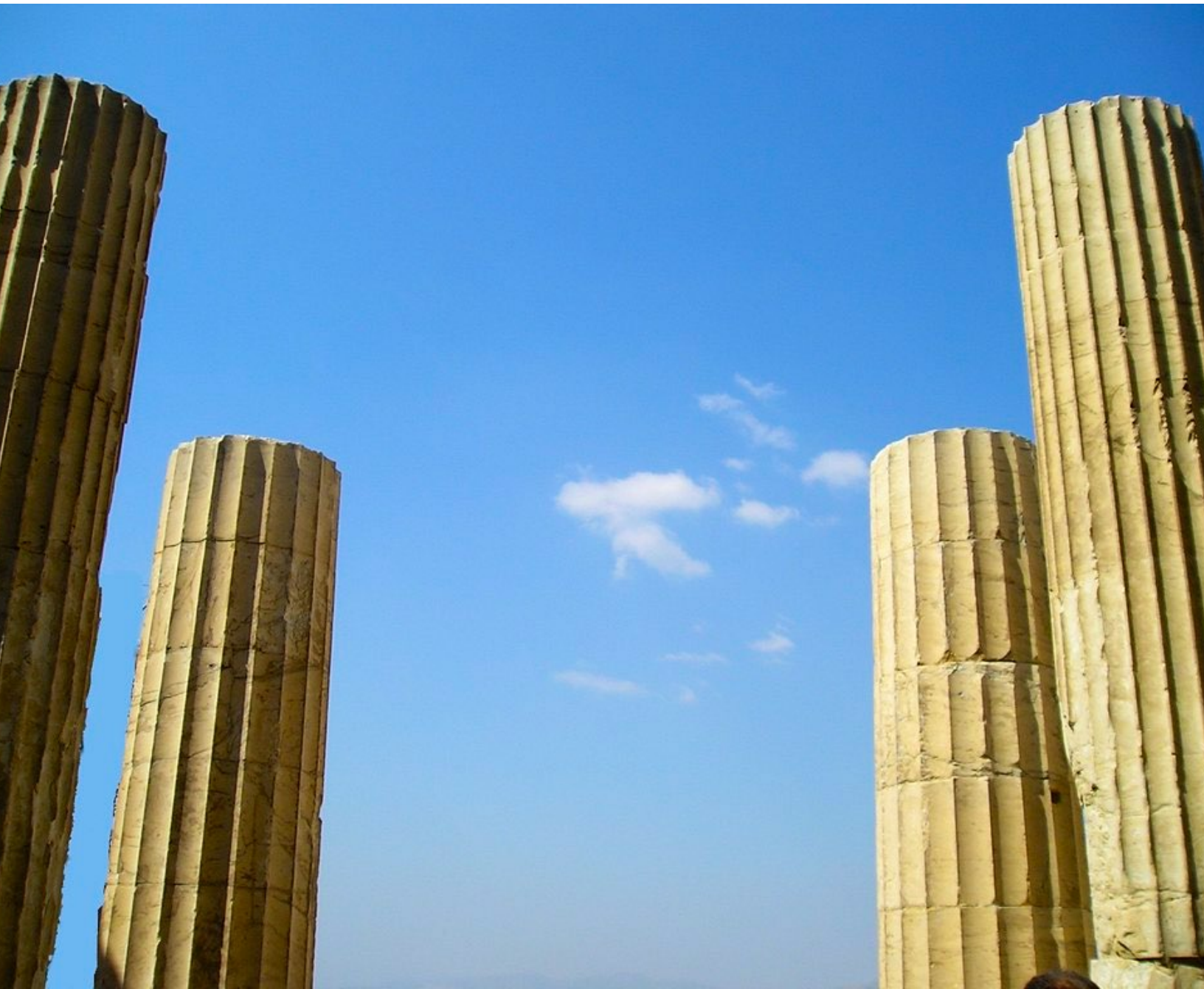


December 2020

VOLUME XI, ISSUE XII

PEGASUS

A NEWSLETTER FOR THE CAUX ROUND TABLE FOR MORAL CAPITALISM
NETWORK LOOKING AT BUSINESS ABOVE THE CLUTTER AND CONFETTI



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Introduction

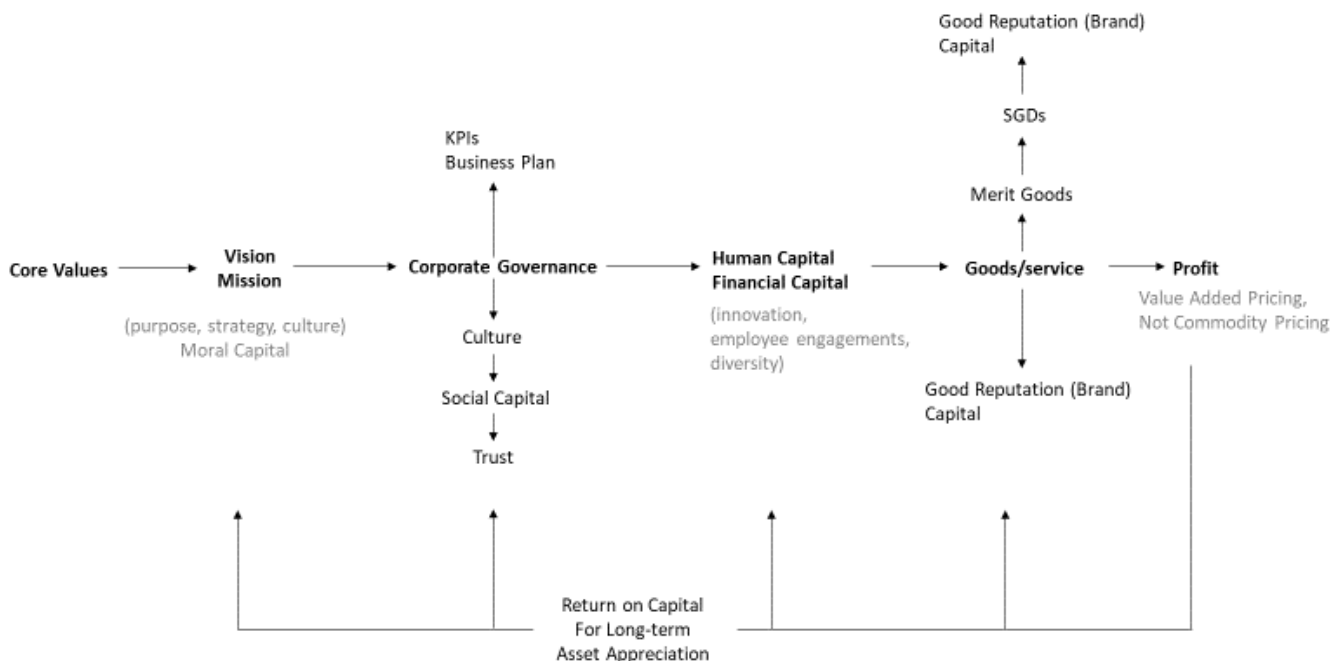
In this issue of Pegasus, we consider the importance of human capital. First, we recall the practical advice of the Stoics, particularly the later Stoics, who wrote in Roman times. They identified a human asset – an intangible capability to rise above contingencies, enhance the intentionality of our actions in the world and so make our lives more efficacious and satisfactory. That asset was presence of mind – an inward power to reflect on impressions and sensations before we make judgments. In modern terms, Stoics sought to enhance human capital – strength of mind and capacity for resilience and innovation; they provided a way for us to avoid self-pity and self-abasement. Stoic presence of mind enables better risk management, promotes courage and enables us to lead.

The Caux Round Table for Moral Capitalism (CRT) has proposed that human capital, though intangible, has a prominent role in moral capitalism. The moral dynamics of capitalism consider people and society, while the financial dynamics of capitalism – price, cost, gross sales, net profits – consider what is materialistic. Capitalism, without a moral compass, takes a reductionist approach to life – what Marx called the “cash nexus.”

Accordingly, the CRT has proposed a more sophisticated theory of the firm, one which incorporates human, social and other forms of capital. This systems approach to a firm seeks to account for more than the traditional factors of production – land, labor and financial capital.

Not coincidentally, in the high tech subculture, there are two social media influencers who apply Stoicism to living well today. They are Ryan Holiday (<https://ryanholiday.net>) and Tim Ferris (<https://tim.blog/stoic/>)

This graphic outlines the CRT theory of the firm:



Secondly, we include in this issue an excerpt of a recent decision by the U.S. Securities and Exchange Commission (SEC) which now requires companies to provide the public with more information on their human capital. This is a small step by regulators, but significantly, it validates giving importance to human capital, as proposed by the CRT. Now that the SEC requires more information on how employees add value to a firm, accounting professors, accountants, valuation specialists and auditors will explore and propose additional metrics for more accurately assessing prospects for the firm's success or failure.

I am reassured by the SEC's presumptive recognition of the importance of human capital, not as a cost on a profit and loss statement, but as an asset of a firm. It indicates to me that the CRT's work on the theory and best practices of moral capitalism is existentially well-grounded.

Stephen B. Young
Global Executive Director
Caux Round Table for Moral Capitalism

THE CAUX ROUND TABLE PRINCIPLES FOR BUSINESS AND STOIC HUMANISM

Stephen B. Young
Global Executive Director
Caux Round Table for Moral Capitalism

The Caux Round Table for Moral Capitalism's (CRT) Principles for Business were made public in 1994. They envisioned a capitalism as a system of interdependent stakeholder relationships, a moral order of concern. The CRT Principles are an affirmation that stewardship in capitalism is the course of wisdom, prudence and, therefore, of worldly success.

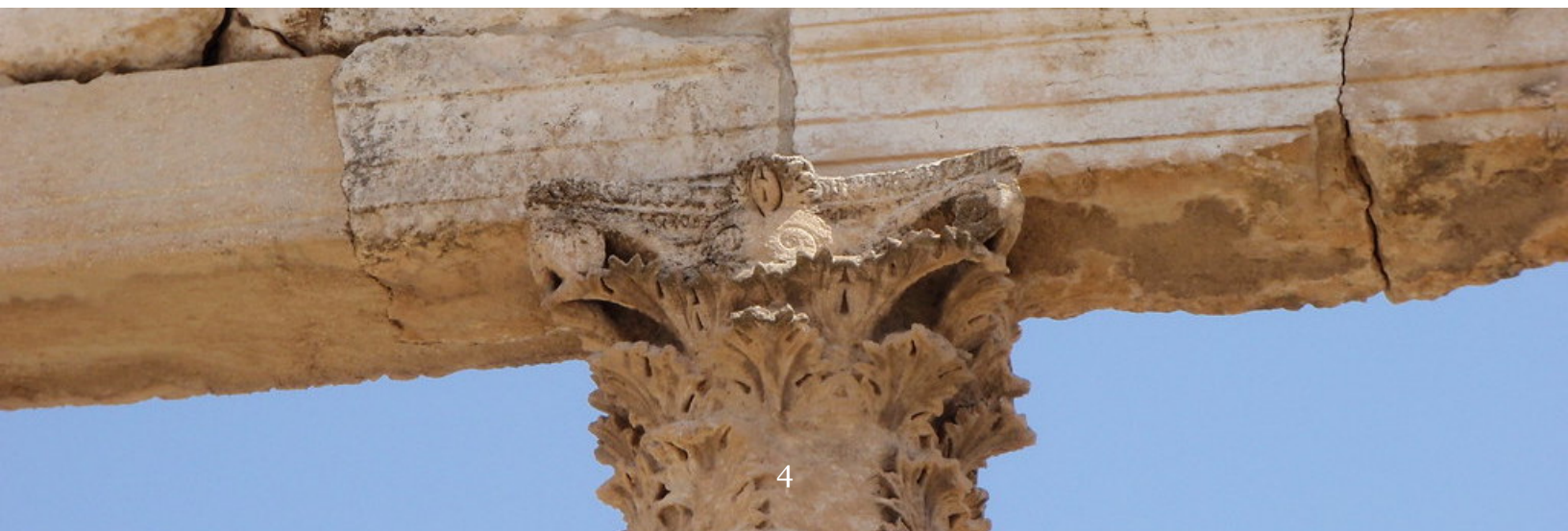
The Stoic philosophers of Greece and their Roman followers, such as Cicero, Seneca and Marcus Aurelius, proclaimed an ethic of personal rectitude which did not follow from the worship of gods. In this sense, Stoicism was humanistic, not theistic. But, importantly, it was not a modern or post-modern humanism of untethered individualism. Stoicism placed each human person in a moral setting and located the center of gravity for each human personality in the capacity of a moral sense within the conscious mind.

Stoic humanism, therefore, can still provide a sound and energizing foundation for daily use of the CRT Principles for Business.

The CRT Principles presume our access to and the strength of our moral sense. Application of the Principles in both business strategy and tactical decision-making draws on the moral sense for criteria with which to make practical judgments. The Principles assert that "law and market forces are necessary, but insufficient guides for conduct. Responsibility for the policies and actions of business and respect for the dignity and interests of stakeholders are fundamental."

Principle 1 asserts that "Businesses have a role to play in improving the lives of all their customers, employees and shareholders by sharing with them the wealth they have created."

Principle 2 asserts that "Businesses should contribute to the economic and social development not only in the countries in which they operate, but also in the world community at large through effective and prudent use of resources, free and fair competition and emphasis on innovation in technology, production methods, marketing and communications."



Principle 3 asserts that “Businesses should go beyond the letter of the law and utilize a spirit of trust.”

Principle 4 asserts that “Business must have respect for rules, but also recognize that some behavior, although legal, may still have adverse consequences.”

Principle 5 asserts that “National self-interest should not prejudice global prosperity.”

Principle 6 asserts that “A business should respect and protect the environment.”

Principle 7 asserts that “A business should not participate in or condone corrupt practices.”

Thus, the CRT Principles for Business categorically reject any form of brute capitalism resting on the premises of social Darwinism that life is only a selfish struggle for dominion and suppression of competitors at all costs, so that only those most fit for internecine conflict will survive.

The CRT Principles can only be effective if individuals honor and exercise their moral convictions, that that which is outside the self has worthy meaning and inherent value.

Adam Smith is most famously noted for his pioneering description of the capitalist form of production and supporting ethos. He proposed that the “origin of the wealth of nations” was specialization of function and division of labor. Here, we can see a derivative use of Luther’s emphasis on the “station” or function of each individual. In the factory mode of production introduced by capitalism, which has made modern civilization possible, each person has a function to perform. But they are expected to work with fidelity, diligence and conformity to what is expected from them in their specified function. Thus, each worker needs an active moral sense in order to be part of the larger social system of production.

Moreover, each worker – each human cog in the factory social machine – must rely on other “cogs” to do their part well, efficiently and in a timely manner. And, reciprocally, those other “cogs” were reliant on each worker to do his or her part well. Capitalist production is, at its core, a moral process of interdependence.

Smith explained the origins of that moral capacity in his first book, *The Theory of Moral Sentiments*. He described individual persons within the understanding of Protestantism as living beings which could reason and act for moral purposes. He located the source of their moral capacity as a “person withing the breast,” what today we would call the “conscience.”

Smith did not credit any deity with the power or responsibility to infuse each person with moral awareness and purpose. Thus, he was a humanist in confining his thinking to earthly realities.

Not coincidentally, Smith had read the Greek and Roman Stoics. His *Theory of Moral Sentiments* references Epictetus, Cicero, Seneca and Marcus Aurelius. Smith's humanism was a Stoic one.

Our modern culture, however, no longer follows Stoic humanism. Who, these days, reads the Stoics or quotes them? Our now post-modern humanism embodies very different assumptions about human nature. Our post-modern culture actually has come to marginalize and even deny the existence of a moral sense within each person.

Thus, capitalism has evolved a brutish variety of ruthless competition, exploitation of the weak and disregard of stakeholders in line with this modern humanism. Brutish capitalism lives more by the morality of Thomas Hobbes where human existence is a war of all against all and "the life of man is solitary, poor, nasty, brutish and short."

Modern humanism and even more our contemporary post-modern humanism, posits an individualism untethered from society, an absolutely egocentric conviction of personal freedom as willfulness, of willfulness as self-serving license and of self-serving license as all-encompassing hedonism. This individualism is nihilistic and so narcissistic, there being nothing outside the self of any meaning or authority. Self-absorption is posited as the only ethic applicable to human persons.

Among social philosophers, this individualism was importantly proposed by Herbert Spencer in his theory of social Darwinism. It was given expression by Friedrich Nietzsche in his argument that we must overcome moralizing about good and evil and live through our will to power alone. With Nietzsche, individualism has no confines, no limits and no attachments to anything other than what it proposes for itself. Nietzsche's nihilism has come down to us through Heidegger, the Existentialists, Derrida and Foucault. It is reflected in the contemporary epistemology that there is no truth worth accepting as a guide for living, that all our words and thoughts are only social constructions, narratives or even fictions, shifting fluxes of transitory meanings where nothing is everything and everything is really nothing. It is even said by some that we are living in an age of "post-truth."

In such a world, there can be no moral capitalism.

Thus, it might be opportune to reconsider Stoic humanism.

At the core of such humanism was a faith in the transcendent being within us, in our moral sense, somehow putting there a spark of intuition, of insight and discernment. Stoic humanism proposed that we are, indeed, tethered to a higher reality, a realm that Christians might call grace, that Mencius called virtue (*de*), that the Buddha spoke of as mindfulness and that the Qur'an assumes is a fitness for receiving guidance.

In Greek, that touch of the divine with us was called a *daimon*, some ill-defined gestation of spirit which was within us, but came from beyond us and which pulled and pushed us in fateful directions.

Heraclites concluded that *Ethos Anthropos Daimon* – our "*daimon* comes from our character." Thus, the common English rendering of his thought – "Character is destiny."

Another and very important Greek use of the word *daimon* was in their word for human flourishing, happiness, prosperity, blessedness – *eudaimonia*. *Eudaimonia* is an abstract noun derived from the words *eu* ('good, well') and *daimon* ('spirit'). For many Greek philosophers, the purpose of being ethical and having a practical philosophy for living was to aim at such flourishing. The locus of the *daimon* was interior to the individual. It was in dialogue with other modes of thought, feeling and perception. In particular, it could spiritually influence a person's capacity for acting with virtue (*arete*) – as a strong and well-adjusted personality should – and for thinking wisely about the facts of life (*phronesis*).

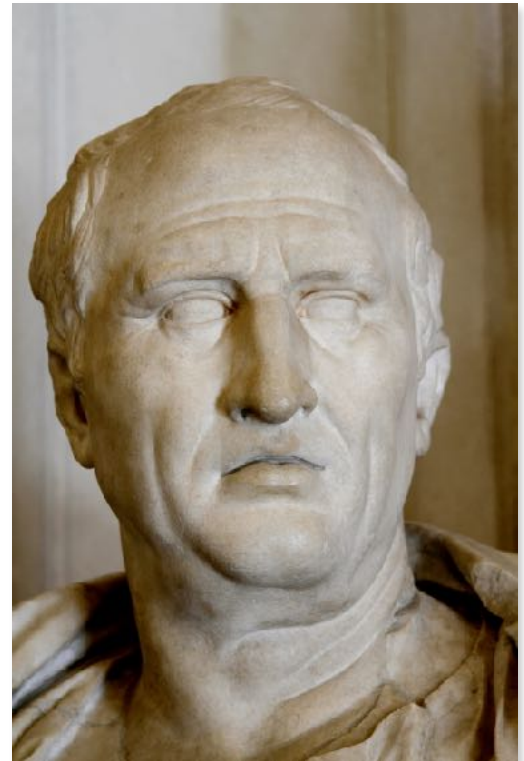
Contemporary positive psychology speaks of “eudaimonic well-being” to include personal powers of self-discovery, development of one's best potentials, a sense of purpose and meaning in life, investment of significant effort in pursuit of excellence and intense involvement in activities.

LEADING STOICS WRITERS EXPLAINING THEIR HUMANISM

Cicero

A prominent thinker in the Stoic tradition cited by Adam Smith was Cicero (106 – 7 December 43 BC). In his book *De Officiis*, an essay on the origin of personal duties, Cicero, rather closely, followed a Greek Stoic, Panaetius.

Cicero advised that one should not make “anything his chiefest good, wherein justice or virtue does not bear a part” and should never set up advantage – *utilitas* – in place of *honestum* as the measure of his happiness. *Honestum* connotes that which deserves full honor is noble, distinguished, worthy, brings praise, gives one great credit, arises from virtue. For Cicero, all duties arose from possession of *honestum* which had four attributes: 1) truth generating prudence; 2) sociability, liberality towards others, mutuality and justice; 3) a brave, energized and exalted mind; and 4) temperance and moderation. Thus, Cicero located that which was superior in individuals in an inner moral sense, not in their possessions or social status. He reminded us that we humans are not beasts and are endowed with reason, a distinctive capacity that should be our most prized possession.



Cicero

In that power of mind over matter, what is good, said Cicero, is only that which is of *honestum* and is free from passions and mental disturbance. From a calm and peaceable state of mind arises constancy and moderation. What might excite the mind such as riches, bettering your social estate, empire, glory or honor would lead to acts of injustice. Thus, what restrains us from injustice is our moral sense. In positions of civil authority, “He who takes on him a public trust should not only look that the business be honest, but that he himself should be qualified for the management of it.” (Book I)

Elsewhere, Cicero affirmed that *salus populi suprema lex* – “the wellbeing of the people is the highest law,” a maxim consistent with the CRT’s Principles for Government.

In Book II, Cicero argues that setting *honestum* against *utilitas* or advantage was a false and fabricated choice because “whatever has *honestum*, the same must be of advantage.” Thus, Cicero merged two schools of ethics – utilitarianism and deontology or abstract moralizing.

For Cicero, justice, advantage or profit and *honestum* were all blended and interwoven, one with the other. (Book II) Any advantage interwoven with *honestum* would be virtuous. “If in profit there is anything not of *honestum*, it is our duty to reject that profit.” “Under nature what is profitable has to align with *honestum* so we must consider what at first appears to be profitable in relation to what is *honestum* and seek the profitable only if it contains what is of *honestum*. Whatever is dishonest can never be profitable.”

Here, Cicero provides an argument for “moral capitalism,” where the profit sought by business is acceptable when it expresses good moral considerations.

In this, Cicero said he followed the Stoics for whom “whatever is honest must be also profitable and whatever is profitable must be also honest.”

In his essay *On Friendship*, Cicero asserted that our capacity for friendship derives from a “distinct principle implanted in the breast of man.” This thought would be taken up by Adam Smith with his locating our moral sense figuratively as a person within our breast which judged our thoughts and actions and help them up to a standard higher than our own will.

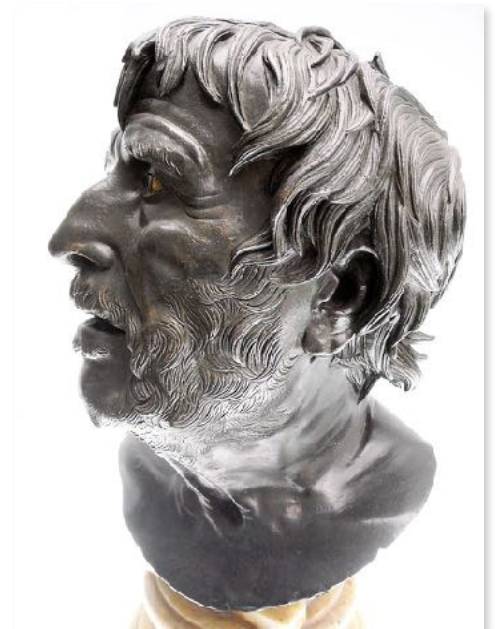
Seneca

Seneca (4 BC – AD 65), also referenced by Adam Smith, lived in the early years of the Roman Empire and was a counselor to the Emperor Nero, who turned against him and forced his suicide.

In one of his letters, Seneca asserted that “God is near you, with you, inside you. ... there is a holy spirit abiding within us who observes our good deeds and bad and watches over us.” (41. 1-2) Here is the Stoic link between our individuality and the divine. We are more than self-interested creatures, but have a soul, as well. Seneca quoted Virgil that in every person “indwells a god, what god we know not.” (*Aeneid* 8.352)

The individual human person was, for Seneca, designed to have a sense of place, embeddedness and due proportion for “whatever stabilizes ... the soul is good.” (Letter 76)

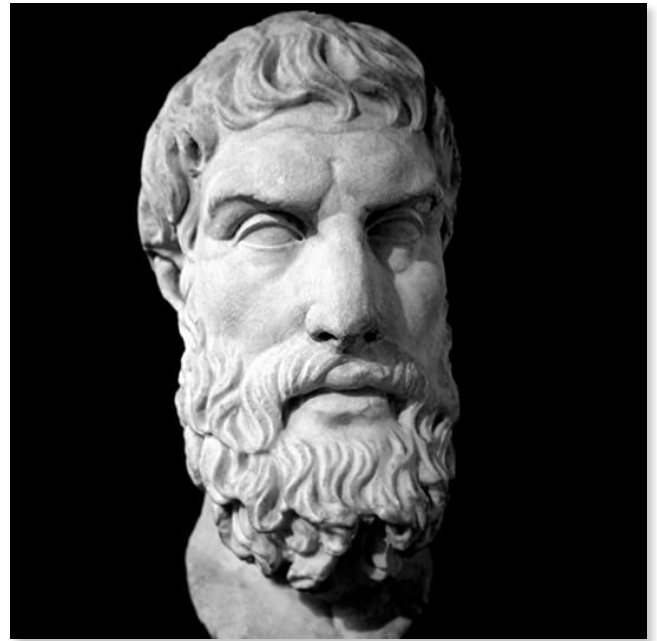
Like Cicero, Seneca accepted the blending of advantage and *honestum*: “Virtue radiates usefulness.” (*On Tranquility* 4) Virtue and the honorable are definable, not boundless or promiscuous and so they are part of the good. “Anything carried to excess is wrong.” (9)



Seneca

Epictetus

Epictetus (50 – 135 AD), a Greek living in Rome, was cited by Adam Smith. He wrote down his perspective on Stoic wisdom. His premise on what a human person should value was that “It was fitting then that the gods have placed this alone in our power, the most excellent faculty of all which rules all the others, the power to deal rightly with our impressions.” (Book 1, 1.7) Thus, Seneca believed there were “two elements mingled within us – a body in common with the animals and reason and intelligence in common with the gods.” (Book 1, 3.1)



Epictetus

“Where the true nature of god is there too is the good. Intelligence, knowledge, right reason.” (Book 2 8.1) Thus, what we do with our minds, I would say with our moral sense, determines whether we are good or bad. “I can get greatness of soul and a noble spirit from myself.” (Book I, 9.29) “The specific material that the good and noble person works on is his own governing faculty.” (Book 2 3.1) To govern yourself, your “first business is to cast away self-conceit.” (Book 4 17.1) Then, you must “attend to those universal principles which you must always have in hand.” (Book 4 12.7)

With this faculty of dealing rightly with impressions – the faculty of thinking – we can make ourselves good for “Essence of good consists in the proper use of impressions.” (Book I, 20.13)

One must, according to Seneca, “attend to your impressions, watch over them unsleepingly. For it is no small thing that you are guarding, but modesty, fidelity, constancy, a tranquil mind undisturbed by fear, pain, or disorder; in short, freedom.” (Book 4 3.7) When Seneca speaks of freedom, he has in mind the power of individualism, a most modern point of view. “Examine preconceptions – learn terms, apply preconceptions to realities.” (Book I, 170) We should also learn the habit of replacing whatever comes to mind with “some fair and noble impression.” (Book I 17.23)

“Good or ill for man comes from choice; if you want anything good, get it from yourself.” (Book I 29.3) We each have a power of choice to put guiding principles to work. (Book I 24.1) “Externals are materials for the workshop of choice.” (Book I 29.2) “Bad people place their interest in things outside themselves, not in their own power of choice.” (Book 2 22.26)

“No man is free who is not master of himself.” (Fragment 25) How enlightened and contemporary this sounds in our era of individual human rights.

Marcus Aurelius

Emperor Marcus Aurelius (26 April 121 – 17 March 180) was a noted Roman Stoic. He, too, provided Adam Smith with thought provoking ideas. Among his meditations are these admonitions:

“The god within you (daimon) should preside over a being who is vital, and mature... We have to stand upright ourselves, not be set up.” (3.5)

“The deity which dwells within you (daimon) directing each impulse, weighing each impression, abjuring the temptations of the flesh, and avowing allegiance to the gods and compassion for humankind. ... No ambitions of a different nature can contest the title to goodness which belongs to reason and civic duty. Not the world’s applause, nor power, nor wealth, not the enjoyment of pleasure.” (3.6)

“If the inward power that rules us be true to nature, it will always adjust itself readily to the possibilities and opportunities offered by circumstance.” (4.1)

“Live with the gods. To live with the gods is to show them at all times a soul contented with their awards, and wholly fulfilling that will of that inward divinity that particle of himself, which Zeus has given to every person for ruler and guide – the mind and the reason.” (5.27)

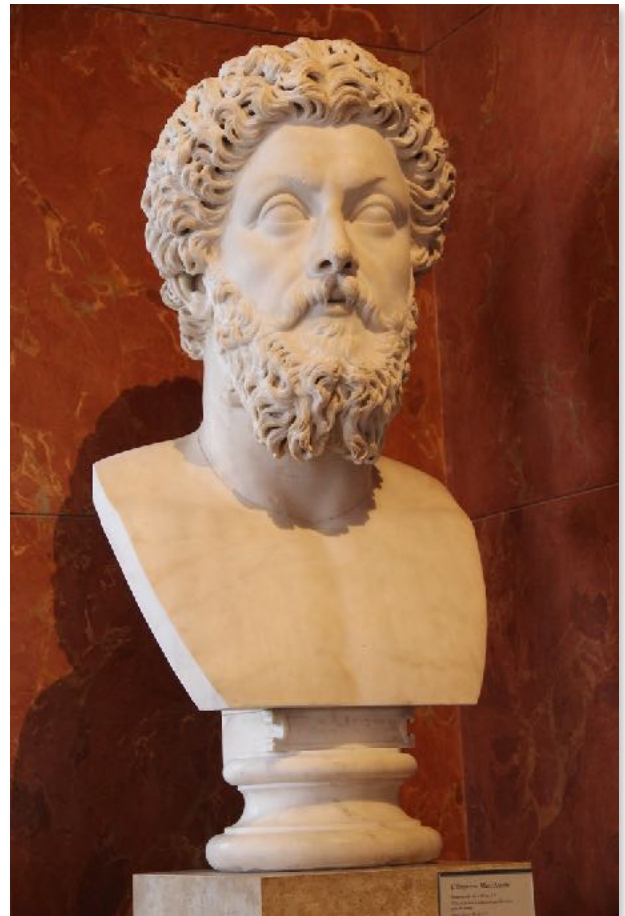
“The soul of man has this in common with the soul of the One: it can never be thwarted from without and its good consists in righteousness of character and action.” (5.34)

“Dig within. There lies the well-spring of good; ever dig and it will ever flow.” (7.59)

“Hour by hour resolve firmly like a Roman and a man, to do what comes to hand with correct and natural dignity, and with humanity, independence, and justice. ... dismissing wayward thoughts, ... recoil from the desire to create an impression, the admiration of self, the discontent with your lot.” (1.5)

“Never value the advantages derived from anything involving breach of faith, loss of self-respect, hatred, suspicion, or execration of others, insincerity, of the desire for something which has to be veiled and curtailed.” (3.7)

“To what then must we aspire? This and this alone: the just thought, the unselfish act, the tongue that utters no falsehood, the temper that greets each passing event as something predestined, expected, and emanating from the One source and origin.” (4.33)



Marcus Aurelius

CONCLUSION

Moral capitalism, as advocated by the CRT, can stand very well on the ideas of the Stoics. Moreover, their humanism is perhaps more relevant today than when they lived so long ago, for we are the age of secular individualism and theirs was the age of faith in the Gods and order imposed upon us by personified, transcendental masters of our destinies. Today, so many worship a reason so subordinated to our will and desires that it has very little resemblance to a moral power seeking wisdom and truth. Our enlightenment seems, at times, to be illusory.

As Shakespeare wrote:

Tomorrow, and tomorrow, and tomorrow,
Creeps in this petty pace from day to day,
To the last syllable of recorded time;
And all our yesterdays have lighted fools
The way to dusty death. Out, out, brief candle!
Life's but a walking shadow, a poor player,
That struts and frets his hour upon the stage,
And then is heard no more. It is a tale
Told by an idiot, full of sound and fury,
Signifying nothing.

SECURITIES AND EXCHANGE COMMISSION

17 CFR 229, 239, and 240 [Release Nos. 33-10825; 34-89670; File No. S7-11-19] RIN 3235-AL78

Modernization of Regulation S-K Items 101, 103, and 105

AGENCY: Securities and Exchange Commission.

ACTION: Final rule

DATE: August 26, 2020

7. Human capital disclosure

a. Proposed Amendment

Item 101(c)(1)(xiii) currently requires disclosure of the number of persons employed by the registrant. Some registrants distinguish between the number of full-time and part-time employees, and others specify the number of employees in each department or division. Some registrants with large numbers of employees disclose the approximate number of employees and some registrants discuss their employees' membership in a union or similar organization.

The Concept Release solicited input on this disclosure requirement, requesting feedback on, among other things, whether this numeric disclosure is still important to investors, and what, if any, improvements could be made.¹²³ Some commenters on the Concept Release recommended retaining and expanding the requirement, while others questioned the continued relevance of the requirement.¹²⁴

Subsequent to the issuance of the Concept Release, we received a rulemaking petition requesting that the Commission adopt new rules, or amend existing rules, to require registrants to disclose information about their human capital management policies, practices and

¹²³ See Concept Release, *supra* note 9, at 23936.

¹²⁴ See Proposing Release, *supra* note 3, at 44369.

performance.¹²⁵ This rulemaking petition generated a substantial number of comments supporting increased disclosure of human capital management policies and specific human capital metrics.¹²⁶

In light of the feedback that we received on the Concept Release and the Human Capital Rulemaking Petition, and as part of our efforts to modernize disclosure, we proposed to amend Item 101(c) to replace the current requirement to disclose the number of persons employed by the registrant with a requirement to provide a description of the registrant's human capital resources, including in such description any human capital measures or objectives that management focuses on in managing the business, to the extent such disclosures would be material to an understanding of the registrant's business taken as a whole.¹²⁷ In addition, the proposed amendment included non-exclusive examples of human capital measures and objectives that may be material, depending on the nature of the registrant's business and workforce, such as measures or objectives that address the attraction, development, and retention of personnel.

b. Comments on the Proposed Amendment

Many commenters expressed general support for the inclusion of human capital as a

¹²⁵ See Rulemaking petition to require registrants to disclose information about their human capital management policies, practices and performance, File No. 4-711 (July 6, 2017) ("Human Capital Rulemaking Petition"), available at <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>

¹²⁶ See Comments to File No. 4-711 available at <https://www.sec.gov/comments/4-711/4-711.htm>.

¹²⁷ See Proposing Release, *supra* note 3. The SEC Investor Advisory Committee also recommended that the Commission take measures to improve the disclosure of a registrant's human capital management, and suggested that any disclosure requirements "should be crafted so as to reflect the varied circumstances of different businesses, and to eschew simple 'one-size-fits-all' approaches that obscure more than they add." *Recommendation of the Investor Advisory Committee Human Capital Management Disclosure* (Mar. 28, 2019), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>.

disclosure topic.¹²⁸ Several commenters expressly supported a principles-based approach to human capital disclosure.¹²⁹ While supporting the principles-based approach in the proposal, some commenters urged the Commission to proceed with caution and expressed concerns that prescriptive requirements may elicit immaterial disclosures.¹³⁰ Many other commenters called for a combination of principles-based and prescriptive requirements that would include disclosure of specified quantitative metrics.¹³¹

Many other commenters expressed opposition to the proposed principles-based approach to human capital disclosure.¹³² Some of these commenters stated that the proposed principles-

¹²⁸ See, e.g., letters from International Center for Enterprise Engagement (“ICEE”), JT Foxx Reviews Research Team (“JT Foxx”), Intellivest Securities, Inc., Enhance Product Development, Inc. (“EPD”), the Hashimoto’s Solution (“Hashimoto”), Auto Connection Manassas VA (“Auto Connection”), Yoga Burn Challenge (“Yoga Burn”), Sustainability Accounting Standards Board (letter dated Oct. 17, 2019, “SASB 1”), Legal & General Investment Management (“LGIM”), CFA Institute, Breckinridge, Paul Rissman (“Rissman”), LaBerge, E&Y, Oregon State Treasury (“OST”), IEHN, Calvert Research and Management (“Calvert”), Dunker, EEI and AGA, CtW Investment Group (“CtW”), CCMC, FedEx, UnitedHealth Group, Harper Ho, Los Angeles County Employees Retirement Association (“LACERA”), PRI, Society for Human Resource Management (“SHRM”), California State Teachers’ Retirement System (“CalSTRS”), Judy Schultz (“Schultz”), DP&W, Hermes Equity Ownership Services Limited (“Hermes”), Better Markets Inc. (“Better Markets”), Willis Towers Watson (“Towers Watson”), AFL-CIO, Mercer, Human Capital Management Coalition (“HCMC”), HR Policy Association (“HR Policy”), Senator Mark Warner, (“Sen. Warner”), Public Citizen, Norges Bank Investment Management (“Norges Bank”), CalPERS, the Forum for Sustainable and Responsible Investment (“SIF”), Domini, New York State Common Retirement Fund (“NYSCRF”), Radiant Value Management (“RVM”), GRI, New York City Comptroller (“NYC Comptroller”), BCI, Timothy G. Coville (“Coville”), JUST Capital, Qin Li, ShareAction, Service Employees International Union (“SEIU”), Catherine Smith (“C. Smith”), and.

¹²⁹ See, e.g., letters from ICEE, CII, LaBerge, SHRM, Towers Watson, Mercer, HR Policy, Hashimoto, EPD, Auto Connection, GRI, Yoga Burn, EEI and AGA, CCMC, C. Smith, SEIU and FedEx.

¹³⁰ See, e.g., letters from SHRM, FedEx, and CCMC.

¹³¹ See, e.g., letters from LGIM, Calvert, OST, CtW, Harper Ho, LACERA, PRI, CalSTRS, Hermes, Better Markets, AFL-CIO, HCMC, BCI, Sen. Warner, Coville, Norges Bank, CalPERS, SIF, Domini, NYSCRF, CFA Institute, ShareAction, JUST Capital and NYC Comptroller.

¹³² See, e.g., letters from UnitedHealth Group; CLA; David Burton (“Burton”); Amazon Watch, American Federation of State, County and Municipal Employees, As You Sow, California Clean Money Campaign, Campaign for Accountability, Center for American Progress, Congregation of Sisters of St. Agnes, Environment America, Friends Fiduciary Corporation, Global Witness, Green Century Capital Management, Harrington Investments, Inc., Institute for Agriculture and Trade Policy, Interfaith Center on Corporate Responsibility, Jantz Management LLC, Miller/Howard Investments, Inc., New Progressive Alliance, Newground Social Investment, SPC, NorthStar Asset Management, Inc., Northwest Coalition

based approach would not likely elicit meaningful information about human capital practices, or provide sufficiently comparable disclosure, unless grounded in standardized metrics.¹³³ Several commenters stated that companies disclose a wide range of human capital information and that this could lead to confusion among investors.¹³⁴ One commenter stated that requiring human capital disclosure would be inconsistent with the Commission's mission.¹³⁵ Some commenters urged the Commission to consider providing interpretive guidance on human capital in light of existing disclosure obligations.¹³⁶ Other commenters expressed concern based on their view that the principles-based approach would rely entirely on the judgment of management to determine the substance of the information to disclose and would result in less disclosure being provided than would be the case under a prescriptive disclosure requirement.¹³⁷

In the Proposing Release, we requested comment on whether the proposed amendment should include other non-exclusive examples of human capital measures or objectives, such as the number and types of employees, including the number of full-time, part-time, seasonal, and temporary workers. A number of commenters supported the inclusion of specific human capital

for Responsible Investment, Oil Change International, OIP Trust, Oxfam America, Pax World Funds, Public Citizen, Railroads & Clearcuts Campaign, Reynders, McVeigh Capital Management LLC, Sierra Club, Teamsters, Tri-State Coalition for Responsible Investment, U.S. PIRG, Union of Concerned Scientists, Women's Institute for Freedom of the Press. ("33 Organizations"); GM; DP&W; Domini; NYSCRF; Public Citizen; RVM; FEI; Schultz; Rissman; Society; ICGN; and Breckinridge.

¹³³ See, e.g., letters from Domini, RVM, HCMC, CalPERS, Rissman, LGIM, ICGN, OST, NYSCRF, NYC Comptroller, FEI and LACERA.

¹³⁴ See, e.g., letters from FEI, LACERA, HCMC and NYSCRF.

¹³⁵ See letter from the Heritage Foundation (contending that the mission of the Commission does not include furthering any social, environmental or other criteria).

¹³⁶ See, e.g., letters from GM, Society, DP&W and Chevron.

¹³⁷ See, e.g., letters from HCMC, CalPERS, NYC Comptroller, Domini, NYSCRF, FEI, PRI, LACERA, Breckinridge, ShareAction and SEIU.

management disclosure metric requirements or examples.¹³⁸ Many of these commenters emphasized the importance of comparability and stated that the use of different metrics would make it difficult for investors to analyze and compare information.¹³⁹ Several commenters recommended that we require specific, or encourage companies to use certain, third-party disclosure standards or frameworks to provide human capital disclosure.¹⁴⁰ One commenter supported the inclusion of non-exclusive examples that do not focus on numerical measurements, and argued that the disclosure requirement should not promote comparability.¹⁴¹ This commenter stated that because every registrant is different, the way in which each registrant defines and measures human capital related objectives necessarily varies widely.

A number of commenters, also highlighting the limitations of mandating or suggesting certain metrics for the purpose of increasing comparability in this area, opposed the inclusion of either non-exclusive examples or prescriptive human capital management disclosure metrics.¹⁴²

¹³⁸ See, e.g., letters from Louis E. Matthews, Jr., Schultz, SASB 1, LGIM, IEHN, Dunker, FCLTGlobal (“FCLTGlobal”), PRI, CalSTRS, Better Markets, HCMC, BCI, Sen. Warner, Public Citizen, CalPERS, SIF, Domini, NYSCRF, NYC Comptroller, ICEE, OST, LACERA, Hermes, Burton, SEIU, CtW, ICGN, Towers Watson, AFL-CIO, 33 Organizations, JT Foxx, EPD, Hashimoto, Auto Connection, Yoga Burn, Bec Brideson, Calvert, Breckinridge, CFA Institute, ShareAction, Qin Li, JUST Capital and Letter Type A.

¹³⁹ See, e.g., letters from SASB 1, LGIM, Calvert, E&Y, OST, FCLTGlobal, LACERA, PRI, CalSTRS, Hermes, SEIU, E&Y, Better Markets, HCMC, BCI, Sen. Warner, Coville, Public Citizen, Norges Bank, CalPERS, SIF, Domini, NYSCRF, RVM, Breckinridge, ShareAction, CFA Institute and NYC Comptroller.

¹⁴⁰ See, e.g., letters from Domini (recommending frameworks published by the International Organization for Standardization, the Global Reporting Initiative, the Sustainability Accounting Standards Board, the Workforce Disclosure Initiative, and the Carbon Disclosure Project), SASB 1, Coville, Norges Bank (recommending the Sustainability Accounting Standards Board framework), Breckinridge (recommending the Sustainability Accounting Standards Board framework) and RVM. See also, e.g., letters from GRI, ICEE, SASB 1, Coville, CII, LACERA, Domini, RVM, Breckinridge and Norges Bank.

¹⁴¹ See letter from Towers Watson.

¹⁴² See, e.g., letters from CCMC, FedEx, SHRM, GM, Mercer, Society, HR Policy, DP&W, FEI and Chevron.

Some of these commenters stated that there was no consensus on the most appropriate metrics or methodology for human capital management disclosure.¹⁴³ Other commenters expressed concern that a list of non-exclusive examples could be viewed as mandated disclosure, which could result in registrants providing immaterial disclosure.¹⁴⁴

In the Proposing Release, we also requested comment on whether we should define human capital. Several commenters stated that human capital should be defined,¹⁴⁵ while a few opposed a Commission definition of the term.¹⁴⁶ One of these commenters stated that there were many definitions of human capital and that the concept is often tailored to the circumstances and objectives of individual companies.¹⁴⁷ The other commenter stated that the Commission should resist defining human capital because there is no standard method to assess “human capital management” and because it is a complex concept with many factors influencing human capital management that vary across industries and individual companies.¹⁴⁸

We also requested comment on whether we should retain the requirement in Item 101(c) for registrants to disclose the number of persons employed by the registrant. Several

¹⁴³ See, e.g., letters from HR Policy, Society and GM.

¹⁴⁴ See, e.g., letters from Mercer (“[P]roviding specific examples of the types of measures or objectives that companies focus on in managing their business, such as those that address the attraction, development, and retention of personnel, as proposed, could result in disclosure that is potentially misleading and is less valuable to investors because it is not tailored to a company’s specific business or industry.”), Towers Watson, and HR Policy.

¹⁴⁵ See, e.g., letters from CalSTRS, CtW, HCMC, NYC Comptroller, Towers Watson, ICEE and PRI (advocating for defining human capital management as “people’s competencies, capabilities and experience, and their motivations to innovate.”). Cf. letter from Burton (“definition for human capital should include human capital measures or objectives that management focuses on in managing the business”).

¹⁴⁶ See letters from Mercer and HR Policy.

¹⁴⁷ See letter from HR Policy.

¹⁴⁸ See letter from Mercer.

commenters urged the Commission to retain the requirement.¹⁴⁹ One of these commenters stated that this disclosure provides investors with valuable information that can be used in assessing productivity growth, compensation measures, and capital allocation.¹⁵⁰ A number of commenters recommended that the Commission require additional information regarding the number of persons employed by the registrant, such as the number of full-time, part-time, and contingent workers; the number of seasonal employees; the ratio of full-time to part-time employees; or the number of domestic and foreign employees.¹⁵¹ Some commenters, however, stated that the requirement to disclose the number of employees was arbitrary, outdated, and of limited use.¹⁵²

c. Final Amendment

After considering public comments, we are adopting this amendment substantially as proposed with certain modifications. Under the final amendments, Item 101(c) will require, to the extent such disclosure is material to an understanding of the registrant's business taken as a whole, a description of a registrant's human capital resources, including any human capital measures or objectives that the registrant focuses on in managing the business. We believe that, in many cases, human capital disclosure is important information for investors. Human capital is a material resource for many companies and often is a focus of management, in varying ways, and an important driver of performance.

The final amendments identify various human capital measures and objectives that

¹⁴⁹ See, e.g., letters from CII, 33 Organizations, PRI and CtW.

¹⁵⁰ See letter from CtW.

¹⁵¹ See, e.g., letters from CalSTRS, Domini, CalPERS, CII, Burton, BCI, NYC Comptroller, ICEE, LGIM, OST, LACERA, PRI, Hermes, SEIU, CFA Institute, CtW, ICGN, Towers Watson, AFL-CIO, HCMC, Sen. Warner, CalPERS, SIF and NYSCRF.

¹⁵² See, e.g., letters from EEI and AGA, CCMC, Hermes, Better Markets, CalSTRS, FedEx and Mercer.

address the attraction, development, and retention of personnel as non-exclusive examples of subjects that may be material, depending on the nature of the registrant's business and workforce. We emphasize that these are examples of potentially relevant subjects, not mandates. Each registrant's disclosure must be tailored to its unique business, workforce, and facts and circumstances. Consistent with the views expressed by some commenters, we did not include more prescriptive requirements because we recognize that the exact measures and objectives included in human capital management disclosure may evolve over time and may depend, and vary significantly, based on factors such as the industry, the various regions or jurisdictions in which the registrant operates, the general strategic posture of the registrant, including whether and the extent to which the registrant is vertically integrated, as well as the then-current macro-economic and other conditions that affect human capital resources, such as national or global health matters.¹⁵³ Although several commenters expressed concern that the principles-based approach could result in less comparability (as compared to a more prescriptive approach), given the varied and evolving nature of human capital considerations, we believe that this approach will likely lead to more meaningful disclosure being provided to investors. Moreover, we do not believe that prescriptive requirements or a designated standard or framework will ensure more comparable disclosure given the variety in registrant operations as well as how registrants define, calculate, and assess human capital measures.¹⁵⁴ Furthermore, we note that

¹⁵³ See, e.g., letters from Mercer and HR Policy.

¹⁵⁴ See, e.g., U.S. Gov't Accountability Office, GAO-20-530, PUBLIC COMPANIES: DISCLOSURE OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE FACTORS AND OPTIONS TO ENHANCE THEM (July 2020), available at <https://www.gao.gov/assets/710/707949.pdf> (finding lack of consistency across companies that use the same framework to assess environmental, social, and governance (ESG) matters); Alex Edmans, *Grow the Pie: How Great Companies Deliver Both Purpose and Profit* (2020) (stating that non-financial measures are inherently incomparable because they depend on a company's unique purpose).



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