of scaling up the mission of serving the low-income and poor people explicitly referred to in the institution’s mission statement. To demonstrate its commitment to serving the poor, K-Rep Bank located its headquarters in Kawangware, one of the largest slums in Nairobi. It also undertook corporate social responsibility activities, such as supporting school activities, local theaters, and women’s groups located near customers’ homes.

There is evidence that K-Rep succeeded in avoiding the hazard of mission drift. Although new loan and savings products geared towards higher income customers were introduced after transformation, K-Rep Bank continued to provide microfinance products

Transforming to a commercial banking institution allowed K-Rep to achieve its primary goal of scaling up; it tripled its outreach in its first four years as a commercial bank. After smoothing out the kinks, so to speak, in its new operational structure during the first two years of operations as a commercial bank, K-Rep’s loan portfolio drastically increased.

K-Rep’s commercialization also allowed the bank to diversify its mix of credit products. New products have permitted the bank to accommodate more customers generally and more group-based customers in particular. Before transformation, group-based loans were the only type offered by K-Rep. After transformation, more products were introduced and the share of group-based loans was reduced, diversifying risks.

One key objective of transformation was to mobilize a larger volume of deposits. Before its transformation K-Rep could use only compulsory savings as security for its loans. K-Rep Bank now offers five main kinds of savings products: group savings accounts, standard savings accounts (for voluntary savings), children’s accounts, current/checking accounts, and term/fixed-deposit accounts. During the first year after transformation, K-Rep Bank attracted $3.5 million in deposits. By the end of 2003 savings had grown substantially, to $15.5 million. The vast majority (96 percent) of K-Rep Bank’s depositors are microsavers whose savings balances average less than $247.
Analysis of the K-Rep Case Study

K-Rep was able to achieve its goal of scaling up through commercializing. Its transformation from an unsustainable NGO project to a viable commercial bank with considerable outreach is evidence that implementing microfinance best practices, while engaging the regulatory environment and persevering through setbacks, can lead to a sustainable microfinance program with substantial outreach.

K-Rep employs all five of the previously discussed best practices. Its interest rate policy acknowledges the higher unit cost for distributing small loans and is raised accordingly. K-Rep’s productivity orientation is strong, though its practices diverged from those specifically endorsed in this paper when it commercialized. Consistent with the practices put forward here, K-Rep’s use of the loans inspired by and modeled after the Grameen Bank’s solidarity groups, reduced transaction costs and mitigated risk. Risk was further controlled by the use of a graduated lending scale, where subsequent loans are larger and for longer periods, based on a customer’s proven ability to pay. The institution also maintained a decentralized structure when it scaled up, which promoted efficiency. On the other hand, the board decided to hire commercial bankers in addition to its original team when it transformed into a commercial financial institution. While the hiring of these staff members diverged from the recommended least-cost human infrastructure, their commercial banking expertise was a valuable asset for the organization.

K-Rep exhibited effective liquidity management. This element of best practice is particularly interesting, because K-Rep’s difficulty securing funding and multiple efforts to overcome this problem illuminate the funding issues microfinance institutions face in general. Its first transformation from a project to an institution was directly related to its inability to continue operations with a single foreign donor. Furthermore, its transformation into a commercial banking institution was motivated in large part by its desire to collect deposits in order to mobilize savings to generate liquidity.

Finally, K-Rep offered a diverse product mix that included several different loan products and savings products. This mix of products diversified the institution’s risk and allowed K-Rep to accommodate its customers as they graduated to demanding larger loans and different types of
products. K-Rep also provided an educational program for its borrowers, educating them about group dynamics and the importance of savings, which is an easily overlooked aspect of best practices. In sum, K-Rep’s twenty years of experience in the microfinance industry serves as proof that MFIs can simultaneously achieve sustainability and outreach by committing themselves to best practices and flexibility.

Conclusion

Though microfinance is still a relatively young industry, great progress has been made in understanding what microfinance best practices entail. They advance sufficiently high interest rates, high loan portfolio standards, a strong productivity orientation, effective liquidity management, and a diverse product mix. Using sustainability as a proxy objective for impact, these practices guide microfinance institutions to achieving the goals set forth in their mission statements.

Because of its deep, extensive and persistent poverty, Africa is a fertile terrain for scaling up microfinance initiatives in order to extend their services to more of the poor, and to more for the poorest of the poor. The case study on the Kenyan Rural Enterprise Program demonstrates that with attention to best practices, engagement with the regulatory environment, and perseverance, scaling up microfinance is possible and effective.

It is always worth mentioning that microfinance is not a panacea for poverty. The economic development of underdeveloped countries requires much more than making financial products and services available to more of their populations. Yet, it is a promising start, and merits the investment and rigorous research required to determine where it can go and how it should get there.


3. Ibid.


8. Ibid.


10. Ibid., 14.


14. Ibid. 5.


18. Ibid. 189.

19. Ibid. 191.

20. Ibid. 191.

21. Ibid. 195.


24. Mario La Torre and Gianfranco A. Vento, Microfinance, (Palgrave 2006).

The outcomes of an agent’s actions can be both intentional as well as unintentional, and the moral and legal evaluations of an agent’s actions and their particular outcomes often depend upon the evaluation of the agent’s intent. However, the role of intent in moral evaluation can be quite different from the role of intent in legal evaluation. As such, I wish to examine the role of intent in terms of benevolent actions, and in terms of justice and law.

I believe that the intent of the agent and the outcomes of the action ought to be the focus of evaluation in terms of justice and law. I shall discuss the nature of intentional and unintentional action and outcomes in reference to justice and law. The concepts of morality and modern law, though different, are frequently intertwined. Often, one may think of punishable acts (justice) as immoral and praiseworthy acts such as benevolence (morality) as free from punishment. In this sense one might consider law and morality of the same principle; one applied for “bad” behavior, the other for “good” behavior. However, from a philosophical as well as legal standpoint this is not entirely accurate. Many acts that are considered immoral are nonetheless considered outside the realm of punishment. Likewise, many acts, though they may be considered moral, are punishable under law; imagine a modern day Robin Hood. There is, however, a link between justice and morality and this ought to be carefully considered.

I will address how one cannot accept moral praise for unintentional outcomes, such as unintentionally beneficent outcomes, and one cannot legally punish for unintentional outcomes, which may liken moral praise and legal punishment to two sides of the same principle. However, I believe that they are in fact different concepts established upon differing principles. I will argue that law and morality - punishment and praise - are not equivalent. One must remember that although intent and action are bound to both justice and morality, they do not bind justice and morality to one another; and there are further principles, mainly motives and duties, which separate law and morality.
In this sense, they are not mutually exclusive, and precluding the one is not sufficient grounds for precluding the other. Nevertheless, as I will show, the application of each often seems consistent with that of the other.

To begin, it is necessary first to define the legal terms and their application in modern law. This is most appropriately begun by defining the modern legal use of intent and action. Legally, intent is the state of mind accompanying an act, especially a prohibited act, and intention is the willingness to bring about something deliberate or foreseen. In this sense, intent is what one wished to do, though one may or may not have accomplished this. One could say, “I intended to hit him, but I missed.” Implicitly, one must have at least attempted to bring about the outcome, hence the necessity of the state of mind “accompanying an act.” In other words, to wish someone were dead is not likened to intent to kill, and more importantly, intent is not likened to action.1

As for the state of mind, this is defined legally as the condition or capacity of a person’s mind. Therefore, intent is best described as the condition or capacity of a person’s mind accompanying an act. In this sense it is not a state of mind as used in common discourse. Legally, to say I was confused, or stressed, is not to say that confusion was your intent. The state of mind is instead very specific to the action.

Legally, to convict someone, and therefore inflict punishment, it is necessary to prove the presence of mens rea. Mens rea, of Latin origin, simply means “guilty mind” and is used to describe one as having a criminal intent, or intent to actually commit a prohibited act. Taken strictly, for example, it is not enough to have one’s act result in the death of another person, but rather one must also have had the intent to kill.

However, one can be held accountable for a variety of intents, not all of which are classified as immoral. For example, there is constructive intent, in which actual intent will be presumed when an act leading to the result could have been reasonably expected to cause that result. In this case, one may have intended to push a friend down a staircase merely for a cruel laugh, but could be considered to

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have a constructive intent to break the friend’s leg, if in fact a broken leg were to result. Essentially, the result is unintended, but should have been reasonably foreseen.

A second example is general intent, in which one is subject to punishment for the awareness of a risk or for the omission of action. For example, if one were to see a pheasant perched next to a friend, yet nonetheless attempted to shoot the pheasant, one would have taken the risk, perhaps an obvious risk, of hurting the friend, and would therefore be assumed to have had a general intent to hurt the friend, again, if this in fact resulted in hurting the friend. Likewise, if one were responsible for feeding a person and were aware of this responsibility and remembered that it needed to be done, yet did not feed the person, one could be held to have had the general intent to kill, if in fact this were to result in death.

It is important here to distinguish intent from motive. Specifically, motive is something that leads one to act. In this sense, intent to commit an act is motivated by something (i.e. money, love, etc.), and any one motive can ground an infinite array of intents. For example, one can be motivated by stress to relax, to exercise, or to eat. When one discusses intentional conduct, as opposed to motive, one discusses situations in which one sets out to accomplish something, and he or she attempts to realize that accomplishment exactly as planned. One has a mental picture in his or her mind, so to speak, of precisely how he or she would like things to turn out. There are no accidents, no complications, no side effects, just true intent. Intent is a legal concept that goes beyond motive.

Having clarified intent, it is important now to turn to the legal definition of act. To describe an act, or an event that happened, is not to describe intention. An act is something done or performed, especially voluntarily, and an action is the process of doing or performing. Voluntarily, in this case, is not to say it must be done with a certain kind of intent, but rather that the act occurred as a result

2. Such behavior under certain conditions might also be considered willful neglect, defined as intentional neglect or deliberate neglect. Likewise, under certain conditions, this could also be considered passive negligence, defined as negligence resulting from a person’s failure or omission in acting. See negligence, Garner, op. cit., 470. In this case, however, it is closer to negligent homicide, defined as the killing of a human being by criminal negligence. In one example of negligent homicide, a husband, aware that his wife was threatening to kill their child, left her without informing the authorities of the specific danger to the child, and his wife ultimately killed the child. The negligent act was not his leaving per se, but rather his failure to inform the authorities. H.L.A. Hart. Causation in the Law. (Oxford: Oxford University Press, 1959) 333.

of a person’s will being exerted on the external world. For instance, if one were to slip and fall into someone unintentionally, one has not acted rudely because the occurrence was not the result of his or her will being exerted on the external world, but was instead accidental. On the other hand, one may say something rude without intending to act rudely. However, the act, what he or she has specifically said, was voluntary. In both cases there is no intent to bring about the outcome, yet the former is not rude, while the latter is rude on account of the voluntary action.

As with intent, legality considers a multiplicity of acts. For example there are intentional acts, in which an act is the result of the agent’s will directed to that end, and unintentional acts, in which it is not. The act can be identical in both instances. When act is met with intent and coupled with mens rea, a wrongful action can establish criminal liability. In law, the wrongful action is termed actus reus.

If one has not intended the act, one is not subject to the same sort of punishment that one would be had one intended the act.

To exemplify, imagine a man standing peacefully inside a store. The man has done nothing illegal, and is standing appropriately in line waiting to be served. A woman enters the store. In doing so, she unintentionally hits the man with the door, thus breaking his nose. Her intention was simply to enter the store, motivated by hunger, but the act resulted in breaking the man’s nose. Despite the breaking of the man’s nose, the woman has not committed a crime; for she did not intend such a consequence, and this could not have been reasonably foreseen. Therefore, she would not receive punishment.

Turning now to morality, it seems that praise follows the exact same principles, and thus the same conclusion: unintentional outcomes call neither for punishment nor praise. To illustrate, image a man is being robbed at gunpoint in the store. The woman walking into the store hits the robber with the door unintentionally, thus knocking the robber unconscious and freeing the man. Certainly, the

5. Aristotle, considering this principle, wrote “If a man does [an action] involuntarily, he cannot be said to act justly, or unjustly, except incidentally, in the sense that he does an act which happens to be just or unjust. Whether therefore an action is or is not an act of injustice, or of justice, depends on its voluntary or involuntary character. ...it is possible for an act to be unjust without being an act of injustice, if the qualification of voluntariness be absent.” Aristotle. “Nicomachean Ethics, Book V.” The Great Legal Philosophers: Selected Readings In Jurisprudence. Ed. Clarence Morris. (Philadelphia: University of Pennsylvania Press, 1959) 15-39.
outcome is favorable to the man, and is a least neutral to the woman, but should she receive praise? To
consider this, it is important to turn to the notions of intent and action morally, as opposed to legally.
Specifically, I will consider David Hume7 and Lord Kames.8

To begin, it is necessary to understand Hume’s account of the will in order to understand his
account of morality. Hume defined the will simply as “the internal impression we feel and are conscious
of, when we knowingly give rise to any new motion of our body, or new perception of our mind.”9 It
is implicit in Hume’s definition of the will that action is any new motion that one knowingly gives rise
to.10 In this sense, Hume’s definition of action is similar to a legally defined action. However, to give
rise to a motion of the body knowingly, as in the case of the woman who had opened the door to the
store, is not yet enough to conclude responsibility for the act of saving the man, but merely the action
of opening the door.

As mentioned, the will is the internal impression accompanying an action, and is likened in
this sense to legally defined intention. As with legal doctrine, the woman has willed, or intended, to
open the door. The legal issue here is quite simple; the woman has not violated the law with her act
or intent, and is therefore free from punishment. On the other hand, if she hit an innocent man, and
intended to do so, there would be criminal liability. However, for Hume, the moral issue is less clear,
has not been written plainly in statute, and requires more than just the will.11

Specifically, one must draw a connection from the passions and motives, to the will, and finally
to the actions in order to establish the responsibility required for praise or punishment. If one
intentionally moves one’s body, but the internal impression one felt and was conscious of was not
of one’s own account, or not driven by motive, then approbation or disapprobation can hardly be
justified. It is thus the case that one cannot rely solely on the will in morality, as with intention in law,

7. David Hume – (1711-1776) Scottish philosopher, historian, and essayist.
10. I do not address liberty and necessity. One could ask: is the will free? If it is not, many would question accountability
even of “intended” actions, such as in the “dilemma of determinism.” For the argument at hand this is irrelevant. Addition-
ally, Hume would nonetheless continue to find accountability in the lack of free will. In fact, for Hume, it is the necessity of
the will that truly attaches moral approbation or disapprobation towards one’s actions. Hume argued that the causal neces-
sity of human actions is not only compatible with moral responsibility but requisite to it. Ibid., 575.
11. As mentioned above, legally, intent is the state of mind accompanying an act, especially a prohibited act, and intention is
the willingness to bring about something deliberate or foreseen.
and must turn to the passions and motives.

As mentioned, motive is defined legally as something that leads one to act. This, however, is not necessary for the purpose of punishment. One might argue that to say “I killed the man, and I wanted to” does not always lead to punishment due to the variety of motives that may have stirred one to kill. If one’s motive in this case was to win the battle of Normandy, for example, and the person killed was the enemy, then punishment would not be enforced. However, this is a matter of legality, not motive, and it is not illegal to kill an enemy in battle. In this case, the motive could have been vengeance and there would still be no punishment, for battle nonetheless required the killing of the enemy. Likewise, if the act was illegal, the motive would continue to be irrelevant. For example, if one were to steal either due to hunger, or out of spite, in both instances one would be subject to punishment. In other words, it is not the same thing to say “I killed him out of self defense” as to say “I murdered him out of self defense.” The motive in both statements is the same, but the legality of the action has changed.  

Returning to Hume, one cannot ignore motive. For Hume, motives are the driving force behind the praise of actions, and actions are merely indicators of the principles of motive. The motive, in this sense, is equivalent to passion. According to Hume, the passions are impressions rather than ideas. The direct passions - which include desire, aversion, hope, fear, grief, and joy, along with volition - are those that are derived immediately from good or evil and from pain or pleasure that we experience or think about in prospect. However, Hume also grouped with them some instincts of unknown origin, such as the bodily appetites and the vengeful impulse, which do not proceed from pain and pleasure, but instead produce them. The indirect passions, primarily pride, humility, love and hatred, are generated in a more complex manner, though the generation nevertheless involves either the thought or experience of pain or pleasure.  

Ultimately, the passions drive the will, and thus drive the actions, and are therefore the object of moral consideration. Hume wrote, “’Tis evident, that when we praise any actions, we regard only  

13. Hume, op. cit., 438-439. Hume’s complete moral theory appears in Book III of the Treatise of Human Nature and in An Enquiry Concerning the Principles of Morals. In both works, his theory involves a chain of events that begins with the agent’s action, which impacts the receiver, which in turn is observed by the spectator. I focus here on the establishment of the passions, the will, and the action in order to establish responsibility, and to clarify moral intent with legal intent.
the motives that produced them, and consider the actions as signs or indicators of certain principles in the mind and temper.”

As such, to find the moral quality, we must not focus on the action, or the type of action, but instead look to the motive that produced an action as the object of approbation or disapprobation. Just as an action alone is not criminal in the law, an action alone is not virtuous in terms of morality.

In addition, to praise an action requires that the motive to produce the action be distinct from the sense of morality. This is to say that the action is not performed because it is virtuous, and that one does not praise the performance of a virtuous action, but that it is virtuous because it is derived from a laudable motive, and one ultimately praises the motive. For example, in the Normandy hypothetical, if our hero had been motivated to kill the enemy for a principle of the mind such as the regard for safety and world peace, rather than vengeance, then his motive might deserve approbation. The act of killing, however, would not.

In this case, the legal issue coincides with the moral issue. His act receives no punishment, and receives praise. If he had intentionally murdered someone outside of war, his act would receive punishment, and would not be praised. However, the consistency in which praise and punishment are applied should not confuse one into thinking they are mutually exclusive.

With this it is necessary to return to the question being considered. If one is not punished for unintended acts, and one cannot receive praise for unintended acts, then do law and morality work upon the same fundamental principles? For Hume, the answer is no. With a dependence on motive, approbation cannot be bestowed upon someone merely for his or her actions, as punishment cannot be bestowed merely for actions. Unlike the law, however, one cannot receive praise merely for intent. The praise is for the motive, and thus for Hume, morality and modern law are driven by different principles.

15. To say that unintended outcomes do not receive praise is not to say that they cannot be good, or beneficial. Bernard Mandeville argued that vice unintentionally leads to the overall good of society, and thus is both unintended and beneficial. The argument here is that they do not receive praise, despite being beneficial, because the motive is not virtuous. Implicitly, Mandeville argued that it must be vice that drives the unintentional benevolence, and cannot therefore be a virtue. Additionally, as mentioned below, Kames required an action to be beneficial, but this is merely one part of a complete equation. The benefit is a necessary condition of virtue, though not a sufficient condition. Mandeville, Bernard. The Fable of the Bees and Other Writings. (Indianapolis: Hackett Publishing Company, 1997).
To further exemplify, consider two men who have stolen bread, and both intended to steal the bread. In one case, man (a) stole the bread in order to push a competitor out of business. Clearly, he is not going to be the recipient of praise from any reasonable person. On the other hand, man (b) stole the bread in order to feed a dying set of young children. In this case, praise is likely. Man (b) has been moved to steal by the motive of humanity, whereas man (a) has been moved by malice.

Nonetheless, both men are susceptible to punishment. They have both intended to steal, and have done so. Though unintended action is neither punishable nor praiseworthy, one can see from this example that for Hume the two are not mutually exclusive. In other words, it is not that if you intend an action you are going to receive either punishment or praise, but rather that you may receive one, the other, neither, or both. The crucial difference is in the motive. According to Hume, we praise the motive. According to the law, we punish the intent.

However, this is not universally accepted. Though Kames agreed with Hume in some respects, such as the freedom of the will, in other ways they diverged. For Kames, unlike Hume, approbation is a result of four considerations; something is approved of if its perception gives pleasure; if it is fitted for its use - a teleological consideration; if we approve of the end to which it is adapted; and lastly, if there was voluntary intention to realize the end.16 Considering this, it is important to note Kames’ reliance on intent. Unlike Hume, intent plays an important role in the establishment of approbation, and therefore the establishment of virtuous action. Specifically, Kames noted that the approbation of action proceeds from “intention, deliberation, and choice,”17 and it is intention that separates human action from the necessary laws of material objects.

Furthermore, having recognized intention, Kames noted that the action itself, or the end, must have some value, writing “A beneficial end strikes us with a peculiar pleasure; and approbation belongs also to this feeling.”18 Essentially, Kames believed, similarly to Francis Hutcheson,19 if the intended action is beneficial, then it is approved as fit to be done. If it is hurtful, then it is disapproved as unfit

17. Ibid., 28.
18. Ibid., 27.
to be done. To exemplify, one need only consider the robber. The robber’s actions may benefit the robber, but they certainly do not benefit the woman, man, or society. In this sense, the robber’s actions would not receive approbation.

Returning to the woman’s action, it is quite clear that the action itself is approved of, for it was certainly beneficial. However, taking into account the full scope of Kames’ analysis, it becomes clear that the action does not call for praise. Mainly, as mentioned, it is necessary to account for the beneficial ends of the action, as well as intent. The woman merely intended to enter the store, and did not intend to hit the robber. As such, the action is not entirely virtuous. Accordingly, one can see that unintentionally beneficent outcomes would not receive praise.

If this is the case, then what separates Kames’ view of morality from the modern law? Whereas Hume based morality on motive, thus distinguishing it from modern law, Kames based it upon intent, much like modern law. However, it is not a feature of morality that distinguishes the two, but rather a feature of Kame’s view of the law.

Primarily, Kames distinguished laws from virtues on the basis of duty, which, according to Kames, Hume ignored. The laws, in one sense, are virtues, but they are primary virtues that ought to be done obligatorily. Primary virtues include justice, a basis of punishment. On the other hand, virtues such as intentional benevolence and heroism, which are at stake with the woman opening the door, are known as secondary virtues that should be done, but are not obligatory. This division, contrived by “the Author of our nature,” categorizes the woman’s act as something that should be done only as a sort of supererogatory act, whereas the act of the robber ought not to be done by matter of duty and obligation.

Kames believed that to make virtues such as intentional benevolence or heroism obligatory, and thus to have them fall under the law, would jeopardize the whole of morality. Essentially, the task of always following such law would be impossible, Kames argued, and society would begin to disregard all laws and morals. On the other hand, Kames believed that making duties such as justice

20. Kames seems to have considered secondary virtues as falling under a sort of prima facie obligation, as opposed to the strict obligation of primary virtues.
21. Ibid., 32.
obligatory is reasonable and could be accomplished. For example, we can continually refrain from theft, maintain contracts, and abstain from murder. One can see here the principle that divides law and morality in Kames’ view. In both law and morality, action is relevant in the sense that it must either be good or evil. However, laws have active duties and ought to be done obligatorily. Intentional benevolence and heroism, on the other hand, do not carry this sort of duty, and are supererogatory acts that simply should be done.

In conclusion, though the outcome of unintentional action is the same in both law and morality, law and morality do not operate on identical principles. The way in which law and morality reach the conclusion is different. Modern law requires mens rea and actus reus in order to establish criminal liability. The absence of mens rea is enough to omit punishment. For Hume, the absence of intent is not exactly enough to omit praise, placing motive much higher than intent. On the other hand, Kames saw intent as crucial, and its absence is enough to omit praise. However, Kames did not liken morality to law, distinguishing laws on the basis of obligation and duty.

For both Hume and Kames, law and morality are not driven by the same principles and are not mutually exclusive. It seems rather simple, however, to confuse morality and law. Both are normative systems with norms relating to the avoidance of harm, and much of the law is based on a society’s moral principles. Additionally, there are holes in the laws which require moral analysis to a certain degree, and law is often a means by which to enforce morality.22

However, there are many differences in addition to those mentioned above. For example, laws are the result of a specific procedure and are enacted at a specific time. Morality is not. A legislature does not gather periodically to decide what is or is not virtuous. Additionally, unlike morality, the laws are public, and are applied to everyone equally by a specific system of courts. Morals and virtues differ from person to person, and neither consistency nor proper promulgation is guaranteed as is justice through modern law. Furthermore, moral approbation can be felt by any one person towards another, but legal punishment cannot be administered by any one person to another. For example, it would be wrong for one, legally, to punish someone else’s child even though his or her behavior might

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22. Patterson, op. cit., 436-439.
deserve it. Essentially then, whether one can or cannot receive punishment for unintended actions has no bearing on receiving praise for unintended actions. Morality, though often comparable to modern law, is driven by its own principles.
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Terrorism is a crime that traditional theories of criminal justice often cannot explain. Establishing punishment for criminal actions is typically a means to deterrence, incapacitation, or a combination of these principles. Through deterrence, the penalty for a crime must be such that it outweighs any estimated gain to the potential criminal, so that he does not attempt the crime. Incapacitation is founded on the notion of precluding crime without appealing to the rational calculation of the individual. Incapacitation is an expensive endeavor, and deterrence is generally a more cost-effective way to combat crime. Each of these theories usually plays a role in setting criminal punishment, but due to the unique nature of terrorism, it is not clear that either is a valid response. First, I consider how deterrence works and whether it is even an option when dealing with terrorism. Second, I examine how deterrence or alternate enforcement measures can be administered. Finally, I analyze how early sanctions may be imposed before the actual commission of a terrorist attack, and how this differs from sanctions for other crimes.

In order to understand the efficacy of deterrence, one must assume the mindset of the person about to commit the crime. In other words, proper deterrence demands an accurate understanding of the criminal’s potential payoff as well as his chances of success versus failure. If the individual estimates that he will gain $1,000,000 by committing the act, then the sanction against the act multiplied by the probability of detection must have a perceived value greater than or equal to $1,000,000 in the mind of the potential criminal. It is assumed that this individual will examine the likelihood that he will be caught, calculate the expected penalty, and thereby conclude that he will not benefit from committing the crime.

One method of determining the appropriate punishment or enforcement against a crime is through a utilitarian calculation of costs and benefits. Steven Shavell presents a theory on establishing sanctions so as to maximize social welfare. He recognizes that deterrence is dependent on the psychology of the criminal actor and offers a corresponding explanation for devising the probability and magnitude of sanctions. He notes that, to a risk-averse individual, increasing the
magnitude of sanctions for a crime will have a more substantial deterrent effect than increasing the probability of sanctions to the same degree (Shavell 479-480). In the case of terrorism, I believe that an individual prepared to commit an act of terror is only sensitive to the risk of being caught before commission of the act and completely insensitive to the risk of being punished ex post facto, no matter how severe the sanction. The primary objective of the terrorist is to inflict a great deal of damage, and self-interested sentiments are only secondarily important. Therefore, the likelihood of early detection is the most important concern to a terrorist who is deciding when, where and how to commit his crime. Setting high punishments for terror would have little if any deterrent effect. The appropriate enforcement mechanism against terrorism must focus heavily on increasing the probability of detection before the act and disregard an increase in the magnitude of sanctions. Increasing the probability of detection likely means increasing expenditure on law enforcement personnel and equipment. Unfortunately, this option entails a higher cost and does not guarantee that the terrorist will not strike in another area, but should ultimately be more effective in reducing harm.

Deterrence theory in criminal law consists of using incentives and disincentives to dissuade crime. In a study of terrorism through law and economics, Nuno Garoupa, Jonathan Klick and Francesco Parisi point out that much governmental policy towards the IRA and ETA, two prominent organizations that have committed acts of terror, presupposes that terrorists do care about the magnitude of punishment (2). Simply because government policy believes that the magnitude of punishment is important, however, does not mean that it is in fact the case. If a terrorist cares even a little about the magnitude of sanctions he would face if apprehended, then deterrence can have a role in enforcement against terror. A rational calculation of the expected punishment of terrorism would multiply the probability of detection by the consideration given to the weight of punishment. But if a terrorist gives zero weight to the magnitude of sanctions because he does not care about being punished, then the product of the magnitude and probability of sanctions equals zero in terms of the deterrent effect. In this calculation, the terrorist is not risk-neutral but risk-ignorant and the anti-terror effort to deter the terrorist is ineffective.

Another facet of deterrence theory involves the use of marginal deterrence to impose greater sanctions when the likelihood or magnitude of harm is amplified. Shavell explains that marginal
deterrence can dissuade a more harmful act when the individual is examining different courses of action (518-519). Just as with ordinary deterrence, marginal deterrence assumes that the prospective criminal considers the possibility that he will face some degree of sanctions. As previously noted, this may or may not be the case for terrorism. Marginal deterrence also requires that the penalty for an attempted crime be much less severe than for a completed crime (Garoupa, Klick and Parisi 16). This method is meant to promote an individual’s reconsideration of the crime before completion, but it may have the adverse effect of reducing the magnitude of the expected sanction against a terrorist attack. Of course, fear of this adverse effect assumes that terrorists are responsive to the magnitude of sanctions, but that must be presupposed if marginal deterrence is to have any efficacy at all.

It is difficult to generalize regarding terrorists and their motivations before the commission of a terrorist attack. It is likely that certain terrorists are responsive to potential sanctions while others are not. In the specific case of a suicide bomber, the terrorist is impervious to personal punishment because he brings the highest form of criminal punishment upon himself. This ultimate sacrifice is an indication that no sanction exists that is sufficient to deter completion of such a mission, which has value greater than the life of the individual. This feature of terrorism makes it difficult to identify incentives and disincentives that could be used in influencing the decision of a terrorist before he acts. Generally, a suicide bomber maintains a religious belief that he will be rewarded as a martyr in the afterlife, and religious convictions are nearly impossible to reason against. A closer study of different terrorist groups may provide more insight into the calculations made by each organization and hence the motivations affecting the individuals therein. To reiterate, an understanding of the unusual psychology of the terrorist is crucial to determining the best course of action against him.

Another potential problem with direct deterrence of the terrorist lies with the defiant response that legal sanctions elicit. Braithwaite explains the psychological principle that an escalation in the threat of sanctions produces increased deterrence but also increased defiance. He notes that deterrence is the prominent response when the sanction threatens a freedom that is not so critical to the subject, but that defiance is stronger when the sanction impinges upon a freedom of action that is desperately desired (Braithwaite 4-5). Many terrorist acts are motivated by fundamental political beliefs. ETA is
committed to fighting for Basque independence from Spain, the IRA engaged in violent acts in the name of defending Catholic Irish nationalist interests, and al-Qaeda is driven to attack Western influence in the Muslim world. Potential terrorists from these groups and others are wholly committed to the cause and have been known to react with defiance to any attempt to deter them. Braithwaite further explains that fundamentalist figures like Osama bin Laden try to paint the US War on Terror as a war against Islam, thereby evoking widespread defiance among Muslim populations of the Middle East. Since deterrence of terror requires severe sanctions against many personal freedoms, it is already likely to produce some defiance effects. But if terror organizations like al-Qaeda can compound defiance of anti-terror measures, then an escalation in deterrence power may not be worth the corresponding resulting backlash.

If individual deterrence is not an option against terror, then law enforcement agencies must resort to other methods of preventing terror. Put simply, if the threat of punishment is insufficient to deter terrorism, then the law must forcibly stop those who would attempt to perpetrate it. Incapacitation could take the form of imprisonment or preemptive attack on a terrorist cell. Shavell describes incapacitation as a broad range of actions that are totally distinct from deterrence in both application and effects (533). He points out that optimal incapacitation depends on the degree of harm that the crime would cause rather than the probability that the culprit will be apprehended. Determining the extent of incapacitation involves a utilitarian calculation of its costs compared to the harm prevented. Incapacitation measures can reasonably be adopted until the point at which enforcement entails a greater cost than non-enforcement. Unlike deterrence, incapacitation does not rest upon the terrorist’s responsiveness to the threat of punishment. Therefore, incapacitation can serve as a more successful method of terrorism prevention in many circumstances.

Although incapacitation is often a better alternative than law enforcement deterrence, it is not the only alternative. Paul Robinson argues that social and moral controls are more powerful than criminal sanctions in eliciting compliance with societal rules (612). Robinson makes this statement with regard to criminal law in general, but his theory may be most salient when considering the motivations behind terrorism and the sanctions against it. For reasons previously mentioned, strict deterrence is uncertain to have a direct effect on the actions of a prospective terrorist. Deterrence constitutes an appeal to the self-
interest of the would-be criminal. The reasons behind the act of terror, however, are most importantly a function of social and moral upbringing rather than a self-interested desire for personal gain. The terrorist will not comply with a societal rule against terror solely due to an appeal to his self-interest. No matter whether the terrorist is prepared to attack others in a foreign country or in his own country, he has little or no responsiveness to legal sanctions. Robinson argues that criminal law is essential to building moral principles, but in the cases of the IRA, ETA or al-Qaeda, terror attacks are driven by non-mainstream political or religious ideologies that do not give credence to official laws. Only when the political system is universally seen as legitimate will it be able to provide moral values to the population. Therefore, political legitimacy is a necessary condition for spreading a moral value against terrorism.

Whether through deterrence, incapacitation or political reform, there is not necessarily one correct answer to dealing with all forms of terrorism. John Braithwaite presents the notion of a responsive regulatory pyramid for determining the appropriate criminal justice action (6-7). He argues for a fluid system of escalation from restorative justice to deterrence and finally to incapacitation depending on the responses encountered. Braithwaite focuses not on the consequential effects of each method, but rather on the appropriateness of each course of action. He believes that if the response is correctly suited to the stimulus, a beneficial result will follow. Braithwaite notes that this hypothesis is more in line with international relations theory than with standard criminal justice logic, but he believes that it is a valuable tactic when dealing with a hostile terrorist entity.

To illustrate his point, Braithwaite presents the case of US relations with the Taliban in Afghanistan after the 9/11 attacks. Although the Taliban offered to negotiate with the US over Osama bin Laden, the US rejected this option and proceeded to war. Braithwaite argues that one must always begin with dialogue at the restorative justice stage of the pyramid before proceeding upward to deterrence, and certainly before undertaking a war of incapacitation (8). He notes that this step must be attempted even if one knows it will not succeed. Such willingness to engage in dialogue, he argues, may have mitigated Muslim antipathy toward the US following the invasion of Afghanistan. Braithwaite's paper, which was written in 2002, shows great foresight regarding current US problems in the Middle East. His message concerning restorative justice as a preliminary stage
of regulation could have future utilitarian value in facilitating the United States’ War on Terror.

Braithwaite’s argument is subject to some challenges. This argument for dialogue before an escalation of force appears more relevant when discussing negotiations with a foreign nation, and it seems to take a naïve view of terrorism. Would such a method work even when the enemy has no desire for discussion and is not concerned with the legal conventions of war? Braithwaite believes that responsive regulatory theory can compel even the otherwise irrational actor to respond to rational incentives (9). This is contrary to standard deterrence theory, which requires that the target of deterrence be rational and self-interested. It is unclear whether Braithwaite’s method can be effective in preventing acts of terrorism when applied to discussion with the individual himself, but his point may be more valid with regard to a terrorist organization.

It is unlikely that an individual who is prepared to inflict harm on others, and possibly on himself, will listen to the voice of reason, but dialogue with the larger group that commissioned the individual may provide insight toward averting such an attack. Although the ideology that drives the individual terrorist emanates from the leadership of the terrorist group, the organizational heads are less extreme than their espousal of violence suggests. The leader of a terrorist group will never put himself in a position of danger, but instead subjects marginal lives to the risks of capture or death. These leaders preach the good of the mission over the life of the individual and yet never sacrifice their own lives. But in this hypocrisy lies a kernel of rationality that can be motivated by appeals to self-interest.

It is important to think in terms of a terrorist organization because it is rare that an individual would commit an act of terror without the financial and moral support of a larger group. There are those who benefit from acts of terror and those who facilitate it. At times, these two groups are one and the same. Sometimes the terrorist’s family is compensated ex post facto for the accomplishment of the goal, and this support may be a motivating factor in the terrorist’s initial agreement to undertake the attack. Many terrorists are selected because they are in a position of financial despair. These candidates might rationally choose terrorism as the best means to support their families. Cutting off this pipeline could impact this rationality and have a deterrent effect on terrorism. Israel, a country that frequently deals with acts of terror, has laws that prohibit the
dispensing of funds to the family of a suicide bomber and that permit the demolition of property owned by the immediate family of a terrorist (Garoupa, Klick and Parisi 27). Such provisions seek not only to discourage terrorism as a means to support one’s family, but also to encourage family members to warn their relatives of such negative consequences. This broadening of the examination of terrorism reveals opportunities for incentives and disincentives that were not otherwise evident.

The other secondary group responsible for terrorism consists of the providers of weaponry and plans for the attacks. This backstage authority renders the terrorist attacker a mere puppet. While the terrorist sacrifices his life or at least his freedom in achieving his goal, the organization gives up very little in accomplishing its objective. Garoupa, Klick and Parisi take note of both active supporters of terror and those who could deter terror but do not, constituting crimes of commission and omission, respectively (4). Even when direct deterrence is ineffective, secondary deterrence can play a role whenever there are rational motivations behind the act. Unlike the direct terrorist, the guiding organization can be motivated by the magnitude of sanctions, whether monetary or otherwise. Although the terrorist himself may have nothing to lose, those higher up in the organization enjoy many privileges that could be taken away. Braithwaite suggests that wealthy Saudi businessmen who may fund al-Qaeda would be particularly susceptible to any deterrence that threatens their material interest in global trade (26).

Financiers of terror never sacrifice their own status or life in terrorist operations, so they are quite different from the suicide bomber who shows no sensitivity to severe punishment. However, these individuals are likely to alter their behavior if they too have disincentives to continue funding terrorism.

Like many other crimes perpetrated by groups of individuals, terrorism requires a great deal of trust among members of an organization. One way to combat terror is to undermine the trust necessary for a cooperative relationship. This can be accomplished with the use of plea-bargaining and leniency agreements when dealing with captured terrorist conspirators as a means to form rifts within the organization (Garoupa, Klick and Parisi 14). While the intense indoctrination within most terrorist groups makes members more difficult to turn than other criminals, even a small breakdown in collective trust could have a drastic effect on the effectiveness of the group. If a member of a terrorist unit can be subverted, this can cast suspicion on all members of the organization.
and even undermine the trust of those who provide moral and financial support to the group.

Another important aspect of the punishment of terrorism is the determination of when liability can be administered. Paul Robinson examines a case of theft to study basic human intuitions about when during an attempted crime liability should be significant. He found that most subjects do not assign heavy liability until the point of “dangerous proximity,” the fifth of six stages toward criminal action when the offense is likely to be completed successfully (Robinson 625-627). Robinson notes that this finding is consistent with the common law legal test for liability. The two initial stages before the crime is complete consist of the thought of the offense without any action and the very basic planning stage. There is never a penalty for simply thinking about committing a crime, but some legal systems would assign “inchoate liability” for a substantial degree of planning towards a criminal act (Robinson 622). Robinson’s study found that only 27% of respondents deemed punishment appropriate in this second stage leading up to the theft (629). I wonder whether this late determination of liability would change for the crime of terrorism in support of strong sanctions at a much earlier stage in planning the crime. Support for or opposition to the USA PATRIOT Act, for example, may provide an indication of popular sentiments about imposing sanctions at a very early stage when there is the potential for terrorism.

A study of intuitions about terrorism should elicit a judgment of severe liability even early in the planning process. Because the expected harm of terrorism is much greater than the harm caused by theft, a high sanction should be imposed against terrorism at a much earlier stage than against theft. At an early stage the chance of the crime being completed is fairly low, while at the point of “dangerous proximity” it is a near certainty. To balance the harmful effects of theft versus terrorism, the sanction at a given stage must be much higher for terrorism than for theft. If instead the sanction is held constant, then it must be imposed for terrorism at a much earlier stage of planning, when the probability of completion is significantly lower. This view is a hybrid of Shavell’s separate arguments regarding deterrence sanctions and incapacitative sanctions. While combining the two may seem inconsistent from a legal perspective, it makes perfect sense from a utilitarian standpoint.

In large part, terrorism is difficult to eliminate in the world today due to the unusual psychology inherent in a terrorist attack. Law enforcement officials do not think like terrorists and may find
it hard to understand the motives and influences behind an attack. Different from most other crimes, terrorism is rarely undertaken for self-interested reasons, at least not at the individual level. Therefore, a terrorist is usually a poor candidate for deterrence. Nonetheless, even though deterrence may not be able to dissuade the terrorist who is wholly committed to his mission, there are many other individuals with influence on the commission of terror who are responsive to legal sanctions. Wealthy sponsors of terror or relatives of potential terrorists would certainly be deterred by economic or criminal penalties. Even where deterrence fails, incapacitation is a costly but viable option. But beyond these basic methods, alternate strategies such as Robinson’s moral and social controls or Braithwaite’s responsive regulation offer new ways to stop terrorism before its motivation manifests.

Because it causes great harm, terrorism requires steeper sanctions and earlier enforcement than other crimes. Even traditional methods of punishment can be adapted to suit the abnormal terrorist psyche. Terrorism is not an ordinary crime, so we cannot rely upon ordinary measures to curb its commission.
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To whom much is given, much is expected. While this biblical verse may not have been referring to corporate executives, it is certainly applicable to their situation. As the average market capitalization of American public companies continues to rise, so too does the compensation package for these companies’ Chief Executive Officers. Chief Executives at the highest level of the corporate ladder are richly rewarded for their responsibility; from 2000-2003 the average CEO was paid $8.5 million annually.1 While the everyday worker may be appalled at such an exorbitant figure, this paper will argue that there is nothing inherently immoral about the fact that compensation levels are so high. The rising pay level for CEOs is justified by recent increases in overall national wealth and productivity, increases in competition for top-tier talent, and increases in overall job risk associated with the position. The nature of the self-correcting American market is such that CEOs earn their salary in a legal and moral fashion. The discrepancy between CEO pay and average pay is not only justified, but necessary to sustain current conditions of the American economy.

Milton Friedman argues the only responsibility of a business is to increase the value of the firm in order to increase shareholder profits.2 To achieve this end, the interests of the CEO and the shareholder should be as closely aligned as possible. This way, the CEO’s main priority is to increase his firm’s share price. High pay that is tied to company performance is the simplest way to accomplish this goal. If the recent dramatic increases in compensation were simply increases in base pay, criticism might be well-founded. However, executive pay includes several additional types of compensation including annual bonuses tied to performance measures, stock grants, and stock options. In the early 1990s, stock options on average accounted for only 20% of a CEO’s compensation package. In 2000, they accounted for 50%.3 Prior to these changes, CEOs would take home the same large paycheck regardless of company performance. With more diverse compensation, they now have greater
incentives to meet and exceed performance goals. If the stock price of the company falls below the contracted exercise price, this portion of the compensation package is rendered worthless. Therefore, the changes in compensation structure associated with increasing pay levels will help further the interests of the stockholders. This is one moral justification for why CEOs get paid so much more today than they did in previous years.

While the shareholder theory outlined above clearly justifies the shift to more diverse payment schemes for CEOs, it does not necessarily justify the absolute high level of pay. It is not indisputably clear that an increase in total compensation was necessary to convince CEOs to accept the shift in payment styles. Perhaps an alternative arrangement could have been made in which CEOs would accept stock options in exchange for, not in addition to, some of their current pay. This way, the interests of the executives and the shareholders would still be aligned, and shareholder earnings would not have to be reduced to cover the higher salary. CEOs would likely resist this offer, though, as options or stock grants add a greater amount of risk to their compensation “portfolio.” Still, it is uncertain if CEOs would actually leave their jobs or consciously lower their job performance if the board of directors forced them to accept such a change.

Due to the uncertainty outlined above, one way to ensure consistency with Friedman’s shareholder theory that company value is increased is to perform a cost-benefit analysis on a CEO’s salary. Scholar Jeffrey Moriarty argues that if adding shareholder value is the inherent obligation of the firm, then the CEO should increase firm value in excess of his salary. Therefore, in order to justify his salary, any marginal increase in the total market value of a company should outweigh the total marginal increase in a CEO’s pay. While it is difficult to determine exactly how much value one individual can add to a company, the overall market capitalization of a company provides a telling indication of performance. From 1980 to 2003, there has been a six-fold increase in CEO pay along with a six-fold increase in weighted market capitalization. Moriarty is quick to point out the rising trends in compensation in his “dessert” argument that CEOs do not earn their pay; however, he fails to mention this parallel rising trend in results. Year-to-year increases in CEO pay are extremely consistent with shareholder gains. The CEO is certainly not the only employee who contributes to
exceptional performance. It is difficult to prove that the parallels between pay and results are causal in nature rather than merely correlated. However, the fact that higher costs are correlated with higher benefits makes CEO compensation appear to be morally acceptable since both CEOs and shareholders are better off.

In addition to the stakeholder theory argument, a utilitarian argument also supports CEO compensation. Higher compensation levels are justified to the extent that total social utility is maximized for anyone who either affects or is affected by the firm’s actions. In order to support executive salaries, paying a CEO a higher salary would have to create an overall net increase in utility for the CEO, the employees, the customers, the shareholders, and others whose utility is at stake. As previously discussed, shareholders have benefited through rising stock prices. Higher stock prices also have the potential to benefit customers. They indicate that firms have greater access to capital, enabling them to invest in efficiency improvements and achieve economies of scale. As a result, consumer prices will likely decrease. Lower prices will stimulate demand, leading to benefits for distributors or manufacturers connected to the firm’s product. Only the firm’s employees do not necessarily benefit as the increase in company profit may not necessarily be used to increase their salaries.

In addition to his shareholder theory, Friedman’s unrelenting support for open markets supports current levels of executive compensation. In an open market, there is only one legitimate way to value any service or commodity; it is “worth” whatever people are willing to pay for it. As long as there is no coercion involved, the free market puts a price tag on every commodity. While some may argue that a Lexus is not “worth” so much more than a Chevrolet, manufacturers should not be reprimanded for charging whatever the market will bear. Neither should CEOs. So long as legal regulations require full disclosure of corporate compensation, the shareholders will be able to freely evaluate whether the firm still provides value. If shareholders perceive that high CEO pay is compromising company profits, they will choose to either sell the stock or refrain from purchasing stock in the first place. This provides a check on CEO pay and ensures that they are leading their firms in a manner that makes everyone better off.

In addition to the participation of stockholders, the oversight of board members also justifies the
elevated level of CEO compensation. Although some argue that CEO compensation is intentionally inflated by members of the board in order to increase their own future salary, it is unfair to presume that board members will act on self-interest alone. While evidence suggests that higher-paid board members grant their CEOs larger compensation packages, the high salaries of all participants may just stem from the fact that a company is larger, more profitable, or more risky. Conflicts of interest exist in many career fields. A car mechanic, if acting in his best interest, would always claim that a car needed a new engine or other expensive parts. However, just as a car mechanic would not want to put his reputation or the reputation of his industry at risk, neither would the board member.

The increasing presence of private equity firms further negates any claims that special relationships between the CEO and his board of directors are the main driver behind the inflation of CEO pay. Critics of high CEO pay argue that executive salaries are invalid because they are skewed by negotiations that are not at arm’s length. Private equity transactions such as CEO salary agreements, however, are always at arm’s length. Private equity operates on the idea that impartial bankers will cut out inefficiencies to add value. Employees are often fired and paychecks are often slashed. When private equity firms buy a company and “take it private”, they will not hesitate to cut compensation for a CEO if she is not performing at a level judged to be commensurate with his or her salary. Therefore, a comparison of salaries in public and private firms would be telling. Sageworks, a stock research firm, compared the salaries of CEOs in ten public firms and their counterparts in ten private firms of the same size and industry. There is indeed a discrepancy in CEO pay at private firms versus public firms, with salaries averaging at $3.3 million for the former and $7.7 million for the latter. However, the difference in salary may be attributed to inherent differences in the nature of the job. CEOs of public companies must take on greater public scrutiny as well as greater legal liability, especially after the implementation of Sarbanes-Oxley. Also, CEOs of privately held companies get a more of their compensation in cash, while CEOs of public companies are compensated with more stock options or other performance-based alternatives. This is more risky, which entitles CEOs to demand greater overall pay in order to take on this risk.

A dramatic rise in the number of private equity firms also presents another justification for high
compensation for CEOs: the competition for talent. CEOs are uniquely able to maneuver across industries. A doctor trained in neurosurgery could not suddenly decide to switch to ophthalmology just because a higher demand offered an increase in salary. However, a CEO trained in managing financial operations for a company specializing in one industry would have a much easier time transferring his skills to a vastly different industry. This is demonstrated by the relentless pursuit of CEOs by headhunters representing private equity firms. In 1987, private equity firms managed a cumulative total of $1 billion in assets. Today, over 2700 firms manage $500 billion in assets. In recent years, CEOs from major companies such as General Electric and IBM have left their firms to pursue careers in private equity. Thus, in order to retain superior talent higher salaries must overshadow the allure of the private sector.

Arguments comparing the risk levels and downfalls of being employed as a public versus a private CEO can also be applied to being employed as a public CEO versus an everyday employee. CEOs are the face of the company and are held responsible for any major event gone wrong. They are subject to public scrutiny and greater liability. CEOs are often held accountable for difficult situations over which they had no control. For example, in 2007 Citigroup experienced losses from mortgage-backed securities. Even though many banks were in similar positions and CEO Charles Prince alone did not cause the subprime crisis, he was criticized for his performance and ultimately left the company. As mentioned before, however, CEOs do have greater job mobility than those in other fields. Nonetheless, even marketability of managerial skills often does not offset the hassle of seeking out a new position.

CEOs work longer hours on average, which necessitates higher pay to compensate for this sacrifice. Accepted economic models support the idea that as individuals move higher up the corporate ladder, they must be paid exponentially more if they are expected to increase the quantity and quality of labor that they produce. Current economic theory provides a model detailing the tradeoffs between labor and leisure. In this model, there are two battling effects. The substitution effect suggests that as a CEO’s average wage rises, she will want to work more hours because the opportunity cost of leisure will be higher. However, the opposing income effect suggests that as a CEO becomes wealthier, marginal utility of money decreases. She will then be more likely to choose leisure over labor. Only a much higher salary
would prevent one from making this choice.

Jeffrey Moriarty’s “utility view” argues that if CEO salaries were lowered across-the-board, fears of a massive exodus of CEOs would be unfounded. CEOs would have no better alternatives given the concurrent elimination of alternatives. Although the talent pool may not be affected in the short term, there could be greater long term implications. High salaries of top businessmen may be necessary to encourage the finest students to enter the field. The earnings potential of jobs in is arguably one of the industry’s strongest appeals. Among elementary school students, the answer to the question “what do you want to be when you grow up?” is usually not “a CEO”. Managing arguably does not provide the same sense of contributing to the world or opportunities for personal expression as do professions in the medical field or the arts. As such, a high salary is one way to recruit top talent to a field where it takes many years to reach a position of power. The “tournament theory” suggests that by making lucrative salaries the prize for making it to the top, more competitors will enter the race.

Still, there are many others who have unpleasant jobs but commit to them in spite of lower salaries. Although the discrepancies in pay may therefore seem “unfair”, this argument seems to center on gut reactions rather than thorough analysis. The initial shock at hearing that CEOs were paid 430 times the amount of the average American’s salary in 2004 may be difficult to overcome. However, the math behind this statistic is highly questionable. A handful of high-paid outliers distort the data, making the median a more reliable figure. The median take-home pay for CEOs in 2004 was 187 times that of the median worker. Another important clarification is the nature of the sample used to collect data. The figures mentioned are based on a survey of CEOs of S&P 500 companies, some of the largest and most successful companies in the world. A Towers Perrin study on a more complete sample concluded that the population compensation for CEOs hovers around 39 times that of the average worker.

High CEO pay is justified in that it aligns CEO interest with company performance and thus shareholder incentives, is freely agreed upon and serves to adequately compensate for job demands and foregone opportunities. Arguments involving increased competition and incentives show that high payments are not only justified, but necessary to sustain the attraction of talented workers to CEO positions. Together, these ideas show that the reasoning behind high CEO compensation is legitimate and moral.
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9. Ibid.


12. Ibid.
**Introduction**

While organisms such as starfish, bacteria and many other plant species are capable of producing asexually, humans are not. Therefore, from an evolutionary perspective, it is imperative that individuals of sexually reproducing species like us find a mate.23 Sex has a very important evolutionary function and is an enormously powerful driving force in the lives of humans. It fuels evolutionary change by adding variation to the gene pool (Abrahams, 1994). More importantly, it is the only mechanism that passes genes on to the next generation. For this reason, there has been a growing amount of literature on behaviors and phenomena that seem to promote a sexual encounter between two individuals. Such behaviors may include courtship, dating, and flirting. Among the three, this paper will focus on flirting and the evolutionary function that it may have.

**Definitions**

Flirting is a form of human interaction, usually defined as expressing a sexual or romantic interest in another person. This paper will use the term “evolutionary function” to mean a particular phenomenon or response to environmental stimuli which may serve as an adaptive advantage and increase genetic fitness. To properly examine whether or not flirting has an evolutionary function to human beings, one should begin by examining whether flirting has a specific role in solving adaptive problems faced by humans.

Adaptations are problem-solving devices24; they are specifically designed to solve a problem and have been naturally selected among other, less successful designs. Over time, individuals with successfully designed adaptations will leave more surviving offspring and their advantageous trait will become species-typical. Adaptive designs, then, have to have specific functions. Function, in the definition of evolutionary psychology, is the specific way in which a certain trait solves problems.

that have been repeatedly faced by a species over time. For flirting behavior to be considered as an adaptation of human beings, therefore, it should be species-typical.

Flirting has been observed cross-culturally. Irenaus Eibl-Eibesfeldt, a scholar of urban ethology, discovered that people in dozens of cultures, from the South Sea Islands to Western Europe, Africa and South America, engage in a similar repertoire of gestures to flirt with each other. One may then ask: is flirting, which seems to be a species-typical behavior, an adaptation to environmental problems that thereby leads to the proliferation of a gene with the specific design feature? Or is it just a side effect of other adaptations?

**Puzzles**

Flirting can be thought of as having a signaling function. Flirtatious behaviors are, in most cases, engaged in by two opposite sexes who are mutually interested in one another. Successful flirting often leads to a sexual encounter, courtship, or advances to a stable, committed relationship between the two individuals. Studies confirm the common notion that flirtatious behaviors are used to promote a relationship that involves some degree of sexual contact. However, sexual intent is not a necessary or a sufficient reason to engage in flirting. Various experiments, such as the one conducted by England, Spitzberg, Zormeier et al, suggest that individuals in platonic cross-sex relationships do engage in flirting behaviors that are no different from those of individuals in sexual relationships. It was also revealed from similar studies that individuals who are engaged in a committed relationship often flirt with strangers without any intent to get sexually involved with them. For this reason, it is extremely difficult to distinguish between flirting behaviors with and without sexual intent. Individuals often misinterpret flirting behaviors without any sexual intent as courtship invitations and escalate their own behaviors so as to pursue unintended, undesired social-sexual behavior. For both men and women, the wrong interpretation of flirting leads to embarrassment and a wasteful investment of resources.

which may be time, effort or money. If flirting were to have a signaling function, why would it often involve such costly outcomes?

Another problematic aspect about considering flirting as a signal of sexual interest is that it is free from any cost or risk. According to the theory of honest signaling, the necessary and sufficient features of a believable signal are that it cannot be easily faked and that it is more costly to produce for individuals who do not mean the signal.\(^\text{29}\) However, because individuals can terminate the interaction at any point without incurring any significant cost, flirting does not constitute any commitment towards advancing the relationship. Therefore, following the definitions of the honest signaling theory, flirting is mere cheap talk among individuals.

In a case where the main function of flirting is signaling of sexual intent, people would be trying to acquire and explicitly show such information rather than hide the fact and be ambiguous about it. Therefore, to conclude that the only, or at least the main, function of flirting is to signal sexual interest, one seems to fall short in accounting for its ambiguity and meaninglessness. The complicating factors may be due to ulterior motivations other than signaling or barriers in interpersonal interactions during perceptual and cognitive processes.

Different Motivations

Flirting behaviors are often very similar in appearance, but may be driven by two or more different motivations. This indicates that flirting interactions can be quite complex, often involving a variety of disparate goals. Different motivations can be broadly classified into two categories. Sexually motivated flirting behaviors are courtship initiating; behaviors with no sexual intent are quasi-courtship. For this reason, the distinction between courtship initiation and quasi-courtship appears to lie not in the behaviors, but rather in the motivations that generate those behaviors. To correctly make a distinction between courtship initiation and quasi-courtship flirting, one must first separate the motivations of the adaptations from its effects.\(^\text{30}\) Therefore, to understand flirting interactions, this paper will first have to recognize the different motivations that promote these interactions and study whether or not each differently motivated function of flirting solves a specific adaptive problem.

\(^{29}\) Robert Kurzban, Honest Signaling Lecture.
\(^{30}\) Justin H. Park, *Distinguishing byproducts from non-adaptive effects of algorithmic adaptations*, 4.
Flirting with Sexual Intent

As mentioned above, not all flirting behaviors are driven by sexual intent. However, sexual motivations are still the most likely to produce flirting interactions in most of the cases. The strongest evidence may stem from the fact that the decision not to flirt with a person is significantly predicted by a lack of sexual attraction to the person (Messman, Canary, & Hause, 2000).

Besides sexual motivation, a second type of motivation is relational – increasing intimacy in an existing relationship to develop it into a more stable, committed one. The finding of Messman et al. (2000) indicates that people are cognitively aware of this motivation and view flirting as a way of promoting relational development.

There is an interesting gender difference inferred from the comparison of the two motivations. In one experiment (Abbey, 1982), participants were given various scripts of a typical cross-sex flirting interaction and then were asked what flirting motivation the person in the interaction would have while engaging in the flirting behavior. In this experiment, men believed significantly more flirting behaviors were sexually motivated than women did, whereas women believed significantly more flirting behaviors were relationally motivated than men did. These findings are consistent with the evolutionary theory view of flirting interactions. From an evolutionary perspective, men are likely to pursue more sexual encounters than women do, whereas women are more likely to value relational commitment than men are (Trost & Alberts, 1998). Research conducted by Yarab et al. (1999) found that while both men and women view flirting with others as a threat to existing relationships, women reported greater jealousy and viewed the behavior as more unfaithful than did men. This implies that women see flirting as more connected to developing relationships as well as a greater threat to an existing relationship. These experimental results further support the evolutionary perspective of gender differences.

32. Ibid.
33. Ibid.
34. Ibid.
36. Ibid.
Gender differences in flirting behavior were also noted in a different experiment conducted by Mishra and two colleagues from McMaster University. Participants were asked to rate their partners or acquaintances before and after watching a video of members of the opposite sex being interviewed. When the female interviewees of the videotape acted more socially and flirtatiously, both attached and unattached men lowered the ratings of their current partners and other women, whereas the relative openness of male interviewees had no effect on women subjects. This finding also indirectly supports the evolutionary theory. Women are less likely to respond to signals of intent because, historically, females benefit most from finding one high quality partner. Therefore, their opinion of their partner is less likely to be swayed by exposure to an attractive male. Reproductive success for men, on the other hand, has historically been contingent on finding and mating with a large number of females.

**Flirting Without Sexual Intent**

The two motivations mentioned above involve sexual intent – either initiating the first courtship, sexual encounter or stable relationship, or refueling an existing relationship. Many other motivations of flirting lack a sexual intent, often referred to as quasi-courtship behaviors. These quasi-courtship motivations of flirting may explain why flirting is often too ambiguous and unreliable to be interpreted solely as a signal of sexual intent.

David B. Givens noted that individuals engage in flirtatious behaviors with an exploring motivation to assess and check various types of information about the prospective partner. This can be understood as the step before the signaling of sexual intent. Before increasing intimacy in a certain interaction, individuals try to examine the personal predisposition and physical or psychological state of the partner. Then the individual may decide whether the interaction is worth increasing intimacy or if the person is worth the investment of more resources.

In this exploring motivation of flirting behaviors, sexual selection plays an important role. Sexual selection refers to mating strategies that favor certain traits. Those individuals with certain more

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desirable traits will have an advantage in obtaining mates over others without those desirable traits. Individuals engaging in exploring-motivation flirting will try to detect traits that indicate relevant properties and assess the potential partner accordingly.

The first type of information revealed during flirting is the degree of interest that one may have in approaching the other. Wasted investment of resources in an uninterested individual is very costly to both men and women. Moreover, various psychological theories suggest that most humans have a strong inclination towards reciprocity. For example, social exchange theory posits that all human relationships are formed by the use of a subjective cost-benefit analysis and the comparison of alternatives.\(^\text{41}\) When a person perceives that the costs of a relationship outweigh the benefits, then the theory predicts that the person will leave the relationship. Thus, the initial step in flirting interactions is recognition of another’s behaviors. It is crucial, before increasing intimacy in a relationship, to examine how willing a person is to establish initial contact and to mutually commit to a relationship. Therefore, individuals may engage in flirting behaviors to assess whether another person might be interested in them with no immediate interest of sexual contact. In other words, people may flirt to assess another’s potential interest before making a judgment about what type of interaction they would like with them.\(^\text{42}\)

The second type of information that may be revealed is intelligence. Humans are complex creatures whose higher faculties presumably contribute to their success. Intelligence, therefore, can largely contribute to genetic success in the human population. In his theory of mating minds, Miller suggests that many different, highly complex traits which demonstrate cognitive abilities can clearly signal one’s intelligence.\(^\text{43}\) One of the best indicators of such excellent cognitive fitness is language. To be a reliable indicator of a certain trait, following from the logic of honest signaling, a cue should not be easily faked and should be costlier to produce for the less fit. Miller suggests that language can be considered one such reliable indicator. Learning language beyond the basic grammar and vocabulary is a difficult task; less than 7% of vocabularies can account for 98% of conversation. Language is critical in most interpersonal interactions, especially courtship, dating, and flirting. Compared to when they

\(^{41}\) Homans, George C. *Social Behavior as Exchange*. America Journal of Sociology, 597-606.


are engaging in normal conversations, people try to use much more creative, humorous and witty types of language when flirting. Flirtatious language is indirect and complex; it involves a process of thinking and interpretation. Although flirting may not definitely signal sexual intent, its language makes it an intelligently challenging behavior for individuals. Thus, flirting does carry a significant function as a signal of mental fitness.

On the other hand, people often flirt simply because it represents an enjoyable form of interaction. For instance, Koeppel et al. (1933) found that individuals reported flirting as a fun and harmless behavior. Another case of gender difference was revealed by the same experiment conducted by Abbey et al in 1982. In this experiment, women, on average, reported more fun-motivated flirting behaviors per script than did men. Thus, the results indicate that women are more likely to see flirting as playful or fun-motivated than are men. This result also partially supports the claim that women will engage in flirting without sexual intent much more often than men.

From an evolutionary perspective, this finding is very relevant to the exploring motivations for flirting behavior. The sexual selection theory indicates that because females often make bigger parental investments, males are relatively less selective in mating than are females. A wrong choice of a mate is much costlier to women than it is to men. Consequently, women need to be especially conscious of the traits that they desire in a male. For this reason, women need to develop a large repertoire of flirting behaviors so that they can not only attract men who are good relational targets, but also judge the language skills that are revealed during flirting. To develop such an assortment, women may compare effective and ineffective flirting strategies in a harmless fashion by practicing flirting.

Flirting can certainly be used to signal one’s sexual intent; but this is only one of its numerous functions. Flirting is also a behavior adopted by individuals who want to assess the degree of interest and mental fitness of the partner. Also, many people flirt just because they find it fun. Sexual selection, however, plays an important role even in these quasi-courtship behaviors. Thus, even in flirting with less sexual intent, a close examination of gender differences in flirting seems to affirm the evolutionary function that flirting may have.

44. Guerrero, L.K., Close encounters: Communicating in relationships.
45. Trost & Alberts. An evolutionary view on understanding sex effects in communicating attraction. 233.
Conclusion

Studies of gender differences in flirting appear to indicate that flirting has an evolutionary function. These studies provide insight into how gender differences in motivations for and perceptions of flirting might have emerged. Flirting often results in miscommunication because its singular appearance can be driven by many different motivations. Nonetheless, we can learn from what these studies suggest about motivations for and perceptions of flirting by members of the opposite sex so that we can be better prepared for future cross-gender interaction.