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Ethics: At the Core of
Real Estate Education and Practice

Real Estate Ethics in Practical Applications

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By Hugh F. Kelly, Ph.D., CRE;
Desmond F. McGowan, CFA, CIPM;
and Steven R. Norris, MAI, CRE

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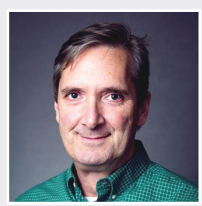
The first part of this paper spoke to the subject of ethics as a core element of the body of knowledge, an element that should be – but largely is not – treated as a systematic element in academic real estate programs. The argument stressed that professional and industry associations in the real estate field require not only knowledge of the subject of ethics, but also require members to subscribe to written codes of ethics and to shape business practice to conform with the tenets of those codes. Beyond that, private firms inform their employees that mere compliance with specified minimum standards does not sufficiently demonstrate corporate expectations in ethical matters. "The letter of the law is not sufficient to attain the highest ethical standards" (Apollo Commercial Real Estate Finance).

The example of other fields of study, such as medicine and law, provide examples of academic disciplines requiring in depth study of ethics as applied to the practice of accredited professionals in those fields. Real estate should be no different. Real estate education's attention to matters of technical skill, as important as it is, should not justify the omission of training in ethics at a level of sophistication equal to that provided in other endeavors. After all, decision-making in real estate requires prudential judgment, adherence to principles, attention to duties, responsibility for consequences, and sensitivity to the interests of others that cannot be

ABOUT THE AUTHORS

Hugh F. Kelly, Ph.D., CRE is Chair of Fordham University Real Estate Institute's Masters Degree curriculum committee. He served as Chair of the Counselors of Real Estate organization in 2014, and was Chair of the CRE's Ethics Committee 2008 – 2009. He is principal of the consultancy Hugh Kelly Real Estate Economics.



Desmond F. McGowan, CFA, CIPM, Managing Director of Oceanview Advisors, is an Adjunct Instructor at the Fordham University Real Estate Institute. He holds a B.A. in Economics from Yale College and an M.A. in Theology from Seminary of the Immaculate Conception, is a CFA Charterholder, a CIPM certificant and a Licensed Real Estate Broker in New York State.

Steven R. Norris, MAI, CRE is principal of Norris Realty Advisors. He is an instructor with UCLA Extension and the Anderson School. He has served on the CRE Ethics Committee and is a member of the Standards Setting Committee of the International Ethics Standards Coalition (IESC).

simply reduced to mathematical calculation, however sophisticated.

Now, in the second part of this paper, we will turn to some of those practice matters. In some we will find positive examples of ethical behavior in action; in others, examples of shortfalls. We will see real estate leaders reflecting on moral reasoning, reflections valuable not only for young persons entering the field, but veterans for whom ethical consideration is a life-long matter of concern. Examples will be drawn from the disciplines of development, finance, management, and consulting, among other specialties. The real estate discussions will, in turn, examine the philosophical, cultural, and psychological foundations upon which ethical reasoning rests.

DRAWING ON PROFESSIONAL EXPERIENCE

Based upon decades of our experience with real estate decision-makers, we not only consider a serious look at ethics in real estate as educationally essential, but a topic that has daily application in the business world.

Consider just a sampling of the basic ethical vocabulary: responsibility, trust, integrity, fairness, truthfulness. Consider, then, how the values expressed in these terms come into play in the development process, in mortgage financing, in deal negotiation, in the management of staff, in equity capital raising and deployment, in the crafting of enterprise strategy. Let's presume that, with the assistance of legal counsel, a real estate decision-maker is confident that a course of action is entirely defensible from a legal standpoint. In that case, can such an action be justified as ethically sound on the basis of self-interest alone? How would you know? Why should you care? And crucially, what impact will the chosen course of action have on those involved, both initially and thereafter.

Ethicists sometimes parse such questions in terms of consequences (e.g., utilitarians might say "Do what brings the greatest good to the greatest number"; the Hippocratic oath says, "First, do no harm"), duties[1] (such as the Kantian approach noted in Part I or prescriptions such as the "thou shalt nots" of the Ten Commandments), or care (perhaps the morality of the Sermon on the Mount or Buddhism's Bodhisattva path of compassion for all sentient beings[2]). If these approaches initially seem remote from day-to-day real estate decisions, it might be worth reflecting a bit more. Are not the kinds of impact statements – environmental or economic – that routinely accompany development permitting or financing deliberations an expression of the ethics of consequences? Is not the concept of fiduciary responsibility grounded in duty? Isn't the growing ESG[3] movement precisely an attempt to consider the care of stakeholders, both immediate and even at some distance in space and time, as pertinent to practical business decisions?[4]

The point is not merely that such considerations do, in fact, enter into the framework of real estate executives. It is that without a command of the ethical vocabulary that is being presumed in the discussion, without a thoughtful study of the concepts expressed in that vocabulary, and without the ability to make a critical judgment about the applicability of such concepts, such an executive is ill-equipped to make, explain, and carry out basic leadership functions. Is this not a key element in the financial crises of recent history? If university and professional real estate educational programs fail to provide the words and concepts needed, and the tools to test their efficacy, then there is a vacuum and a substantial educational disservice is being foisted upon students and young professionals.

AREN'T ETHICS JUST A 'PRIVATE MATTER'?

The notion that ethics is a private matter, of course, fails on its face. The very concept of ethics is a concept of engagement. The term "ethics" comes from the Greek, and as Aristotle explained in his *Nicomachean Ethics*, it is not merely a meditation on good living but intends to bring about good living. For the Greeks, that was not about an individual living in isolation but about living in community; more precisely, it was about living in the *polis*, the city of free persons.[5] Character is not expressed in good thoughts but in good actions (*pragmata*).[6]

Centuries later, Kant titled his discourse on ethics *The Critique of Practical Reason*, contrasting the norms of practice with the exercise of "pure reason," which Kant understood to be "purely analytic, knowledge independent of all experience." Kant proposed that case studies are particularly germane to the investigation of moral issues. He observed that even those with little patience for abstract argument reason acutely and in great detail when examining moral behavior. In his view, we should all be given the experience of weighing motivations as well as behaviors and, in discussion and debate, examine the basis for their approval or disapproval of practical examples.

Business transactions – including real estate transactions – are certainly subject to moral examination. Despite the fact that most business transactions result from the private interaction of just two agents, the timing, number and pattern of most consumer market transactions allow observers to infer a great deal of information about the decision-making process and the behavior of market participants in general. In terms of Kant's proposal, there are abundant case studies to examine.

By comparison, real estate transactions may be informationally opaque even for the participants in the transaction. The uniqueness of each property leaves the buyer at an informational disadvantage to the seller. Long holding periods leading to infrequent trades mean that any given buyer and seller rarely (if ever) do any repeat business.

In this environment, it is difficult for market participants to gather information about the moral standards of their counterparts, and nearly impossible for individuals to impose moral sanctions. In response, the real estate market has developed some conventions which protect infrequent buyers from some of the worst types of unethical behaviors. These include:

- Title Insurance, which effectively outsources the examination of the quality of an ownership claim and couples that examination with a guarantee of that analysis. The buyer effectively pays a fee to insure ethical behavior and the seller is disciplined against unethical acts since they cannot transfer the title without the approval of the title agent.
- Regulations, which cover nearly every aspect of the real estate industry from land use, construction, property rentals, mortgage lending, physical inspections and title transfers.

The recent Great Recession shows how imperfect these remedies are. It is unlikely that Kant would have been surprised at the failure of "reasonable" remedies to prevent all abuses. This underscores the importance of preparing and presenting case studies from the real estate field as professional education material. This would be a demonstration that we have learned lessons and are making changes based upon the experience of the Global Financial Crisis.[7]

While the concept of "private property" might seem to lie at the very heart of the business of real estate, the physical nature of real estate makes the public or communal dimension an indispensable correlative. The marketplace of Athens, the Agora, was not only the commercial center of the *polis*, it was also the cultural, administrative, and religious center of the community. It is worth remembering that the Parthenon, the dominant structure on the Areopagus, was both the cult center of this city's goddess Athena Parthenos, but also the government Treasury.[8]

Privately-held real estate is subject to the police power of the state, the right of government to enact laws and regulations for the safety, health, and welfare of the community. This is expressed in many ways, from zoning, to licensure requirements, to the required permitting of construction or reconstruction activity, to environmental considerations and beyond.

Ethical codes often prescribe courses of action which, by design, satisfy such legal requirements. This has the very useful effect of pointing adherents of such codes away from behaviors that would lead to jail, or alternatively to significant financial penalties. But such *de minimis* ethics are incomplete, and many industry codes of ethics explicitly recognize this.

THE PUBLIC AND REAL ESTATE PRACTITIONERS READILY ENGAGE WITH MORAL DISCOURSE

One very recent case illustrating the practical complexity in ethics is Amazon's decision to locate a large management operation (HQ2) in Long Island City, Queens (across the East River from Manhattan) and then, when faced with evidence of political opposition reflecting objections from some community groups, rescinding that decision. Apart from the typical forces of opposition that such projects often face, many observers are more troubled by the mechanism of the decision making than the decision itself. Among these are:

- Concerns regarding governmental and shareholder transparency. On the face of it, the decision was effectively taken by three men (the Governor of New York State, the Mayor of New York City and the CEO of Amazon), each of whom is only one agent in a multi-part system of decision-making. In the case of the governor and the mayor, a significant decision was taken without the approval (or even consultation) of their respective legislative partners in government.
- Concerns about the fairness of transferring a large sum of public money to one of the world's most valuable commercial enterprises.
- Concerns that such a transfer was not necessary to attract Amazon in the first place. One argument is that if New York City is the best place for Amazon to do business, shouldn't it go there without what amounts to a bribe. If it is not, should it go there at all?
- Concerns that the terms of the deal would (or even could) be enforced in the future.

Some have argued for stronger laws to protect against this type of "back room" dealing, even if laws cannot prevent unethical behavior without motivated (and ethical) enforcement agents.

Others have countered that, perhaps, the moral high ground cannot be unambiguously claimed by opponents to the deal. In arguing against the economic development agreement as announced, opponents (at least some of them) sought modifications to specific terms relating to mitigation of transportation congestion, targeting of employment opportunities for community residents, and some shield against soaring housing costs. (New York has already seen candidates run on a ballot line held by The Rent Is Too Damn High Party!).

Among the ethical issues to be considered may be:

- Should complex issues like the Amazon project be reduced to binary choices: Deal or No Deal?
- The very real stresses on urban systems - transportation congestion, high housing costs, and gentrification - have existed for years, and the Amazon project could not justly be blamed for them. New York's leaders have the responsibility of addressing those problems, with or without Amazon - and the base conditions are far more problematic than the marginal impacts of the Amazon project.
- The essence of cost/benefit analysis is to look at both sides of the equation. Isolating the incentive package as a sole "talking point" is sheer dishonesty, if the benefits of the project are ignored. This is not just about the 25,000 jobs and secondary employment effects (the multiplier, estimated at 82,000 jobs) including the boost of blue collar employment during construction and in servicing the campus thereafter. The overall tax revenue from the project was estimated at $27 billion over 25 years. That's a pretty good nine-times return on the incentives provided, the alleged "corporate bribe."
- Depicting Amazon as a corporate villain is the "You've Got Mail" rom-com argument writ large. Bookstores, record stores, video stores, and countless other small retailers have undoubtedly been impacted by the Amazon model. Nevertheless, Amazon could not have succeeded in its enterprise without the whole-hearted endorsement of the American consumer. It is reasonable to expect that many of those protesting the project did most of

> their Christmas shopping online! In driving this project out of New York, there is no economic or real estate benefit derived that lessens the disruptive features of ecommerce. There is only the effect of turning the City's back on its benefits to the local economy, including the strategic advantage of being at the heart of 21st century technology - a status for which Savills recently ranked New York Number One in the world.[9]

Advocates of the project cited a December 2018 Quinnipiac poll showing New York City voters approved of the development agreement by a 57 to 26 percent margin, including 60 to 26 percent among Queens voters. Such results were largely confirmed in February 2019, as a Siena College Research Institute poll revealed 56 percent of voters in the state backing the project, while 36 percent disapproved. City residents supported the deal even more, with 58 percent approving. But the way the agreement was arrived at was roundly questioned, and both Governor Andrew Cuomo and Mayor Bill de Blasio found their roles sharply criticized in the same polling, with their approval ratings below 38 percent in the Quinnipiac study.[10]

Local proponents of the deal, seeking to revive discussions with the company, did acknowledge shortcomings. In an "open letter" published as a full page ad in the *New York Times* on March 1, 2019, more than 80 signatories – representing a cross-section of politics, business (including real estate), unions, education, non-profits, community groups, and the arts – urged a reconsideration by Amazon. However, with characteristic (and perhaps unhelpful) New York City chutzpah, the letter spun the controversy this way: "We know the public debate that followed the announcement of the Long Island City project was rough and not very welcoming. Opinions are strong in New York – sometimes strident. We consider it part of the New York charm!"[11]

The ad did not suggest that the behaviors that prompted the unwelcoming reaction were questionable, a posture that might itself be ethically suspect. Further, mistrust might have been engendered by the withdrawal of the nomination of Long Island City's State Senator Michael Gianaris (an opponent of the development) to the state's Public Authorities Control Board, a body with veto power over the $505 million state grant that was part of the incentive package. As an example of political hardball, both the initial nomination and then its withdrawal struck observers as evidence that accountability and transparency remain lesser values than getting the deal done, whatever it might take.

The Amazon case provoked lively discussion, on and off university campuses, which might have (and should have) provided a "teachable moment" for the ethics of such large real estate deals across the national educational landscape, especially concerning projects with wide-ranging effects in the community. Such cases can and should be shaped so that the discussion isn't dependent on temporary public outcries, but helps to shape the way current and future real estate leaders think systematically about the ethical responsibilities incumbent on both sides of the question.[12] What does this case, and others like it, have to teach us about weighing consequences, ascertaining duties, and exercising care when a $3.7 billion, eight million square foot development program is contemplated over a fifteen year period?

Such a discussion naturally must examine the competitive dialogue that is part and parcel of the negotiation process, where the desire to gain advantage in argument may militate against ethical dealing. In many ways, the view that negotiation is a zero-sum game exacerbates the temptation to set ethics aside. The perspective that negotiation can generate positive-sum outcomes may sidestep that moral trap. Whatever one's position, it is clear in retrospect that the Amazon case in New York fell right into the "I Win/You Lose" abyss.[13] While each participant could claim they were "acting within their rights," the result very well could be construed as "and so everyone lost." That is certainly the spin placed on the situation by New York's many detractors.

REAL ESTATE PRACTITIONERS ENGAGE IN MORAL REASONING (AND STUDENTS SHOULD KNOW THIS)

Why should legal sufficiency not be the criterion for ethical sufficiency in the field of real estate? Perhaps one of the best answers to this serious question has been articulated by Bowen H. "Buzz" McCoy, in *Living into Leadership*, "How do we ever get better if we always seek the lowest common denominator?"[14] McCoy proposes a series of filters to evaluate our ethical questions.

- Our personal intuitive sense of right and wrong
- Our interpretation of how the law informs our behavior
- Our sensitivity to what the public expects of us and how to retain public trust beyond what the law requires
- The extent to which we allow ourselves to become informed about the deep religious and spiritual truths of our culture.

Buzz McCoy's advice remains powerful today. He was the partner who established Morgan Stanley's real estate practice during a long and highly successful career. His reflections on leadership are grounded in experience with such commercial property business icons as Trammell Crow, Charlie Shaw, Donald Bren and such corporate and financial leaders as Bill Hewlett, James Burke, and Bob Baldwin. *Living into Leadership* takes the ethical discussion from the abstract to the particular – and does so with the credibility earned by complex experience.

Another such credible resource is Daniel Rose, whose real estate development career has included the award-winning Pentagon City complex in Arlington, VA and the One Financial Center office building in Boston, as well as numerous multifamily properties in Manhattan. His book, *Making a Living, Making a Life*[15] is a collection of erudite essays and speeches (published and/or delivered over three or more decades) on subjects ranging from real estate development itself, to the cities which are the context for that activity, to issues of domestic and international policy, the ethical and spiritual principles that have guided his thinking, and the philanthropic responses that such reflection has engendered. As with McCoy, it is useful for practitioners as well as students to hear that highly successful real estate professionals see ethical concerns as integral, not peripheral, to careers in this field.

Real estate practitioners are, more often than they might wish, required to convey bad news to investors, to partners, to clients or to others in the course of business. How this is done can be delicate, but shading the truth while softening the blow is just an invitation to trouble. One of the co-authors recalls being asked to evaluate the prospects for full repayment of an institutional investors' loan, amounting to hundreds of millions of dollars, which had funded the construction of a notable "edge city" mixed-use project. Careful analysis suggested the future income streams and capitalized value would be insufficient to make the lender whole, a conclusion conveyed to both borrower and lender. In essence, the report indicated that to anticipate repayment "the project would have to successfully market property equivalent to downtown Boston within a ten-year period." When the developer responded, "Who is to say that what we have envisioned will not be accomplished?" The analyst replied, "I can't claim to predict the future perfectly. But I cannot sign my name to the likelihood such a vision can be achieved under any reasonable economic outlook." Signing one's name is a statement of ethical professional responsibility.

Another challenging question arises from the relative "underperformance" of many of the nation's largest pension funds over the past five years or more. Each of these larger funds (many representing billions of dollars of retirement funds) are partially invested in prime institutional-grade commercial real estate. Separate from disappointing equity market returns, the relative underperformance of major real estate investments is a direct result of "over-promising" on investment return levels on behalf of pension fund managers and their advisers.[16] At the purchase of major commercial properties, a rosy picture of projected investment returns, both annually and at the reversion of the investment holding period, is often presented.

This culture of "over-promising" has been encouraged for a number of years in overly optimistic appraisal values, due-diligence, and investment committee decisions, observed by one of the co-authors in reviews as part of his professional practice. There are significant sums of money to be made nationwide from fees associated with major commercial property transactions, which use the funds of workers from all walks of life across the country. This analytic optimism seems to be occurring in a vacuum of ethical direction on the real purpose of these investments – which should be focused on careful stewardship of invested funds to return realistic (as opposed to rosy) returns to future retirees. Void of ethical moorings, pension fund investments in commercial real estate sometimes have generated a landscape of retiree disappointment amidst the perception of broken promises.[17]

The motivational author and speaker Stephen R. Covey stresses (as do McCoy and Rose) the need for ethics in the workplace to be grounded in self-reflection, healthy and nurturing relationships, and a coherent philosophy of life based upon time-tested principles that are simultaneously reliable and challenging.[18] Covey, of course, may be best-known for his widely read *The Seven Habits of Highly Effective People* (1989). While some academics might look upon this as a pop-culture "self-improvement" book, it is rooted in very respectable ethical teaching, going back to Aristotle who wrote, "We become just by doing just acts; temperate by doing temperate acts; brave by doing brave acts." Indeed, for Aristotle, virtue was formed by the development of habits, and these were at the core of moral education.[19]

Speaking to NCREIF in 2012 about the Chartered Financial Analysts' Global Investment Performance Standards, Timothy F. Peterson, CFA, noted the tendency to reduce ethical reviews to checklists, sign-offs, waivers, and disclaimers. These, he remarked, "prevent lawsuits" but do not substitute for "taking care and acting in good faith for the benefit of clients." Such ethical reviews arise when judgment is relinquished. "The problem in organizations, however, is that many 'ethics' solutions focus on *compliance*," Peterson maintained. "The compliance definition of 'ethics' is not one of integrity or integratedness; it is a watered-down, devalued definition that essentially means 'follow the rules.'"[20]

Thoughtful practitioners, in large measure, agree that standards higher than mere rules and regulations are the North Star for one's moral orientation in real estate, as in other professions. Although theories of moral development may originate in a study of how we learn right and wrong as children, living and working in the adult world requires us to "put aside childish things."[21] Abraham Maslow (1943) proposed a hierarchy of human needs that began with behaviors satisfying physiological requirements and basic safety, ascending to "self-actualization," or realizing one's personal potential and self-fulfillment. Later on (after 1970), Maslow expanded on this hierarchy to recognize more transcendent values, including service to others, the scientific pursuit of knowledge, the improvement of the society one may belong to, and religious faith. Kohlberg, similarly, later in his career posited a stage of moral development that aims at a universal relevance, a place where the values of justice, duty, and human happiness cohabit. He bases this on the presumption that humans are inherently communicative, capable of reason, and desirous of understanding other humans and the world that we have in common.[22]

CONCLUSION

This recognition of a higher standard should not be disregarded in ethical discourse, particularly as applied to real estate.

Ethics can be described as a system of behaviors that participants in that system regard as proper. Framed in this manner, ethics are capable of evolving over time. History is filled with examples of practices that in one century were regarded as ethical and are now regarded as abhorrent. This is not to say that ethics are completely fluid at any given point in time. Indeed, ethics would lose all meaning we were not able to judge an action as right or wrong at any given moment.

Ethics are the product of our higher beliefs, but they are not the full expression of our higher beliefs. Said another way, ethics are informed by and flow from our larger sense of morality. The fact that ethics can change over time does not mean morality is ephemeral. It does mean *understanding* of morality can change. This is particularly true when we encounter different groups of people or face dramatic technological and/or environmental changes. In our globalized economy, when the pace of change seems ever accelerating, moral reflection is as important as ever, and perhaps has never been more challenging. Real estate cannot be exempt from that challenge. •

ENDNOTES

1. It might be noted that the Code of Ethics of the National Association of Realtors (NAR) is framed explicitly in terms of duties to clients and customers, to the public at large, and to fellow Realtors® Affiliates of NAR, such as the CCIM Institute, CRE, and SIOR (the Society of Industrial and Office Realtors®, are aligned with NAR formulations.

2. See "The Parable of the Sadhu," by Bowen H. McCoy, *Harvard Business Review* (May-June, 1997)

3. ESG stands for "environmental, social, and governance", a generic term used in capital markets and used by investors to evaluate corporate behavior and to determine the future financial performance of companies.
   ESG factors are a subset of non-financial performance indicators which include sustainable, ethical and corporate governance issues such as managing the company's carbon footprint and ensuring there are systems in place to ensure accountability. Definition as found in the Financial Times online lexicon, at http://lexicon.ft.com/Term?term=ESG

4. See, for example, the discussion in *Emerging Trends in Real Estate 2019* (Urban Land Institute/PricewaterhouseCoopers), pp. 18 – 20.

5. Before Aristotle, Plato recounted the story of the death of Socrates in *The Apology* and the *Crito*. While the popular understanding is that Socrates was a martyr for philosophy, choosing death over renouncing his independence of thought, Socrates did not choose the option of exile from the *polis* – suggesting that life without community was the original "fate worse than death."

6. The limitations of the Athenian polity are often invoked in critiquing ethical judgments, as only free males of property were involved in the discourse of governance. But, as Hannah Arendt has noted, even Plato remarked that a wise ruler would go beyond the judgment of "men of understanding" whose perspective is compromised by common prejudices. It was the core of the Socratic enterprise to call into question what "everyone knows." (See Arendt's *The Promise of Politics* (Schocken Books, 2005) p. 9, in a posthumously published excerpt from her intellectual journal (*Denktagebuch*) dating from 1951.

7. Such a reflection can be found in Hugh F. Kelly, "The Morphology of the Credit Crisis," *Real Estate Issues* (Volume 34, Number 3, pp. 25-35, 2010), which includes "Ten Commandments for Future Real Estate Finance," developed by a panel of the Counselors of Real Estate's Ethics Committee.

8. William M. Singer, "A View into the *Naos*: Capital and Space," *Premises* magazine (NYU/Schack Institute, Fall 2011), pp. 13-14.

9. See Savills' "Tech Cities in Motion," February 4, 2019, accessible at https://www.savills.co.uk/research_articles/229130/274942-0/tech-cities-in-motion---2019

10. Quinnipiac data as reported in https://poll.qu.edu/new-york-city/release-detail?ReleaseID=2589; Siena poll information as reported in the Wall Street Journal, https://www.wsj.com/articles/majority-of-new-yorkers-support-amazon-project-in-queens-new-poll-shows-11549967400

11. New York Times, "Open Letter to Amazon Chief Executive Jeff Bezos," March 1, 2019, p. A-5. Advertisement paid for by the Partnership for New York City.

12. Lest the Amazon case be seen as anomalous or simply an odd example specific to New York, one of this paper's co- authors can attest to similarly complex considerations of socio-economic impact and public acceptance being weighed in the 1980s General Motors' Saturn plant location search – a blue collar corporate venture of comparable magnitude. James and Deborah Fallows recount consequential economic development choices made in much smaller communities including Columbus, Mississippi (Yokohama Tire and Severstal Steel, using Tennessee Valley Authority "megasite" incentives) and Eastport, Maine (Cooke Aquaculture, Sexing Technologies [the latter involved with exporting pregnant cows artificially inseminated to produce a disproportionately large percentage of female calves to replenish dairy herds depleted by mad cow disease], and support for a clean-energy technology that exports 450,000 tons of wood byproducts annually as a substitute for coal in electrical generation). See Fallows, *Our Towns: A 100,000-Mile Journey Into the Heart of America*, Random House (New York, 2018), pp. 61-77; 110-131.

13. The tendency for real estate negotiations to lapse into zero-sum thinking has been highlighted in several retrospective reviews of Donald J. Trump's *The Art of the Deal* (written with Tony Schwartz), Random House (New York, 1987). George Wu of the University of Chicago's Booth School of Business notes, "It is probably no surprise that Trump's overall tone in The Art of the Deal is pugnacious. One of his key pieces of advice is to "Fight back." He casts negotiation as a zero-sum game, with a clear winner and a clear loser. But like any approach to negotiation, that attitude only works some of the time. It may be successful if you're trying to drive a hard bargain in a pure price negotiation. But it may fall flat if the negotiation requires that one party really listens to the other, that they collectively try to solve a problem, or that they figure out how to craft imaginative trades." See http://review.chicagobooth.edu/strategy/2016/article/art-deal-not-art-war
Since at least the early 1980s (and likely much earlier) there has been a push to explore "positive sum" alternatives to the win/lose dichotomy. Probably the most influential text has been *Getting to Yes: Negotiating Agreement Without Giving In*, by Roger Fisher and William Ury of the Harvard Negotiation Project, Penguin Books (New York, 1981). The authors regard the win/lose adversarial positioning approach as inefficient, producing reckless agreements, and poisoning relationships (see pages 5-6). In a retrospective treatment of Fisher and Ury's contribution to alternative dispute resolution, Australian law professor Tessa McKeown concludes, "While the principled bargaining or 'problem-solving' approach to negotiation advanced in *Getting to Yes* is not without fault, it is arguably the most successful method of negotiation that has been developed. Parties are more likely to reach a settlement using principled bargaining, interests are better protected, and relationships are more effectively preserved." (Tessa McKeown, "Fisher and Ury's *Getting to Yes*: A Critique," Faculty of Law, University of Wellington, Victoria, May 2013).

14. Bowen H. McCoy, *Living Into Leadership: A Journey in Ethics*, Stanford Business Press (Stanford, CA, 2007) p. 174.

15. Daniel Rose, *Making a Living, Making a Life: Essays and Speeches*, Half Moon Press (Essex, NY, 2014)

16. This phenomenon extends beyond the real estate sector, as discussed by Jeffrey N. Saret, Barbara Zahn, and Subhadeep Mitra in "Investment Return Assumptions of Public Pension Funds," *Pensions and Investments* (March 2016). The authors cite data from the Center for Retirement Research at Boston College to suggest that projected returns are not supported by historical performance, but observe that "those who oversee state pension plans may have an incentive to proffer optimistic forecasts."

17. The use of returns (income and appreciation) during the most recent upcycle, extrapolated into estimates of future commercial property performance, is especially troubling in a late-cycle environment. Valuation has been criticized for a "rear-view mirror" bias in the academic literature. The bibliography of O.A. Tidwell's doctoral dissertation at Georgia State University (2011), "An Investigation into Appraisal Bias: The Role of Decision Support Tools in Debiasing Valuation Judgments," presents a comprehensive look at that literature. The implications of a changed economic environment on real estate value trends is highlighted in a September 2018 National Real Estate Investor article by Elaine Misonzhnik, "Growth in Total Returns on CRE Investment Will Decelerate over the Next Two Years, PREA Survey Respondents Predict." The changed economic environment may be dramatically different if the 2019 projections from the Congressional Budget Office are even approximately correct, as the CBO forecasts the average monthly employment gains for 2020-2029 as being below 50,000, versus the 200,000+ monthly increases of the post-Global Financial Crisis recovery period. See https://www.cbo.gov/publication/55551

18. See, for example, Stephen R. Covey, *Principle-Centered Leadership*, Simon & Shuster/Fireside (New York, 1991).

19. Vernon J. Bourke, *History of Ethics, Volume 1: Graeco-Roman to Early Modern Ethics*, Axios Press (Edinburg VA, 1968), p. 44.

20. Timothy F. Peterson, "Policy, Procedure, Ethics, and Competence," A presentation to the NCREIF Performance Standards Committee, July 12, 2012.

21. See 1 Corinthians 13:10

22. In this, Maslow and Kohlberg are well aligned with 20th century philosophers such as the Swiss Karl Jaspers and the Canadian Bernard J.F. Lonergan. For example, Lonergan stresses "the heuristic structure of our knowing [which] reveals an upwardly directed dynamism... For the root of ethics lies neither in sentences nor in propositions nor in judgements but in the dynamic structure of rational self-consciousness." Lonergan, *Insight: A Study of Human Understanding*, Philosophical Library (New York, 1957) pp. 603 -604. Jaspers contrasts human and animal existence this way, "Lacking the faculty of choice, [the animal] is purely itself as it exists. But *man* cannot be that… Man cannot merely exist. He must transcend and soar or go down, bereft of transcendence." Jaspers, *Philosophy, vol. 1*, University of Chicago Press (Chicago, 1969), p. 78.

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