

Faith, Finance and Fiduciary Duty September 2015



I see interesting parallels among emerging approaches to investment beliefs and strategy; recent thinking on fiduciary duty; and the world view of the world's greatest faiths. What these seem to me to have in common is a recognition of interconnectedness and the importance of functioning systems and their preservation. Parts cannot flourish without the whole. Pursuing the short term without thought for the long term is self-defeating. The language and terminology differ, and the overlap is far from complete; but my sense is that the underlying concepts are closely related. Climate change and financial crisis seem to be prompting new ways of thinking in the investment and legal communities that bear a striking resemblance to age-old wisdom.

I offer the quotes below with no further commentary, in the hope of stimulating reflection and feedback.

1. Faith

*The Encyclical Letter Laudato Si' of the Holy Father Francis on Care for our Common Home*¹

“Laudato si’, mi’ Signore” – “Praise be to you, my Lord”. In the words of this beautiful canticle, Saint Francis of Assisi reminds us that our common home is like a sister with whom we share our life and a beautiful mother who opens her arms to embrace us.’ (para. 1)

‘This sister now cries out to us because of the harm we have inflicted on her by our irresponsible use and abuse of the goods with which God has endowed her. [...] We have forgotten that we ourselves are dust of the earth (cf. Gen 2:7); our very bodies are made up of her elements, we breathe her air and we receive life and refreshment from her waters.’ (para. 2)

¹http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html

‘It cannot be emphasized enough how everything is interconnected. Time and space are not independent of one another, and not even atoms or subatomic particles can be considered in isolation. Just as the different aspects of the planet – physical, chemical and biological – are interrelated, so too living species are part of a network which we will never fully explore and understand.’ (para. 138)

‘When we speak of the “environment”, what we really mean is a relationship existing between nature and the society which lives in it. Nature cannot be regarded as something separate from ourselves or as a mere setting in which we live. We are part of nature, included in it and thus in constant interaction with it.’ (para. 139)

The Islamic Declaration on Global Climate Change – August 18, 2015²

‘Our species, though selected to be a caretaker or steward (khalifah) on the earth, has been the cause of such corruption and devastation on it that we are in danger of ending life as we know it on our planet. This current rate of climate change cannot be sustained, and the earth’s fine equilibrium (mizān) may soon be lost. As we humans are woven into the fabric of the natural world, its gifts are for us to savour. But the same fossil fuels that helped us achieve most of the prosperity we see today are the main cause of climate change. Excessive pollution from fossil fuels threatens to destroy the gifts bestowed on us by God, whom we know as Allah – gifts such as a functioning climate, healthy air to breathe, regular seasons and living oceans. But our attitude to these gifts has been short-sighted, and we have abused them. What will future generations say of us, who leave them a degraded planet as our legacy? How will we face our Lord and Creator?’

A Rabbinic Letter on the Climate Crisis³

‘In Leviticus 26, the Torah warns us that if we refuse to let the Earth rest, it will “rest” anyway, despite us and upon us – through drought and famine and exile that turn an entire people into refugees.

This ancient warning heard by one indigenous people in one slender land has now become a crisis of our planet as a whole and of the entire human species. Human behavior that overworks the Earth – especially the overburning of fossil fuels - crests in a systemic planetary response that endangers human communities and many other life-forms as well.’

² <http://islamicclimatedeclaration.org/islamic-declaration-on-global-climate-change/>

³ <https://theshalomcenter.org/torah-pope-crisis-inspire-400-rabbis-call-vigorous-climate-action>

*Statements by His Holiness the 14th Dalai Lama*⁴

‘Our ancient experience confirms at every point that everything is linked together, everything is inseparable.’

‘Everything is interconnected. My interest is linked to everyone else’s. Our survival and future are linked. Therefore the destruction of your so-called enemy is actually the destruction of your self.’

*Hindu Faith Statement – Alliance of Religions and Conservation*⁵

‘These days it looks as if human beings have forgotten that a particular natural condition on Earth enabled life to come into existence and evolve to the human level. Humanity is disturbing this natural condition on which his existence, along with the existence of all other forms of life, depends. This is like the action of a woodcutter cutting a tree at the trunk, on the branch on which he is sitting. According to Hindu religion, “dharanath dharma ucayate” —that which sustains all species of life and helps to maintain harmonious relationship among them is dharma. That which disturbs such ecology is adharma.’

2. Finance

*PFZW – Pensioenfonds Zorg en Welzijn (Netherlands) - Investment Framework 2013-2020*⁶

‘A sustainable, viable world is necessary in order to generate sufficient returns over the long term. [...] Making sustainability an integral part of the investment policy therefore contributes to returns over the long term.’

*Local Government Superannuation Scheme (Australia) – Sustainable and Responsible Investment Policy*⁷

‘LGS is long term in nature, and [...] the long term prosperity of the economy and the wellbeing of members depends on a healthy environment, social cohesion and good governance of LGS and the companies in which it invests.’

*Washington State Investment Board – Investment Beliefs*⁸

⁴ <http://www.dalailamaquotes.org/category/dalai-lama-quotes-on-life/>

⁵ <http://www.arcworld.org/faiths.asp?pageID=77>

⁶ http://www.pfzw.nl/Documents/Over-ons/PFZW_Boekje_Beleggingskader.pdf

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⁸ <https://www.lgsuper.com.au/documents/policies/LGS%20Sustainable%20and%20Responsible%20Invest%20Policy.pdf>

‘The WSIB has a long investment horizon and therefore is subject to complex and systemic global risks that unfold over time, including financial risks resulting from global climate change. Many of these risks are difficult to quantify, but nevertheless, we consider all identifiable risks in our investment process and believe thoughtful consideration of these evolving global challenges is inseparable from long-term investment strategy and performance.’

CalPERS – Foreword by Henry Jones, Chair of Investment Committee, to the UNEP Inquiry Working Paper ‘Financial Reform, Institutional Investors and Sustainable Development’⁹

‘As one of the world’s largest investors, we have long been convinced of the need to think in terms of sustainability. Our institution needs to be sustainable in order to deliver the commitments on pension and health benefits we have made to our beneficiaries. This means our investment returns need to be sustainable. This in turn means the companies we invest in need to operate in a sustainable way. And this means the economy, the environment and the society on which they depend must be sustainable too.’

Saker Nusseibeh, Chief Executive, Hermes Investment Management – ‘All Economic Activity Needs a Moral Compass’¹⁰

‘If we want a model that provides sustainable returns over the long term, we cannot just think in terms of nominal returns within the context of dry financial models. We also need to think holistically in terms of our future wellbeing [i.e. in terms of sustainable development].’

3. Fiduciary Duty

Law Commission (UK) – Fiduciary Duties of Investment Intermediaries¹¹

‘6.50 In their response to our short paper, UNISON pointed out that pension trustees “are owners not of just a handful of assets, but of a slice of the economy as a whole”. As the performance of investment funds “is directly correlated to the overall performance of the British and world economy”, it is said that trustees ought to consider the effect of their

⁸ http://www.sib.wa.gov/financial/pdfs/db_investment_beliefs.pdf

⁹ http://apps.unep.org/publications/pmtdocuments/-/Financial_Reform,_Institutional_Investors_and_Sustainable_Development_A_Review_of_Current_Policy_Initiatives_and_Proposals_for_Further_Progress-201.pdf

¹⁰ www.theguardian.com/commentisfree/2015/jan/25/investors-should-keep-a-moral-compass-inside-their-portfolio

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325508/41342_HC_368_LC350_accessible.pdf

decisions on the economy as a whole. This theory is often described as “Universal Ownership” and is strongly promoted by Hawley and Williams. They contend that:

... the time has come for institutional investors to explicitly recognize that economy-wide, macroeconomic issues heavily influence the returns they will earn on their investments.

6.51 This raises questions where, for example, a major British company faces a takeover bid from a foreign firm. Should the trustees vote in favour on the ground that the scheme would make money from the deal, or against on the ground that the deal would damage the UK economy?

6.52 Trustees should consider beneficiaries’ interests and the impact of any takeover on the scheme’s assets in deciding how to act. The question trustees would need to consider is whether the potential damage to the UK economy is a financial factor or a non-financial factor.

6.53 In some circumstances, damage to the wider economy might be considered a financial factor, as it will impact on the scheme’s portfolio as a whole. The wider economic effect of a takeover may impair trustees’ ability to generate returns over the longer term. In the Consultation Paper we said that the aim of a pension fund is to secure returns across the whole portfolio. Therefore there can be no legal objection to making a decision which, after due consideration, is designed to provide financial benefits to the portfolio as a whole.’

*Edward J. Waitzer and Douglas Sarro – Fiduciary Society Unleashed: The Road Ahead for the Financial Sector*¹²

‘Investors rely on a common infrastructure: stock markets that should offer investors fair and equitable access to the capital markets; investment managers, consultants, and advisers who should be trusted to act in the best interests of their clients; companies that should adhere to sound corporate governance principles that foster long-term growth; and a sustainable natural environment capable of facilitating further human progress. If this infrastructure is allowed to fail, all investors, present and future, will lose. The duty of loyalty, as it is increasingly envisioned by courts, regulators, and legislators, imposes a similar resulting obligation on financial actors to preserve and continue to develop this infrastructure for the public good. [...]

¹² http://www.ippfa.org/whats_new/news_items/2015/2015_01_26_Fiduciary_Society_Unleashed.pdf

In summary, the duty of loyalty requires fiduciaries to take proactive steps to invest (and encourage investment) for the long term, in a way that serves the best interests of their beneficiaries. This means charting a course for investment that takes account of important social and economic challenges, including effective corporate governance, human rights, and sustainable development.’

*Murray Gold and Adrian Scotchmer, Koskie Minsky LLP – Climate Change and the Fiduciary Duties of Pension Fund Trustees*¹³

‘Systemic factors that underlie the long-term benchmark performance of financial markets are critically important for long-term pension investments, and pension fiduciaries, particularly those engaged with large pension plans, may engage governments on climate issues relevant to their long-term investment policies in the best interests of beneficiaries.’

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¹³ http://www.share.ca/files/KM_Climate_Change_Paper_web.pdf