FRONTIERS OF LAW IN CHINA
VOL. 15 DECEMBER 2020 NO. 4
DOI 10.3868/s050-009-020-0025-3

FOCUS

NATURAL LAW IN A CHANGING WORLD

NATURAL LAW, BASIC GOODS, AND FIDUCIARY ALTRUISM

WU Zhicheng[*]

Abstract Even though fiduciary duties take the highest position in the spectrum of legal altruism, and legal fiduciary altruism sometimes differs from moral fiduciary altruism, natural law morality is not necessarily useless in helping to explain, determine, and justify concrete rules in fiduciary law. Five specific inspirations, in addition to divergences, can be drawn by a closer look at the seven basic goods of John Finnis' natural law theory. First, the basic good of life may help to determine the boundary of the best interest test under the duty of loyalty. Second, the basic good of play, in particular the distinction between business community and play community may help to justify the separate treatment between civil agency and commercial agency regarding the unconditional power of immediate termination. Third, practical reasonableness may help to explain the rule against set-off under the duty of no conflict. Fourth, different cultural notions of sociability may lead to distinct understandings with regard to the no-profit rule. Fifth, different attitudes towards knowledge in various religious beliefs may create distinct understandings about the burden of informed consent.

Keywords natural law, basic goods, fiduciary duties, altruism

INTRODUCTION ····· 432
I. LAW AND MORALITY IN FIDUCIARY ALTRUISM ····· 433
A. Altruism in Fiduciary Law ····· 433
B. Law vs. Morality in Understanding Altruism ····· 435
II. INSPIRATIONS FROM BASIC GOODS ····· 438
A. Life, Sacrifice, and Duty of Loyalty ····· 439
B. Play, Business, and Termination of Fiduciary Relationship ····· 441

[*] WU Zhicheng (吴至诚), D. Phil. in Law, Faculty of Law, University of Oxford, Oxford, UK; Assistant Professor, School of Law, Renmin University of China, Beijing 100872, China. Contact: wu.zhicheng@ruc.edu.cn.

This article is supported by the Fundamental Research Funds for the Central Universities, and the Research Funds of Renmin University of China (20XNF003). I wish to thank Professor John Finnis and Associate Professor Guo Rui for helpful comments on the ideas of this paper. Any errors are my own.

C. Practical Reasonableness and No Conflict of Interest 445
III. DIVERGENCE IN BASIC GOODS 446
A. Sociability, Friendship, and No Profit 446
B. Religion, Knowledge, and Informed Consent 449
CONCLUSION 450

INTRODUCTION

The concept of "fiduciary duties" has long been recognized in common law jurisdictions and has gradually become a popular concept in China's civilian jurisdictions. While the understanding of the scope and content of fiduciary varies in common law jurisdictions,[1] there is a commonly recognized core. Specifically, fiduciary duties are a set of duties owed by the fiduciary to the beneficiary, according to which the fiduciary shall act in the best interest of the beneficiary in good faith, the fiduciary cannot incur a conflict of interest between him/herself and the beneficiary or among beneficiaries, and the fiduciary cannot obtain profits from his/her position as a fiduciary without the informed consent of the beneficiary.

Chinese commercial law generally and functionally recognizes fiduciary duties, though not yet in a notional way. Specifically, in company law, directors owe fiduciary duties to the company,[2] though it is difficult to find a similar authority confirming that promoters owe fiduciary duties to the company at its incorporating stage similar to the way directors owe fiduciary duties to the company having finished its incorporation process.[3] In trust law, a trustee owes duties of loyalty, no conflict, and no profit to beneficiaries.[4] In partnership law, duties of no conflict and no profit are provided, but there is no such duty of loyalty.[5] In agency law, such types of provisions cannot be found in contract law for generally mandating regulating agents, but they can be found in specialized laws for, say, practicing lawyers.[6] Overall, fiduciary rules in Chinese law are still in the process of being detailed in the sense that fiduciary rules are currently written in an abstract way without many cases for reference to conduct context-based analyses. On the one hand, these factors do cause lacuna, adding difficulties in applying such rules.

---

[1] See for example Paul Finn, *Fiduciary Obligations: 40th Anniversary Republication with Additional Essays*, The Federation Press (Sydney), at 308–311 (2016); Jennifer G. Hill & Matthew Conaglen, *Directors' Duties and Legal Safe Harbours: A Comparative Analysis*, in D. Gordon Smith & Andrew S. Gold eds. *Research Handbook on Fiduciary Law*, Edward Elgar Publishing (Cheltenham), at 305–309 (2018).

[2] 中华人民共和国公司法 (2018 修正) (Company Law of the People's Republic of China [2018 Amendment]), Art. 148.

[3] Id., Art. 94.

[4] 中华人民共和国信托法 (2001) (Trust Law of the People's Republic of China [2001]), Arts. 25–28.

[5] 中华人民共和国合伙企业法 (2006 修正) (Partnership Enterprise Law of the People's Republic of China [2006 Revision]), Arts. 32, 96.

[6] 中华人民共和国律师法 (2017 修正) (Lawyers Law of the People's Republic of China [2017 Amendment]), Art. 39; Code of Practice for Lawyers [2017 Amendment], Art. 39.

On the other hand, these lacunae remain the possibility for us to interpret these abstract fiduciary rules in a morally justifiable fashion.

Among various branches of jurisprudence, natural law is a prominent branch because it focuses on law and morality. This article focuses on the seven "basic goods" raised by Professor John Finnis, namely, life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion.[7] The first section gives a brief illustration on the pre-existing research regarding the relationship between law and morality in fiduciary altruism, together with corresponding hypothetical examples in Chinese law. The second section argues that three of the seven basic goods, namely, life, play, and practical reasonableness, are helpful in understanding three issues in fiduciary law. The third section argues that culture and religion differences may lead to discrepancies in understanding certain concepts in fiduciary law; the conclusion follows.

I. LAW AND MORALITY IN FIDUCIARY ALTRUISM

The idea that fiduciary duties are not solely contractual can be understood in two ways. The first way to understand them is that there is no contract to be found in certain kinds of fiduciary scenarios. An example is that a trustee usually has no contractual relationship with his/her beneficiary where the settlor does not set him/herself as the beneficiary. Another example is that a director appointed by shareholder meetings is not necessarily seen by many company lawyers as having entered into a contract with the director's company. Moreover, non-consensual fiduciary relationships exemplified by constructive trust and agency by operation of law are also not based on contracts.

The second but more fundamental way to understand fiduciary duties, is that they impose a higher moral standard than normal contractual duties and tortious duties, that is, duties not to interfere with others' rights. It is in this sense that not only doctrinal lawyers but also legal theorists view the relationship between fiduciary duties and contractual duties as morally not overlapping but divided. For instance, when criticizing Professor Roberto Unger's critical legal studies, Professor John Finnis said that a contract cannot be treated "as only a fraction of the legal universe, a universe in which … fiduciary obligations and trust abound."[8]

A. Altruism in Fiduciary Law

There is a long-established fiduciary tradition in common law jurisdictions that came

[7] See John Finnis, *Natural Law and Natural Rights* (2nd edition), Oxford University Press (Oxford), at 86–90 (2011).

[8] John Finnis, *Philosophy of Law: Collected Essays Volume IV*, Oxford University Press (Oxford), at 313 (2011).

about after the 18th-century English milestone case *Keech v. Sandford*.[9] A relatively clear statement separating fiduciary duties and contractual duties can be found in an early 20th-century celebrated case, *Meinhard v. Salmon*, where Justice Cardozo said:

> *Many forms of conduct permissible in a workday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive is then the standard of behavior. As to this, there has developed a tradition that is unbending and inveterate*.[10]

Professor Peter Birks systematically put forward an analysis of fiduciary altruism.[11] Based on the reason why someone acts in the interests of another, altruism can be classified into three categories, namely, (i) mechanical altruism, denoting genetically dictated actions done in the interests of another, focusing on conduct; (ii) moral altruism, denoting humanity or religion motivated actions done in the interests of another, focusing on virtue; and (iii) legal altruism, falling somewhere in between mechanical altruism and moral altruism, focusing on both conduct and virtue. Legal altruism can be further divided into three sub-categories. The first level, which is the lowest, is called "negative," often seen in tort scenarios. At this level, one is allowed to pursue his/her own interests alone, save that he/she shall perform his/her duty of care, thereby preventing reasonably foreseeable harm to others. The second level, which is in the middle, is called "positive," often seen in contract scenarios. At this level, different from the first level of legal altruism, one shall not only pursue his/her own interests to the extent of avoiding willful or negligent infringement of the counter-party's rights, but shall also make the counter-party's situation better off. The third level, which is the highest, is called "positive-and-disinterested." At this level, one shall not see the counter-party as a market player but as a vulnerable beneficiary in need of his/her loyalty. This means that many things that can be done to a market player cannot be done to a beneficiary, such as secret discounts, secret commissions, business opportunities, self-dealing and related-party transactions.[12] Professor Paul Finn also gave three similar levels of standards of behavior

---

[9] Sel Cas T King 61, 25 ER 223 (1726).

[10] *Meinhard v. Salmon*, 164 NE 545, 546 (1928).

[11] Peter Birks, *The Content of Fiduciary Obligation*, 34 Israel Law Review, 3, 14–22 (2000).

[12] Apart from a literal progressive relationship from the labels "positive" and "positive-and-disinterested" in the words of Birks, there is another "a fortiori" relationship between the second level of legal altruism and the third level of legal altruism, described as "subsidiarity," is that fiduciary duties "assist with securing the proper performance of non-fiduciary duties by seeking to insulate fiduciaries against situations in which they might be swayed away from providing such proper performance." See Matthew Conaglen, *Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties*, Hart Publishing (Oxford), at 75–76 (2010). The performance of all fiduciary duties refers to the discharge of all other non-fiduciary duties. Thus, a trustee who consciously acts in good faith with the best intentions and without incurring conflict of interests or obtaining profits shall not be liable for breach of duty of care for negligently investing the same trust fund in a wrong way from a consequentialist perspective: *Walker v. Stones* [2001] QB 902.

that are progressive, namely, "unconscionability," "good faith," and "fiduciary," showing a graduated scale in balancing one's self-interested behavior and the counter-party's interests.[13]

B. Law vs. Morality in Understanding Altruism

Altruism is admittedly a good philosophical term linking law and morality in tort, contract, and fiduciary scenarios. However, this does not necessarily mean that every single fiduciary duty has a moral ground and can be justified by such a moral ground. Legal fiduciary altruism sometimes may counter-intuitively deviate from the correlative moral fiduciary altruism that would be considered by a reasonable person. In this regard, it was correctly pointed out by Professor Andrew S. Gold that legal loyalty may in many ways conflict with extra-legal (moral) loyalty.[14]

Specifically, private law generally takes an individualist approach based on each party's free will; the meaning of the "duty of loyalty" in the legal sense is that the fiduciary should strictly follow the beneficiary's preferences as long as the beneficiary voluntarily assumes the risk of his/her choice, even if the relatively more experienced fiduciary feels morally apologetic that the beneficiary's subjective choice is very likely to be, in the end, not in his/her best interests. Taking trust as an example, this situation is somewhat equivalent to the trustee's duty to comply with the terms of the trust. In the homeland of trust law, it was said by Lord Browne-Wilkinson that the "basic right of a beneficiary is to have the trust duly administered in accordance with the provisions of the trust instrument, if any, and the general law."[15] Even if the trustee perceives in good faith that acting in violation to the trust document would probably realize the best interests of the beneficiary, the trustee cannot do so without bearing liability for breach of trust.[16] Such an idea is also accepted by Chinese trust law, where it is stated that the "trustee shall adhere to terms in the trust document and shall handle the trust affairs in the best interests of the beneficiary."[17] This is different from the moral sense of "loyalty" from a paternalistic thinking pattern. Similarly, parents may feel themselves morally disloyal to their child even when the child has become a young adult if they do not agree with the child's choice but still decide to respect and follow such a choice. Doctors, lawyers, and professional advisors may equally feel themselves morally disloyal to their clients if they, by "legal obedience"—following the law because the law says so—choose to do things

---

[13] See Paul Finn, *Fiduciary Obligations: 40th Anniversary Republication with Additional Essays*, The Federation Press (Sydney), at 312–333 (2016).

[14] See Andrew S. Gold, *Accommodating Loyalty*, in Paul B. Miller & Andrew S. Gold eds. *Contract, Status, and Fiduciary Law*, Oxford University Press (Oxford), at 185–212 (2016).

[15] *Target Holdings v. Redferns* [1996] AC 421, 434.

[16] Though the trustee may be fully or partially relieved from such liability at the court's discretion: Trustee Act 1925, s 61.

[17] See fn. 4, Art. 25 para. 1.

according to what the client wishes instead of doing what they think is best for their clients.

The examples given in the preceding paragraph only reveal one set of scenarios involving the tension between law and morality in fiduciary law because in those examples, the purpose of the morality argument invoked by the fiduciary is still focused on the best interests of the beneficiary, although the beneficiary does not agree. Another set of scenarios is where the fiduciary morally thinks it inappropriate to act solely in the best interests of the beneficiary without taking anything else into consideration.

For instance, directors owe a duty of loyalty to their company.[18] As a result, when making business decisions, directors shall do their best to help the company obtain as many profits as possible. A director of a manufacturing company often confronts the issue of a cost–benefit analysis. If the manufacturing process creates pollutive emissions into the air or water, the director would have to consider whether it is economically beneficial for the company to spare money in purchasing environmentally friendly facilities or paying extra fees to pollution treatment plants. Such a measurement involves a monetary comparison between the amount of potential liabilities if the company were to spend nothing for environmental protection and the amount of money the company would spend for anti-pollution purposes. A company could be liable for a fine ranging from 100,000 to 1,000,000 yuan for unauthorized or excessive emission of air and inland water pollution.[19] The fine for such emission of pollution into the sea ranges from 20,000 to 100,000 yuan.[20] Thus, if the expected profits to be gained by the company from manufacturing products in breach of the environmental protection rules is substantially higher than the expected fine issued by the government against the company for doing so, and the company's breach is not to be done in a serious way that could trigger further severe administrative sanctions like compulsory dissolution of the company or criminal liability for the director, it seems that the director, by performing the duty of loyalty to the company, ought to choose the illegal option at the expense of the environment in order to help the company to earn as much money as possible. After all, as a profit-oriented legal entity,[21] the best interests of the company is literally measured by the size of profits gained. Such a choice can be particularly justified by not taking a natural law approach, so that there is no moral advantage by following rather than breaking the environmental law.

By contrast, suppose the director is not morally indifferent, and therefore prefers the legal option for the company to purchase environmentally friendly facilities or pay extra fees to pollution treatment plants, causing the company to be unable to achieve the maximum profits; would the director be held liable for breaching the duty of loyalty to

---

[18] Sec fn. 2, Art. 147.

[19] 中华人民共和国大气污染防治法 (2018 修正) (Atmospheric Pollution Prevention and Control Law of the People's Republic of China [2018 Amendment]), Art. 99; 中华人民共和国水污染防治法 (2017 修正) (Water Pollution Prevention and Control Law of the People's Republic of China [2017 Amendment]), Art. 83.

[20] 中华人民共和国海洋环境保护法 (2017 修正) (Marine Environment Protection Law of the People's Republic of China [2017 Amendment]), Art. 73.

[21] 中华人民共和国民法典 (Chinese Civil Code [2020]), Art. 76 para. 1.

the company? The answer is prima facie in the positive through a textualist interpretation, though it by no means indicates that the director has no possible defense to invoke. The director may well say that the failure to achieve the best interests of the company can be justified by the fact that he/she is no more than obeying the law requiring the company to fulfill its duty to comply with the rules on environmental protection, as the law must not expect a fiduciary to act in an illegal way in order to discharge his/her fiduciary duty, and the duty of loyalty is no exception.

Compliance is not the only defense available for the director against the claim for breach of fiduciary duties; corporate social responsibility could be another one. Thus, take English law for instance, Section 172 of the Companies Act 2006 provides that a director must act in the way he/she considers, in good faith, would be most likely to promote the success of the company, and in doing so has regard to not only the issue of profitability, but also the impact of the company's operation on the community and the environment. Such a morality-related duty is also recognized as a legal duty in China,[22] which could be interpreted in such a way as to contain the duty to protect the environment.[23] Indeed, while there is not yet a widely accepted definition of corporate social responsibility, the common basic understanding is that:

> *Increasingly, corporations recognize responsibilities to society and engage in activities that contribute to the social good, beyond what is required by law or profit maximization. These activities fall into two general categories (1) strategic, such as stakeholder management, and (2) altruistic, such as environmental overcompliance.*[24]

Just like the meaning of the word "overcompliance" quoted above, the performance of corporate social responsibility sometimes involves activities done in a way more altruistic than what the law requires the company to do to benefit others. This is not limited to the context of environmental protection, but also covers those contexts where the company is not required by the government to help the community at the expense of its goal of profit maximization. This can be illustrated by a high-profile hypothetical case. Suppose a company does not produce masks according to the registered business scope,[25] though the director thinks it wise to let the company decide to produce masks temporarily during the COVID-19 period, as this decision is likely to generate more profits to the company

---

[22] Sec fn. 2, Art. 5.

[23] See GUO Rui, 道德、法律和公司——公司社会责任的成人礼 (*Morality, Law and Corporation: Corporate Social Responsibility's Coming of Age*), China Legal Publishing House (Beijing), at 103–107 (2018).

[24] Abagail McWilliams, *New Developments in the Study of Corporate Social Responsibility*, in Abagail McWilliams et al. eds. *The Oxford Handbook of Corporate Social Responsibility: Psychological and Organizational Perspectives*, Oxford University Press (Oxford), at 3 (2019).

[25] The starting point of an *ultra vires* contract entered into by a company (beyond its registered scope of business) with another person is valid unless there is any rule elsewhere negating the legal effect of such a contract: 最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（一） (*Judicial Interpretation I of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law*) (Supreme Court Interpretation No. 19, 1999), Art. 10.

due to the market's high demand, and this would be good for the local community as well, especially to those facing mask shortages. Unfortunately, however, the company fails to achieve success selling masks for various reasons, causing a deficit in the company's net assets. A question then arises. Would the director be held liable for breaching the duty of loyalty owed to the company? In other words, could the director raise corporate social responsibility as a good defense to be immune from bearing liability? Morally, a company's pursuit of profit maximization shall be subject to corporate social responsibility. The answer could therefore be said to depend on whether the company is recognized by the court as engaging in corporate social responsibility when producing and selling masks. It is indeed difficult to find out a clear-cut test for determining whether a particular business decision falls within the concept of corporate social responsibility, but this cannot lead to the conclusion that the general idea of morality is nonsensical. In this sense, the director's moral altruism may not generate as much benefit as legal altruism would, though this does not necessarily mean that the director is always liable for failing to achieve the best interests of the company.

All the above examples demonstrate possible inconsistencies between legal altruism and moral altruism. Nevertheless, it is possible for two conflicting ideas to be of help to each other, and the contest of law and morality in fiduciary law is no exception. A thorough exploration of the morality element, or say, the internal point of view for a person willing to act as a fiduciary for the benefit of another, is helpful for us to form a better understanding of applying rules in concrete scenarios, especially where there are moral or even legal uncertainties about specific issues in fiduciary law. The next section will elaborate this in detail.

II. INSPIRATIONS FROM BASIC GOODS

A sharp distinction between natural law theory and legal positivism is on the role of law as standards of behavior. A legal positivist such as Professor H. L. A. Hart would hold that the law, as a set of rules with people's internal point of view, is a set of rules not only for people to predict the outcomes of behaviors, but also for them to use as starting points of standards for the appraisal of their own and others' behaviors.[26] By contrast, a natural

[26] See H. L. A. Hart, *The Concept of Law* (3rd edition), Oxford University Press (Oxford), at 98 (2012), though this by no means indicates that legal positivists believe that the rule itself is always *the conclusive* justification for acting. While Hart's definition of a legal system requires the legal officers to believe in the law being a standard to appraise societal behaviour, that is not the same as saying that compliance with the law is thus a categorical justification of the act itself. The legal officer's belief may turn out to be wrong, and laws may indeed be unjust. For example, Hart's answers on the Hart-Fuller debate revealed that he does believe in opposing unjust laws that are deeply immoral in and of themselves. Consequently, compliance with rules just offers a starting point in the sense of a default position. As pointed out by Professor Denis Galligan describing Hart's idea, "a rule not only guides actions but is a standard against which actions are judged … there may be other reasons for overriding it in certain cases; in the absence of such factors, it provides a sufficient reason for acting." Denis Galligan, *Law in Modern Society*, Oxford University Press (Oxford), at 51 (2006).

law theorist such as Professor John Finnis believes that a black-letter law is not a reflexive justification on its own; one can and indeed needs to find some basic goods other than the set of rules itself to test if a particular rule normatively deserves to be one's standard of behavior. This section therefore aims to determine the role of three basic goods, namely, life, play, and practical reasonableness, in understanding detailed fiduciary rules.

A. Life, Sacrifice, and Duty of Loyalty

Life is one of the seven basic goods, and it refers to bodily health, intellectual health, freedom from the pain that betokens organic malfunctioning or injury, and transmission of life by procreation of children.[27]

As the irreducible core of fiduciary duties,[28] the duty of loyalty requires the fiduciary to act in good faith for the best interests of the beneficiary. Usually it sounds quite justifiable, given that fiduciary duties are the highest bundle of duties in the spectrum of legal altruism. However, it is not always easy for the fiduciary to keep such a high level of altruism in certain situations where the value of life, broadly defined, is at stake. The question is: If the fiduciary fails to meet a high standard, should the law give the fiduciary a defense based on self-preservation against the beneficiary's claim for breach, or should the fiduciary still be liable to the account?

Suppose a practicing lawyer knows that he can achieve a better outcome for his client if he devotes himself to an office dealing with evidence and arguments until very late in the evening, consecutively, for weeks or even months. However, he equally knows that in doing so, he will risk reducing his health condition to suboptimal health or even experience a sudden unexpected death due to cardiac arrest.[29] As a result, he decides to accept an offer to settle from the counter-party's lawyer, and he will no longer attempt to get a higher pecuniary award for his client by carrying on court proceedings but will instead accept a compromise that is somewhat beneficial to both sides. His client therefore brings a claim against him for breach of duty of loyalty.[30] Can the lawyer use life as a good defense in the sense that the human instinct of self-preservation leads to his decision of not trying to maximize the interests of his client? It is true that the lawyer's decision factually goes against the notion of wealth maximization, which could be said to

---

[27] John Finnis, *Natural Law and Natural Rights* (2nd edition), Oxford University Press (Oxford), at 86 (2011).

[28] *Armitage v. Nurse* [1998] Ch. 241, 253–254.

[29] Moreover, he knows that he is a specialist in this particular matter, so changing the lawyer probably would not make the client better off, not to speak of the time and cost involved in such a substitution.

[30] In practice, tort negligence is more commonly used in cases like this, though breach of fiduciary duties has an advantage in that the claimant does not need to prove the defendant's fault: *Regal (Hastings) Ltd. v. Gulliver* [1967] 2 AC 134, 137, 144; *Towers v. Premier Waste Management Ltd.* [2011] EWCA Civ 923, [2012] BCC 72 [10].

be a consequentialist test for discharging the duty of loyalty. However, from a natural law perspective, the value of human dignity should take precedence over any pecuniary value, so people, including those in a fiduciary position, should not be degraded as mere objects or tools for making money for someone else.[31]

Despite the fact that this is indeed a hypothetical case, the underlying concern is nevertheless a real issue in contemporary Chinese society. The so-called "996 (work from 9am to 9pm, six days a week)" is a notorious concept emerging from IT industry then spreading across nearly all industries, inducing people to revisit and criticize the culture of overtime work at the expense of heath.[32] Moreover, the news has continually reported sudden unexpected death or overwork death (*Karoshi*) of practicing Chinese lawyers in their 30s or 40s, adding to the panic among legal professionals.[33] These situations all demonstrate a gap between the law and reality in China. The legal requirement of fiduciary loyalty provides a prophylactic form of protection for the beneficiary to get as much as possible from the fiduciary's work, whereas the real concern is that fiduciaries in the field of legal services work too hard to be accused of laziness, making the best interest test in the duty of loyalty an overkill when it comes to fiduciaries' health conditions. One could reasonably argue that, by setting up a boundary between the strictest of best interests and the defense of self-preservation based on the value of life, it may result in practical difficulties in the sense that proving the causation that any particular overtime constitutes a severe health threat is unrealistic. Indeed, a medical institution normally does not issue an *ex ante* document anticipating such a threat, but rather an ex post document showing the connection between the harm that has already happened and the overtime work, which is too late for the lawyer in cases of severe health problems. However, this point is not enough to reject the proposal of the acceptability of self-preservation as a good defense against claims for breach of fiduciary duties, simply because evidential uncertainties cannot be a justification for the law to keep silent toward substantive matters. For instance, creditors claiming transaction avoidance in the contexts of a sham contract or a sham trust face similar difficulty in finding evidence in a sham transaction, though this does not negatively affect the legislature's attitude toward recognizing rules on transaction avoidance.[34]

The necessity of accepting self-preservation as a good defense to claims for breach of fiduciary duties is not necessarily limited to cases involving a potential threat to life but likely also to those involving a substantial reduction of life quality. Specifically, such a

---

[31] John Finnis, *Human Rights and Common Good: Collected Essays Volume III*, Oxford University Press (Oxford), at 246–247 (2011).

[32] Wikipedia, *996 Working Hour System*, available at https://en.wikipedia.org/wiki/996_working_hour_system (last visited Oct. 18, 2019).

[33] Wikipedia, *Karoshi*, available at https://en.wikipedia.org/wiki/Karoshi (last visited Oct. 18, 2019).

[34] See fn. 4, Art. 12; 中华人民共和国民法典 (Chinese Civil Code [2020]), Arts. 538–539.

necessity can also be seen by applying the US–Canadian version of domestic fiduciary duty (owed by parents to their children)[35] to the Chinese culture. While traditional Chinese parents are willing to pay bills for their adult children in a self-sacrificing way, even in the case of buying a house in a child's name by spending virtually all of their savings, they do not tend to view this as the performance of any kind of moral *duty* (not to speak of any legal one) owed to their children, but rather a kind of benevolent *gift* based on affection, despite the fact that they think that they normally have a moral duty to act in the best interests of their children in non-sacrificing scenarios. This somewhat resembles the example given by Birks regarding mechanical altruism. If a child falls into a river, the parents will probably jump without hesitating to calculate risk. This is because, generally speaking, people naturally value the passing on and survival of the gene by reproducing.[36] The underlying reason why parents give aid to children, financially or physically in a sacrificing way, is not because of legal coercion or their internal point of view about the fiduciary law regarding legal altruism and requiring them to make sacrifices, but because of a moral or mechanical altruism driving them to sacrifice. It is against the natural law to say that, because parents will normally die before their children, it is normatively justifiable for the law to require parents to save their children at the expense of their own lives.[37] Thus, if a couple refuses to purchase a house for their child to assist them with marriage at the expense of a substantial portion of their assets, the couple shall not receive legal blame for non-sacrifice despite the fact that their choice is not in the best interests of their children (at least in the short run). In sum, "sacrifice" can be said to be a synonym of altruism, but there are matters of degree when it comes to legal altruism as opposed to moral or mechanical altruism; if the fiduciary knows that the level of legal altruism required must be achieved at the expense of the very basic value of life, the law should normatively allow the fiduciary to hold self-preservation as a good defense.

B. Play, Business, and Termination of Fiduciary Relationship

Like directors, partners, and trustees, an agent can also be said to be a fiduciary of the principal. However, there is a unique point in the law of agency in China compared to the laws of companies, partnerships, and trusts, which is the power of both the agent and the principal to unconditionally and immediately terminate the fiduciary relationship.[38] In Chinese law, a partner cannot freely and immediately withdraw from the partnership without unanimous consent of all partners or other exceptional circumstances.[39] A trustee

---

[35] *M(K) v. M(H)* [1992] 3 SCR 6, because in the Anglo-Australian model, fiduciary duty has nothing to do with family issues between parents and children outside of exceptional ad hoc situations.

[36] See Birks, fn. 11 at 3, 16 (2000).

[37] For the natural law idea against the hierarchy of values and people, see part 3 of this section below.

[38] See fn. 21, Art. 933, its predecessor being 中华人民共和国合同法 (Contract Law [1999]), Art. 410.

[39] See fn. 5, Arts. 32, 96.

also cannot freely resign from office without the consent of the beneficiaries.[40] It is possible for a company director to be fired by the company based on a valid resolution of the shareholders' meeting,[41] though this is practically impossible in the case of a company trying to fire its director if that director is simultaneously the major shareholder, because such a director who is willing to remain in that position would easily prevent the company resolution from happening by voting against it, as the corporate governance voting rule in shareholders' meetings is not "one-head-one-vote" but "one-share-one-vote." By contrast, in a fiduciary relationship between a principal and an agent, both parties can elect to unconditionally and immediately terminate the contract of mandate. The one exercising the unconditional power of termination is only liable to compensate the counter-party for any damage attributable to him/her.

Comparatively speaking, such a Chinese position is different from a similar EU position according to the Commercial Agents (Council Directive) Regulations 1993/3053, which currently is also effective in England and Wales.[42] The EU position is stricter than the Chinese position in that the EU position does not recognize immediate termination without cause. The quickest way of getting rid of an agency relationship is termination by notice, with a minimum period of notice being one month, which is normally only applicable to agency contracts for an indefinite period as opposed to a fixed period.[43] However, there is a similarity between Chinese law and English law in terms of the form of remedy available to the claimant. In English law, breaching such a one-month minimum period does not lead to a specific performance, but to damages, because "the courts will not normally enforce the continuation of such a contract, whether directly by an order for specific performance or indirectly by injunction."[44] In Chinese law, likewise, if the principal elects to terminate a contract, the agent cannot sue for a specific performance but only for compensation of damages actually caused to the agent attributable to the principal.

This lenient position for termination of agency in Chinese law has been criticized by academics for many years. The prevailing academic view is to limit the application scope of unconditional and immediate termination by a dichotomy-based interpretation. The main related arguments are that the unconditional power of immediate termination is only

---

[40] See fn. 4, Art. 38.

[41] 最高人民法院关于适用《中华人民共和国公司法》若干问题的规定 (五) (*Judicial Interpretation V of the Supreme People's Court on Issues Concerning the Application of Company Law*) (Supreme Court Interpretation No. 7, 2019), Art. 3.

[42] Brexit has not yet been finalized at the time of this writing.

[43] Commercial Agents (Council Directive) Regulations 1993/3053, reg. 15. Similar provision can be found in the French Commercial Code, Art. L134–11.

[44] Peter G. Watts, *Bowstead & Reynolds on Agency*, 21st edition, Sweet & Maxwell (London), at para. 7, 46 (2017), citing *Cooperative Insurance Society Ltd. v. Argyll Stores (Holdings) Ltd.* [1998] AC 1 as the leading authority.

applicable to agents and principals in civil cases, by which it means cases where the agent does not run the matter in question as his/her business but as a mere ad hoc service of agency; such power is not generally applicable in commercial cases, meaning the agent runs the matter in question as his/her business in a consecutive way. Moreover, principals and agents in commercial scenarios, as opposed to civil scenarios, should be allowed to exclude the power of free and immediate termination via an explicit opt-out clause.[45] Thus, following the academic interpretation, suppose in a commercial agency relationship, a principal elects to terminate the contract with the agent; the commercial agent can then claim a specific performance as the primary form of remedy or damages in lieu of the value of performance interest.

As a result of academic pressure, the legislature finally accepted the suggestion to change the law. This can be illustrated by comparing the provision in the Contract Law 1999 and that in the Chinese Civil Code. Article 410 of the Contract Law 1999 provides that:

> *The principal or the agent may terminate the contract of mandate at any time. Where contractual termination leads to loss to the other party, unless for reasons not attributable to the terminating party, damages shall be paid accordingly*.

Article 933 of the Chinese Civil Code, replacing Article 410 of the Contract Law 1999, provides that:

> *The principal or the agent may terminate the contract of mandate at any time. Where contractual termination leads to loss to the other party, unless for reasons not attributable to the terminating party, such a terminating party under a gratuitous contract of mandate shall be liable in damages for direct losses caused by the inappropriately timed termination, and the terminating party under a non-gratuitous contract of mandate shall be liable in damages for direct losses sustained and benefits to be obtained by the other party*.

The question then is whether there is a normative reason for us to interpret the legislation in that fashion by drawing a line between civil and commercial agency? Merely pointing out the difference regarding the "profit-oriented" point between civil agency and commercial agency is not enough to conclude that immediate termination should normatively be granted to civil scenarios but not commercial scenarios. Indeed, one cannot say that Chinese agency law is indifferent to the issue of whether a particular

---

[45] See, for example, LÜ Qiaozhen, 委托合同中任意解除权的限制 (*The Limit of the Unconditional Power of Immediate Termination in the Contract of Mandate*), 9 法学 (Legal Science), 75 (2006); CUI Jianyuan & LONG Jun, 委托合同的任意解除权及其限制 (*The Unconditional Power of Immediate Termination and Its Limit in the Contract of Mandate*), 6 法学研究 (Chinese Journal of Law), 73 (2008); ZHAO Yijin, 商事合同解除权的特殊限制 (*The Special Limit of the Power of Termination in Commercial Mandate Contracts*), 2 国家检察官学院学报 (Journal of National Prosecutors College), 151 (2016); WU Teng, 委托合同任意解除与违约责任 (*Discretionary Termination of and Liability for Breach of Mandate Contract*), 2 现代法学 (Modern Law Science), 62 (2020).

agency relationship is profit-oriented. In the case of a gratuitous agency (usually in civil scenarios), the agent is liable to compensate the principal's loss only for willful conduct or conduct of gross negligence, whereas in cases of non-gratuitous agency (usually in commercial scenarios), the agent is liable to compensate the principal's loss as long as the agent is at fault, including willfulness, gross negligence, and ordinary negligence.[46] Given that there is a separate treatment in *actionable damages* responding to the "profit-oriented" point, the question then is why we still need another place, that is, *the power of termination*, to reflect the same kind of different treatment between civil and commercial agency. Additional theoretical inquiries are therefore necessary.

It is virtually common sense to say that the basis of an agency relationship is mutual confidence, so the law should not normally order parties to stick to an agency contract when one or all parties no longer wish to continue the relationship for want of mutual confidence. However, by adopting Finnis' distinction between a "business" community and a "play" community, one can tell that the natures of mutual confidence in civil and commercial scenarios differ from each other.

In the words of Finnis, the distinctive feature of a "play" community compared to a "business" community is that in the former, the incentive of participants willing to enter into a particular transaction or interaction is not that they "need to have any interest in the other participant" but is based on a common good of something called a "good play of the game."[47] Applying this model to the case of agency, the situation somewhat resembles civil scenarios where the principal and agency get together "for fun" or "for play" instead of "for money" in a broad sense in which each party wants the other to enjoy the entire process of the transaction. In many cases, the interactants might have had a prior mutual confidence based on friendship or familiarity before entering into the transaction in question, and they would like to keep this personal relationship after the transaction. In other words, the need for the persistence of a personal relationship instead of professionalism is the key to understanding agency in civil scenarios. Therefore, if either of the two parties somehow feels that he/she no longer wishes to keep a personal relationship with the counter-party because of losing confidence, there is no reason why the law should coerce the parties to continue the "game." By contrast, in a commercial agency relationship, the agent is a professional and the principal could be a layman client or could well be a company running certain type of business. The reason why such a scenario can be categorized into a "business" community is that neither of the parties relies on prior mutual confidence such as a friendship. Rather, they both depend on norms in a certain social sphere based on professionalism. Moreover, they do not really care whether both parties enjoy the entire process of the collaboration, but instead focus

[46] See fn. 34, Chinese Civil Code (2020), Art. 929 para. 1, its predecessor being 中华人民共和国合同法 (Contract Law [1998]), Art. 406 para. 1.

[47] See Finnis, fn. 7, at 140.

separately on whether the pursuit of objectives has been successful—the agent gets paid and the principal gets the matter solved. The co-ordination between the two parties is not valued by any party as a component of the counter-party's objective. As a result, if any of the parties in a commercial scenario arbitrarily decides to terminate the agency relationship merely because of lost confidence in the counter-party, the law should intervene by primarily imposing an order for specific performance or secondarily an order to pay money equivalent to performance interest. The value of keeping a sustainable order of a commercial transaction takes precedence over the value of following the parties' mutual confidence.

C. Practical Reasonableness and No Conflict of Interest

The basic good concerning the duty of no conflict is practical reasonableness, which is somewhat more complex than the concepts of the previous subsections. Practical reasonableness contains multiple ingredients. On the one hand, it is accordingly required that actions should be reasonably efficient and that we should act to advance the interest of the community. On the other hand, we must not set up a hierarchy among values themselves nor a hierarchy among people without these people's free choices.[48] Thus, in the eyes of natural law theorists, it is not a good idea to understand the requirements of efficiency and common benefit in a utilitarianist way, the gist of which is to admire actions for promoting rather than diminishing the happiness of the community, that is, the overall benefit of people involved in a particular matter.[49] Such an idea of fundamental impartiality can be exemplified by the famous trolley car case,[50] the finding of which showed that it was morally right according to the principle of utility but not to natural law to turn a running trolley car onto a side track to avoid crashing into five workers on the main track. In fiduciary law, the duty of no conflict requires not only the avoidance of a conflict between the fiduciary's interest and the fiduciary's duty to the beneficiary but also the avoidance of a conflict between multiple beneficiaries of the same fiduciary.

An example is a trust for multiple beneficiaries, including capital beneficiaries and income beneficiaries: If a trustee fails to maintain a balance between them, but enriches one party at the expense of another, then the trustee cannot be immune from liability by offsetting the profit made in one transaction against the loss in another. Thus, in a 19th century English trust law case, a testator left his estate, the majority of it being a mortgage, for a trustee for the benefit of his widow for life, and on her death for the

---

[48] See Germain Grisez, Joseph Boyle & John Finnis, *Practical Principles, Moral Truth, and Ultimate Ends*, 32 American Journal of Jurisprudence, 99, 137–138 (1987); See Finnis, fn. 7, at 105–109.

[49] See Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, Clarendon Press (Oxford), at 1–7 (1907).

[50] See Michael J. Sandel, *Justice: What's the Right Thing to Do?* Farrar, Straus and Giroux (New York), at 21 (2010).

claimant. According to the will, the trustee was required to convert the mortgage into the form of cash within one year after the death of the testator and then invest the money in securities. However, the trustee delayed such a conversion, allowing the widow to receive income from the mortgage interest for 10 more years. The claimant thus brought a successful action against the trustee for the difference in value. The trustee was not allowed to use offsets as a defense against the liability for the breach of trust despite the fact that the widow's gain exceeded the claimant's loss and the fact that no one was consequentially worse off, because the stock price in question at the moment of the trustee's actual purchase was substantially lower than the price of the same stock 10 years prior when the trustee should have made the purchase.[51] Even if the overall balance sheet of the beneficiaries as a whole is better off, it does not mean that the trustee can use this situation as a good defense against anyone among these beneficiaries who suffers a loss. The underlying rationale of such a case cannot be easily understood from a utilitarianist perspective, because even the capital beneficiaries were better off in the long run due to the trustee's delayed disposition of trust assets. However, the underlying rationale of such a case can be understood from the point of practical reasonableness and incommensurability in natural law theory as mentioned in the previous paragraph. Specifically, "evil may not be done for the sake of good," and "do to others as you would have them do to you."[52] To put it another way, where there are multiple beneficiaries in a fiduciary relationship, legal altruism shall be understood in an individualist rather than a collectivist way.

III. DIVERGENCE IN BASIC GOODS

We have already seen the contribution of some natural law basic goods to fine-tune the boundary of legal altruism in fiduciary law. However, like many other ideas and theories, when natural law spreads across the world, it is sometimes inevitable that people with different backgrounds may have different understandings of the same concept. This chapter is therefore attempting to give two examples showing culture-specific and religion-specific divergences and their possible effects on fiduciary altruism.

A. Sociability, Friendship, and No Profit

The historical origin of positive and disinterested fiduciary duties as opposed to reciprocal contractual duties tells us that there were two natural law basic goods, namely, sociability (i.e., friendship), that were reasons for fiduciaries at that time to do things in an altruistic way. One's view on his/her certain altruistic behavior toward another can also be said to be an act based on friendship or the pursuit of value, especially where one

---

[51] *Dimes v. Scott* (1827) 4 Russ 195, 38 ER 778.

[52] John Finnis, *Reason in Action: Collected Essays Volume I*, Oxford University Press (Oxford), at 246–247 (2011).

could have abused his/her power but intentionally chooses not to do so because of a feeling of nobleness and honor related to being loyal to another. The underlying moral reason why a fiduciary keeps his/her promise of doing good for his/her beneficiary may also have something to do with the fear of friendlessness, because in a small-scale society (in the old days) or a transparent society (in the digital era), if one constantly abuses another's confidence, then there is a danger that his/her goodwill will become bankrupt, so that at some time in the future, there is a possibility that no one will be willing to trust him/her any longer. In the words of Finnis, having friends is crucial for one's well-being, as "[o]ne can scarcely think of oneself as really well-off if one has no friends."[53] Moreover, if a fiduciary thinks reasonably in the long run, he/she should know that it is virtually inevitably for him/her to be a beneficiary in another fiduciary occasion throughout his/her entire life. If he/she breaches his/her fiduciary duty to be a "winner" at present in the short run, and everyone acts in breach like he/she did, then he/she would not dare to enter into a fiduciary relationship in the future, and the entire fiduciary system then collapses; this is ultimately against his/her interest and the interest of the entire society.

As noted by Professor Michele Graziadei, fiduciary duties initially sprang from non-commercial relationships that would be defined as commercial relationships by today's standard. Tracing back to Roman law, the contract of mandate was an honorific contract of service, which was sharply distinguished from, for instance, a mercenary contract of *locatio conductio* (loan for service, for use or for consumption).[54] Professor Alan Watson also stated that "the contract came into existence at all is a tribute to the great weight that the Romans placed upon friendship—friends were expected to do a great deal for one another."[55] Similarly to trustees in English legal history, where, even as late as the Victorian Era, the feeling of honor and friendship provided a true moral incentive for one to accept to hold a right on trust for someone else, despite the fact that the English society at that time had been more open to the expansion of profit-oriented commercial trustees to solve the problem of trustee shortage.[56]

In contrast, by taking a closer look at Chinese history, one can learn that the ancient Chinese were more acquiescent than the Romans to the breach of an altruistic promise, without the perspective that such a breach undermines sociability. On the one hand, there were sayings in the Confucian *Analects* teaching people to help others based on virtue to be a good human being, that "the mind of the superior man is conversant with

---

[53] See Finnis, fn. 7 at 142.

[54] See Michele Graziadei, *Virtue and Utility: Fiduciary Law in Civil Law and Common Law Jurisdictions*, in Andrew Gold & Paul Miller eds. *Philosophical Foundations of Fiduciary Law*, Oxford University Press (Oxford), at 288 (2014).

[55] Alan Watson, *The Evolution of Law: The Roman System of Contracts*, 2 Law and History Review, 1, 12 (1984).

[56] See Chantal Stebbings, *The Private Trustee in Victorian England*, Cambridge University Press (Cambridge), at 30–31 (2002).

righteousness; the mind of the mean man is conversant with gain."[57] *The Analects* also teaches people in terms of sociability to cherish friendship by keeping gratuitous promises to another and by being loyal in taking care of another's business.[58] On the other hand, Chinese culture seems to be rather tolerant toward actions in violation of an implicit promise of no profit, as if the beneficiary does not expect much from the fiduciary. This can be exemplified by two historical celebrities in China.

The first historical celebrity is GUAN Zhong, the most famous political and economic reformer of the Dukedom of Qi in the Spring and Autumn period. When GUAN Zhong's friend, BAO Shuya, the chief advisor of Duke Huan of Qi, recommended that GUAN Zhong to be the chancellor of Qi, the Duke and BAO discussed a past story between GUAN and BAO. Before GUAN and BAO were not yet politicians, they ran a business together in a form similar to a partnership, where the poorer GUAN provided management and the richer BAO provided money. When the partnership received an income, GUAN from time to time used the money to pay his personal debts in the first place, and then used the remaining money to be divided equally with BAO without informing BAO. However, BAO never made a claim for compensation against GUAN; he did not even think this was an infringement. Rather, BAO thought it noble to view GUAN's behavior as perfectly fine. While such a story of a breach of fiduciary duty was recorded as a part of written history, it hardly had any negative effect on GUAN, who received credit as one of the most prestigious officials throughout Chinese history.[59]

The second historical celebrity is CHEN Ping, a core advisor of the founder of the Han Dynasty. When CHEN Ping joined the Kingdom of Han, he abused his advisory job to secretly accept an enormous number of bribes from his colleagues. Later, he suggested to King LIU Bang (later the first Emperor, Emperor Gaozu of Han) to give him several thousands of kilograms of gold for him to carry out espionage activities against the Han rival, Kingdom of Chu in the Chu-Han Contention. Again, he never kept a record of spending as somebody in a fiduciary position, not to speak of disclosure to the King as the beneficiary about any corruption involved. However, like the story of GUAN Zhong, neither the King nor society ever looked down upon him despite the fact that his behaviors were definitely a breach of the fiduciary duty of no profit, even from a normative perspective.[60] In these two stories, neither of the two fiduciaries had any feeling of guilt in obtaining profit by misusing their fiduciary position, showing at least that the basic good of sociability or a sense of honor is not an uncontentious moral basis

---

[57] See Confucius, *The Analects*, Open Road Media (New York), Book IV Chap. XVI (2016).

[58] Id. at Book I Chap. IV.

[59] For the story of GUAN Zhong translated into English, see SIMA Qian, *The Grand Scribe's Records: The Memoirs of Pre-Han China*, Ed. William H. Nienhauser, Indiana University Press (Bloomington), Memoir 2 (1994).

[60] The volume of "Hereditary Houses of Han China" of *The Grand Scribe's Records*, where Chen Ping's story was recorded in "Hereditary House 26," has not yet been translated into English.

for Chinese fiduciaries to act disinterestedly.

B. Religion, Knowledge, and Informed Consent

Religion is also one of the basic goods in the eyes of many natural law theorists throughout history, exemplified by the celebrated Catholic teaching on natural law over millennia.[61] For instance, fiduciary law is said to be rooted in and therefore somehow justified by religion. "In Christian theology, Christ is the perfect fiduciary. He is the selfless steward who lays down his life for others."[62] For many people with a religious belief, they are quite used to adjusting their behaviors to match religious doctrines, so that "harmony with God is a basic human value."[63] However, there is more than one religion in the world, not to speak of the differences in various branches of a particular religion. Who can be sure that he/she has the correct understanding of a particular religious norm? Different religious branches may have different views on the knowledge issue, which is another basic good in Finnis' theory, meaning that all other things being equal, it is better to be well-informed than to be ignorant.[64] Such types of discrepancies may affect the internal point of view for a fiduciary in terms of understanding the positive and disinterested way of doing things required by fiduciary rules.

An example lies in understanding the so-called "informed consent" of the beneficiary as a requirement for discharging fiduciary duties.[65] How can the word "informed" be defined in professional contexts? For instance, a practicing lawyer may find it difficult to explain all relevant information comprehensively to laymen clients if the lawyer proposes making a compromise with the counter-party, so might a director of a high-tech company report comprehensively to all shareholders of a company if the director proposes entering into a self-dealing transaction. Divisions of labor currently create "language barriers" among people who are educated in different fields. By contrast, it is easier for a partner to explain a similar situation to co-partners with the same industrial background. Consequently, different people may have different thoughts as to whether these fiduciaries should perform the duty to inform as a way of "teaching" the beneficiaries regardless of whether the beneficiaries do have an interest in learning those professional languages.

---

[61] See Kevin L. Flannery, *The Natural Law in Catholic Ethics*, in Lewis Ayres & Medi Ann Volpe eds. *The Oxford Handbook of Catholic Theology*, Oxford University Press (Oxford), at 388–401 (2019).

[62] Mary Szto, *Limited Liability Company Morality: Fiduciary Duties in Historical Context*, 23 Quinnipiac Law Review, 61, 88 (2004).

[63] See Finnis, fn. 7 at 410.

[64] Id. at 72.

[65] There are, of course, exceptional fiduciary scenarios that impose a stricter duty that cannot be discharged by acquiring the beneficiaries' informed consent: See, for example, *Tito v. Waddell (No. 2)* [1977] Ch. 106 (trustee's self-dealing transaction with the beneficiary in English law) or 最高人民法院关于适用《中华人民共和国合同法》若干问题的解释（五）(*Judicial Interpretation V of the Supreme People's Court on Issues Concerning the Application of Company Law*) (Supreme Court Interpretation No. 7, 2019), Art. 1 (director's self-dealing transaction with the company in Chinese law).

A lesson can be drawn from the Age of Reformation, when there was a similar language barrier, though a genuine one in its narrow sense, between clergymen and ordinary Christians. Before Martin Luther's translation of the two Testaments with the help of the printing press and political fragmentation in the Holy Roman Empire in the 16th century, which made the Bible accessible and intelligible to everyday Germans,[66] a traditional southern German Catholic Christian would feel it fairly natural to rely on clergymen as agents of God, because an ordinary Catholic could not read the Bible him/herself. As a result, when a Catholic clergyman explained to a Catholic why a particular tax was raised or why a particular donation was encouraged in accordance with theological doctrines, even a kind-hearted clergyman did not think it necessary to translate and teach all the relevant provisions in the Bible to Catholics consulting him. Things were different in a northern German Protestant church, for instance, where ordinary literate Protestants were able to read the Bible to give their informed consent to calls from the Church due to the inexistence of language barriers. Placing these scenarios under a fiduciary framework, a Catholic clergyman at that time would be very reluctant to understand the meaning of "informed consent" according to the Protestant standard because it would generate quite a heavy burden for him to give advice to an ordinary Catholic if a particular issue might not lead to that Catholic's best interest or lead to a conflict of interest or profit.[67]

Religious language barriers occurred in China as on the European Continent. Although there were doctrines of Taoism written in Chinese, and doctrines of Buddhism translated into Chinese, it was still not easy, even for some literate believers, to obtain the precise meaning of a particular sentence, because many of these doctrines were not expressed in everyday vernacular, not even in classical Chinese. A historical lesson can therefore be drawn that, just because *nowadays* both Catholics and Protestants are able to read the Bible as they like does not mean that we can ignore the difference from what happened *in the past*. Similarly, just because the knowledge-based "language barriers" between people working in different disciplines may be overcome by the prevalence of AI and Big Data for laymen to anticipate outcomes *in the future* does not mean that we can simply ignore the *current* knowledge gap and treat all kinds of fiduciary–beneficiary relationships equally with regard to the meaning of "informed consent."

CONCLUSION

Compared to the relatively "developed" fields of torts and contracts in Chinese law,

[66] See Craig Koslofsky, *Explaining Change*, in Ulinka Rublack ed. *The Oxford Handbook of the Protestant Reformations*, Oxford University Press (Oxford), at 589–591 (2016).

[67] This by no means indicates that Catholics are more vulnerable to be misguided by their clergymen compared to Protestants. In the UK, for instance, there was a famous case where a woman donated too much of her wealth after joining a sisterhood under the undue influence of her Protestant spiritual director, but later on got advice from a Roman Catholic priest to realize the problem: *Allcard v. Skinner* (1887) 36 Ch D 145.

the "developing" field of fiduciary law here means that there are not only lacunae for us to fill in but there is also room for us to take the opportunity to rethink the content of fiduciary duties.

Fiduciary altruism is the highest level of legal altruism, requiring the fiduciary to act in the best interests of the beneficiary in a positive and disinterested way. While such an idea is based on moral considerations, legal altruism may sometimes deviate from moral altruism. However, this does not mean that lessons cannot be drawn from natural law. As elucidated in this article, Finnis' basic goods are inspiring ideas for normatively fine-tuning fiduciary duties. Specifically, the basic good of life entitles a fiduciary to use self-preservation as a good defense against a beneficiary's claim of a breach of the duty of loyalty in somewhat extreme cases. The basic good of play can be used to justify why the unconditional power of immediate termination should only be applied in civil agency scenarios representing play communities, as opposed to commercial agency scenarios representing business communities. The basic good of practical reasonableness in the sense of no hierarchy among values and people helps to explain why a trustee has no right to offset a loss caused to a beneficiary by a gain made for another beneficiary, even when the overall wealth is consequently better off.

However, with the idea of natural law spreading across the world, it is sometimes inevitable that people with different cultural and religious backgrounds may have different understandings of the same concept. For instance, Chinese history shows a certain tolerance toward breaches of duty of no profit and the underlying notion of sociability and friendship, which may lead to a different internal point of view of fiduciaries in China to be willing to obey such a duty in an absolute strict way. Another example is that European history shows that Catholic and Protestant believers may have different views on the meaning of knowledge and truth, which may lead to fiduciaries' different understanding of the concept of informed consent. Overall, this article is a preliminary think piece seeking to link natural law and fiduciary duties by drawing inspirations from a cross-sectional glimpse from one slice of the natural law cake.