Those who follow Powell in advocating that English law (or, indeed, any modern common law system) should adopt a general principle of good faith must overcome two fundamental objections: first, that there is no reason why contracting should be subjected to moral constraints - it is simply a matter of parties pursuing their own self-interest; and, secondly, that if moral constraints are to be introduced, this is unworkable until agreement is reached about whose (or which) morality is to serve as the reference point for a good faith doctrine.  

The first objection is easily dealt with. No one thinks that contract law is, or can be, morally neutral. Even the minimal constraints of the classical law reflect a certain kind of morality; and, even if contract is seen as essentially self-interested dealing, there are all sorts of moral (or public interest) constraints on the kind of agreements that the parties can enforce.

The more serious objection, therefore, is the second one, that a moral reference point must be specified.

The second objection is undoubtedly well taken. Good faith only makes sense relative to some particular moral reference point. What is that reference point? In this chapter, I have alluded to two reference points: (i) the standards of fair dealing recognised by the community of which the contractors are most proximately a part (a good faith requirement); and (ii) the standards of fair dealing and co-operation that would be prescribed by the best (i.e., most defensible) moral theory (a good faith regime). The former are the standards of a positive accepted morality; the latter are the standards of a critical (not necessarily accepted or recognised) morality. On the latter view, *uberrima fides* (which is beginning to be applied bilaterally in insurance law) becomes the rule rather than the exception.

[Set out in detail]

---

77 Cf the issues identified in section 6 of Thomas Wilhelmsson's chapter (Chapter 8 in this volume).


79 See Daniel Friedmann's chapter (Chapter 13 in this volume).

80 But must we choose one or the other? Generally, cf John Wightman's argument for pluralism in contract law in *Contract: A Critical Commentary* (London, Pluto Press, 1996); and, with specific reference to good faith, see his chapter in this volume.

Referring Principles:

1.1.1 - Good faith and fair dealing in international trade