

# **Ethics of Mergers and Acquisitions**

**William W. L. Ho**

**Thesis for M.Phil. (Research)**

**Department of Philosophy**

**Faculty of Arts**

**University of Glasgow**

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## **Abstract:**

I was puzzled by the frenetic mergers and acquisitions (M&A) activities in business in the last two decades. I witnessed through direct experience many negative impacts on people and society as a result of M&A. Therefore, I wanted to find out whether M&A is ethical.

I started the investigation by looking at M&A activities - their nature, volume of activities, development trend and their impacts on various stakeholders in business. I tried to understand the basics of business ethics and then established the relationship between ethics of M&A and business ethics. I then examined all the major contemporary ethical theories and applied them to the investigation of ethics of M&A.

Through detailed analysis, I found that a clear cut statement on the ethics of M&A is impossible as a judgement will depend on the ethical principles applied, the time scale within which the impacts of M&A is assessed, the stakeholders involved and how they have been treated. Nevertheless, I claimed at the end that M&A is unethical due to the creation of inequalities in the distribution of social primary goods. The ethical position of M&A could be improved by making sure that the redistribution of social primary goods resulted from M&A are to be done equitably and the stakeholders who are negatively affected are treated with care. One way to make sure that M&A will be carried out ethically is through a change in the institutional values in society, one that takes into account the interest of all stakeholders in business, especially the least advantaged, rather than just the shareholder.

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I would like to thank David Gray, a contracted craftsman in my company, who once said to me that he enjoyed talking to me because my conversation is often so philosophical. I felt shameful because I have no clue what philosophy was at that time. His casual remark actually sowed the seed in my mind that I must try to understand philosophy. After this incident came another important moment in my journey towards the search for the understanding of philosophy. Another colleague of mine, Dr. R. Kubik lent me a novel, 'the Sophie's World'. I realised, after reading the book, that philosophy can be fun as well as intellectually challenging. I thank him for his indirect encouragement.

My next gratitude is for Mr. P. Shaw from Glasgow University who accepted my e-mails inquiring about the possibility of taking a part time course in philosophy. He kindly and patiently guided me through the maze of philosophy subjects that finally lead to my decision to study the ethics of mergers and acquisitions. Finally I am grateful to Miss Elizabeth Telfer, my tutor at Glasgow University, who critically and patiently challenged my writings and corrected my use of English during our biweekly encounters in last two years usually late on Friday evenings. Through our casual conversations, the subject of philosophy begins to take shape in my mind. I believe that I have now acquired the basic language of philosophy that allows me to continue to explore the different fields of this extraordinary subject on my own.

Thank you!

William Ho

30/5/2001

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## **Chapter One - Introduction**

### **1.1. Why do I want to investigate the ethics of M&A?**

Mergers and acquisitions have been a very common business activity since the proliferation of capitalism in the last decade. Merger refers to the combination of two or more companies into one single corporation by combining their assets and business operations together to create a new corporate identity. Acquisition is the process by which a company purchases the assets of other firms and absorbs them into its corporate structure without creating a new corporate identity. In actual practices, the term 'merger' is probably a misnomer as there are rarely true mergers of equals in business. Usually a more dominant partner in a merge will absorb the others and thus making the process more like an acquisition. I will use the acronym M&A to represent all mergers and acquisitions without specifying the nature of the process.

I am interested in investigating the ethics of M&A firstly from my own working experience in a multinational company that has undergone several M&A in the last five years. Secondly, I am also intrigued by the M&A frenzy happening around the world at the end of last millennium.

I started my career with my current employer in 1974 when it was one of the world's top 10 chemical conglomerates. It had manufacturing, research and commercial operations in almost every country in the world. It was well known, respected and of decent size in the seventies (ranked around 50th in the world). During my last 26 years service with this company, it evolved continuously but not very successfully from the financial performance point of view. To try to improve the situation the company has been taking steps to change, sometimes very dramatically, especially in the last 5 years when it has undergone two external

M&A and two internal major restructuring. It now ranks outside the top 1000 biggest companies in the world measured by market capitalization.

What has gone wrong with my employer? I was puzzled by the question why, with the availability of huge financial, human and technical resources as well as long tradition, it could not take control of its own destiny. The dwindling significance of my company may be due to its inability to cope with the lightning changes of the economic, social and technological environments in the last 30 years or its poor management. I may never be sure of the answer but the consequence is that after working over 26 years in a reasonably big and reputable company, I find myself employed by a much smaller company struggling to sustain growth and profitability. These dramatic changes prompt me to ask the questions why my company could not survive under its original structure; why has it taken M&A as the course of action for survival; is this kind of evolution in business inevitable and what impacts these changes have on the lives of people related to the business. Furthermore, what happens to my employer appears to be of common practice today. There are many M&A deals reported almost on a daily basis in the media. M&A deals have been increasing annually. In year 2000, the total transaction was a record US\$3.5 trillion<sup>1</sup>. So why are M&As so popular in business? Is this really the right thing to do economically, socially and ethically? Naturally I am interested particularly in the ethical aspects of M&A as I would like to know how people who are related to the company, particularly the employees and the communities, should be treated in M&A? What should an ethical M&A be like? These are the two major questions that I would like to answer in this paper.

## 1.2. Why has the M&A phenomenon been such a global frenzy?

To be able to answer the questions on the ethics of M&A, I have first to understand what causes M&A to take place and why have they been so popular in the last two

decades. I believe that one of the most important developments in the world in this period that is responsible for creating the M&A frenzy is globalisation.

*Globalisation:*

Globalisation is a process in which events are happening on a global basis. There are many definitions of 'globalisation'. The sociologist, Anthony Giddens defines 'globalisation' as a process that decouples space and time and emphasises that with instantaneous communications, knowledge and culture can be shared around the world simultaneously.<sup>2</sup> A simpler and more encompassing definition that I prefer is 'the process by which nationality becomes increasingly irrelevant'<sup>3</sup>. In this paper, I will use the term 'globalisation' to refer mainly to the economic process in which trade, ownership of assets, production and consumption of goods are becoming easier across national borders. It is a process that makes trade easier and is believed by international institutions like the World Trade Organization to have the effect of delivering a higher and more even living standard among different countries. They also claimed that the globalisation process is one of the major factors that contribute to the 200 times increase in the total volume of global trade in the past 50 years.<sup>4</sup>

So what are the major stimulants for globalisation? I believe they are:

a. The reduction in trade barriers between countries:

This is brought about by the establishment of and strong promotion for free trade by the powerful global institutions - The World Trade Organization (WTO), The International Monetary Fund (IMF), The World Bank (WB) etc. The major advocate for free trade is WTO whose strategies are supported and implemented by IMF and the WB through their investment policies. Their work includes the promotion of both border tariffs reduction and liberation of the global financial markets that allows easier transfer of capital across national borders.

b. The reduction in transportation cost:

This comes about through technological advance and deregulation of the transport industries resulting in intensified competition that leads subsequently to more efficient operations. This enables economical shipment of merchandise and capital goods on a global basis.

c. The reduction in communication cost:

The information technology (IT) revolution, partly resulted from technological advance and partly because of deregulation, allows instantaneous, transparent and inexpensive business data to be made available to companies around the world. This makes foreign investment and global management possible and affordable. The international institutions play a direct and active part in the promotion of globalisation while the other two factors create an environment that makes globalisation feasible and in fact profitable for business.

The consequences of globalisation for business are manifold. It tends to:

- Increase multilateral trade on a global basis.
- Intensify competition. This is due to the easier access to financial and business information by players in the market who will be able to react to each other's strategies faster.
- Encourages business consolidation through rationalisation (for cost cutting) or formation of alliances (for synergy in strengths) as a means for enhancing competitiveness.

The arguments demonstrate that M&A becomes a rational consequence of the globalisation process. This explains why so many business leaders consider M&A to be a natural choice for company survival and prosperity, despite the scarcity of M&A success stories, and why the M&A frenzy continues unabated.

M&A has economical, social and political effects on society. These effects raise, therefore, ethical questions on whether they are at all desirable or even permissible as they could have substantive influence on people's life, especially when many M&A are now taking place at a global level. Therefore, questions on the 'right' or 'wrong' of M&A are raised more and more in society today.

### 1.3. The relationship between ethics of M&A and business ethics in general

Before attempting to address the two questions raised in section 1.1. on ethics of M&A, I would like to look briefly at business ethics in general and try to find out how ethics of M&A is related to the former.

The study of business ethics has attracted a lot of academic interest in the past 20 years especially in North America. It has been prompted by many global issues attributed to business activities such as environmental pollution, child labour, widening income gap between rich and poor countries, etc. Critics claim that these negative impacts are caused by increasing business activities that are the consequence of globalisation which they attack as unethical. They call for a tighter control and restraint of business activities and a stop to the globalisation process. Anti-globalisation campaigns made their first major protest at Seattle on 20th December 1999 during the WTO conference. The protesters denounced the international institutions such as WTO, WB, and IMF for promoting globalisation, which subsequently creates more inequality and poverty in the developing world and destroys the environment. Global businesses are therefore immoral.

If the claim that global business activities are unethical were valid, then there would be little point for me to proceed further in this present investigation on the ethics of M&A because M&A, being a business process, will, by induction, also be unethical. To examine the validity of this claim, the question on 'whether the practices and policies on business activities are ethically defensible'<sup>5</sup> has first to be

asked. Although this question appears to be simple and straight forward, it actually covers a wide range of issues because business is a complex process involving many stakeholders (I will give the definition on stakeholders in the following section). In order to make this ethical evaluation of business practices and policies easier and to help to achieve a better understanding of the relationship between ethics of M&A and business ethics in general, I will break down the business process into different parts as illustrated in diagram A below. I will then address the relevant ethical questions raised in each of these different parts of the business process separately.

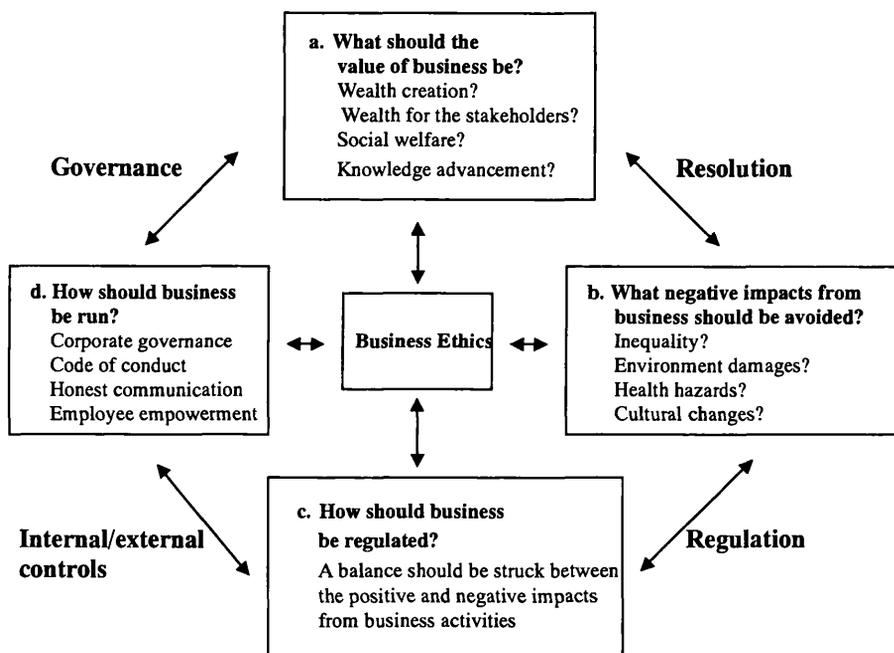


Diagram A. Ethical questions in business

In diagram A, I have put the general questions related to business ethics into four groups:

- a. What should the value of business be and for whom?
- b. What could be the potential negative impacts by business on people's life and how should they be avoided?
- c. How should business be regulated to balance the values and impacts generated?

d. How should the management run the business that will ensure meeting the requirements from these regulations?

Questions a. and b. are about the 'right' and 'good' balance between the values of business and the impacts they have on people. Questions c. and d. are about the application of controls on business based on the outcome of the discussions on what are these 'rights' and goods' with the former on external control by authorities and the public and the latter on internal control by the management and shareholders of the company.

a. What should the values of business be?

Many politicians, philosophers and economists must have asked this question for centuries. Discussions on this question and debates on the proposed answers actually continue with increasing rigor in modern times because of the pervasiveness of business and, thanks to the mass media and more direct involvement of people (please refer to the 'equitisation' process - more people in the western world today are holding shares - in chapter four), a wider awareness and deeper understanding of its impact on society. People today are more knowledgeable and prepared to challenge any business activities that will affect their livelihood. In this section, I will attempt to develop a succinct view on the values of business.

Business started in the simple form of bartering in ancient time. It was mainly a means to satisfy the daily needs of people. Business gradually developed from this straightforward bilateral bartering to a more complicated state when middle persons were needed to acquire and sell goods. Since effort and resources were required and risks were involved for making even this kind of simple transactions, an incentive and reward in the form of profit was necessary to attract people to carrying out this middle person's task. This was the time when 'business

professionals' were first born. These early business people were willing to take risks for profits that would in turn give them the resource to satisfy their own needs. This shows that the value of business, right from its birth, was to satisfy people's needs and wants in life either directly through trading or indirectly through profits from business. The parties involved in business at that time were limited to buyers, sellers and the middle persons.

When business as an institution develops through the generations, it increases in dimension, in process complexity and in the number and nature of parties involved. These parties, referred to as stakeholders in today's big businesses, are the shareholders, the alliance partners, the management, the employees, the credit providers, the communities, the regulators, the competitors, the auditors, the matchmakers, the insurers and so on. Thus business becomes a complicated network of relations. There are in broad terms two main approaches in governing the relationship between a business and its stakeholders - the classical theory by Milton Friedman<sup>6,8</sup> and the stakeholder theory by Edward Freeman<sup>7</sup>. Friedman states that the purpose (the focus in the running) of business should be to maximise the profits for the shareholders. By doing this, he argues, that the interest of the shareholders will be directly taken care of and other stakeholders' interest will also be given due weight as a consequence. The stakeholder theory, on the other hand, states that each of the stakeholder groups should have a right not to be treated as a means, i.e. as a resource element in the business process, to maximise profits just for the shareholders, but must participate in determining the future direction of the company in which they have a stake. Therefore the purpose of a business, according to the stakeholder theory, is to take the desires of all stakeholders into consideration by involving them in all the major business decisions. Both theories claim that, at the end, the value of business is the creation of wealth for all.

Therefore, despite this higher degree of complexity in the way a business operates when compared to the early bartering days, it appears that the central value of

business continues to be that of satisfying the needs and desires of stakeholders. What has evolved is that there are now many more stakeholders in addition to the buyers, sellers and the middle persons. All these stakeholders have a much more diverse demands and desires from the business.

These two theories mainly differ on the priorities that should be given to the different groups of stakeholders who have different needs and desires to get out from a business. I will examine below the nature of these needs and desires from the various stakeholder groups and from which to understand better the values of business to them.

### *Investors*

Except for benevolent motives, investors invest in business mainly for the desire of making a positive return on their investment. This claim is exemplified by today's institutional culture of 'shareholder value' in some western economies. This culture is brought about by the capitalisation of the economy in which the capital market operates in such a way that it determines the value of a company by its market capitalisation. As a consequence, one of the main aims of a business is to increase market value of the company that will in turn benefit the investors as shareholders. The logic of this approach is that by focusing on satisfying the desire of shareholders (to increase value of their investment), a company will be able to operate profitably and that in turn will bring incidental benefits to all other stakeholders.

### *Customers*

For customers, the value they gain from business is to secure the supply of goods and services to satisfy their own (corporate and individual) needs - product performance, reliability, competitive prices, on-time delivery, service, etc. It appears that the value of business for them has always been the satisfaction of their perceived needs and desires. What has changed in the value to the customers since

the early days of bartering is the gradual shift from the satisfaction of basic desires to more stimulated desires which are fuelled by advertisements and promotion.

### *Employees*

Employees go to work in a company for broadly three purposes, to get an income, to gain experience and personal development and to enjoy comradeship from colleagues at work. Business becomes a provider of income and environment for personal and social development for the employees. The needs and desires of the employees may or may not be consonant with the needs of the business. A business usually does not declare the provision of employment and a social environment for its employees as its main purpose of existence. In fact, the needs and desires of employees could and do sometimes compete with the needs and desires of the shareholders who own and decide on the direction of the company. This appears to be a conflict of interest between the shareholders and the employees. In fact, this conflict could be extended to other stakeholders as well, in particular the government and the communities which demand business to take up some social responsibilities, such as providing social security (e.g. stakeholders' pension recently introduced in UK), education (e.g. the Modern Apprenticeship scheme in industries promoted by the British Government), knowledge advancement (e.g. fundamental research and development programmes taken up by companies). These stakeholders argue that by extending the profit objective to these additional activities, business could enhance its value to society and at the end could also be benefited due to the support it will gain as a result from all stakeholders.

Personally I believe that to ask investors to use their funds to satisfy the needs and desires of other people will probably not be accepted by them as they have no obligation to do so unless by doing that, the business could actually gain at the end. There is indeed some evidence of this development as demonstrated by the recent popularity of the 'socially responsible investments'<sup>9</sup>

### *Communities/Government*

Community is a very important stakeholder in today's business. It provides labour, social and physical infrastructure and the environment within which a business could exist. It influences business operations indirectly through laws and regulations administered by government. On the other hand, it is at the same time a beneficiary of the business - directly through wealth creation from the business operation in the community and indirectly through social programmes run by the government funded from business taxation. Therefore, business creates wealth in the society (the communities) and contributes to the government's resources. With this strong mutual dependence, major decisions in big businesses today would not be made without first consulting the government and the community to consider the likely social impacts. An example is the sale negotiation of the Rover Group by BMW in the UK in year 2000. The community at Longbridge where Rover cars are made would be so much affected by the transaction that the government, the trade unions and the community representatives were all heavily engaged in the discussion to find a solution that would be acceptable to the community

As discussed in the case of employees above, a company sets up a business in a community will not look at the well being of the community and tax payment to the government as their major objectives. In fact, the opposite scenario is more likely' A business would actually look at taxation and cost of labour as factors of operation that need to be minimized when choosing a location for investment.

In conclusion, I can claim that from the understanding of the major needs and desires of the different groups of stakeholders the value of business has not changed much since its ancient barter beginning. The overriding value from business should continue to be the satisfaction of the needs and desires of the major stakeholders although the conditions and the processes by which values are created have changed a lot. What complicated the value proposition from business are the ever-increasing groups of stakeholders making their claims. There are now

more people competing for the wealth created (this issue will be discussed in section c. below) and making a fair distribution among them will become more difficult. Furthermore, as a business operation becomes bigger, it is also more likely for it to make substantial impacts on society, be they positive or negative. Therefore there must be a mechanism in society to regulate business so that competition for values from the various stakeholders and the consequential negative impacts can be resolved ethically. This issue will be discussed in more detail in section b. and c. below.

b. What negative impacts from business should be avoided?

Being a large scale and pervasive human activity, business operations today make huge impact on people's life. Naturally the extent of impact will depend on the nature and magnitude of the business and on the different stakeholders. The relevant questions are mainly: What kinds of impact from business should or should not be accepted? How should these impacts be judged and the negative ones avoided? How are the conflicts between values and negative impacts being resolved? Finally, how should these impacts be managed? (This point will be discussed in section d.) Some of the major areas of impacts that are of concern today are:

- Cultural identity
- Environmental changes
- Food production
- Health protection
- Standard of living
- Equality in wealth distribution

There is no doubt that business has been making more and more impacts on each of these important areas that human welfare is being affected one way or the other. A right balance between the benefits and the negative impacts from business has to

be struck and the conflicts resolved. Let's take the example of 'standard of living'. We mentioned in section a. that one of the desires of governments is to create wealth and improve standard of living through indirectly managing business activities in society. A very detailed IMF Working Paper<sup>10</sup> argues that business did make very positive impacts on people's life by bringing substantive wealth and improved living standards in the last hundred years to the world population.

This report makes the following major claims:

- 1) The global economic development achieved in the past 100 years is awe-inspiring. Brad DeLong<sup>11</sup>, University of California, mentioned in his paper for the National Bureau of Economic Research that *'compared to the pace of economic growth in the 20<sup>th</sup> century, all other centuries – even the 19<sup>th</sup> century that so impressed by Karl Marx – were standing still.'*
- 2) When the measurements of living standard improvements are made on Human Development Index (HDI), a statistic proposed by the United Nations Development Programme that includes health (life expectancy) and education (literacy rate) in addition to monetary income, the improvement is even more encouraging. For example, the HDI in Mozambique in the 1990s did improve compared to the 1950s and the global inequality between countries as measured by HDI has also fallen sharply since 1950<sup>12</sup>. The report attributes this improvement to the increasing business activities.

On the other hand, the same report also indicates that the gap in national wealth measured by GDP per capita between the richest and the poorest countries has widened dramatically during the past century. For example, it states that the income per head in Mozambique fell from roughly \$1,000 a year in 1950 to roughly \$850 in 1990, whereas in USA they went up from \$10,000 to nearly \$24,000 (all at 1990 prices). Even within some rich countries, the income gap between the rich and the poor is also widening<sup>13</sup>.

This report claims that although business contributes to the overall wealth creation of the world and has served the needs of many people, it also brings about wealth inequality. This clearly illustrates the point made earlier on about the need to resolve the conflict of wealth creation from business and the negative consequence of injustice from the inequality of wealth distribution. This is a challenge to ethics. Philosophers have been tackling this and other related questions. They are attempting to find criteria against which the right or at least permissible impacts from business activities could be assessed. When these criteria have been agreed upon and established, people can then know how business should be regulated.

c. How should business be regulated?

There should be two broad inputs on regulating business - from external and internal authorities. I will deal with external regulations in this section and will deal with internal regulation in the next section.

External regulations to a business means the control imposed on a business by the public either directly through the government (by explicit laws and regulations) or indirectly through public pressure (institutional values of the society). In a way, the explicit legal requirements are consequences of people's values concerning what are the right and wrong business practices. Consequently, appropriate legal systems would be established that will guide or limit business activities in such a way that will fulfil the ideologies of the society. For example, many social democracies in Europe today such as France and Germany, give higher priority to the ideology of equality compared to countries like UK and the USA (the Anglo-Saxon capitalists, to be discussed in the concluding chapter). As a result, these governments promulgate laws that emphasize a more egalitarian approach on wealth redistribution. The more libertarian democracies, like UK and USA, put more emphasis on property rights with the aim of motivating people to create wealth sometimes at the expense of unequal wealth distribution.

Therefore, this ethical question on regulation deals mainly with what philosophical principle should be applied by societies on what they want out of business. Is it utilitarianism (looking for the best possible consequence for the society), or libertarianism (respecting people's property right and freedom of transaction) or egalitarianism (distributing wealth as fairly as possible)? These principles will be discussed in the next chapter.

d. How should companies be run?

There are two broad aspects to this question. (1) How should management run a company? This could range from democratic decentralisation to centralised dictatorial control with all the variations in-between. (2) What management control has to be in place that will ensure its business activities meeting all the legislative requirements, both internal and external? It is the second aspect of the question that has more relevance to business ethics as it concerns the way in which the ideal of the company management as well as the expectation and requirement from society could be met.

If we take business safety and environmental standards as an example, different countries usually have different criteria and standards. Therefore a company could operate legally with different standards in these countries as long as the individual country's requirements have been met without having to consider whether they are all right (in the ethical context) or not. Companies with high ethical standards and ideal may decide to opt for the highest denomination as a global standard. To apply these high standards globally, irrespective of the local regulations in different countries, these companies usually establish a 'Corporate Governance' to guide how local operations should be conducted and a 'Code Of Conduct' to govern the behaviour of all employees wherever they are located. Therefore, the content and execution of the 'Corporate Governance' and the 'Code of Conduct' and the

monitoring of their enforcement are the important management process related to business ethics.

By dividing the topic of business ethics study into these four major areas as depicted in diagram A and asking the relevant ethical questions within each of these specific areas, I hope to make investigating 'ethical issues in business' and in particular ethics of M&A easier and more focused. This approach will help me to identify the areas of business ethics in which 'ethics of M&A' lie. The nature and scope of these questions are naturally interdependent and have been covered extensively in the business ethics literature, although not in the way that I have categorised here. I do not intend to deliberate further on business ethics in this paper but will now move to the topic of ethics of M&A.

#### 1.4. In which areas of business ethics does the 'ethics of M&A' lie?

M&A is a business process involving many activities. M&A comes about because it is expected to be capable of delivering economic values through liberation of latent profit potential in a business resulted from either the reduction of operational cost, or the creation of business synergy or the expansion of market coverage or a combination of all of these. M&A is therefore a process that transforms companies. Hence the study of ethics of M&A should be related to the section 1.3. a. on the 'values of the business' and section 1.3. b. on the 'impacts of M&A', particularly on people's lives, in diagram A. Therefore, I will concentrate the investigation of ethics of M&A by attempting to answer the questions on whether driving for profit through M&A is right and whether the negative impacts resulted from M&A on various stakeholders, if any, can be ethically justified and resolved in the light of the positive benefits. Finally, I will discuss in the concluding chapter how M&A should be regulated from an ethical point of view, both externally and internally.

### 1.5. How will I investigate ‘ethics of M&A’?

Having clarified the questions that I would like to raise in this investigation of ethics of M&A, I would also like to look at the relationships, in the context of business ethics, between different groups of stakeholders because I believe that these relationships are relevant to the investigation.

Solomon<sup>14</sup> distinguishes three levels of relationship in business ethics, a micro level – the rules for fair exchange between individuals, a macro level – the institutional rules of commerce for the society, and a molar level – the dealings between business entities i.e. the corporations. The micro level ethics in business is naturally part of traditional ethics for individuals applied to the business settings. The macro level ethics is part of the universal questions on justice, legitimacy and the nature of society that constitute social and political philosophy governing the behaviour of individuals. The molar level ethics concerns the questions of how corporations operate with particular relevance to the relationships between employers and employees, between companies and other stakeholders whose interests are affected by the business activities. Ethics of M&A therefore concerns all three levels but, in my opinion, with particular relevance to the molar level. They are also inter-related. For example, a society’s values are an aggregate of the individual values. Business behaviours are influenced by the institutional values in societies. Business activities, because of the huge resources and operational activities, have no doubt affected people’s behaviour. These three levels of ethics could therefore be linked in a graphical form as shown in diagram B below:

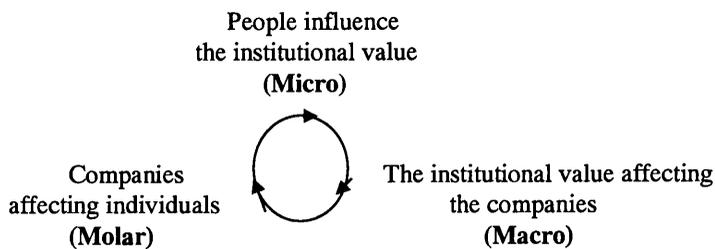


Diagram B. Relationships of the three levels of business ethics

I believe that M&A take place and have been carried out with certain rules moulded by institutional values in society. In a way they are already following some form of ethics, i.e. a set of standards pervasively acknowledged and applied by the business community. There are different views from various institutions in the society on the appropriateness, good or bad, right or wrong of M&A activities. In order to reflect on whether the purpose, the actions and consequences in M&A activities should follow certain ethical rules, I will apply the common contemporary ethical theories to M&A situations and investigate how they fare. But before going into discussing the ethics of M&A immediately, I would like to give a brief review in the next chapter on the common contemporary ethical theories that have been widely applied to the study of business ethics.

## Chapter 2 - Contemporary ethical theories

Values, rules and principles form the terms of cooperation in society. Society is laced with implicit and explicit arrangements and agreements under which individuals and groups of individuals are obligated to cooperate or abstain from interfering with each other. Philosophers are interested in the ethics of these terms of cooperation and have been studying and developing theories not only to explain but also to provide guidance on what should these ethics be. Some philosophers believe that the diverse human judgments and beliefs about ethics can be brought into a systematic unity through a general theory of ethics. This has been found to be difficult to achieve as, unlike science, philosophy, in this particular case, ethics, is value based and is not provable. Instead, many different ethical theories have been put forward for over two thousand years since ancient Greece. Very often these theories are incompatible with one another and have been under constant scrutiny, analysis and deliberation by opposing camps of philosophers resulting in gradual modifications and improvement of these theories. This tradition of debate continues until today. My intention is to apply these different theories in the discussion of ethics of M&A and I would like to give a brief description on them in the following sections.

There are different ways to classify the existing ethical theories. N. Bowie puts them into the following categories<sup>15</sup>:

- Obligation based normative ethical theories
- Common morality theories
- Rights theories
- Virtue theories
- Feminist/Care theories

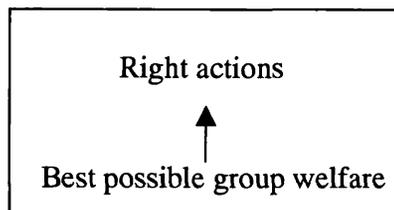
I will adopt this classification and will make brief descriptions with relevant criticisms on some of the representative ethical theories in each of these categories below.

## 2.1. Obligation based normative ethical theories

These are considered to be universal theories based on rules and principles that can be applied to all moral situations. The most representative and widely studied ethical theories are based on the utilitarian model and the Kantian model.

### (A) Utilitarianism

#### Basic concept



The first utilitarian philosophical writings are those from David Hume, Jeremy Bentham, and John Stuart Mill<sup>16</sup>. In essence, utilitarian theories hold that the moral worth of actions or practices is determined solely by their consequences. An action or practice is right if it leads to the best possible balance of good consequences over bad consequences overall for the people affected by the action. In taking this perspective, utilitarians believe that the purpose of the function of morality is to promote human welfare by minimizing harms and maximizing benefits<sup>17</sup>. Thus finding the morally right answer becomes a matter of measuring the expected changes in human welfare from an action. Utilitarianism also demands that the pursuit of human welfare or utility be done impartially for everyone in society. However, it does not mean that equal input has to be applied to each member of the group that is affected by the action. It also does not specify that all of the people affected by a particular action need to have an improvement in utility. For as long as the total output from the action provides a net gain or the lowest loss in utility then even if some members of the group suffer a reduction in

utility, as long as it is the best possible outcome overall, the action is still considered to be the morally right action.

Based on this notion, utilitarianism seems to be a rather straightforward theory until one gets into the definition and measurement of utility. In fact, the theory is far from simple. First of all, there is still difficulty and disagreement on the definition of utility. There are at least four identifiable descriptions of utility today<sup>18</sup>.

- (a) Welfare hedonism: This approach promotes utility as the experience or sensation of pleasure for a person as the chief human good.
- (b) Non-hedonistic mental-state utility: This approach argues that different kinds of experiences are valuable, and that we should promote the entire range of valuable mental states and not just the sensation of pleasure.
- (c) Preference satisfaction: In this approach, increasing people's utility means satisfying their individual preferences, whatever they are, although satisfying them may not always contribute to our overall well-being as preferences do not necessarily define our good.
- (d) Informed preferences: This approach actually tries to resolve the potential problem of irrational preferences by defining utility as the satisfaction of 'rational' or 'informed preferences'.

Besides the increase of utility, utilitarianism also takes into account the reduction of sufferings and harm in the total calculation. Yet emotional suffering and harm are subjective feelings and will also create difficulty in their definition and measurement as well.

### Criticisms

These various definitions of utility demonstrate how difficult it is to have an objective and universally acceptable understanding of utility. As a result, there is no straightforward and simple method and defined context (the time frame and the

number of people involved in the calculation) for measuring utility. For example, defining and measuring quantitatively the increase in happiness level (utility) for two persons of different social status and values when they both receive the same amount of benefit, e.g. a \$1000 voucher, can only be relative as the benefit would affect them differently. Therefore, the changes in their individual happiness level cannot be objectively and quantitatively measured.

The other major objections to the theory in deciding the morality of an action or practice are on its judgment based solely on the consequences of the action. It ignores special obligations people have to particular groups of people, i.e. the theory only looks at the events of the future and not at the legacies from the past, and it includes unacceptable preferences in the calculation of net utility and could violate basic human justice and rights. Let's have a closer look at these two objections.

#### (a) Special relationships

Since utilitarianism demands that the pursuit of human utility should be done impartially for everyone in society, it therefore ignores the existence of some entitlements from particular groups of people due to some special relationships they have in the past. An example of special relationship in business, for example, is that of 'loyalty' from employees, customers and suppliers. According to the requirement of impartiality and universality of utilitarianism, 'loyalty' should not be given any special consideration by a company when taking actions that could affect the utilities of this special group of 'loyal' employees. Therefore, when a company is going through a rationalization programme, according to the utilitarian principle, the right action for the company is to lay off the older employees who are usually higher paid (provided their experience and expertise are no longer required by the company). By doing this, the company can save more money, be more profitable, for the benefit of all stakeholders of the company except perhaps the redundant employees. Therefore, loyalty and past contribution to the company

from these employees will not be given special consideration in the utility calculation. Naturally, their unhappiness will be put in the calculation. This ignoring of loyalty is not in line with our usual intuition that loyal employees with contribution in the past should deserve some preferences.

**(b) Injustice**

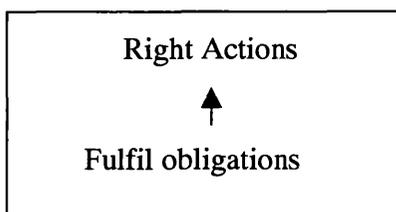
Since utilitarianism only considers the consequences of actions, justice and rights for people could be violated in the pursuit to achieve higher utility or lower harm. I mentioned in chapter one about the widening of income gap in many countries today despite the creation of greater average wealth. This demonstrates the potential danger of creation of injustice in the pursuit of overall increase in utility. It seems that, on the face of it, utilitarianism puts higher priority on utility than on justice.

These objections indicate the inadequacy of utilitarianism as an all encompassing and rigorous ethical theory. Nevertheless, people practise utilitarianism, or more precisely consequentialism, intuitively in many ethical situations.

The second most common ethical theory from the obligation based normative principle from Immanuel Kant who demands that ethical judgment should not be made from the consequences of actions but from people's obligations commanded by morality.

**(B) The Kantian Theory**

**Basic concept**



Kant's basic moral concept apparently comes from two Protestant beliefs<sup>19</sup>. The first is the priority of 'faith' over 'work' i.e. intention is more important than consequence. The second belief is the 'basic radical corruption of human nature'. This means that human inclination will be wrong and will have to be controlled by duty<sup>20</sup>. This puts emphasis on the authority of duty in carrying out an action.

Kant is the first philosopher who puts the concept of 'duty' as the most important judgment of ethics. He extends the concept from specific 'duty' to generalized 'duty' and proposes that moral goodness consists in the performance of this generalized 'duty' for its own sake. Actions have moral worth only if they are done from duty, and not from inclination. Actions from inclinations may not be wrong but have no moral worth. Actions done from duty are actions guided by reason because duty should also be rational. One of Kant's most famous innovations in his ethical theory is the introduction of the concepts of 'hypothetical imperatives' and 'categorical imperatives'. Imperatives are commands - the 'ought' for our actions. Hypothetical imperatives are commands that are conditional on inclinations or purposes - do this in order to achieve that. They require us to use the means that are necessary in attaining the ends that we want to achieve. Categorical imperatives are commands that are not conditional on any purposes or consequences. We are obligated to act in a certain way according to duties with reasons that we believe in regardless of the ends we wish to achieve. Hypothetical 'oughts' are therefore guided by desires and the motive comes from the achievement of ends. Categorical 'oughts' are guided by reason and the motive comes from the belief in certain principles without taking into consideration of any consequences from the actions. For Kant, moral actions must comply with the categorical imperatives.

Two of Kant's most important formulations on categorical imperatives are:

(1). Act only on the maxim whereby you can at the same time will that it should become a universal law.

(2). Act so as to treat humanity, whether in your own person or in that of any other, never solely (*or exclusively*) as a means but always (*also*) as an end.

These two formulations, derived from reasons, are based on the conceptions of rationality and universality. Rationality is the more fundamental of these two conceptions because the requirement of universality can be derived from that of rationality. The first formulation on categorical imperative stated above is based on the principle of universality while the second one is based on rationality.

Kant's principles on ethics require people's motives for actions to be moral. He expects people to make the right decisions for the right reasons. The right decisions for the wrong reasons do not make the action unethical but they do not give moral worth to the actions. Therefore if people are honest only because they believe that honesty pays, their honesty is welcome and should be encouraged but the honesty in this case has no moral worth according to Kant as it is used as a means and not as an end and is not done in accordance with obligation. Therefore applying this principle to the business setting, a corporation will be considered to have done the right thing when it is run profitably. However, its actions in achieving the profits are only considered to be prudential but not moral.

The second formulation of the categorical imperative can be illustrated by looking at how employees are treated in business. It is generally accepted that employees of a company are employed as means to achieving certain business ends. But this should not be the sole end if the business is to be run ethically. To meet the demand of Kant's ethics, employees should also be treated as ends for their own sake, i.e. through working for a company, employees' potential could be developed and their values and input respected. Therefore if employees are also treated as ends, there should be no problem in their serving as means to the business.

## Criticisms

One of the major criticisms of Kant's theory is its narrowness, restrictiveness and inadequacy to handle the diversity of problems in moral life. His theory is considered incapable of dealing with emotions or intimate and special relationships involving sympathy and care because it emphasizes too much universal obligations, at the expense of particular obligations. For example, actions arising from one's particular relationship and motivation such as friendship, reciprocation, loyalty etc. are acceptable but, according to Kant, have no moral worth. An often-quoted example (Michael Stocker's story in 1976) is that of a colleague who comes to visit you in hospital when you are sick. If he does it in accordance to duty and not because of friendship, your colleague has acted morally according to Kant. But there seems to be no warmth or genuine compassion when he visits you. According to the ethics of care, human conduct should not be this impersonal. Critics, therefore, claim that the Kant's principle fails to recognize the distinctive human values (care, friendship, compassion etc.).

Another criticism of Kant's principle is of its absolutism that rules out all specific situations. The example of the 'inquiring murderer'<sup>21</sup> when a murderer comes to ask you for the whereabouts of a potential victim (which you happen to know) illustrates the difficulty of his theory's absolutism. If you tell the murderer the truth, the victim may die, but if you lie, you are breaking Kant's absolute obligation not to lie. It is clearly immoral to allow innocent people to die. Kant's principle is therefore criticized for not being able to take care of the consequences of actions. On the other hand, this criticism may not be justifiable as it is not exactly clear whether Kant will interpret this example in this manner. One can have another maxim that 'it is wrong to let innocent be killed'. This maxim should take priority over the maxim of 'never to lie'. On the other hand, we will have now a situation with two universal maxims that are in conflict with each other.

Kant's theory does not have a rule to guide the ranking of priorities. A solution proposed by Kant's supporters to tackle this conflict of maxims is that when a rule needs to be violated, it must be done for a reason that would be universally willed. The Kantian philosophers are again using universality to solve specific problems. In a way, they delegate moral authority to all people.

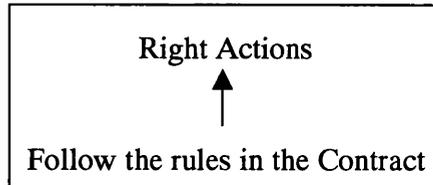
Despite Kant's not fully satisfactory moral system, it is a very influential theory in the history of ethics. Other philosophers have attempted to construct a more encompassing and plausible theory based on some elements of Kant's theory. For example, some use the notion of respect for people as ground for providing the ethical guidelines to govern conduct. This is the premise on which the rights theories are built. I will discuss this in the following sections in this chapter.

## 2.2. Common morality theories

Common morality theories are constructed from the premise that people can join together to act in ways that each can reasonably and freely subscribe to a common moral standard. These theories come in different forms, such as the '*social contract*' theory from Thomas Hobbes<sup>22</sup> who constructs his theory from the desire of self-preservation, the '*self-realization*' theory from Hegel and Bradley<sup>23</sup> who construct the theory from the set of common values developed in a community that people aspire for; and the '*justice as fairness*' theory from John Rawls<sup>24</sup> who builds his ethical principles from fair procedures. I will briefly describe these theories in the following sections and will apply them to M&A situations in chapter 3 with particular reference to Rawls' theory.

## (A) Social contract

### Basic concept:



Human beings are social creatures. Some philosophers have thought that this is the key to understanding morality which arises when people live together and accept the governing sovereignty that is necessary for social living. Thomas Hobbes, the British philosopher, first developed this theory based on the concept that humans are self-interested. They seek power to protect themselves from death (preservation). But they are basically equal in physical capability and hence with similar ability to harm each other. With scarcity of resources to be shared, this would create a war of all against all if they do not agree to be ruled by a sovereignty capable of enforcing peace while each pursue their own goals. He calls this original position 'the state of nature'. To avoid a constant state of war in 'the state of nature' to compete for these scarce resources required for survival, an imaginary agreement, *the social contract*, would be established based mainly on people's egoistic needs. It is only within the realm of a Social Contract, Hobbes argues, that people can take care of themselves. In essence, *social contract* morality is a set of rules, which rational people will agree to accept, that govern how people should treat one another for their mutual benefits and on the condition that everyone will follow these rules. Actions within these rules are ethical.

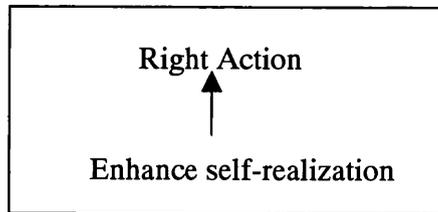
## Criticisms

The social contract concept of ethics has attracted many supporters due to its simplicity. But there are also a number of criticisms of this theory.

- a. The social contract theory is based on a hypothetical historical state. In fact, there had never been a situation when people sat down, discussed, established and ratified these contracts. Without a formally agreed contract, people have no obligation to follow a set of rules governing how they should behave. The social contractarians argue that a social contract is simply implicit in society. A moral agent actually agrees more or less to accept this contract by the way he/she behaves within the moral values that are in force in the society.
  
- b. By agreeing to the conditions of a social contract, partners to the contract, i.e. the moral agents in the society, are supposed to have rights and duties that are stipulated in the contract. However, since there have never been any negotiations taken place to establish the contract, subsequently rights and duties have never been defined and accepted and no clear guidelines could be followed.
  
- c. Another criticism to the theory is on the legitimacy of the participants to the social contract. Questions are often raised on whether mentally retarded people and animals in general should be included in a social contract with rational human beings, either implicitly or explicitly. Since these two groups of beings do not have the mental capability to understand, interpret and participate in the formulation of the social contract, they will not be able to fulfil their obligations, if any, and claim their rights from the contract. This could imply that the social contract theory should not cover these groups of beings and therefore rational people would not have moral obligations towards them. This is a contentious issue.

## (B) Self-realization

### Basic concept:



Hegel identifies the actions that lead to ‘self-realization’ as the central concept of ethics and the fundamental aim of morality<sup>25</sup>. Hegelian morality, I will call this the ‘social ethics’ below, stresses the social character of an individual and finds the content of moral life in the actions derived from particular social relations and functions. The premise of ‘social ethics’ is based on the belief that the development of an individual is essentially a social process. Bradley uses language capability as an illustration of this social process. *In acquiring a language, a person is acquiring not just the knowledge of a set of words, but a set of ideas and concepts, a way of thinking which is built into the language itself. Although a person can exist as a thinking, rational individual, by acquiring the language of a community, he will naturally comprehend the world through the concept of the language he uses*<sup>26</sup>. We can in fact explain the concept of ‘social ethics’ along the same line by just replacing the word ‘language’ in the above quotation by the word ‘ethics’.

Therefore the ethics of self-realization is the fulfilment by an individual in establishing a relationship with the community in which he lives. A right action is an action that is in line with these established relationships. The essence of ‘social ethics’ could be illustrated by comparing it with other ethical theories through answering the question: Why should we not break a promise? Kant’s answer would be that a moral agent must keep a promise as it is governed by the categorical imperative. Utilitarianism would say that keeping promise would

normally lead to more utility and therefore people should not break a promise unless in specific circumstances when breaking a promise could bring happiness or avoid pain. In 'social ethics', a promise typically creates or presupposes a relationship of trust and dependence. Therefore breaking a promise is violating a trust relationship and will be considered wrong in the 'social ethics'. 'Social ethics' emphasizes that what matters to human beings are not just desires and preferences (as in utilitarianism) and obligations (as in the Kantian model) but also relationships which lead to self-realization.

### Criticism

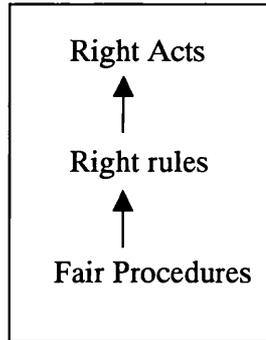
a. Critics argue that there are aspects of moral life that do not necessarily derive from relationships with a social community. For example, artistic and intellectual activities are sometimes solitary actions and therefore have no social norm to follow. Actions in these situations will have no moral guidelines to follow.

b. As an individual draws moral worth from the relationship with his community, there could be a problem when the community is in a confused and irrational state. For example, soldiers in Nazi Germany were following orders to carry out atrocities. Actions by the German soldiers were probably based on judgments derived from the belief that the country was doing the morally right thing. This means that an immoral social norm could lead to unethical conduct.

I find 'social ethics' quite interesting due to its applicability to the business setting. I will refer back to this theory briefly in chapter 3.

## (C) Rawls' justice as fairness

### Basic concept



Rawls argues that people are willing to give their free agreement to and respect rules enforced by a government that guide and limit their behaviour if these rules are established through a fair procedure<sup>27</sup>. He argues that if the decision procedure is fair, so are the rules. A fair social contract could therefore be established among people through this fair procedure from which principles could be generated to guide the right conducts of people. The procedure he devises is a hypothetical construction that he calls the '*original position*' and the principles that are generated from this procedure is called the '*difference principle*'.

In the '*original position*', rules of conduct for people have not yet been established. People are asked to decide freely what rules of justice should be used to govern the distribution of the most important goods - the social primary goods which include rights and liberties, power and opportunities, income and wealth, self-dignity etc. In order to make sure that people are making the most objective and fair choices on these rules, they are supposed to be kept behind a '*veil of ignorance*' which prevents people from knowing their place in society, e.g. their social status, their fortune in the distribution of natural assets, their abilities - including that of intelligence, strength and appearance etc. In this way, people will not be able to take advantage of their arbitrary social endowment when they are asked to vote for

the principles of justice. He believes that people in this imaginary 'original position' under the 'veil of ignorance' will choose the following two principles as a basis to evaluate the social and political institutions that will govern the distribution of the social primary goods. These principles<sup>28</sup> are:

1. Each person is to have an equal right to the most extensive basic liberty (the standard civil and political rights) compatible with a similar liberty for all.
2. Social and economic inequalities are to be arranged so that they are both,
  - a. reasonably expected to help those least well off
  - b. attached to positions open to all.

The first principle ensures that all individuals will be politically equal so that they all have equality in the assignment of rights and duties that give them access to public offices, to vote, to associate with others, etc. The second principle stipulates that an unequal distribution of social and economic goods could be justified only if the least advantaged would also do better off than they would have done in a perfect state of equality and that the positions of power that are responsible for the distribution must be open to all.

Rawls considers the first sub-principle (2a) the more important one and thought it should have higher priority than the second principle that he called the *difference principle*. In essence, his theory emphasizes the need for political liberty and equality, followed by fairness in the distribution of social primary goods before the maximization of utility is considered, i.e.

*Liberty > Justice > Utility* (> means has priority over):

He sets this lexical priority in order to resolve the conflicts that could arise from the three values of liberty, justice and utility. This implies that we could not increase someone's wealth at the expense of people's liberties when such a priority is put in place.

In support of his principle of justice, Rawls proposes the following two arguments:

1) He argues that his theory fits well with our intuitions in justice. He believes that it is fair for individuals to have unequal share of social goods if those inequalities are earned and deserved by the individuals. On the other hand, it is unfair for individuals to be disadvantaged by arbitrary and undeserved differences in their social circumstances. He thinks that straightforward equal opportunities could not address the issue of unequal distribution of natural talents in society. He argues, therefore, that these inequalities should actually be tolerated and their influence on primary social goods distribution accepted as long as the results from these inequalities would benefit all including the least well off. This is because, he believes, people behind the 'veil of ignorance', will want or need certain things to enable them to lead a good life. These are the two kinds of 'primary goods':

a. The natural goods like that of health, intelligence, vigour, imagination, natural talents etc. that are affected by social institutions but not directly distributed by them.

b. The social goods that are distributed by social institutions, like wealth, powers, rights and liberties, opportunities, respect etc.

Therefore by choosing the difference principle, although they do not know what position they will occupy in society, or what goals they will have, they know they will always be benefited irrespective of the positions they will occupy in society eventually.

2) Rawls considers his principles to be superior to other ethical theories because they are the outcome of a hypothetical social contract derived from a position of equality among people as moral agents through a fair procedure. In choosing the principles of ethics based on justice, people behind the 'veil of ignorance' would want to ensure that they will have the best possible access to the primary goods distributed by social institutions. In the meantime, they

must also equate their own rational self-interest to benevolence for other people in their choices because they might themselves be in these positions. This means that they should identify other people sympathetically and take their good into account as well as their own. Consequently, a rational approach in this situation is to adopt a maximin strategy - i.e. to maximize what one would get if one is end up in the minimum, or worst-off, position.

It is based on these two arguments that Rawls concludes that people in the 'original position' would select the difference principle.

As regard to his support for 'liberty prior to fairness', Rawls uses the social contract concept, developed from the fair procedure, as a device to validate this principle. As in the case of 'state of nature' described by Hobbes, people in the 'original position' make choices, including that of ceding certain powers to be governed by a state, in order to manage the uncertainties and scarcities of social life. People must be free to make these choices. Otherwise, no matter what kind of outcome in the subsequent distribution of social goods, it will not be considered just. Therefore the key condition in Rawls' process of deriving his principle of justice is by developing the social contract from a position of liberty and equality. This is why the condition of 'positions of power open to all' has such a high priority in his theory.

### Criticisms

Some philosophers argue that Rawls' principles still allow too much room for people's fortune to be influenced by arbitrary factors. This criticism is aimed at Rawls' limitation of the definition of 'the worst off position' to purely on people's possession of social goods and not people's possession of natural goods. For according to Rawls, as long as the possessions of social goods are judged to be fair between two people, the different talents possessed by them should not play a part

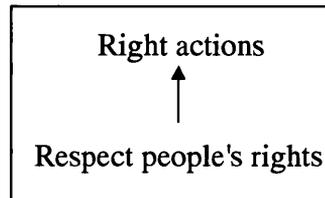
in the determination of the distribution. Critics claim that natural goods should also be included in the index in determining who are in the least advantaged position and should be compensated for. Rawls' position on this challenge is that compensation for inequalities in natural goods among people is a matter of benevolence and not a matter of justice.

Another criticism on Rawls' theory is that when inequalities in wealth are the result of *choices*, and not *circumstances*, the difference principle might actually create and not remove injustice. For example, inheritance tax is a social means of redistributing wealth to some of the least well off and is based on circumstantial inequalities. This ignores how the wealth is accumulated in the first hand. If a person is born poor, he has a choice, either not to do much about it and remain poor or to work hard to accumulate a fortune. This creates wealth inequality as a result of choice. His legacy, after he died, will be partially taken away and shared indirectly through social programmes with some people who prefer not to work hard. This is where injustice is created. A remedy to Rawls' principle should be that people's social goods should be 'ambition sensitive' and not 'endowment sensitive'. This means that inequalities from people's life chances should be regulated, but not the inequalities that are created from people's life-choices. To make such a distinction, people's possession of social goods should be determined from a fair and equitable starting point that has taken into account in the choices they make. Rawls counters this argument by saying that the idea of an equal starting-point is not achievable, as we will not know how to compensate for the unequal natural endowment in the first place.

Despite the above criticisms, my opinion is that Rawls' theory on justice is one of the most influential ethical theories in contemporary ethics and I will use it as the major guiding principle for my following discussion on ethics of M&A.

### 2.3. Rights Theories

#### Basic concept:



The roots of the conception of universal human rights lie in the doctrine of a natural law, i.e. people, by nature, possess certain rights that are universal, independent of culture and/or social situations<sup>29</sup>. Consequently, an individual has more rights conferred by nature than by other external institutions. John Locke is the first philosopher who sets out the claim to rights such as life, liberty and property against the state as an external institution. He and other influential philosophers maintain that a plausible ethical theory or some part of it must be 'rights based'<sup>30</sup> and claim it should not be reducible to a theory of obligations, utility or virtues. This conception is further extended by Robert Nozick who believes that as a basic moral rule, every individual should have the right to be left free to do as they choose<sup>30</sup>. This reinforces once again the premise that the right an individual has over his own actions has higher authority than any external agent. This also indicates the priority of rights over obligations. The 'right' theorists actually assert that obligation is derived from right and not the other way round. They claim that the purpose of morality is to secure liberties and/or other interests for the 'right' holders.

To understand 'right' based ethical theories, it is necessary to understand and define the concept of rights. Traditionally, philosophers have distinguished rights into two major types - the positive and negative rights. The right to well being, to receive goods and services when in need, to greater social wealth or economic

advance etc are positive rights. They are also called 'active rights' because they cover rights to have things done for or to people. The right to liberty, i.e. the right not to be interfered with, is a negative right that limits a government or other people from interfering with one's legitimate activities. In this context, negative rights could also have the other connotations of claims, powers, immunities etc. This shows that the meaning of right is quite rich and complex.

One of the major difficulties in the right-based ethical theory is the conflict that could exist when two positive rights are competing with each other. Another difficult situation one could encounter is the obligation to meet a claim from some positive rights could interfere with the rights to liberty for the others, i.e. their negative rights. This shows that 'right' as an entity is relative and cannot stand-alone by itself. One proposal to help resolving conflicts between different rights is that a person's right should be limited if it threatens the rights of the others.

Another difficulty on rights theory is on deciding 'who' or 'what' may have rights and explaining 'why' they are justified in having such rights. A proposal is that only moral agents who have rational capacity and are capable of making autonomous choices should be given these rights. It argues that since rights involve claims and duties, they should, by implication, only be granted to rational agents. However, this condition is questioned by many philosophers, such as Peter Singer, who argues that the condition of 'rationality as a prerequisite requirement' implies that animals, mentally handicapped persons and infants who are considered to have no or limited rational capacity, will have no rights<sup>31</sup>. This is arguably controversial.

One of the strongest supporters of the right-based ethical theory among modern philosophers is Robert Nozick<sup>32</sup>. His 'entitlement theory' focuses on property rights and liberties of their disposals. He claims that people can secure good life as a result of property rights. Based on this conception, he defends market freedom

and demands limitation on the power of the state to interfere with the rights of individuals to own and deal with properties in society. Hence he opposes the use of taxation schemes by the state to re-distribute wealth in society. He believes that a government could only interfere with people's right to property and the liberty to dispose of them if the interference is to protect and ensure other people's fundamental rights.

Nozick's entitlement theory consists of three parts:

- (1) A principle of just initial acquisition - an account of how people come initially to own holdings.
- (2) A principle of transfer - whatever holding is justly acquired can be freely transferred.
- (3) A principle of rectification of injustice - an account on how to deal with holdings if they were unjustly acquired or transferred.

The implication of Nozick's entitlement theory is that only a minimal government, limited to the narrow functions of protecting people against force, theft, fraud, non-enforcement of contracts etc. is allowed. Any more extensive government that does not respect property rights cannot be justified.

Nozick proposes two arguments, based on intuition and self-ownership, to support his entitlement theory.

a. Intuition argument

He argues that in an initial state of legitimate acquisition, people will prefer his principle of transfer instead of a redistribution principle enforced by the state as his principle of transfer confers liberty and right to people to dispose of their holdings while the state's redistribution policy will violate this right and liberty.

#### b. The self-ownership argument

The heart of Nozick's entitlement theory is the claim that individuals have rights, and no people or institutions are allowed to violate these rights. This implies that people are not simply resources for the others. Respecting people's rights is a necessary aspect of respecting people's claim to be treated as ends in them and not as means for the others. Nozick thinks that our most important right is the right over oneself - the self-ownership. Therefore if one owns oneself, then one owns one's talents and that implies one owns whatever one produces with these talents. This is why he considers a re-distributive taxation system by the state violates this self-ownership principle.

#### Criticisms

The Marxists attack Nozick's entitlement theory on the premise that individual property rights would hinder social progress on egalitarian grounds. Other philosophers reject Nozick's theory on the following grounds:

a. The entitlement theory is based on the assumption that the initial holding of property is legitimate. However, initial acquisitions of properties as reported in history, often involve force. This means that there are actually no legitimate initial holdings and therefore objection by Nozick to redistribution of existing wealth by the state cannot be accepted as wrong because these properties have never been legitimately acquired in the first place. In fact, according to the critics, there is no way that people can appropriate 'not owned' resources for themselves in this world without denying other people's claims for equal consideration. To justify initial holding, as expounded by Nozick's theory, we have to accept his claim that the world was initially 'not owned' and was then up for acquisition. If this is the case, the question to ask is on what authority and legitimacy can this initial acquisition be justified. Why has the claim to a property by one person more weight than alternative claims? Why can a society not actually declare that the world has

always been jointly owned and as such each person should have an equal claim or veto over the disposal of holdings for the benefit of all people?

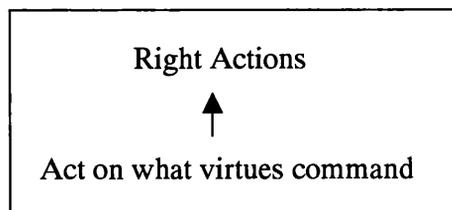
b. Critics also attack Nozick's assertion that self-ownership yields absolute property-rights. They think this is faulty as there is no logic to show that one will automatically lead to another.

Despite these criticisms, the rights theories have been rather influential in the last twenty years in Western political philosophy. The collapse of the Marxist regimes which forbade private ownership in the past decade and the success of the western economies which are expounding property rights and have created stable and wealthy economies have lent weight to the value that people have put on the rights theories.

I believe that the entitlement theory has particular relevance to business ethics in the West and I will refer to this theory again in the discussions of ethics of M&A.

#### 2.4. Virtue theories

##### Basic Concept:



In virtue ethics, first discussed by Plato, the cultivation of virtuous traits of character is viewed as morality's primary function. It claims that a just person should not only have a disposition to act fairly but should also have an appropriate moral desire to do so. Having only the motive to act fairly, as according to Kant, is not enough for the virtue ethics proponents who claim that it is not the rule

followers, but the people, disposed by character to be generous, caring, compassionate, sympathetic etc., who should be recommended, admired, praised as moral models. Therefore to address ethics, instead of answering the question on what is the right thing to do, the right question to ask, according to the virtue ethicists, is what traits of character one should have to make one a good person.

In recent years, the virtue ethics appears to be making a comeback and is favourably considered in the business world where entrepreneurs who possess traits of virtue are usually hailed as moral leaders and are hailed as models for the others (peers and subordinates) to follow. Some philosophers, such as G.E.M. Anscombe, called for a complete redirection of ethics from its preoccupation with principles of obligation, directive rules, and judgments of right and wrong to decision making by persons of good character<sup>33</sup>.

To understand a theory of virtue we have to investigate the following questions. What is a virtue or what makes someone a virtuous person? Why should a person have these qualities? Are virtues relative or absolute? How can a virtue theory guide us in our moral actions?

Aristotle mentioned that a virtue is a trait that is manifested in habitual action good for a person to have<sup>34</sup>. One description he gives is that virtues are the mean poised between two extremes. For example, courage is a mean between the extremes of cowardice and foolhardiness. He further states that virtuous character is neither natural nor unnatural. It has to be cultivated and made part of the individual, much like a language or traditional habit. There is a long list of traits of character that people today consider to be virtues such as honesty, bravery, generosity, etc.

One of the reasons for the attractiveness of virtue ethics is that it provides a natural and attractive account of moral motivation. I described the Michael Stocker story in page 17 about a person visiting a colleague in hospital in accordance with duty

and not because of friendship. It is right to make the visit but, according to the virtue ethicists, there is no moral worth in it because there appears to be no friendship, love, or social relationship that people value. Therefore, a theory of ethics like Kant's that emphasizes only obligation will not give due weight to this relationship and is considered by the virtue ethicists as unsatisfactory.

Another advantage of virtue ethics is that it could compensate for the doubts on the 'ideal of impartiality' in modern moral philosophy. For example, it is intuitive and generally accepted that the love for family and friends is an important feature of a morally good life. To ignore special relationships in modern moral philosophy is one of the major criticisms to them as mentioned in the previous sections on utilitarianism and Kantian ethics. It is normal in politics and business in which one's relationship with other people are frequently impersonal and contractual and sometimes even adversarial due to conflicts of interest. Duty based theories like Kant's ethics could provide a good guidance to our moral decisions in these realms of activities. However, in the world of family and close associations, where we are dealing mainly with relatives and friends, close personal and intimate relationships based on love and care are paramount. Moral theories that emphasize impersonal duty, contracts etc are therefore inappropriate and inadequate in these close relations. The virtue ethics could therefore be seen as a correction to this imbalance.

### Criticisms

Virtue ethics, taking character of people as its central concern, runs the risk of being incomplete in dealing with actions. This is because moral problems are frequently about what we should do in certain situations. Virtue ethics cannot provide information and guidance on the assessment of and suggestion to taking appropriate actions, although virtue ethicists could and do counter this criticism by proposing that reasons could provide assessment of actions. This means that

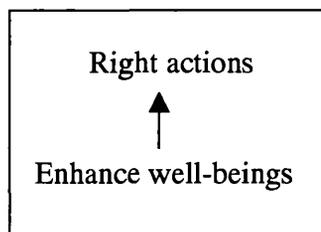
people are supposed to take those actions that a virtuous person would take. Therefore, for any action, there will be correlating virtues to support it. Unfortunately, this is not always the case. Besides, actions done by virtuous people may be the right actions but they may not have any moral worth from the Kantian perspective.

Another problem of virtue ethics is on its inability to resolve moral conflicts. If an action could be affected by the existence of more than one virtue, which one of them should take priority? Any justification to take one virtue over the other would mean a preference of the outcome of one action over the other. This could mean that the virtue theory cannot stand on its own but has to be supplemented by other theories like that of utilitarianism assessing the outcome of one vs. the other. Furthermore, while virtue ethicists criticize the universal moral philosophies for being impartial, virtue ethics could, on the other hand be partial due to the special relationship involved.

In business, special relationships do exist among colleagues who have worked together for a long time. Therefore, in M&A where situations often arise when loyalty, gratitude etc. have to be taken into consideration for actions such as redundancies. The virtue theory therefore has certain applicability in the ethics of M&A. I will again refer to this briefly in chapter 3.

## 2.5. Ethics of Care

Basic concept:



In some respects, the ethics of care is related to the ethics of virtue because the former focuses on a set of character traits that are deeply valued in close personal relationships such as sympathy, compassion, fidelity, love, friendship, etc. The ethics of care is derived from the development of feminist ethics theory whose premise is based on the arguments that the subordination of women in society is wrong, and the experiences of women are worthy of respect and should be taken seriously<sup>35</sup>. To support the ethics of care, feminist philosophers raise the following arguments.

- a. They claim that universal moral principles such as utilitarianism and Kantian ethics are inadequate guides to actions because in the abstract formulation of the hypothetical moral environment, the moral agents are separate from their social particularities. Therefore moral considerations become separate from an actual social and historical situation.
- b. The feminist philosophers criticize the autonomous and rational nature of moral agents whose ethical decisions, guided by universal moral principles, have to be insensitive to the situation regarding the beliefs, feelings, attitudes and concerns of each of the individuals involved. The relationships between these individuals are also ignored and this is considered wrong by the virtue ethicists.
- c. They also claim that traditional normative ethical theories fail to recognize the importance of valuing the well being of others for their own sake. Impartiality of these normative theories demands an impersonal approach that does not take into account the individual's needs and abilities. The universal and impartial theories are therefore criticized for leaving little room for virtues such as empathy, compassion, fidelity, love and friendship. Feminists asserted that care and compassion as moral values (values often associated with woman) are as important as rights and justice (values often associated with man<sup>36</sup>).

In essence, the distinct moral perspective of the ethics of care is characterized by a concern with relationships and responsiveness to particular needs of others, and by

a commitment to others' well being. Consequently, the ethics of care offers a fundamental difference to the universal ethical theories. Instead of modelling human relationship purely on rational and autonomous exchanges as in the case of the Kant's ethics, a willingness to take into consideration the relationship between people before making a moral judgment is strongly promoted by the feminist ethicists<sup>37</sup>.

### Criticisms

The ethics of care in principle offers another way of guiding a moral judgment. However, the difficulty in applying this theory is that the degree of care and responsibility for the others cannot be determined. In ethics of care, a person is always considered to be in a relationship. This creates difficulty in deciding how one should balance the responsibility to oneself and to the others. The extent of care, the responsibility to the others and the priorities between others and myself has never been defined in care ethics. This issue is reminiscent of a similar problem with utilitarianism in which a moral agent also faces a seemingly 'unlimited and undefined responsibility' to act for the best of others involved in the situation. This similarity is not surprising. While the care ethicists reject the utilitarians' commitment to achieving the best outcome for most people, they have the same tendency as the utilitarians to ground moral claims on the subjective harm and happiness of other people, rather than on an objective justice. As a result, the question of whether one can meet one's responsibilities for the others without giving up one's autonomy is difficult to answer. To meet the obligation on care, it seems that one needs to know in advance what one is responsible for before one can make plans for others' future. This requires a certain degree of predictability that is naturally rather difficult to achieve.

The ethics of care is now quite popular in the realm of business ethics as managers are encouraged to care about their work force and to establish good relationship

with them. I will also take this theory into consideration in the ethics of M&A in the following discussions.

## 2.6. How will I apply the ethical theories to ethics of M&A?

The above brief overview on some contemporary ethical theories is obviously incomplete. It has nevertheless demonstrated to me that the ethics of a situation need to be examined from different ethical angles according to what principles are to be applied in the assessment. Each of these principles touches on one facet of an ethical situation that allows us to make one possible judgment. When another principle is applied to the same situation, it could lead to a different moral interpretation. Therefore in order to have a complete picture and a satisfactory conclusion in the investigation of ethics of M&A, I would have to apply all of these ethical theories, albeit with different degree of emphasis, discussed in this chapter in the following deliberations.

## **Chapter 3 - Ethics of M&A**

In this chapter, I would like to examine the ethics of M&A by applying the common contemporary ethical theories that I have briefly described above as tools of assessment. Through this examination, I will establish a view on the ethics of M&A. Before I do that, I would like to briefly review the ethics of making a profit in business.

I mentioned in section 1.4. that M&A is currently a popular means to create economic value and profit potential for business. One of the most important purposes of M&A, I argued, is to create a new entity with enhanced capability that will be able to generate more profit for the business, at least from a theoretical point of view, through different avenues such as rationalization of operation, market or product portfolio expansion, increase in critical R&D resources etc. Therefore, to examine the ethics of M&A, I will have to demonstrate firstly that making profit in business is ethically acceptable or at least not unethical. If this is not the case, then I do not even need to investigate the ethics of M&A which, by deduction, will also be unethical because:

- a. If profit making from business is unethical, and
- b. M&A is a business activity with the principal purpose of generating higher profit potential.
- c. Therefore M&A is unethical.

### **3.1. Ethics of profit making in business**

In chapter one, I said that it is necessary to understand the value of business if we want to study and understand business ethics. In the deliberation of the value of business, I proposed that it first started in ancient civilization in the form of simple bartering for the purpose of meeting people's needs. As time goes by, demands of a different nature from business by various stakeholders such as the consumers, the

business operators, suppliers, communities etc., evolves and increases gradually. I showed in diagram A (page 4) examples of some of the values offered by business, such as satisfying people's materialistic needs and desires (mainly the customers who obtain goods and services from the business), generating profit for shareholders (people who invest in a business mainly for making a profit), benefits for the management and the employees (people who run and operate the business in return for a financial reward) and the communities (jobs created and knowledge generated from the businesses process in the community). Creating and providing these values to the stakeholders through business activities appears to be a valid and noble objective and I do not think that there will be many people arguing against the values and will claim that business is unethical. I will elaborate this claim briefly in the following section.

Therefore, the major moral questions on profit making appear not to be related to *why* profit is made but on *how* profit should be made; should there be a limit on the level of profit; who should have a claim on these profits and how the profits and other values derived from business should be distributed. I will address these questions using the ethical principles as described in chapter 2.

Doing business involves risks mainly in the form of losing one's investment. In ancient times when traders had to travel long distances to source and sell merchandises without the convenience of a proper transportation infrastructure and the security available from a political administration, they put their personal safety at risk as well. Therefore profit is an incentive and reward for attracting people to take risks in business to serves the needs of the others. Intuitively, there seems to be nothing unethical in this representation, i.e. profit as an incentive. In fact, if profit making is considered inappropriate as an economic incentive to generate goods and services for society and is forbidden by social institutions, nobody will be willing or able to invest in business. The consequence of this approach has been demonstrated by the totalitarian experiments undertaken by the communist

regimes in countries like China and Russia from the after the Second World War where profit making in the production and distribution of goods and services was banned. Business was run by the state according to the perceived ‘needs’ of the people. This *profit-is-not-allowed* system has clearly failed to deliver the economic development needed to improve or even sustain the standard of living of the people in these countries.

This *profit-is-not-allowed* system is actually, in my opinion, unethical, as it has violated many of the contemporary ethical principles. For example, from the utilitarian point of view, this social endeavour is wrong because the system led to a loss in utility measured in wealth development (accumulation of physical and human assets) in these regimes compared with the other economic systems like capitalism. I could also claim that people under these regimes were not happy either. Otherwise, the uprisings by the people, which led to the subsequent downfalls of the totalitarian regimes right across Eastern Europe, would not have occurred from the end of the 80s to early 90s. Based on Rawls’ fair procedure, people, under the ‘veil of ignorance’, would have objected to this system that caused the deterioration of living standard and loss of liberty. The system would also fail Kant’s categorical imperative. Its rejection by the people who have experimented it for half a century proves that it could not be willed as an universal maxim. Finally, in a communist *profit-is-not-allowed* economic system where individuals have no right to any property, it has definitely violated Nozick’s entitlement principle.

When we look at *profit-as-an incentive-and-reward* economic system, it has generated much higher economic growth and development than the *profit-is-not-allowed* system as illustrated briefly in chapter one from one of IMF’s studies<sup>10</sup>. This demonstrates that making profit has been a useful incentive for an institution to deliver economic value and social development. There is no argument to show

that it is unethical. The process in getting profit may not have moral worth but it is not wrong to aim for making profit in business.

I will now attempt to answer the next two questions:

- a. Should ethics put a limit on the level of profit that a business can make?
- b. Can profit justify the means used in its generation?

a. Limits on profit level

If profit is an incentive and reward and is part of an economic system that is designed to satisfy people's need, why should there be an upper limit on how much profit a business should be allowed to generate? Shouldn't more profit mean happier investors and that in turn would mean more resource could be ploughed back into the business to serve stakeholders' needs better? Anyway, an upper limit on profit level will automatically be set by a market mechanism, if properly run, through fair competition. The social institutions in a just society that guarantee liberty and equal opportunities for people to compete fairly in business will assure this.

There is, however, a minimum profit level sustained over a period of time that a business must have in order to survive. If the profitability is below a certain level, which depends on the nature and degree of risk of a particular business and other alternative investment possibilities available at that time, the business will lose its capability to grow or even to survive because it will lose its attractiveness to investors who may decide to stop funding the business. Therefore an appropriate level of profit, from a financial and not ethical perspective, will be set by the market situation as well as the competence of the company.

The above argument shows that a high level of profit by itself is not unethical. If we again use the various ethical theories to evaluate the ethics of profit level, it

would appear that the utilitarians would not put a cap on it as long as it can maximize the total utility of all the stakeholders related to the business. The obligation based ethicists will support this as the management of a company has in effect established a contract with the shareholders to generate the desired level of profit allowable by the market structure. In fact, not generating the agreed upon profit level is wrong because a contract would have been broken and a promise has not been fulfilled. From Rawls' principle of justice, it should not be a problem for people behind the 'veil of ignorance' to accept a system that maximizes the level of profit as long as the least advantaged also would end up in a better position. Finally according to the entitlement principle, it is the right of the shareholders and the management to decide how they are going to utilize their assets to generate whatever profits they can generate limited by the conditions of the market structure and the internal and external legislative restraint.

The above arguments show that making profit in business, at whatever level, as long as they are meeting all the external and internal (to the company) regulations, does not have an ethical problem when inspected by various contemporary ethical principles. I will now proceed to examine the second question on 'how' profits should be made from an ethical perspective.

b. Can the end (making profit) justify the means?

In the few typical issues on business ethics that I have raised in chapter one, such as;

- Environment pollution caused by business
- Corruption in business
- Child labour in business
- Incorrect information about business misleading the public
- Unfair treatment of employees, etc.

We can see that they are all related to ‘how’ a business is (unethically) run and the (negative) impacts the business makes on the environment and some stakeholders to the business rather than on ‘why’ profit should or should not be made.

This picture reaffirms to me that the study of business ethics should be focused on *how* profits should be made and utilized and what impacts a business should or should not be allowed on the stakeholders.

M&A is a business process - it is a ‘*how*’ - designed to generate profit potential. Its impacts on the various stakeholders have therefore to be inspected ethically.

### 3.2. Impacts of M&A on stakeholders

In everyday decision-making, there will always be two main streams of considerations, i.e. the objectives of the decision maker and the impacts that the final decision would have on the people related to the decision. The decision maker usually uses different value principles that could be financially, socially, politically or ethically based to guide their decisions. I have already explained above that it makes sense to decision makers in business to carry out M&A from the financial point of view. From the ethical point of view, I have also said that the core of the inquiry should be focused on ‘how’ M&A is carried out and the impacts on the various stakeholders whose lives are affected as a consequence. Assuming that M&A will be carried out strictly according to the rules and regulations of the country, the study will become an examination of these impacts by the appropriate ethical principles. In business decisions I believe that decision makers usually use more than one of the many ethical principles to guide them in the decision process. In the following deliberation, I will therefore take all the ethical theories that I have reviewed in chapter two and use them to judge whether these impacts are ethically acceptable or not. This will then tell us if M&A is ethical. Regarding the stakeholders, I will concentrate on the four most important

groups in the inquiry, i.e. the shareholders, the customers/suppliers, the employees and the communities. I will try to answer the following two general questions:

(1) What are the major impacts of M&A on these stakeholders?

(2) Are these impacts ethical judged by the various ethical theories?

### 3.2.1. Shareholders

These are the investors who provide the capital for and therefore own the business and are expecting to earn a return for their investment. The size of return expected usually depends on the amount of the investment, the level of risk that they have to take and the availability of other investment alternatives in the capital market and sometimes the investors' personal preferences - industries, geographical areas, preferential businesses, e.g. socially responsible investments. Investment is a rational choice made by investors. Today there are two major categories of shareholders in the publicly owned companies. The first category of investors is individuals or collectives, such as a company pension fund, who make their investments directly in a company. I call these the *direct* investors. The second category of investors is the institutional fund managers who make their investment on behalf of many individual clients, including both the individuals and/or the collectives. I shall call these institutional funds the *indirect* investors.

Shareholders, both the direct and indirect investors, are usually the group of stakeholders which exert the highest pressure on the decision makers of a company - the board of directors - to generate the desired level of return from the business. As a result, it is fair to claim that most M&A initiatives in business today are taken as the consequence of indirect demand from the shareholders for adequate financial performance.

(1) What are the impacts of M&A on the shareholders?

Share prices of the various companies involved in M&A usually go up immediately as soon as a M&A deal is agreed upon among the participating companies even before the actual merge has taken place (e.g. the share price of Halifax went up by 6% on 4th May 2001 immediately after the news of its intention to merge with Bank of Scotland in the morning). This happens because the capital market is expecting a potential gain from the birth of a more efficient operation as a result of the merger. Investors are therefore trying to acquire stocks for the partner companies. This situation means that the current shareholders of the companies involved in M&A, under normal circumstances, will stand to gain handsomely from the process. Therefore, the impact of M&A on shareholders from the financial point of view is in general positive, at least in the initial stage of a merger.

(2) Is the financial gain for the shareholders ethically acceptable?

*a. Utilitarianism*

For reasons of simplicity, I will limit the definition of utility in relation to M&A to 'human happiness' that is influenced by a sense of personal achievement (psychological) and security in life brought about through financial gains (physical) for this and subsequent discussions.

When taken in isolation and ignoring the impact of M&A on the utility of the other stakeholders to the business for the moment, M&A appears to be the right action from the shareholders' point of view. In accordance with the utilitarian theory, their utility level should have been increased - happiness gained through the achievement of financial gain. Since utilitarianism requires that an action have to give the highest possible utility overall, I have to reserve judgment on the ethics of M&A concerning the shareholders based on this theory until I have examined the

impact on the other stakeholders. A tentative conclusion is that M&A brings about increased utility to the shareholders.

*b. Rawls' principles of justice*

According to Rawls' ethical principle, we should assess the ethics of M&A concerning the shareholders by looking at whether people behind the 'veil of ignorance' would give approval to M&A from firstly the impacts on all stakeholders (whether they are all better off), in this particular case, the shareholders and secondly whether the benefit generated from the M&A is distributed fairly among the stakeholders.

I mentioned in the above section that shareholders will normally be financially better off as a result of M&A. This is something positive and I believe that people behind the 'veil of ignorance' will also give approval to this outcome and hence the process provided that they would fare better than without the M&A even when they end up to be one of the least advantaged stakeholders. Thus I cannot again make judgment at this point on the ethics of M&A according to Rawls' principle until the impacts on the other stakeholders to the business has been reviewed later.

*c. Kantian obligations*

Kant will accept actions to have moral values provided that they are commanded by categorical imperatives after rational deliberation. Let's examine if M&A could satisfy these requirements.

From my description of the two types of investors above, we can see that first of all, investments by shareholders are in principle made rationally. The direct investors either make the choice on the company they will invest in after considering its competence level, earning potentials and, more and more importantly, their ethical behaviour; or they explicitly indicate the level of return to the institutional fund managers expected from their investments. These indirect

investors will have a duty, based on an explicit contract to generate the agreed upon financial return. After having committed to this obligation, the indirect investors have to make rational choices on their investment strategies.

We have actually three broad levels of obligation in today's equity market. Firstly, the trustees in a company's pension fund have a duty to try to generate an adequate return from the investment for their members - the employees and the pensioners. Secondly, the indirect investors have a duty to meet the targets of financial return set by or expected from their collective or individual clients. Therefore, these two groups of investors have the right, freedom and indeed the obligations towards their trustees and clients to demand performance from a company that they have invested in. The third level of obligation is from the management to these two groups of investors, if they accept the targets and agree to deliver the promise, the management has a duty to try to meet their expectations on performance.

Consequently, a company really has no choice, both as a consequence of their duty to their shareholders (the ethical perspective) and also as a necessary condition to keep the company in business (the financial perspective), but to perform according to the demand of the shareholders.

This justifies (ethically and financially) M&A from the shareholders' point of view. According to Kant's theory, both the direct and indirect investors are acting (putting pressure to companies) to fulfil obligations to the trustees and the clients respectively while the management acts (in creating M&A) in accordance with their duty towards the shareholders. These three levels of obligations are universally based on the institution of promise. Only by the categorical imperative from the fulfilment of promise can long-term business transactions take place. If the direct and indirect investors do not keep their promises to their employees and clients, if the management does not keep their promise to the shareholders, the equity market would no longer be able to function as it is operating today. The whole capitalistic economic system will cease to function. I can therefore

conclude that M&A from the shareholders' perspective satisfy Kant's categorical imperative and they have not been acting unethically in the formation of M&A.

*d. The entitlement principle*

I consider Nozick's entitlement theory to be an important ethical theory in the business context as it has a strong influence on regulating the distribution of wealth. It is in principle an extension or another interpretation of Kant's ethical theory in the sense that Nozick's theory demands respect for people's right to their decisions and possessions. Nozick in particular stresses the absolute authority that an individual (or any other legal entity) has over his property. Since M&A is an economic process through which the re-arrangement of assets (in the form of property holdings) in a society takes place, this makes the application of Nozick's entitlement theory to M&A situation particularly relevant. So what does this theory tell us about the ethics of M&A?

In a modern business corporation, shareholders usually subscribe for or purchase in the stock market the equity of a company in the form of shares and stocks. This acquisition is done under the strict legal regulations established by various social institutions. One can therefore expect that not only is the transaction of shares legitimate but also that, once the transfer of the equity is complete, the investors have legitimate property right over that part of the company holdings in the form of shares that they have acquired. In line with Nozick's entitlement theory, the investors' right to own and sell these holdings is not violable by anybody in the society. This confers on shareholders absolute freedom in what they want to do with these assets. They can decide, bound only by their own investment motives and principles, and governed by the laws of the country, either to increase or to reduce their investment in a business operation depending on whether the business is meeting their return on investment expectations, without having, in principle, to worry about any social consequences of their decisions. If the company in which they have invested fails to achieve their expected return, they can either put

pressure on the management for improvement in performance through their representation at the company board or just dispose of their equity holdings. The consequence of the latter action is that the company will be put under financial pressure due to the lack of capital, or will only find capital available at higher borrowing cost from the creditors. If there is no quick business improvement, a logical consequence will be that of M&A. According to the entitlement principle from Nozick, the shareholders will have the freedom and could decide to approve M&A without worrying about any consequences, negative or not, to the other stakeholders of the company. They could take benevolent and sympathetic views on the consequences of their actions (forcing the formation of M&A) on other stakeholders to the business. Even if they would not take these benevolent actions, they would not be considered as acting unethically in Nozick's theory. Therefore I can claim that Nozick will accept M&A as ethical.

### 3.2.2. Employees

I will use the term 'Employees' in the following discussion to include both the general work force and the senior management of a company. The latter has a dual status. They are both the employees of the company as well as the agents for the boards of directors who in turn are representing the interests of the shareholders. I will consider these two groups separately in the following examination of the impact of M&A on them.

(1) What impacts do M&A have on the employees?

I will start with the impact of M&A on the senior management who are in fact responsible for carrying out the work in the formation of an M&A. In an M&A operation, there are usually two (sometimes even more depending on the number of partners participating in the M&A) management teams from the partners that will eventually be merged into one. Some managers will be retained by the new company and will have the responsibility of carrying out the integration of the two

organizations. Those who are not selected, usually from the acquired company, will eventually be made redundant or will be given jobs with reduced responsibility. Naturally, the impact on and hence the reaction from these two groups of managers will be different. Let's look firstly at the kind of impacts on the management overall in typical M&A situation.

An M&A process does not happen very often in a company and is typically an exceptional, sporadic but critical event for the senior management. It is exceptional because the work involved in M&A is usually a one-off assignment for the project team and is seldom repeated within a short span of time. It is sporadic because the progress of work cannot be exactly planned. M&A comes about only when a suitable alliance candidate can be found, negotiation can be smoothly carried out and the subsequent due diligence has yielded positive results. The work is critical because the two merging companies are in the process of charting a new and unknown future for the business that may or may not be successful. The work has to be done very carefully and the prognosis on the prospect of the merged company in the future has to be carefully made. Then an organization and management structure has to be defined and the financing for the project has also to be arranged. Eventually, legal procedures such as application for government and shareholders approvals, registration of the new company and the assignment of the employment contracts for the work force and other stakeholders have to be settled. M&A is therefore a very complex operation and make a very high demand from the management.

This complicated, lengthy and demanding M&A process will naturally make strong impacts on the senior managers. The first group of managers (usually the acquiring group) who will be retained eventually will be under a lot of pressure and stress, before, during and after the M&A to ensure successful completion of the project. On one hand, they are heavily involved and are given important responsibilities to form a new company, especially if it is a multinational company.

On the other hand, their actions have to be done in a highly confidential and hence stressful environment as any leakage of information during the various stages of negotiation and implementation could cause big changes in the share prices of the companies involved in the financial market and strictly regulated by law. This puts a high strain on the emotional and the social relations of the managers with their friends, colleagues and even their family members. Finally when the new company is formed, the management has also the very daunting task of building the new company restructure that usually involves dealing with people including laying offs. Furthermore, subsequent to the completion of M&A, when management starts to exert control and try to put the well thought out strategies in place, they may find that many of their business assumptions made before the mergers may not be correct as partner companies in M&A usually try to paint a more optimistic picture than it really is during the negotiation stage in order to make the deal more attractive. This could create distrust, poor relationship, legal complexity and difficulty for the acquiring group of managers to deliver what they have promised to the shareholders and the financial market before the M&A takes place.

On the more positive side, the managers from the acquiring company will usually make gains - financially (increase in share price) and egoistically (perceived to be more competent, assigned with bigger roles and higher status are expected to have better long term future with a bigger and potentially more profitable company) as the result of M&A. These positive impacts are, unfortunately, counterbalanced by longer hours of work and higher level of stress compared to their work before M&A.

The second group of senior managers, who would either be made redundant eventually or be given diminished roles in the new company, besides losing their current employment or important positions, could suffer from a sense of humiliation due to rejection or demotion. Depending on the individuals, these

managers could go through a series of emotional turmoil - starting with disbelief, anger and injustice then followed by fear for their future. Another psychological pressure on them is their reflections on the reasons for their being selected for redundancy or demotion. Depending on the individuals, they could interpret this as an indication of their incompetence by the new management and this could have a negative impact on their self-confidence and dignity. This could lead to a feeling of shame.

From a financial point of view, due to their seniority in the original company, these managers will usually be given a very good redundant package - the golden handshake - when they are not retained. They could actually make financial gain as a result of forced departure from the company. It is also common that due to their high level social connections in the business community in the past, they could usually find alternative employment without much difficulty if this is what they want.

Therefore, from the above analysis, it appears that the major negative impacts on senior managers who are made redundant as a result of M&A are on their emotion and ego. Money and employment security are usually not an issue.

The lower level employees are usually under most threat among all the stakeholders as a result of M&A. It is the norm, and in fact very often a declared intention by companies, that M&A is pursued to improve productivity through the reduction of jobs. Hence it is clear that M&A has a negative impact on employment. Similar to the situation for the senior managers, the impacts on the lower level employees would also be psychological and financial. When a company announces the intent of M&A, there will already be a very high degree of uncertainty and fear among the workforce. The fear of losing employment and the potential significance to themselves and their family members, the stress from the uncertainty of waiting for the final outcome will create anxiety and unhappiness.

For those who are eventually made redundant, there could further be a feeling of doubt (as in the case of the senior managers) as to their own competence and self-worth. This is because in forced redundancy situation in a company, there is usually a selection process through which employees considered not suitable for the new company based on various criteria such as competence, age, gender, history in the company etc. will be selected. Therefore, there could be a perception, both by the redundant employees himself and/or by their colleagues, friends and relatives that they are the least competent group. This psychological pressure could wear people down.

With regard to the future financial security of the redundant employees, there are actually extensive employment laws in many welfare states such as the UK that will ensure that these employees would be adequately compensated for losing employment through M&A. There are also measures put in place by the state to assist them to look for alternative employment. Therefore the negative impacts on the lower level employees who are made redundant are mainly, as in the case of senior managers, on their emotion rather than on finance, at least in short term.

Even those employees who would be retained in the new company would have to go through a period of turmoil. Firstly, they would experience the same initial speculative phase like the redundant employees. After they know that they are 'safe' and will be retained by the new company, they will face a situation in which the new management of the company will be different from the one that they are used to. There will be new business direction and policy to be coped with. They will have to get to know the new organization, the new power structure and a new culture. They have also to get over the 'survivors shock' and to recover from the loss of the emotional and social relations to their close associates who have been laid off. This could very often lead to indignation, depression and sometimes indifference to work.

It appears from the above analysis that negative impacts of M&A on the redundant employees are mainly on the generation of psychological and emotional stress through anger, fear, loss of confidence and self-respect. The financial impact is in most cases not a serious issue due to the compensation mechanisms established in the modern employment legislations that govern the management of redundancies. This phenomenon appears to be independent of the seniority of employees in a company. The negative impacts would also apply to the remaining employees albeit to a lesser extent.

(2) Is the treatment of employees in M&A ethically acceptable?

*a. Utilitarianism*

As a result of M&A, the above deliberation indicates that there will be some gain in utility for the group of senior managers who are retained by the new company but there would be a loss in utility for most other employees due to fear, stress, breakdown of emotional connection, self doubt etc.

I reckon from an intuitive and qualitative analysis on the happiness level of each group of employees described above that the total net change in utility level for them at the end of a M&A will be a net reduction because:

- (a) The retained managers will have higher responsibility and probably better potential prospect in the company but they still have to go through a period of stress and turmoil. I would assign a neutral change in utility to this group.
- (b) The redundant managers will have a lower utility (based on an immediate estimate after the redundancy without taking into consideration of alternative employment in the longer term) due to a more weighted negative psychological impact even though they might receive a good separation redundancy package. For these employees, I believe that financial gain or loss will have a lower weight

when compared to the egoistic utility. Therefore I will assign a net reduction in utility for this group.

(c) For the lower level employees as a whole, I reckon that there will be a net reduction in utility. This is because the negative emotional stress applies to all employees, whether they will be eventually retained or not, in the negotiation and implementation phases of the M&A. After the final organizational structure is in place, the redundant employees will continue to suffer from the emotional stress - a bad dream comes true. The retained employees would be more relieved but they will continue to suffer from the temporary loss of a social association in the company in the short term and a sense of insecurity for the future - fear for the next M&A. The financial impact seems not to take a very important position in the calculation of change in utility due to the usual compensatory measures that are in place.

Therefore I can claim from this deliberation which could be verified from my own direct personal experience in my company that the overall change in utility for employees after the completion of a M&A process is negative and it will take some time to recover the length of which will depend on how quickly can a new company culture be established and business activities return to stability.

Although I have examined the change in utilities of shareholders and employees as a result of M&A, I still have to reserve judgment on the ethics of M&A based on the utilitarian principles until I have looked at the remaining stakeholders in the later sections.

#### *b. Rawls' principles of justice*

I have established above that employees are the group of stakeholders who will usually suffer from a net reduction of utility as a result of M&A caused mainly by emotional stress. The questions relevant to Rawls' principles of justice are whether the employees are the least advantaged group of stakeholders in M&A,

what would their position be as a result of social goods redistribution in M&A and whether they would accept the decisions taken in M&A if they would be in the original position behind the veil of ignorance. I will start the discussion on these questions related to the lower level employees first as they are the most affected group of stakeholders. This will be followed by a brief discussion on impacts on the managers.

Before M&A, employees occupy their respective positions in an established company hierarchy as a result of their competence, personality, ambition, social relation within the company and history of employment. Except the senior managers, most employees perform tasks assigned to them based on voluntary and mutually agreed employment contracts with the company. Employees have therefore very little influence on the company's direction of development and on how rewards - position, money and power- to various stakeholders including themselves are distributed except perhaps to a certain extent through union representation. Therefore, one can claim that the lower level employees are the least advantaged in a corporate environment compared to other stakeholders as far as their ability to influence the distribution of goods created from the operation of the company is concerned. The other stakeholders - customers, suppliers and communities - give licenses for the existence of the company because they provide the revenues, goods and services and the environment in which the company can operate. They are therefore not directly involved in the distribution of rewards in the company. The history of M&A has also shown that somebody else usually in a unrelated position will decide the future employment of the employees. The latest example in UK to illustrate this point was the announcement by British Aerospace<sup>37</sup> to layoff 5000 workers in UK as a result of merging with Marconi, an American company. The employees were not consulted during the negotiation and were informed of the final decision. This is why I believe that these employees are the least advantaged stakeholders in M&A as they have neither direct influence

on its creation nor on how positions and other social goods in the new company are distributed.

I will now turn to the question on whether employees are worse off after M&A, not only regarding utility which has already been shown to be lower in the previous section, but also the other social primary goods redistribution. The social goods in consideration are wealth in the form of income, opportunities, liberty and dignity. I will first look at wealth distribution and will consider the two groups of employees - those who stay and those who are made redundant.

It is evident that retained employees in general would not suffer from the loss of income unless they are changed to a lesser job. Therefore as far as redistribution of wealth is concerned, they will not be affected. When we look at the redundant employees who often claim that they will lose a regular income from the current employer as a result of redundancy, we may have to examine this claim with a time scale and the source of income in mind. When employees are laid off as a result of M&A and not through their fault, they will usually be compensated. In countries with strong social security practices like the UK and other north and western European countries, redundant workers are in general compensated in such a way as to allow them to maintain more or less the same standard of living for some time, say six months to one year depending on different companies. This will give the redundant employees time to look for alternative employment. If they succeed in finding employment within a short time, the redundant employees could actually be better off when judged from monetary income point of view as they would have pocketed a severance payment from the merged company and could continue to work in another company to secure their regular source of income.

There is naturally a possibility that a redundant employee could not find an alternative employment within the period supported by the severance payment. There could be due to the non-availability of alternative employment, mismatch of

the competence of the employees in relation to the demand in the labour market at that time etc. One should, however, also ask the question of what could happen to the redundant employees if M&A did not take place. This would probably mean that the company would lose the chance to increase its competitiveness through M&A. It might therefore fail to survive in a short time and be liquidated. As we know that a liquidated company will only have limited cash from the realisation of residual assets to compensate for creditors and employees. Should a company file for bankruptcy, not only would all employees lose their regular income, they could also risk missing adequate compensation (compared to the severance package when made redundant) as other creditors usually have priority to the claim of the residual asset from a bankrupted company according to today's commercial law. They would therefore end up in a position of redundancy but without the benefit of an adequate severance payment.

With this argument, an employee should actually be better off to be made redundant when a company is merged than to take the risk of a potential closure of the company. It would appear therefore that M&A will not worsen the financial position of both the retained and redundant employees and occasionally, redundant employees could actually be better off financially when they are able to get alternative employment within the period when they are still supported by the severance payment.

Let us now examine the redistribution of opportunities. When a person is employed in a company for a relatively long time, there is usually little incentive for the employee to look for alternative employment unless the current job no longer meets his expectation or the demand from the employer or there is a change in his personal circumstances, like having to relocate for whatever reasons. Freedom of movement and alternative employment opportunities within the company is therefore rather limited for these long serving employees. In this

circumstance, change of jobs for an employee will normally be limited to promotion or horizontal movement within the current company.

When an employee is laid off as a consequence of M&A, he is put in a position where he has to make choices, e.g. the choice between seeking alternative employment and taking early retirement and, if he intends to continue working, where and whom to work for. He has in fact opened up to more opportunities (in theory an infinite possibility minus the current employment) as he can now consider all the various options - alternative employment, self-employed or retirement. His freedom of movement (job nature as well as geographical location) will only be limited by his own ambition and family flexibility, competence level and the state of the labour market. He has in fact only a very slight decrease in the degree of freedom compared with the retained employees who theoretically should have the same degree of freedom if they choose to leave the company and search for opportunities outside. The latter have the advantage of having one more degree of freedom, i.e. to stay in the same company, although they may not have the incentive or the pressure to make a change. I could therefore conclude that retained employees have no deterioration in the availability of opportunities while redundant employees do have a slight reduction in liberty as a result of M&A.

I have argued in the last section that the redundant employees could suffer from a loss of other social goods such as dignity, self-esteem, self-confidence, reputation etc. Depending on individual personalities, the perceived loss of psychological worth by the individual concerned could be more harmful than a financial loss or the reduction in physical security.

It is often claimed that when an employee is made redundant, he sometimes interprets the laying off as an indication that he is less competent than the others who are kept by the new company. This gives a negative impact on dignity and self-esteem. This is an emotional claim that could not be objectively defined let

alone quantified. But it is reasonable to visualize that this kind of emotional state does exist among some of the redundant employees. The severity of this sentiment would depend on the particular situation in which the employee is made redundant. Some jobs in a company will disappear as a consequence of a new organizational structure. People are laid off in this situation not because of their incompetence but because of the disappearance of jobs. This situation should be more easily acceptable by redundant employees and the issue of dignity and self-esteem should not be relevant. In other cases when jobs are kept but will be done by fewer people compared to the initial situation before the M&A, some employees will be made redundant and some will be kept on. This is a situation where there will be some relevance to the above claim. In this situation, treatment of employees' ego needs to be very sensitive in order to avoid damaging their self-respect and dignity. The selection of employees to be made redundant would become a key issue. From the productivity point of view, it would be rational for the company to select the least competent workers for redundancy. This selection criterion is exactly what redundant employees are afraid of. It takes only the need of the company in consideration and has not considered the need of the employees. This approach is therefore very often rejected by labour unions. An alternative approach, supported by the unions, is that the selection criteria must also take the needs of the individuals affected into consideration. This practice is in fact quite common in countries with traditionally strong industrial relations such as the UK. In these countries, equity in the process of selecting redundancy is considered to be as important as the eventual productivity gain of the company. In these companies, the selection criteria for making redundancies have actually to be agreed with between the management and the labour unions regulated by some employment arbitration bodies set up by the government. Furthermore, the selection process has also to be carried out fairly.

These practices actually resemble that of the fair procedure described in Rawls' principle of justice. Through this process, selected employees will not be labelled

as the least incompetent and the question of damages on dignity and self-esteem of the redundant employees can be avoided. As a result, the employees concerned will be more willing to accept the redundancy after taking all relevant factors into consideration through a fair process agreed upon by all parties concerned. This also means that people in the original position would agree to this system, as they would know that even if they would be made redundant, they would be selected through a fair procedure with their dignity and self-respect protected.

Therefore, as far as the lower level employees are concerned, they would consider M&A actions acceptable (ethical according to Rawls' principles) if the selection for redundant employees follows a fair procedure.

I will now turn to the situation of the redundant managers. I have already mentioned in the section on utilitarianism that both the retained and the redundant managers will not be worse off from wealth redistribution as a result of M&A. The same arguments on liberties and opportunities given for the lower level employees will also be applicable for the managers. That means they do not have more than a very marginal loss of opportunities.

The major negative impact on the redundant senior managers could be on the issue of dignity. Due to their positions of authority and responsibility, the departure of senior managers from a company is usually a negotiated process. They are made redundant by the new leadership for different reasons. The major ones are usually on grounds of politics and personal differences with the new leadership team rather than on their competence. Otherwise, they would not be in their respective positions before the M&A. These managers normally command respect from employees due to their positions and authority before M&A. Therefore, when they are made redundant, they are very often looked upon as the 'losers' and 'victims' of the change by the rest of the employees. It is this negative psychological impact that is more difficult for these redundant senior managers to deal with. Dignity is

an important social good and is therefore relevant to our consideration of Rawls' principles of justice.

The above deliberation indicates that the group of redundant employees, both the lower level employees and the senior managers, are worse off as a result of M&A due to a slight decrease in the freedom of employment for them on one hand and a potential loss of dignity and self-respect, especially for the senior managers, on the other. This will make M&A unethical as a system according to Rawls' principles of justice.

To correct this unethical position, the selection process for redundancy in M&A must be carried out fairly, people's self-esteem should be protected in the process, and redundant employees should be provided with training to increase their chance of alternative employment.

### *c. Kantian obligations*

I have shown in the section on shareholders that the motives and subsequently the actions taken by the management, under pressure from the investors, to establish M&A in order to create a more competitive and profitable company are in principle ethically acceptable according to Kant's ethical principles. Some stakeholders such as the employees of the company and the community in which the company operates, however, often claim that M&A is unethical because they have been negatively affected. The way that media reports on how some companies are treating the employees in undignified ways both in the creation of redundancies and how the redundant employees have been managed also imply that some managements have not acted ethically. To address whether these accusations are justified, I propose to consider the two aspects of duty according to Kant's ethics, i.e. whether M&A is done in accordance with duty and whether the company treats the employees only as means in M&A. Finally I will also look at

the conditions under which redundancies have been managed and how should it be done ethically.

The usual attack made by employees and the communities towards a company in M&A is on the ground that it puts the interest of the shareholders ahead of that of the employees. Jobs are unreasonably cut in order to provide profits for the shareholders. They also claim that the livelihood of the redundant employees will be harmed because of the termination in employment against employees' will.

I agree with some of the claims, for it is true that some employees will lose their employment through no fault of their own (unless they have been working in an irresponsible manner that weakens the competitiveness of the company). It is also probably true that the need to meet the profit objectives of the investors could be in conflict with employees' desire for continuous employment in a company.

However, I have argued in the previous section that M&A are considered ethical concerning the investors. This claim was made on the ground that management has to fulfil their obligation to the investors to keep the company in existence through an employment contract. Creation of M&A is a decision taken after careful consideration. Therefore, despite the sometimes rather emotional language used by some angry employees, it does not follow that the management is acting unethically for M&A actions although M&A could still be carried out unethically.

The complaint by the employees on M&A should actually be investigated from Kant's formulation on the categorical imperative, i.e. whether the company has used employees only as means and not also as ends in M&A. Employees are engaged by a company with a contract of employment that in principle lists the rights and obligations of the employers and the employees in the relationship. The nature of the contract will naturally vary in different companies operating in different countries. But in principle a contract will usually be drawn up to balance the employer's right to hire and fire the employees and the company's obligation to

reward and develop the employees and the employee's right for a fair reward for their service with appropriate training and development to enable them to carry out the assigned and obligatory duties. Therefore, based on the principle of voluntary engagement, i.e. the contract is entered into without coercion, as long as the company is acting within the conditions set out in these employment contracts, the management has not treated employees as means only but also as ends, through respecting their needs and providing training and development during their time in the company.

It is actually beneficial to the company that the potential of employees is properly developed, as this will increase the human capital for the company through the individuals' increased capability. Contemporary social science and management academics actually claim that without the realization of the employees' potential, a company would not have fully utilized the human capital of the company and would lose out in competitiveness in today's global market<sup>39</sup>. However, if the company has been providing regular training and development for the employees only for the benefit of the company, it is still treating the employees only as means. To treat the employees really as ends, the company must develop its employees as its duty to do so.

On the other hand, in accordance with the principle of voluntary engagement, the company should also have the right in case of business needs to terminate employment as long as the employees who are made redundant are selected through a fair process and treated with dignity as mentioned in Rawls' section above. Therefore the process of redundancy management becomes another way of treating employees as ends and not just as means in the consideration of the ethics of M&A. If these conditions are met, the employees should have been considered fairly treated and the company has acted ethically towards the employees in an M&A situation under the Kantian principle.

In summary, it appears that M&A has not violated Kant's ethical principles for the employees. The key ethical consideration in the M&A process should therefore be focused on how employees should be treated.

*d. The entitlement principle*

Employees of a company usually do not own equity of the business unless they are also shareholders of the company through employee share ownership schemes or direct acquisition of the company's share in the stock market. Even under this situation, the employees are normally the minority owners of the company. They have therefore no right, according to Nozick, to interfere with how the company's assets should be managed even though they might have a stake in the business through contributing to the creation of profit and receiving a benefit from it.

Can one nevertheless argue that since employees help to create wealth in the company, they should also be entitled to a part of the assets of the company? The answer according to Nozick is definitely negative as there has not been any legitimate transfer of property between the company and the employees. Another argument is that employees are already rewarded through salaries and other benefits in return for their services agreed upon in their respective and fairly negotiated employment contracts. Therefore even if the employees' interests are negatively affected as a result of M&A, their objections, if based on a right claimed on how the assets should be managed and transferred in M&A, have no ethical support.

The above is a simplistic and a direct application of Nozick's theory in M&A situations. In actual practice, companies have not been given a free hand on how to trade their assets, especially regarding M&A transactions which have to meet stringent financial, social and ethical criteria set by the regulatory authorities. Different countries have introduced regulatory measures to rectify some of the potential negative consequences in M&A. These measures are designed to ensure

that no monopolistic enterprise will be created through M&A that may not be in the interest of the society as a result of reduced competition. Furthermore, potential gains from M&A are also shared, through compensatory measures and taxation, with the related stakeholders especially for those that could be negatively affected, such as the redundant employees and the community.

The establishment of these regulatory and compensatory elements is not in accordance with Norzick's entitlement theory that demands absolute ownership and freedom of transfer of assets and nobody, including the government and any of the other stakeholders, could interfere with these transactions, directly or indirectly through putting up costs of the transaction. This libertarian approach unfortunately has proven to be not ideal in actual practice. In the early days of the industrial revolution when companies had a lot of freedom to manage and trade their assets, they were able to accumulate great wealth but bear little external transaction costs. This created extreme wealth inequalities among the social strata in the society. It is through the recognition of some of these negative effects from practicing absolute property rights that many national governments started to develop governance systems in an attempt to regulate companies in the management and trading of assets. These governance systems appear to be based on a moral compromise between respecting the right of the investors to own and trade properties on one hand and protecting the well being of the employees and communities on the other. An appropriate system will have to ensure that those who are negatively affected get part of the benefits through taxation and obligatory compensations paid by the companies as mentioned above. Consequently, many government regulations such as the antitrust laws, the labour employment laws, the human rights acts etc. have been introduced to ensure that monopolies and potential unfair treatment of employees and other stakeholders could be avoided as a result of M&A.

In summary, according to the entitlement principle, M&A is ethical and should not be regulated. In actual practice, an appropriate balance between the strict application of Nozick's entitlement principle and an appropriate interference from the 'state' on the protection of the interests of other stakeholders should be applied.

*e. The theories of virtue and care*

One often hears criticisms in the media targeted towards big businesses for not 'caring' for the needs of the employees and putting the interests of the shareholders ahead instead. When employees are laid off because of downsizing or M&A, the company shows no gratitude towards the redundant employees who may have contributed a lot to the success of the company in the past. Are these criticisms justified from based on the principles from the ethics of virtue and care?

The high rate of mortality of modern companies demonstrates the ferocity of the business environment<sup>40</sup>. Companies are forced to take M&A as measures to ensure survival. This is one of the major justifications for M&A. The ethical questions become whether the company really owes its employees gratitude which is a manifestation of virtue and cares about them in the redundancy process as a result of a special relationship between the company and the employees.

According to Terrance McConnell, gratitude is owed when the following conditions are met<sup>41</sup>:

1. The benefit must be granted voluntarily, intentionally, freely, and not for disqualifying reasons.
2. The benefit must not be forced (unjustifiably) on the beneficiary against his will.
3. The beneficiary must accept the benefit (or would accept the benefit if certain impairing conditions were corrected).
4. It must be the case that the person to whom gratitude is owed provided a benefit or through great effort or sacrifice tried to provide a significant benefit.

In the previous discussions under Kant and Rawls' ethics, I have already established that employment is a contract agreed between two sides - the employees and the employer. Therefore the element of gratitude actually does not exist except in cases where employees have performed beyond their call of duty. Even in this situation, the company has no obligation to take this gratitude into consideration. To take care of the redundant employees and the communities is therefore not a matter of obligation but rather a matter of care arisen from a special relationship which has been created during the working life of the employee in the company. This is where the ethics of care should come into play in M&A.

In M&A, the management of a company has the need and obligation to the shareholders to lay off certain employees with whom they have established a personal relationship. According to the ethics of virtue and care, this special relationship puts a claim on the management for special consideration, such as protection of employment. The management is unfortunately put in a dilemma when two ethical demands are in conflict. They have either to keep employees in employment due to the loyalty and past contribution of the latter and the special relationship between them (ethics of care virtue) or to fulfil their obligation to the shareholders (the obligation ethics) by reducing cost of operation of the company by laying off these people.

In my opinion, the right thing to do could be somewhere in between these two alternatives, i.e. making the necessary redundancies but taking each individual case with sensitivity and care towards the individual, in the form of psychological and financial support. The end result for the company may still be the same. The company will achieve its cost cutting targets; the employee will eventually leave the company; and the process of redundancy management would be more bearable with minimum negative impacts on the employees. A typical policy of this approach is the provision of redundancy support by the company to the employees

including counselling, new skill training, job searching etc. If all these measures are carried out, the ethics of virtues and cares should have been followed. M&A should be considered ethical.

### 3.2.3. Customers and suppliers

I am conflating these two groups of stakeholders together for consideration. The reason for putting them together is that they are both business entities that have in turn their own customers and suppliers respectively. A company will always play the role of a customer as well as a supplier simultaneously. Therefore the gain for the suppliers would be at the expense of their customers and vice versa. The net effect among the customers and suppliers should therefore balance each other out.

(1) What impact do M&A have on customers and suppliers?

In today's business environment, to be successful in selling one's products and/or services, companies have to work very hard to satisfy customers' needs on price, quality, service and to compete successfully in the market place. These business attributes do not exist by accident but have to be achieved through investment in people, technology, infrastructure and other resources that are all cost elements to a business. Naturally these costs have to be paid for from the business operation. There are broadly two ways to pay for them and that is to ask the customers to pay more and/or to ask the suppliers of raw materials and services to charge less. When a bigger company is formed as a result of M&A, the new company will have a bigger purchasing power through larger scale of operation and better knowledge (through the synergy of the combined operation) on the suppliers' market. This advantage on market information and higher purchasing power will mean higher pressure for suppliers on the price of their products. On the other hand, if the suppliers can hold onto the procurement contracts from this new and bigger company, they would also stand to gain from the increased volume of demand. However, from a straightforward mathematical calculation, a company needs to

increase three times the percentage change in price reduction in the volume (in quantity) of business for their products in order to maintain the same profit level. Therefore, it is quite likely for a supplier who intends to continue selling to this bigger customer formed from M&A to lose in profit if their business volume cannot be increased over-proportionally to recover from the lower prices.

From the customers' point of view, buying from a bigger company formed through M&A, could be good news or bad news depending on how dominant the new company in the market will be after its formation. It is in theory worse for customers buying from a bigger supplier because M&A will inevitably reduce choices (instead of two or more suppliers, now there is only one) available to them, especially if the new company formed through M&A becomes so big that it monopolizes the market segments that it serves. On the positive side, a bigger supplier could sometimes give better offers to customers because it should have better technical, financial and human capabilities available to develop better (resulted from synergistic resources in R&D) and sometimes even cheaper (productivity gain through increased scale of economy) products for their customers.

I will now examine how the ethical theories will judge the ethics of these impacts.

(2) Is the treatment of customers/suppliers in M&A ethically acceptable?

*a. Utilitarianism*

The calculation of the total net change in utility as a result of M&A for customers and suppliers is more complicated than it first appears because the result depends on how M&A is regulated.

From the negative side of the equation, M&A creates bigger companies that will reduce choice and competition and could lead to higher prices and hence a

reduction in utility for the customers. Furthermore, bigger companies tend to dominate the industry in which they operate and could suffocate innovation and reduce diversity of products and services. The fact that most countries with free market mechanisms have established anti-trust laws to prevent monopolistic M&A taking place is an indication of the potential danger and the possibility of creating net reduction in utility posed by M&A. On top of that, a bigger company should have higher efficiency of operation. This should give rise to a reduction in the overall level of consumption of raw materials and services in the overall supply chain. This reduction would mean reduced revenue for both the customers and the suppliers involved and will subsequently put further pressure (rationalisation) on their operations. This efficiency improvement is naturally good for the environmental conservation through reservation of natural resources, less consumption of energy and less waste per unit of product made. This will be a positive contribution to the community and the environment that I will discuss in the next section. Nevertheless from the customers' and suppliers' point of view, it will lead to reduction in utility.

From the positive side of the equation, customers and suppliers should be able to benefit from bigger volume of business if they are able to maintain their business relation. The subsequent bigger scale of economy should also bring up the efficiency in resource utilisation that is good for all in society. Nevertheless, I would reckon that M&A will tend to give a reduction in utility to customers and suppliers from their view point based on the utilitarian principle.

#### *b. Rawls' principles of justice*

From a theoretical point of view and under normal circumstances, suppliers and customers to a company should not be worse off in terms of trading volume when they compare their positions before and after M&A of a company to which they have the trading relation. It is because the total demand from the market place on products and services should not be a function of the operational activities of their

providers and should have remain unchanged. The positions of these suppliers and customers in the market are made worse off from an M&A due to the creation of a dominant player who reduces freedom on their operations. This is in fact one of the reasons why the globalisation process has resulted in more intensive competitive pressure on all businesses.

Now if we take companies as individual entities behind the veil of ignorance, I believe that they would not have agreed with the M&A process which in effect reduces their choice and space of operation, in effect their liberty. Employees from these customers and suppliers would naturally be in the same position as the employees in the merged company because they would also be in danger of being made redundant when the organizations in which they have been working for are all looking for ways of improving productivity. From these arguments, M&A will not be considered right for the customers and suppliers according to Rawls' ethical principles because of the reduction in the freedom of operation. With Rawls' lexical priority on liberty prior to utility, efficiency in the overall business operation would not be taken into consideration in the ethics judgment.

*c. Kantian obligations and Nozick's entitlement theory*

The relationship between customers/suppliers and the company carrying out M&A should not involve any Kantian and Nozickian ethical considerations. The management of a company does not have any contractual obligations towards customers and suppliers (except in the transactions of goods and services) on how they should run their business as long as they can supply the goods and services at price and quality agreed upon with the customers and suppliers. Until there are any business transactions between the company and the customers/suppliers, there is also no transfer of properties between them. They are just different companies running their own business in the market place separately. Consequently, these two ethical principles are not applicable in the context of customers and suppliers.

### 3.2.4. Communities

I will use the term communities in a very broad sense to include (a) the local community within which a company is operating; (b) the global community because today's multinational companies operate outside national boundaries; and (c) the natural environment. This means that the term covers the people and the nature with whom the company interacts. I will first focus on the people in the community in this discussion but I will exclude the government, at both the local or national level, as part of the community because it could be considered as the agent appointed by the community in a democracy that helps to regulate the relationship between a company and the communities for the benefit of both. Ethics of M&A in this case involves looking at the conduct of companies in M&A in relation to the communities.

(1) What impact does M&A have on the communities?

M&A creates or eliminates business operations in a community that varies from a case-by-case basis. As a result, the M&A process could affect the livelihood of the people and other businesses in the community both directly and indirectly. In normal circumstances, communities are benefited from the operation of a company in their vicinity. A company will normally

- (a) create wealth in the community through direct provision of jobs to the residents and sustain a network of suppliers of products and services that they need for their operations and subsequently create more indirect employment;
- (b) help to develop managerial and technical skills in the community;
- (c) contribute to the funding of local and national social programmes through taxes paid;
- (d) catalyse the improvement of physical and social infrastructure in the community; and

(e) especially for multinational companies, provide links to the global market that could enable the community to have access to information and ideas from the outside world.

Because of these potential benefits, communities generally welcome investment from these companies, unless a company may bring in potentially negative environmental impacts, e.g. nuclear power plant. Therefore in the case of M&A involving these companies, any positive impact will be welcome while the communities will resist negative ones.

As mentioned earlier on, a change in the ownership of a business operation through M&A will inevitably bring about rationalization and restructuring. There are plenty of examples in the global automotive industry that M&A activities have caused huge impacts in local communities. The automotive companies usually operate on a big scale and employ large numbers of workers and support a substantial network of suppliers. The latest mega-merger between Renault of France and Nissan of Japan in 1999, for example, resulted in many plant closures around the world. Local communities are aware of these potential negative impacts to direct and indirect employment and the devastation to the social infrastructure and network. If the communities are on the losing side, i.e. plants in their neighbourhood are to be rationalized; they form alliances with other stakeholders to lobby the company and government for continuous operation. In some cases, national governments would actually offer industrial grants and/or preferential taxation schemes to companies in order to retain the operation in the community in order to avoid the negative impacts.

(2) Is M&A ethically acceptable to the communities?

*a. Utilitarianism*

As far as the communities are concerned, whenever M&A takes away jobs, it reduces utility and whenever it creates employment, it increases utility.

Unfortunately, as I mentioned earlier, most M&A results in rationalization. This means that there will be job reduction rather than creation. Therefore M&A usually reduces utility in the community as a whole at least in the short term and must be considered unethical in accordance with the utilitarian principle. I stress 'short term' in the above statement because the net change in utility could also depend on the time frame within which the measurement of utility is made. When an industry is consolidating its operations in the community, it will naturally lose out in utility immediately due to the reduction in people's income, fear of social insecurity, loss in social connection and reduced taxation to the local government for funding social programmes.

In longer term, however, the utility changes could also increase. The following scenario could happen. As a result of industry consolidation, there will be a release of labour into the employment market. This labour resource could be available to the community to support a gradual evolution of the industry structure to more modern and higher value added industries.

We could use the industrial development in Glasgow as an illustration on these two points that M&A would reduce utility in short term but may not when utility measurement is made in a longer time frame. Shipbuilding and engineering used to be the backbone industries in Glasgow in the first half of the last century. With increasing global competition, shipbuilders and engineering firms in Glasgow had to merge in order to pool the resources together to compete effectively in their respective markets. Initially, unemployment increased dramatically in Glasgow from huge redundancies resulting from these mergers. This created a lot of anxiety and negativity in the community. Then investments in the city were gradually directed towards other faster growing industries such as the electronics and communication services, which were attracted to Glasgow as a result of better availability of a disciplined, educated, and low cost workforce. Many hi-tech and services oriented industries are now forming a major part in Glasgow's portfolio of

businesses and have helped to the revival of economic and social development of the city in the last decades.

Therefore, from this longer-term perspective, say 10 - 20 years it appears that M&A could eventually be beneficial to a community. In fact, some governments in the world take active steps to encourage national companies to merge, e.g. ship building companies in South Korea, in order to increase competitiveness on one hand and allow the country to redirect human resources into developing other strategic industries on the other. These companies have undergone a massive consolidation programme in the last 10 years. Eventually, the community as a stakeholder in a business undergoing M&A could benefit in some longer-term economic development. Unfortunately, people in the community have to go through a cycle of reduction and then eventually increase in utility. Furthermore, there is also uncertainty and risk as this redirection of industry and subsequent improvement in economic development and utility may not necessarily happen, as it will depend on how the community through the government will redirect resource and support towards the regeneration. Success also depends on many external factors such as the global technological and economical environment.

In summary, from the community point of view, M&A is unethical in the short term in accordance with the utilitarian theory because of the reduction in utility but in the longer term it is ethically acceptable as there could actually be an increase in total utility.

#### *b. Rawlsian ethics*

In this section, I will attempt to assess the effect of M&A on the community in accordance with Rawls' difference principle in the distribution of social goods, i.e. whether there will be any gains or losses for the community in wealth, liberty, and opportunities as a result of M&A and whether people behind the veil of ignorance will accept this process.

In the last section on utilitarianism, I have already concluded that in the short term, the community will have a reduction in wealth and other social goods such as employment opportunities as a result of M&A in the community. As a stakeholder, the community appears to be worse off because, like the employees of the company, they will have an overall reduction in utility. Although I have also mentioned that in the longer term, there could be an economic improvement in the community but this is not guaranteed and is contingent on the environment and time scale. I will not take this probable improvement into consideration. From this line of argument, people in the community, if they were behind the veil of ignorance, would not have accepted M&A and that makes it unethical according to Rawls' principles.

*c. Kantian ethics*

In the section related to the employees, I have concluded that in accordance with the Kantian ethics, companies have not acted unethically towards the employees in the M&A situation as long as they are treated fairly in the process. The community is an extension of the employees. Therefore, by extrapolation, M&A should also be ethically acceptable to the community when companies take M&A actions. There is naturally a difference on the nature of relationships between the company and the employees to that of the company and the community. The former has a formal contractual agreement governing the relationship between them. The latter has no contractual agreement (except in abiding by the commercial laws of the society) and therefore the community has in principle no obligatory claim on the company in the case of M&A. This appears to be one of the important debates in the realm of business ethics on whether a company has natural obligations towards the community or not. Surely a company has to meet all the rules and regulations governing its behaviour towards the environment and the employees. Other than that, a company appears to have only supererogatory obligations towards the community.

To conclude, M&A should be morally acceptable to the community according to Kant's ethics.

*d. The entitlement principle*

Again as described in the section on employees, companies have an absolute right on their assets and freedom in their disposal in the case of M&A. According to Nozick, even inequalities and reduction of utility created in the community through this business process does not create an ethical claim on the company. Therefore, M&A should be considered ethical in accordance with the entitlement principle.

3.3. What do these deliberations tell us about the ethics of M&A?

After the above detailed analyses, I would like to integrate the tentative conclusions that I have drawn on how each of the stakeholders would judge on the ethics of M&A based on the contemporary ethical theories. With this integration, I hope to make an overall assessment of the ethics of M&A. To do this, I have put all the various conclusions in Table I below.

**Table I – Summary of the ethical positions for M&A based on various ethical theories in relation to different stakeholders**

Stakeholders Theories	Shareholders	Employees	Customers/ Suppliers	Communitie s	Concluding remarks on the ethics of M&A in accordance with contemporary ethical theories
Utilitarianism	Increase in utility	No change in utility	Decrease in utility	Decrease in utility	Contingent to individual cases but tends towards neutral
Rawlsian ethics	Ethical	Unethical	Unethical	Unethical	Unethical
Kantian ethics	Ethical	Ethical	Irrelevant	Ethical	Ethical
Nozickian ethics	Ethical	Ethical	Irrelevant	Ethical	Ethical
Virtue/Care	Irrelevant	Contingent	Irrelevant	Contingent	Contingent on how the employees and the communities are treated

Table I shows that, not surprisingly, there are different answers on the judgment of the ethics of M&A concerning different stakeholders and the ethical principles against which the assessment is made. I would like to make the following two levels of judgment.

### 3.3.1. At the level of the ethical principles

#### *a. Utilitarianism*

No doubt, M&A aims to improve efficiency in business operation. Whether this is ethical in accordance with the utilitarian principles depends on the total change in utility for all the stakeholders to the business. In the short term, the change in utility appears to favour the shareholders but causes a slight decrease in utility for the customers, the suppliers, the communities and the employees. This change, however, could actually become positive if the period for making the measurement in utility changes is longer.

#### *b. The Rawlsian ethics*

The overall judgment made on the ethics of M&A in accordance with the Rawlsian difference principle is that it appears to be unethical. The gain from M&A appears to have benefited the shareholders but not most of the other stakeholders. Rawls' priority rule specifies that justice have lexical priority over efficiency. Therefore, M&A is considered to be unethical.

#### *c. Kantian ethics*

With Kant's emphasis on obligations and categorical imperatives, it appears that if a company is able to treat the stakeholders, especially the employees, in accordance with the voluntary contracts that they have entered into, M&A should be ethically acceptable.

*d. Nozickian ethics*

With the emphasis of the entitlement principle on absolute property right and freedom of disposal of assets in the company, it is not surprising that M&A is considered to be ethical according to the Nozickian principle.

*e. Virtue/Care ethics*

The analysis based on the ethics of virtues and care shows that the consequence of M&A on the stakeholders has less relevance to these ethical principles but more on how they are treated in the process. If the employees, especially those who are negatively affected, are treated with care and due consideration in the process, M&A should be accepted as ethical in accordance with the ethics of virtues and care.

Like many ethical situations, this detailed analysis of the ethics of M&A does not yield a clear conclusion on whether M&A is by itself ethical or not. The ethical position depends on the ethical principles used, the time frame involved in the analysis, the business environment at time of M&A, the stakeholders concerned and how they are treated. The overall picture seems to be that, as a business process, M&A by itself has nothing wrong as it tends to increase utility in accordance with the fulfilment of contractual obligations by the management to the shareholders and is in line with the property rights of people. However, the process tends to create inequality among the stakeholders especially for the least advantaged, when judged according to the Rawlsian principles. Furthermore, when some of the stakeholders, especially the employees, have not been treated with care, fairness and with gratitude for their past extraordinary contributions, then M&A is not ethical.

Therefore, to ensure that all M&A are ethical, we should address the issue of the potential inequalities created and on treating the negatively affected stakeholders

with care and dignity. I will attempt to address these issues in the following concluding chapter.

## Chapter Four - Conclusions

The increasing dissent from part of the public towards capitalism since the protest at Seattle in 1999 has formed an image in people's minds that some multi-national corporations are greedy, unjust and have no regard to the environment. They are accused of being responsible for the inequalities and poverty in some developing countries. This perception is further fuelled by the globalisation policies promoted by international institutes like the IMF, WTO, World Bank etc. They find evidence on the promotion of free trade through corporation and globalisation from the record breaking corporate M&A – 3.495 trillion US dollars<sup>42</sup> in year 2000. Some of these mergers have created dramatic headline news of mass redundancies (e.g. the closing down of Corus Steel Plant in Wales last year).

I believe that some of these M&A activities have been carried out unethically, probably not intentionally by the management, because there was a real reduction in total utility, an apparent creation of wealth inequalities and a reduction in social goods for some of the least advantaged stakeholders in business. It is practically impossible, however, to investigate each of these M&A to look for evidence of unethical behaviours. I have therefore no intention of verifying this claim, but will try instead to look for solutions to correct the unethical aspects of M&A that I have listed at the end of the last chapter.

To understand why M&A have been carried out the way as they are today, one has to look at the motives of the people who are doing it, since people's attitude, behaviour and subsequently actions, are either governed by disciplines - rules and regulations - or more effectively, by what they believe in, the institutional values. I mentioned on page 17 that corporate behaviour is affected by the individual values which are in turn affected by the institutional values. Therefore, before I conclude by stating what needs to be improved in M&A, as far as ethics are concerned, I

would like to look at the major institutional values that drive the M&A movement in the world today.

#### 4.1. M&A and institutional values

People, under normal circumstances, make rational choices and take actions in life according to the values inherent in various institutions in society. These values are in general established and adopted by people through long periods of evolution based on what are considered by the people to be the right and/or good things to do. These become the major ethical guidelines (I am excluding the religious imperatives in this context) for that society. These ethical guidelines can be put under two broad headings, the good and the right or, in more pragmatic terms, efficiency and justice in the distribution of goods that have been created. The various ethical principles that I have discussed and applied to M&A in the discussion in the last two chapters are developed to describe and provide guidelines for the assessment of the ethics of individual and group actions as well as institutional values. They provide the precepts on which people's behaviour in life (for those who are willing to accept authority from these principles) is based. These precepts derived from the institutional values, based on the major ethical theories, could be grouped in the following perspectives:

- a. A utilitarian perspective advocates the maximization of happiness and self-actualisation of people involved as a consequence of actions.
- b. A Kantian perspective advocates respect for human rationality and moral obligations in activities.
- c. A Nozickian perspective advocates respect for rights, in particular, the property rights defined in the entitlement principle, in the process of wealth creation and distribution.
- d. A Rawlsian perspective advocates a fair procedure accepted by all in the establishment of a system governing the distribution of social goods and that

inequalities will only be allowed if the least advantaged will be better off as a result of the actions.

- e. A virtuous perspective advocates care for people and actions in accordance to the precept of virtues.

These institutional values are considered to be important in one way or the other in guiding people's behaviour in every society. In my opinion, all of these values are important and it is a matter of the priority that people in different societies, or even segments within a society, will attach to each of them. Literature is full of debates concerning which of these values is the most relevant in society. It is understandable that a complicated activity like that of M&A will be perceived by different people (e.g. shareholders and employees) in different parts of the world with different ethical views. Therefore for an M&A to satisfy even one of these principles fully is impossible as in each case there will be different perceptions that may demand different compromises among people before an ethical principle is accepted. Similarly, when we try to find ethical remedies to the unethical M&A, we should not only make judgments purely on the actions and consequences of the M&A but also to consider, more importantly, the institutional values that are in existence in the society concerned. It is not only measures that need to be put in place to improve the process of M&A to make them more ethical but we also need to examine, understand and change if necessary the institutional values of the society in order that these measures could be carried out and supported with the right attitude. So what are the current dominant institutional values related to business in western societies where most M&A deals have been made?

The major proportion of M&A, both in terms of the number and size of deals, has been taken place mainly in the so-called Anglo-Saxon business worlds, represented more than proportionally by the British and American businesses<sup>43</sup>. The Anglo-Saxon business world in general practises today a kind of capitalism that emphasizes efficiency in operation and shareholder values. Consequent to this

value system, the creation of 'return on investment' for the shareholders has a very high priority in business.

There is a process of 'equitisation' - shares ownership of companies - going on in the western societies in the last ten years when more and more people own shares (e.g. percentage of American adult population that owns shares increased from 30% to 48% from 1991 to 2000, the equivalent figure from Germany is 6% to 16%<sup>44</sup>). People are investing in shares because they expect higher returns than putting their money on other investments such as savings. The pressure on companies to perform is therefore getting higher and to maintain a continuous and satisfactory return to these shareholders, constant growth through efficiency improvement in business is almost mandatory. When avenues for organic internal growth for a business are exhausted, then growth through M&A, even including hostile takeovers, are considered to be a viable option and are generally accepted by the general public in the Anglo-Saxon business world. This provides the background and ethical support that allows the frenetic pace of M&A in the last thirty years as mentioned in chapter one to take place.

In contrast to this focus on shareholder value, the value of the so called Rhenish world, represented mainly by the West and North European and Japanese businesses, is about treating employees as the more important stakeholder to the business. An OECD study<sup>45</sup> finds that there is currently about four times more legislation related to 'employment' in the Rhenish world compared to the Anglo-Saxon world. This is a result of the emphasis by the Rhenish world on maintaining a stakeholder balance that is more in favour of or at least not in disadvantage to the employees than the shareholders. This study also indicates that this complexity of employment legislation in the Rhenish world has an adverse effect on business efficiency with the result that the economic performance in these countries has not been as strong as the Anglo-Saxon companies in the last decade.

What we have in business is therefore a competition between two major value systems, the focus on efficiency and shareholder values and the focus on employees' wellbeing and social justice.

Efficiency and wealth gain for society in which people are encouraged and are able to realize their potential through their career development is obviously a good thing and is often given a high priority in social institutions. Supported by government policies, these institutions are driving for more productivity gain. This is the engine for value creation in the Anglo-Saxon world. There is no doubt that as a result of this focus, economic development in the Anglo-Saxon world has been progressing very fast in the last decade. For example, the US economy has entered an unprecedented continuous high growth for the last ten years until the beginning of 2001. Unfortunately, a by-product of this growth is the widening of the income gap and inequality that was mentioned in chapter one. The difference between the highest and the lowest paid employees has increased from 42 times in 1980 to 475 times in 1999 in the USA<sup>46</sup>. It does not mean that the Anglo-Saxon capitalism has forsaken the other values such as justice, rights and care. They appear to have given higher priority to efficiency. This has generated unprecedented wealth but is also responsible for bringing about inequalities within the country.

The Rhenish capitalism is more in line with the Rawlsian (justice prior to efficiency), the Kantian (treating employees as ends as well as means) and the virtue/care (taking employees as special relations) ethical principles than the consequential model of the Anglo-Saxon world. A common practice in European companies, particularly in Germany, appointing union representatives as board members and the support given by the EU towards labour movement mean that employees can have more influence on business directions, including decisions on M&A, on how employees are treated, on the formulation of redundancy procedures

etc. These measures highlight the importance Rhenish capitalism places on the value of justice and obligations over the value of consequential efficiency.

At present, shareholder value as a business model, which is actually spreading very fast through the 'globalisation' and 'equitisation' of the capital market, is strongly resisted by the Rhenish business world (market capitalization is three times bigger than the total bank deposits in USA but is two times the other way round in Germany<sup>47</sup>). But Rhenish capitalism is currently losing ground to the Anglo-Saxon capitalism in global competition as far as delivering efficiency is concerned<sup>48</sup>. The Rhenish business world, to be able to compete more effectively, is under pressure to adopt the Anglo-Saxon model. More and more European companies are under pressure to adopt the shareholder value approach (Germany had its biggest ever corporate M&A in year 2000 when Vodafone took over Mannesmann). Yet if the shareholder value approach is to take root in the Rhenish world, it requires a complete change in the institutional values in the society. This could take a long time if at all possible as we also start to witness more resistance, and in fact outright rejection of the Anglo-Saxon business model by people not only from the Rhenish world but also from within the Anglo-Saxon societies today. This sentiment is highlighted by the more frequent protests from the many NGOs (nongovernmental organizations) and the general public against the globalisation of western capitalism. These NGOs complain strongly against the promotion of economic gain in society at the expense of justice and the environment. The big companies are accused of having caused the creation of huge income inequalities between the rich and the poor countries and also of destroying the environment due to over exploitation.

The demand from the general public for a right balance of these two value systems - efficiency and justice - is on going. The search for a satisfactory solution through philosophical and rational debates will influence how business, which M&A is a part, will be conducted continuously in the future. The governments, the business

leaders, the NGO representatives and many academics from politics, economics, ethics and sociology are all searching for a solution that could eventually strike a balance between efficiency and justice in the distribution of goods as well as in taking care of the people and the environment.

#### 4.2. Ethical M&A

Until a conclusion from the debate and competition between these two major value systems in business can be reached, the emphasis on business growth and shareholder values will most probably continue to dominate the world as the Anglo-Saxon economies have the major share of the global economy today. This means that more M&A will continue to take place in the foreseeable future. To complicate the situation further, there is also at present a new development in the ownership of public companies. Through 'equitisation', more and more of companies' assets is traded in the stock markets with institutional investors like the pension and insurance funds becoming major holders (about 50% of the total equity of the UK market is owned by these two funds). Through this equitisation process, the demarcation between shareholders and employees is getting blurred. On top of this, there is also a trend for companies to give shares to their employees as part of an incentive or reward system. The result of this development is the intertwining of interests of employees and shareholders. The issue of justice on the distribution of profit between them becomes more difficult to define.

This complexity of company ownership has not fundamentally changed my view on the ethics of M&A, except that it may change the conception of fairness in the distribution of profit between shareholders and employees. As a business process, M&A does deliver efficiency and increase in economic value to society as a whole if implemented properly. This does not mean, however, that it could not be carried out unethically. In my opinion, we should look at the three distinct aspects of ethics of M&A and see what we can do about them. They are the 'efficiency

improvement through M&A', the fair distribution of the economic gains from M&A and the well being of employees and other less advantaged stakeholders that are affected by the process.

On the point of efficiency improvement, I have already discussed and concluded that it is in principle good. In the Anglo-Saxon world, people put more emphasis on economic growth because they consider it a good end that will bring utility (happiness and actualisation of human potential). In fact, a recent study by the World Bank also concludes that economic growth does help the poor<sup>49</sup>. The caveat is on how to minimize its negative impacts such as the increased danger on environment pollution and the creation of inequalities. This requires responsible leadership supported by appropriate institutional values from society and the willingness of the rich not only to siphon their wealth in support of the poor but also to help them deliver efficiency in their own economic system.

On the point of fair distribution of benefits generated from M&A, the major contenders for them are the employees and the shareholders. Since their interests are now more and more intertwined as more employees are becoming shareholders, it seems to make sense that they should work together in partnership to agree on how to create and distribute the benefits. This concept should support the notion of treating employees in the company as an important group of stakeholder and appoint trade union representatives in the board to get their contribution and support for the development of the company. Partnership approach should be encouraged as part of the institutional value.

Finally, all stakeholders, especially the employees, should be treated fairly and with care, respect and compassion not only from the financial benefits that this could bring but because it is the right thing to do. Employees should be treated purely as ends. Therefore, thoughtful measures should be put in place in a company to support the employees affected by the M&A process.

If M&A are to be truly ethical not only in principle but also in practice, companies must have genuine incentives to generate economic value through synergy and alliance with all the stakeholders. The values generated from the process must be distributed fairly. It has to be executed in such a way that all stakeholders' interest will be appropriately considered and treated with care and justice. The world needs not only efficiency and effectiveness to utilize the limited endowment but these have also to be done justly. If these measures are followed, M&A as a tool is not evil and should be considered ethical.

I mentioned in chapter one that *business ethics* and its application in the business world is very influential in shaping the future order of societies. International institutions, such as the World Bank, the IMF, the WTO, etc. together with the national governments, will have a very important role to play to develop a value system that will ensure that all business activities, including M&A, are carried out ethically. I would like to end this paper with two assertions.

*Wealth development and obligations to all stakeholders and the environment must go hand in hand.*

*Economics must operate in harmony with ethics.*

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