

A Review of Donaldson and Dunfee's *Ties That Bind: A Social Contracts Approach to Business Ethics*

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ABSTRACT. This article reviews Thomas Donaldson and Thomas Dunfee's new book *Ties That Bind*. The article argues that the book is a helpful elaboration of Donaldson and Dunfee's Integrative Social Contracts Approach, particularly with regard to their specification of hypernorms. The article also presents Donaldson and Dunfee's argument with regard to how the hypernorm of necessary social efficiency applies to bribery and raises questions about the extent to which human moral behavior might be hardwired.

I. Introduction

I picked up my copy of Thomas Donaldson and Thomas Dunfee's new book, *Ties That Bind: A Social Contracts Approach to Business Ethics*, the day that tickets went on sale for *The Phantom Menace*. The two events have some similarities. Although George Lucas is not likely to become envious of Donaldson and Dunfee's merchandising spin-offs resulting from the book, *Ties That Bind* has been eagerly awaited by the business ethics community for several years. The book does not disappoint. It is a thorough, provocative, and well-written book, which will spur even more commentary on ISCT.

Because the basics of Integrative Social Contracts Theory ("ISCT") are now well-

known, I do not want to dwell on them at great detail in this review except in brief in order to provide context for the reader to appreciate what new ground the book breaks in terms of the depth by which Donaldson and Dunfee elaborate their approach. Their elaboration is the distinctive mark of the book. In addition, I want to focus, somewhat arbitrarily, on two special points of interest.

II. Overview of the book

A. *The background of ISCT*

The history of Donaldson and Dunfee's collaboration is well known in the field. Donaldson was one of the pioneers of contemporary business ethics through the publication of *Corporations & Morality*. (Donaldson, 1982) His social contract approach to business ethics drew upon classic social contract approaches to moral philosophy. Dunfee meanwhile, relied upon his jurisprudential background to argue that extant social contracts provide a source for moral guidance. (Dunfee, 1991) In their joint work, they have integrated these two kinds of social contracts to accord a significant degree of deference to the norms local communities determine are appropriate while keeping those norms subject to philosophical understandings of moral appropriateness.

One of the reasons deference is necessary is because of "bounded rationality." In addition to the notions of bounded rationality propounded by economists such as Herbert Simon and Oliver

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Williamson, Donaldson and Dunfee argue that moral rationality is strongly bounded in terms of business ethics. This is because business life is “artificial;” the rules of business life can vary widely and are not “natural.” Designing business ethics requires sensitive attention to the rules determined by local communities.

Thus, tied to the notion of bounded rationality is the notion of “moral free space.” Communities are entitled to free space to determine what is appropriate for their time and place. Provided that members of such communities have the capacity to consent to the norms, the community’s rules are “authentic.” Proxies indicating meaningful consent are the rights to exit and voice in the development of the norms.

B. *The hypernorm question*

What has generated a good deal of attention since ISCT first debuted is the notion of “hypernorms.” In order for the local norms to be obligatory (or legitimate), the norms must also be in accord with formal philosophy. Donaldson and Dunfee provide an elaboration of the notion of hypernorms in *Ties That Bind*. Paralleling Charles Taylor’s notion of hypergoods, they define hypernorms as “second order moral concepts because they represent norms sufficiently fundamental to serve as a source of evaluation and criticism of community-generated norms.” (Donaldson and Dunfee, 1999, p. 50).

One of the more interesting aspects of the book is Donaldson and Dunfee’s defense of refusing to identify the source of a hypernorm. Several scholars in the field have pushed Donaldson and Dunfee to specify the source of hypernorms. Bill Frederick, for instance, has encouraged Donaldson and Dunfee to locate hypernorms in the processes of nature (Frederick, 1995) while Don Mayer has argued to locate them in reason (Mayer, 1994).

In response, Donaldson and Dunfee first rely on the human capacity to recognize a hypernorm. Regardless of the source (reason or nature), a convergence of intellectual thought and the evidence of them as global norms is sufficient to identify them. Second, they argue that

scholars have used ISCT’s second-order hypernorms successfully. Thus, unless someone is able to show how such quests to find and apply hypernorms fail in light of the success other scholars have had in finding and applying them, Donaldson and Dunfee remain unconvinced that further specification of the source of hypernorms is necessary (Donaldson and Dunfee, 1999, pp. 74–78).

Of course, even the strategy of recognition gets one only so far. If recognition of a hypernorm is central to its status as a hypernorm, how do we recognize them? Donaldson and Dunfee respond to this question quite specifically. They list the following eleven kinds of evidence that suggest the existence of a hypernorm and argue that if two or more of these confirm a widespread recognition of any ethical principle, a decision-maker should take that as a rebuttal presumption that a hypernorm exists. The eleven kinds of evidence are:

1. Widespread consensus that the principle is universal.
2. Component of well-known global industry standards.
3. Supported by prominent nongovernmental organizations such as the International Labour Organization or Transparency International.
4. Supported by regional government organizations such as the European Community, the OECD, or the Organization of American States.
5. Consistently referred to as a global ethical standard by international media.
6. Known to be consistent with the precepts of major religions.
7. Supported by global business organizations such as the International Chamber of Commerce or the Caux Round Table.
8. Known to be consistent with precepts of major philosophies.
9. Generally supported by a relevant international community of professionals, e.g., accountants or environmental engineers.
10. Known to be consistent with findings concerning universal human values.
11. Supported by the laws of many different

countries (Donaldson and Dunfee, 1999, p. 60).

In providing this list, Donaldson and Dunfee thus provide a significant amount of specificity to what a hypernorm is and how we can find it. In a sense, they use these extant manifestations of norms in order to reinforce and perhaps identify philosophical criteria for moral behavior. “What is” thus has a great deal to do with “what ought to be” or “what is” at least points toward “what ought to be” might look like. This is an interesting phenomenological straddle, which may or may not be intellectually convincing to critics, but which allows them to plausibly argue that the burden of proof ought to be shifted to their critics. In legal terms, they have constructed a *prima facie* case for hypernorms.

In a sense, the argument Donaldson and Dunfee make seems to be most akin to a kind of natural law. To vastly oversimplify natural law, if there is an innate moral sense in every human being, then one would expect to find manifestations of it in every human culture. Moreover, if human beings have the ability to reason about the good, then we may be able to specify the moral goods that are important for human life. (Finnis, 1980) Donaldson and Dunfee do exactly this when they seek to ground the existence of hypernorms in extant norms and do so while maintaining the necessity of formal moral philosophy in examining such norms. This parallel is not to argue that Donaldson and Dunfee should locate their argument in natural law. I would expect that they would respond to such a proposal as they have to the arguments of critics already mentioned. That is, they would probably remain agnostic about the source of hypernorms. It seems, however, that a natural law approach that takes seriously the laws of nature is an approach very compatible with Donaldson and Dunfee’s project (Fort, 1999).

Donaldson and Dunfee elaborate three kinds of hypernorms: procedural, structural, and substantive. Procedural norms are those conditions essential to support consent in microsocial contracts. These would include notions of exit and voice, which permit Donaldson and Dunfee to characterize a community norm as authentic.

Structural hypernorms are those principles that establish and support the essential background institutions in society. This would include a legal system designed to assure fair trials. Substantive hypernorms are fundamental concepts of the right and the good such as promise keeping and respect for human dignity.

III. Two special points

It is arbitrary to select specific points to discuss. Undoubtedly, scholars in the field will address a variety of topics raised in the book. Two particular points, however, struck me as worth additional attention. The first relates to an application of a hypernorm to the perennial global ethics question concerning bribery. The second relates to Donaldson and Dunfee’s comments regarding the extent to which human beings may be “hardwired” to be ethical.

A. Necessary social efficiency and bribery

As an example of a hypernorm, Donaldson and Dunfee identify “necessary social efficiency.” By this they mean that an action or policy is efficient “when it contributes toward the provision of necessary social goods sufficient to sustain the least well-off members of society at a level of reasonable possibility concerning liberty, health, food, housing, education, and just treatment.” (Donaldson and Dunfee, 1999, p. 119) They establish this hypernorm by arguing that two necessary goods are fairness and aggregate welfare (Donaldson and Dunfee, 1999, p. 121). In order to actualize these goods, one must have institutions such as private property. Following Aristotle’s argument against Plato, they argue that private property is more likely to be utilized efficiently and productively for the benefit of all members of society than would be the case if no one had private ownership.

Therefore, the economic structure of a society must be organized so that resources in which society has a stake should be efficiently utilized and individuals should discharge their role duties stemming from the economizing parameters of efficiency strategies in which one participates.

In other words, the least well-off have the best chance of reaching basic goods if resources are used efficiently, and society should be structured to allocate resources efficiently and individuals should fulfill their roles in such a structure.

This sounds abstractly enough like a hypernorm and it also has a practical implication. Focusing on bribery, Donaldson and Dunfee make three arguments against it from the perspective of ISCT. First, bribery may violate a role duty in a principal-agent relationship. An agent may extort a bribe for the benefit of the agent herself rather than for the benefit of the principal. Second, even in those communities in which bribery is "accepted" Donaldson and Dunfee argue that, in fact, the norm is not authentic. They note that bribery is outlawed in *all* countries. In addition to this evidence that bribery then is not a community norm, they cite interviews conducted with executives in countries where bribery is frequent and record the disgust of executives at the practice. One may wonder if this reaction was for the benefit of the audience (an ethicist), but Donaldson and Dunfee make their point sufficiently well to conclude that bribery may occur, but that does not mean that it is viewed as moral even by members of communities where it does occur.

Third, bribery violates the hypernorm of necessary social efficiency. It does this in two ways. One way is that it harms political participation when governmental officials accept bribes. When a government official makes a decision on the basis of a bribe, he is allocating public resources in a manner not subject to the political control of the public. Accordingly, there is a violation of the norm of a society structured to provide the least well off the possibility of pursuing basic goods.

A second way that it violates the hypernorm of necessary social efficiency is that it skews the efficient distribution of resources. A common rationalization for bribery is that no one gets hurt. Under Donaldson and Dunfee's analysis, however, the skewing of resources resulting from bribery may very well hurt the least well off. It would surprise me if this assessment of bribery is not found by most ethicists as a very helpful schema.

B. *Hardwired human nature?*

Another issue that Donaldson and Dunfee raise from time-to-time, but do not dwell upon, is the notion that human beings may be hardwired to be ethical. This is view advocated recently by biologists and evolutionary psychologists. James Q. Wilson (1993) and Robert Wright (1994) exemplify the position. Their argument is that there is a "moral sense" among human beings, a conviction substantiated by economist Robert Frank (1988) who reports that cheaters do not dominate in the long term. Donaldson and Dunfee also consider Bill Frederick's case for grounding ethics in nature and note that ethicists can use the argument that nature requires cooperation as well as competitiveness as a weapon against executives who paint a narrow portrait of Darwinian struggles for survival. For Donaldson and Dunfee, the issue is important because authentic norms are the product of human interactions (Donaldson and Dunfee, 1999, p. 155).

Perhaps a better way to tap into the biological human nature would be to characterize human beings as Aristotle and Darwin did. Larry Arnhart (1998) has recently argued that Aristotle and Darwin can be linked because, at least in part, they both carefully considered biological evidence to conclude that human beings are social creatures. By virtue of being social creatures, they must elaborate rules by which they live together. Those rules are the cultural specifications of moral behavior (Arnhart, 1998; Fort and Noone, 1999). Thus, as social creatures, human beings must use their reasoning capacities to figure out what rules are necessary to live together. Human beings must in some sense contract with each other. The basis for this is not so much that there is an instinct toward altruism, but rather simply that human beings are social creatures.

The danger in relying on a "moral sense" is that it suggests that such a sense does not thereafter need cultural cultivation. One could simply advise individuals to tap into their biological instincts. Such an approach would be more therapeutic than moral. A "moral sense" obtains its ethical character, however, by the reality of

human sociability. As Frederick argues, a central evolutionary adaptation of human beings is our ability to create culture through natural techno-symbolic capacities (Frederick, 1995). I hardly think that Donaldson and Dunfee are prepared to advocate for a view of business ethics absent from this cultural, philosophical explication of moral duties. In raising the notion of human “hardwiredness,” I simply wish to note that (1) this natural characteristic in fact could be an advantageous recognition by the field (against a narrower notion of Darwinism) while (2) placing the recognition in a human nature of sociability to preserve the necessity of cultural and philosophical specification. The approach of noting human sociability, it seems, fits more easily into Donaldson and Dunfee’s framework and does so while doing justice to anthropological studies of human nature. (Fort and Noone, 1999)

IV. Conclusion

Ties That Bind contains much more than what I have touched upon in this review. Some of the other interesting parts of the book are applications of their “rules of thumb,” a thoughtful integration of ISCT and stakeholder theory, and several international ethics dilemmas. I dwell on only a few here to highlight some of the book’s most interesting aspects. In reading *Ties That Bind* in the shadow of *The Phantom Menace*, it strikes me that Donaldson and Dunfee are Jedi Masters from whom everyone in the field can learn a great deal.

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