

# Creating Ties That Bind

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**ABSTRACT.** The work of Donaldson and Dunfee (*Ties That Bind: A Social Contracts Approach to Business Ethics*, 1999) offers an example of how normative and descriptive approaches to business ethics can be integrated. We suggest that to be truly integrative, however, the theory should explore the processes by which such integration happens. We, therefore, sketch some preliminary thoughts that extend Integrative Social Contracts Theory (ISCT) by beginning to consider the *process* by which microsocial contracts are connected to hypernorms.

**KEY WORDS:** integrative social contracts theory, hypernorms, moral disagreement, reflective equilibrium

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## I

In their magisterial work, *Ties That Bind: A Social Contracts Approach to Business Ethics*, Donaldson and Dunfee (1999) attempt to square a view of ethical theory built on the idea of social contracts with much of the existing literature in business ethics. In doing so, they hope to place business ethics on firmer philosophical footing. In this article we suggest that, their integrative social contracts theory articulates an important and useful set of ideas ripe for further development and extension, whereas it does not fully escape the problems they attempt to solve. We have much sympathy for the idea of a contractual account of business ethics, and therefore, we seek to extend their ideas with an approach that views the moral “ties that bind” from more of a process perspective, as a conversation among engaged moral actors. We outline our approach here in honor of Tom Dunfee, who was an important conversational partner over many years.<sup>1</sup>

Donaldson and Dunfee are concerned with two problems that they see in the business ethics literature. The first is the lack of integration between normative and empirical approaches to the field; let us call this the problem of integration. The second is what they call, following Nagel (1986), “the view from nowhere.”

### *The problem of integration*

As business ethics has evolved as a discipline, it has attracted a more diverse group of scholars from a number of disciplines; an increasing number of social scientists employing empirical research methods have joined the conceptual analyses of philosophers who were the early founders of the discipline. This brings a certain pluralism to the field; while many

management scholars are concerned with collecting better data and making more accurate predictions, philosophers have continued their analysis from the viewpoint, largely, of analytical ethics. Philosophical business ethics is grounded in the normative ethical analysis of the relevance of principles, consequences, or character, with management scholars attending to the related descriptive and predictive investigations of actual organizational behavior. And as we have recently pointed out, an increasing number of scholars study *both* philosophical/normative texts *and* managerial/empirical texts (Harris and Freeman, 2008). Donaldson and Dunfee's work was an early clarion call to think about business ethics in this kind of integrated way; they strive to put forward a theory that shows how such integration can be achieved.

#### *The view from nowhere*

The second problem is related to the problem of integration – the separation of normative and descriptive – because Donaldson and Dunfee see the pervasive ethical “view from nowhere” as an examination from only an abstract point of view. Particular detail is wiped away to “discover” general philosophical principles or truths. This view from nowhere can be sterile and ultimately impotent since it is overly stylized and does not clearly connect to concrete actions. Due in large part to the efforts of scholars such as Tom Dunfee, there are now more legal scholars involved in the discipline, who are rooted in the details of business law and particular cases; legal analyses tend to dissolve the normative/empirical distinction, viewing the law as at once both normative and empirical. Nevertheless, Donaldson and Dunfee point out that the gap between general principle and concrete advice, especially in normative work in business ethics, is quite wide.

In order to address these problems, Donaldson and Dunfee propose a solution to these problems based on the idea of social contracts. They suggest that the general ideas of “fair contract” and “hypothetical consent” – which have been important pieces of the social contract tradition since Locke – remain as the philosophical keystones, but in a complicated and global business world, they yield only the view from nowhere. They suggest that there are many “hypernorms” which, while ultimately justified by a con-

tractual mechanism such as the one used by John Rawls, do not exist merely as abstract, general principles. Rather, Donaldson and Dunfee suggest that we take seriously the idea that there are local norms and principles which may well apply, especially in business, grounding the norms as something more concrete than generalized rules of thumb. They suggest that we combine the idea of overarching hypernorms (based on macrosocial contracts) with the extant “microsocial contracts” to form what they call integrative social contracts theory (ISCT).

The hypernorms are the focal point of a key tension that ISCT hopes to resolve. Donaldson and Dunfee want to avoid charges of relativism by retaining the philosophical certainty of the big principles, or hypernorms, which we would perhaps agree to behind a veil of ignorance. However, they also want to embody pragmatic relevance in their theory by letting particular communities influence the acceptable norms of behavior. This central tension is governed by one important boundary condition: these local norms can vary and change, provided they inhabit a “moral free space” that does not materially conflict with the hypernorms, which are taken as axiomatic, and look much like the idea of universal human rights (Donaldson and Dunfee, 1999, p. 83). In order to assess ISCT's treatment of the two problems that Donaldson and Dunfee identify and set out to solve, let us consider the role of the hypernorms.

## II

There are several different ways to understand Donaldson and Dunfee's use of hypernorms. On the one hand, we might understand ISCT's hypernorms as strongly axiomatic, privileged, and ultimately a sterile “view from nowhere” smuggled into the theory. If this is accurate, then it is not clear that ISCT gets us very far along the road to integration; rather, the normative is simply privileged, and hypernorms become the bedrock. While there is certainly a spirit of integration from which the book is written, there is simply not much actual integration if, in fact, the normative hypernorms trump everything else.

On the other hand, we might instead understand the hypernorms as fairly minimalist floor values or

guidelines that most of us can agree on (e.g., all else equal, we should not harm innocents). In this sense, the hypernorms are not so much privileged, monolithic, or sovereign, but in the end this also means that they are ultimately not very specific or directive, either. Therefore, hypernorms might always be present in the background, but consist mainly of bromides that could be interpreted a number of different ways. In either case, this implies that ISCT does not really resolve the integration problem or the view from nowhere problem—at least, not yet.

We would like to suggest that Donaldson and Dunfee point us in a fruitful direction, but that the promise of their project is not yet fully realized. Elsewhere, we have argued that separating the normative from the descriptive is actually impossible, because one cannot single out specific “facts” from their underlying narratives (Harris and Freeman, 2008). This means that ethics are embedded in the generalized meaning of words and concepts (e.g., Searle, 1964), as well as in the actual practice of economic action and transaction (e.g., Granovetter, 1985). And while Donaldson and Dunfee outline a theoretical framework by which integration is advocated, they stop short of actually showing how such integration would be achieved. In other words, we suggest that although Donaldson and Dunfee are, in fact, trying to escape the separation of the normative and the descriptive, they do not go quite far enough.

This becomes clear when they describe their project as focusing on “economic matters” (p. 27). The social contract as detailed in their four principles refers to “local economic communities” and curiously to “economic ethics.” In their attempt to ground economic differences in hypernorms and macrosocial contracts, they have, perhaps, unwillingly accepted the conceptual separation of economics from ethics only to try and put them together again. A different approach is to eschew the separation in the first place. There is no separable “economic ethics,” and conversely, there is no ethics without considering how human beings create value and trade with each other. If they are not separate, then they will have no need to be integrated.

So what is the problem here? We conceive of it this way: within the ISCT framework, all decisions

in moral free space have to be consistent with hypernorms, and because hypernorms give only the most generic guidance, there will always be an argument about whether particular microsocial contracts are consistent with hypernorms. If ISCT is to achieve its promise, then, we suggest that the most important consideration here is not necessarily the actual hypernorm, or the particulars of the microsocial contract, but rather the ensuing conversation and process that is of necessity about the *connection* between general principles (so-called “thin morality”) and specific community and individual practice (so-called “thick morality”).

We, therefore, suggest it would be useful for ISCT to explore the very process of entanglement between macro and micro levels of social contracts as it applies to all of our institutions and practices – of which business (or, value creation and trade) is one. In order to do this, we have to pay more attention to the conversations that exist and the resulting processes that occur to connect these levels. Our aim here is to take a process view of ISCT, touching on several mechanisms that may connect microsocial contracts and macro hypernorms.

It is worth noting that our argument here might also be construed more broadly, suggesting that ultimately we need to think about the process by which Kantian, Utilitarian, social contract, or virtue-based issues are, in fact, all connected to custom and practice. Part of understanding these connections involves the pragmatic role of language itself. Traditional ethical theory – and its attendant language – must be employed beyond a simple focus on ethical judgments, decisions that must be made or not made, and defining and applying terms such as “right,” “wrong,” “good,” “bad,” etc. to these states of affairs. What gets lost if we stop there – if we succumb to a generalized view from nowhere – is the messy, gritty, real world of moral sense making and problem solving that is so important to our daily lives.

Yet, we also do not want to overstate the extent to which differing uses of language are what separate the gritty from the abstract; in other words, this is not simply (or even primarily) a language issue. In fact, much of analytical business ethics is *not* stylized or sterile, but, in fact, is embroiled in the particulars of practice, illustrated by particular cases, and explicitly applied to real-world problems. Indeed,

Donaldson and Dunfee themselves set out to return the messy world of business to business ethics, by focusing on microsocial contracts and the differences among them. This points us in the right direction, but we want to expand their view of moral language and conversation and dialog and engagement to focus on the process by which micro and macro are connected. If Donaldson and Dunfee are correct that we need a more detailed and nuanced view of the connection between general principles – hyper-norms – and the microsocial contracts that a variety of communities enact, then we need to pay more attention to the process connecting these levels.

### III

We shall sketch out an initial, extended view of ISCT that focuses on the process of coming to agreement about the ties that bind, and starts to explore the dynamics of the set of conversations that occurs and/or could occur among community participants deliberating moral problems.<sup>2</sup> There are a number of connected ideas here, which we sketch in the following paragraphs.

#### *The primacy of framing and sensemaking*

The use of language, while not the only thing that is important here, is a good starting point. Language helps us make sense of the world, and is almost always inextricably normative and descriptive. Language is about meaning-making and shared understanding.

For Donaldson and Dunfee's project, the language of social contracts frames the idea of business in a particular way. It at once enables and constrains the discussion about the connection of business to society. Social contracts help us to make sense of business and society in a certain way, and this helps to set the guidelines for what we see as the primary dilemmas of business. Using the language of social contracts is an illustration of exactly what we mean here by the sensemaking role of language. It is often this sensemaking use of language that blurs the distinction between what is empirical and what is normative.

For an example, consider the use of the concept of "stakeholder." On the one hand, we could use

the term purely descriptively to single out and depict customers, suppliers, employees, communities, and financiers. On the other hand, we could use the term to make claims about the rights and responsibilities of these groups and of corporations.<sup>3</sup> However, the embedded sensemaking idea in this example is more subtle. By invoking the term "stakeholder," we are implicitly giving legitimacy to the groups we reference that way, i.e., they must have a stake. By using the term "stakeholder," we are engaging in an intentional play on the terms "shareholder" and "stockholder," changing only two letters of each word to invoke a more general idea. By merely using the framing of "stakeholder," we invoke both the descriptive and normative at the same time. The two realms are entangled through the use of their connected concepts. Of course, for some purposes, we can focus on either the more descriptive or more normative uses of the term, but that does not avoid their entanglement.

This point is equally clear in the idea of social contracts. Merely by using the framing of "social contracts" and recommending that we make sense of business through "social contracts," Donaldson and Dunfee are having us view business as a normal part of society rather than somehow separate from society. The very discussion of business using the language of social contracts invokes the idea of the integration of business with society. The idea of "contract" is also connected to choice and agreement, and the ideas of reciprocity and performance. What does not seem to fit – and we believe that Donaldson and Dunfee can simply do without it – is the idea of "economic community." "Economic community" seems to signal that we can separate out "economic" from the rest of what counts as "society." And at times (see p. 40ff. and p. 98ff.), "economic community" can refer to a corporation, a state, or just a regular community.<sup>4</sup>

How we make sense of business is logically connected to the concepts that we use in setting up the idea of microsocial contracts. And if microsocial contracts are to emerge and be connected to macrosocial contracts and hypernorms, as Donaldson and Dunfee suggest, there must be a conversation about the role of business. Again, this is not a purely descriptive or purely normative task. Donaldson and Dunfee are clearly committed to the idea that business is a deeply human institution, and even their

“economic communities” are moral in nature. Yet, much of the language of business is presented in many contexts as morally neutral or solely descriptive. At the same time, there have been many recent critiques of business in the last several years. However, it is easy to see customers and other stakeholders as moral beings. Marketing consists of promises. Ideas, such as supply chain management, involve getting human beings to cooperate together so that all of them win. These key concepts, which make up particular microsocial contracts, have ethics already built into their fabric. It is not the case that moral free space is morally neutral; rather, it is full of moral complexity.

#### *The role of background narratives*

Any particular piece of language brings its background conditions and theories with it; it is always embedded in context.<sup>5</sup> Indeed, Donaldson and Dunfee call up a number of background ideas and images by the very use of the metaphor of the social contract. A social contract is broader than any individual; yet, it implies there is some role for the idea of agreement and choice. However, it is far from clear what happens to an individual who does not agree to the social contract. It is also easy to see how framing business ethics in terms of social contracts can lead to a concern with so-called “saints and sinners.” If macrosocial contracts are to be understood in terms of hypernorms, and if the test of any particular locally authentic norm in moral free space is whether it violates any hypernorms, then those communities (or companies) which violate hypernorms will be viewed as sinners, since hypernorms are universal. Those who never violate hypernorms will be the saints. Hence, certain companies are vaunted for their exemplary behavior, and others are vilified for their actions, as judged by some analytical (or perhaps arbitrary) standard.<sup>6</sup> What is missing here is the connection between a local microsocial norm and the hypernorms themselves. What is the conversation that is to be had regarding whether a local norm violates hypernorms?

A controversial example involves local norms regarding child labor. In many local economic communities, child labor is viewed as a necessity. Yet, many have argued that child labor violates a

universal human right, especially when it prevents a child from learning basic education, or leads to health and welfare issues which will prevent the child from leading a meaningful life. If the argument stays at this level, there is an inherent conflict between the microsocial contract and the hypernorm. And in Donaldson and Dunfee’s scheme, the winner appears to be the hypernorm. However, taking a process view of ISCT, things become more complicated.

Perhaps, it would be more interesting to see if there is not some reconciliation between these two levels of analysis. Child labor *per se* might be understood as something that is, generally speaking, morally problematic. The concept calls up meaning for us precisely because we see it against a background of the innocence of childhood where growth and development are more central and appropriate than the vagaries of hard labor. Yet, the employment of minors might sometimes be necessary to help feed a family, or simply for self-preservation. We might distinguish child labor on a family farm from the grinding exploitation of sweatshops, for example. We could distinguish child labor where at least some education was built into the process, from obvious deprivation and humiliation. We might be able to design a mid-level set of principles that could help determine whether a particular microsocial contract about child labor could be justified.

#### *Moral imagination and reflective equilibrium*

Such a process might include a comparison of one microsocial contract with another, rather than just with the hypernorm. Indeed, this process may well grow to look like what Rawls (1971) calls “reflective equilibrium.” We start with some principles (hypernorms) that represent our best thinking so far, but we realize that even these principles are revisable. We then look at particular cases that challenge these principles, such as authentic norms built into existing microsocial contracts. The principles stand in relation to the cases, as the relation of theory to new data. Either the new data confirm or are consistent with the principles, the data are rejected as flawed, or we may need to revise our principles. This process is neither easy nor problem free, but it

does describe one useful way to see how microsocial contracts can be connected to macrosocial hypernorms, in a dynamic way over time.

Reflective equilibrium means that we start from where we actually are. It is here that Donaldson and Dunfee remind us that we have both hypernorms (general principles) and a set of practices in moral free space (microsocial contracts), which may reinforce or violate these macro principles. The ISCT contention that there are no morally legitimate microsocial contracts which violate hypernorms would be stronger when the connection between the emergence of practices and hypernorms were more explicit. As Donaldson and Dunfee rightly point out, in moral free space, it is very difficult to determine whether practices violate principles. Much depends on interpretation, and as they argue, tolerance is a real virtue.

#### *The role of disagreement*

If conversations about microsocial contracts and their connections to hypernorms are to be meaningful ones inside companies, or economies or communities or societies, then there must be a real role for meaningful difference. This implies that such conversations must already be framed in terms of mutual respect and tolerance. Of course, these ideas have limits, as extreme tolerance may imply extreme disrespect. In the world of business practice, companies are constantly grappling with how to manage in an increasingly diverse economic environment. Large global companies are, perhaps, different from local community-based businesses, and we might expect a different set of norms to emerge. The fact that Donaldson and Dunfee allow for such difference seems to be one of the strengths of their theory. Stronger still would be an understanding of the connection between local community-centric norms and wider global ones.

In many companies, senior management encourages conversations about company values. Sometimes, these company values could be read straight off of Donaldson and Dunfee's list of hypernorms, and rarely will these company values countenance outright violations of hypernorms. However, in these conversations, much is a matter of interpretation. Hypernorms can conflict. Dilemmas abound when the company values are put forward as a

complete action-guiding set of norms. However, if we can connect the company values to its underlying purpose and business model, then it is somewhat easier to frame a set of decisions that must be made. For instance, Wal-Mart's obsession with everyday low price is inherently connected with its purpose of trying to bring goods and services to communities at the lowest possible price. Sam Walton believed that people in rural and poorer communities deserved to have better goods available to them. Now, of course Wal-Mart does not always make the correct decision about whether a particular action is consistent with that purpose, but the purpose and resulting values do, in fact, frame the decision in ways that connect it with hypernorms of efficiency and equality. If there is a conflict either between these principles or with another norm that gains salience, such as sustainability, then Wal-Mart must then go through an exercise of reflection and reframing. They must begin to make sense of their moral world utilizing the concept of "sustainability" and hence reframe what they mean by "everyday low price."

The traditional ideas of ethical theory form the basis for understanding how has a conversation about the nature of the conflict between microsocial contracts, and between levels. One way to think about this process is to formulate a set of questions that managers and theorists need to ask when faced with a conflict. At least one of these questions needs to appeal to our imagination and offer alternative framings, meanings, and ways to make sense of the phenomena. This process of using the tension between microsocial contracts and hypernorms as a motivation to engage our moral imagination (Werhane, 1999) is not well understood, but we argue that this friction inherently offers an opportunity to see ISCT as a more realistic management process.

#### IV

Seeing ISCT as more of a process points business ethics in a different direction from a more standard application of universal principles, consequences, and character. It points us toward understanding how conversations emerge among human individuals and community. It places center stage the questions of how we are going to live together, and how we are going to create our joint futures, especially focusing

on how we create value and trade with each other. It moves us away from an over reliance on making moral judgments as the first virtue of a system of business ethics, and toward a nuanced view of how business activity gets framed, understood, argued about, and enacted. Making sense of business only in economic terms already gives away the game to those who believe that business ethics is an oxymoron, or it means that we need a special section for applied (or “economic”) ethics – and as such, raises the question of whether such ethics has depended for its development on the purely economic view of business. In contrast, framing business as just another in a long list of human institutions and activities makes ethics applicable to business. Making sense of value creation and trade as something that we humans have done for millennia then ironically raises the question of the adequacy of a philosophical ethics that has denied business a place in moral theory.

Seeing ethics as more of a conversation among real – rather than hypothetical – moral actors points us away from a business ethics that is enmeshed in judgments about companies and capitalism as saints and sinners. Warren Buffet is reputed to have said that all saints have a past and all sinners have a future. Just as few of our children are either purely saints or purely sinners, so too are our companies. Making sense of business in a “thickly moral” sense builds in the same kind of emotional commitment to being responsible that we hope to transmit to our children. If we begin to see business as one more way that human beings create meaning for ourselves and others, then we will see ethics as concerned with authenticity and change, power and authority, leadership, imagination, and the creation of sustainable value. Donaldson and Dunfee have pointed us down this more nuanced path in business ethics. By paying attention to ethics as a deeply human undertaking, enmeshed in language and dynamic in nature, we can not only better understand the role of business in society but also create even better ties that bind.

## Notes

<sup>1</sup> Though this essay is in honor of Tom Dunfee, Tom Donaldson is one of our important conversational partners as well, and we thank him for his helpful feedback on an earlier draft.

<sup>2</sup> The challenge of connecting microsocial contracts with hypernorms bears some similarity to the issue of resolving moral disagreement among actors that lack common normative ground – a common problem. Although discourse ethics (e.g., Habermas, 1990) approaches this challenge mainly as a problem of moral justification, others (e.g., Painter-Moreland, 2008; Stansbury, 2009) have begun to focus on the application of discourse ethics to organizational contexts.

<sup>3</sup> See Donaldson and Preston (1995) for a fuller discussion of these distinctions.

<sup>4</sup> If Donaldson and Dunfee had simply left out “economic” and made sense of microsocial contracts in terms of “communities”, then we would see “business” as a normal part of “community”. The problem is that there would not appear to be a special role of “economic ethics” here. That doesn’t seem to be a problem unless one is worried about keeping a special role for “business ethics” within either philosophical or management theory.

<sup>5</sup> Language shapes how we see the world. Words shape our actions. Philosophers such as Wittgenstein, Dewey, Quine, Putnam, Davidson, and Rorty have outlined a view of language that relies on understanding the multiple tasks of language, rather than searching for a particular meaning or set of meanings. Wittgenstein’s ([1952]2001) idea of “don’t ask for the meaning, ask for the use” reminds us that language shapes what we do, how we interact with each other, and how we create meaning for each other. Quine’s (1960) view of the indeterminacy of translation illustrates how interpretation and conversation are always an issue. If part of the normative task of scholars is to show us how to live better, then the Duhem metaphor of rebuilding the ship while it remains afloat shows the connection between the micro real world (the ship) and making it better (the rebuilding). Putnam (2002) asks us to see such an entanglement of facts and values (and for Dewey ([1927]1954), means and ends) as a normal part of the way that language works, even in science (Kuhn, 1962). Rorty (1981) reminds us that the whole edifice of the “meaning” of the words simply takes the Greek ocular metaphor far past where it is useful. Our “web of belief” (c.f. Quine, 1951) is always revisable, and Davidson (2001) reminds us of language’s constitutive role in the making of meaning.

<sup>6</sup> This highlights a related problem: what to make of inconsistency of actions? Merck is a saint for donating Mectizan (in perhaps the most famous case in business ethics), but then they are proclaimed sinners for their behavior in the Vioxx case. The recognition of both organizational complexity and the connection between microsocial norms and generalized hypernorms might be useful in making sense of these kinds of actions.

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