

# Extant Social Contracts and the Question of Business Ethics

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**ABSTRACT.** ISCT arguably forms the most promising impetus to a contractarian theory of business ethics presently available. In this article, I want to pay tribute to the lasting significance of Dunfee's contribution to the field of business ethics by analyzing the vital role of the idea of extant social contracts (ESCs) in the conceptual set up of the ISCT project. The construct of ESCs can be shown to shape the problem statement from which the ISCT project proceeds – indeed it helps to conceptualize the basic question which defines and delineates the domain of business ethics.

**KEY WORDS:** extant social contracts, fact-value divide, integrative social contracts theory, justification, relativism, value pluralism

## Introduction

Machiavelli's main treatise in political theory, *Discorsi sopra la Prima Deca di Tito Livio* (Discourses on the First Decade of Titus Livius), derives its idiosyncratic and somewhat long-winded title from the fact that it grew out of notes he assembled from a reading of Livy's account of the history of Rome. Machiavelli worked on this project off and on for 4 years after his

exile from politics in 1513. In these years, he was involved with a reading and discussion society of young patrician humanists who regularly met to discuss philosophy and politics in the Rucellai gardens in down-town Florence (Pitkin, 1984, p. 64). As far as we know, Machiavelli read parts of that work to the group and the particular people to which it was dedicated substantially encouraged him in his work on the *Discourses*.

I want to start this contribution by quoting from the dedication to his *Discourses* in which Machiavelli addresses his benefactors. "Greetings," he writes,

I am sending you a gift which, if it does not befit my obligations to you, is such that beyond doubt is the largest Niccolò Machiavelli is able to send to you; ... You can indeed mourn over the poverty of my talents, if these discussions of mine are poor, and over the fallacy of my judgment, if, as I go along in many places I deceive myself. ... Take this, then, in the way everything is taken from friends, where one always considers rather the intention of him who sends than the quality of the thing that is sent.

(Allan Gilbert, *Machiavelli: The Chief Works and Others*, I, p. 188.)

Whoever is presently working in the field of business ethics is bound to have benefited from the great contribution Tom Dunfee made to this field, intellectually as well as in terms of institution building, leadership, and his long-standing efforts to stimulate and facilitate other scholars. Therefore, it is a special privilege and a great pleasure to be able to acknowledge his guidance and his thought leadership in the present volume. In addition, like Machiavelli, I propose to concentrate on the best contribution I could possibly make by way of a tribute, which is in the field of conceptual analysis and the history of ideas. It may not be a full account,

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but it is my best attempt at paying homage to the lasting significance of Tom's contribution to the field of business ethics.

While Dunfee was a prolific author, no doubt his most enduring legacy to the field of business ethics was his contribution to a collaborative project with Tom Donaldson which resulted in their book *Ties That Bind* (1999). The importance of this book may be characterized in various ways. On the one hand, *Ties* still represents the most convincing attempt to date at developing a social contract theory of business ethics. This is significant in view of the lack of foundational approaches to ground theories of business ethics. We live in a world in which there is wide-spread agreement that business enterprises must abide by certain ethical standards, but it seems virtually impossible to decide what these standards *are* and how they could be *justified*. In that context, any sound theoretical foundation is welcome and, as it builds on the pioneering work of Tom Donaldson (1982, 1989) in adapting the social contract for application to the domain of business ethics, many scholars look upon *Ties* as a milestone in the elaboration of the social contract model as a basis for justification in business ethics.

However, there is also a second way in which the significance of *Ties* can be characterized, and that is in terms of its very timely and accurate problem statement.<sup>1</sup> The ISCT project seeks to reconcile conflicts between norms that may come about in the context of international business or business activities involving different occupational groups or across economic communities. In any practice of international business there may well arise conflicts between (usually stricter) moral norms in the home country of the corporation and the (generally more lenient) standards practiced in the host country. The type of conflicts among norms which ISCT addresses can also be seen between different occupational groups or between economic communities. Accountants, bankers, lawyers, and traders all have their specific norms relating to the exercise of their profession. In addition, where different disciplines collaborate, profession-specific norms may collide. Another category of such conflicting norms relates to different cultures in organizations. Big corporations commonly have cultures of their own which often involve a series of company-specific norms and

values. If two or more of these corporations engage in business together, these company-specific values may clash. The more multi-national corporations work across national borders, and the more different occupational groups intermingle, the more likely these conflicts between community-specific moral norms will become. The principal ambition of ISCT was to seek to adjudicate possible conflicts among community-specific norms, or micro-social contracts, by means of identifying universal, more fundamental principles, called hypernorms.

At this point the significance of Dunfee's intellectual contribution to the domain of business ethics is best made visible. For this same ambition prompted his idea of "business ethics and extant social contracts," as was the title of a seminal article in BEQ (Dunfee, 1991). This article provides us with a full account of Dunfee's ideas as they stood at the beginning of his collaboration with Donaldson. Dunfee envisaged the accommodation of conflicting community-specific norms as a principal task for business ethics. A close reading of this article will help us to delineate this central question of business ethics which forms the focal point of Dunfee's contribution to the ISCT project.

In this article, I will reconstruct how the idea of micro-social contracts (MiSCs) grew out of the earlier analysis of extant social contracts (ESCs), and the crucial role this came to play in the set up of the ISCT project. I will first review Dunfee's original article and situate the idea of ESCs as the first in a set of three hierarchically ordered solution mechanisms. I will then put Dunfee's initial project in the context of an ongoing debate on the propriety of the dichotomy between normative and empirical or "scientific" approaches to the study of business ethics and the business and society domain. As the outcome of this debate is still relatively undecided in these domains, I will draw briefly upon an earlier, parallel debate concerning the feasibility of an empirical/scientific approach to the study of politics and its consequences for our understanding of norms and values. I will conclude that irrespective of any possible criticism on the eventual approach worked up in *Ties*,<sup>2</sup> a lasting contribution of Dunfee's idea of ESCs consists in the way it continues to help set the research agenda not just for contractarian approaches but for all future theories of business ethics.

### Business ethics and extant social contracts

Dunfee originally launched his version of a social contract theory of business ethics in an article for the first volume of *Business Ethics Quarterly* in 1991.<sup>3</sup> One of the more peculiar features of that article is that what eventually turns out to be the main message in this piece is blurred by the broad and formal, but rather unfocused problem statement from which the article proceeds. For Dunfee starts off by signaling three clusters of problems, which he takes to be perennial problems with which scholars of business ethics seek to deal (pp. 44–45). These are:

- (1) inconsistent results when multiple ethical theories are applied in judgment of a particular business practice;
- (2) conflicts among multiple societal moral norms which all appear applicable to a single business decision; and
- (3) fact gathering and methodological constraints which encumber efforts to apply traditional ethical theories to complex business practices (p. 23).

Owing to these three “seemingly constant and irresolvable difficulties” there is insufficient practical guidance, but managers “must nevertheless make decisions with significant ethical implications” (p. 23). The construct of ESC is then advanced as “a framework of ethical decision-making” with which “some of the traditional problems in business ethics” (pp. 23–24) may be resolved. This, one could say, is the formal problem statement of the article. All three elements mentioned can be related to the managerial perspective of practitioners in dire need of practical guidance. However, a close reading shows that the introduction of ESCs may serve to resolve a much more specific, conceptual problem, which would provide the article with a high degree of coherence. The actual problem Dunfee aims to resolve can be redescribed as three more specific, functionally related and hierarchically ordered problems, i.e., the problem of multiple moral norms, the problem of justification and the problem of the relativism of moral norms for business conduct. The problem of multiple moral norms draws attention to an important feature of the condition of modern business enterprise. The problem of justification asks for the foundation or *reason why* anyone would follow a certain moral norm in the first place. The problem of relativism consists in the fact that, lacking such a

justificatory basis, all claims on moral norms would have equal moral force, which would make it impossible ever to make out which norm should prevail in case of conflicting and mutually exclusive norms.

The theoretical problem Dunfee eventually seeks to resolve and the starting point of his argument is that many actually existing moral norms may well conflict with one another. At any rate, there is no guarantee that the multiplicity of moral norms will naturally fit into some harmonious cosmos of ideals.<sup>4</sup> I have called this the problem of multiple moral norms. Dunfee claims that these conflicts are particularly characteristic for the world of business, and that, propelled by processes of globalization, increasing complexity and specialization, these conflicts among norms can only intensify. This is precisely the condition of modern business enterprise.

In this article, he seeks a solution by embarking on an inquiry into how moral norms actually manage to exercise force over individual agents. This is what I will label as the problem of justification (or moral obligation). Two crucial aspects of the construct of ESC-based moral norms are the idea that such norms are always related to some community or other and the claim that individual members of that community are bound by these community-specific norms on the basis of their consent, which can be established in a variety of ways. Dunfee’s inquiry into the problem of moral obligation serves to indicate not only where the moral force of norms over individual agents originates, but also how and where *limits* can be set to this consensus. The first boundary consists in the community-specific character of ESCs. By their very nature, local norms only apply to the relevant community. Moreover, he stipulates that any such norms will only have a *prima facie* validity: if a local norm turns out to go against a more general norm that would constitute a reason to abandon such local norm. So far for a general outline of the argumentative strategy in Dunfee (1991). Let us now proceed to a more formalized reconstruction.

Dunfee’s argument comprises a number of distinct claims and assertions which are set out, elaborated and further illustrated in this early statement of his social contract theory of business ethics. The central

construct is of course already indicated in the very title and is labeled “extant social contracts” or “real social contracts.” Elaborating this central idea, Dunfee makes a number of specific claims about the basic nature of ESCs:

- (1) ESCs are community-specific, i.e., these moral norms are tied to “communities or groups of individuals with common goals or values” (p. 24);
- (2) ESCs are “discoverable through empirical investigation” (p. 30);
- (3) ESCs “constitute a significant source of ethical norms in business” and they “generate a *prima facie* duty of compliance on the part of members of the ESCs based upon consent” (p. 24);
- (4) The form of that consent can either be actual (“express”), implied or tacit consent by “those who take advantage of the instrumental value of the social contracts” (p. 32);
- (5) To the extent that “individuals simultaneously participate in multiple communities, conflicting ESC-derived ethical norms will often be encountered” (p. 24);
- (6) “Businesspeople typically participate in multiple communities and, as a consequence, they will encounter many of these conflicts among ethical norms” (p. 23).

The important point being made here is that, in the circumstances typical of modern business, these overlapping memberships have increased significantly, owing to both the process of globalization as well as the continuing specialization, which gives rise to ever more interaction between different professional communities (claim 5). The condition of modern business therefore is characterized by an ever increasing set of conflicts between moral norms (claim 6).

To round off his argument, Dunfee also hints at a possible solution to the problem of multiple moral norms, although in this article he largely postpones this to future work. Three mechanisms seem to play a part here: first there is the idea that the validity of local norms can be “empirically discovered” (claim 2), but he also mentions a “filtering test” which will enable us to formulate certain “priority rules.”

### One question, three solution mechanisms

The first solution mechanism in Dunfee (1991) is to “empirically discover” existing norms, similar to the way in which people establish matters of fact (like a hunter determining what type of animal he is tracing). The idea here is apparently that if it can be demonstrated that a particular norm *exists*, this will also settle the question as to its justification. In a significant way, this idea corresponds to Wittgensteinian insights concerning the working methods employed in social and political thought (Austin, 1965; Cavell, 1969; Pitkin, 1972; Winch, 1965; Ziff, 1960). Note, however, that Dunfee restricts his first solution mechanism to the establishment of local norms. It is not immediately clear why this same working method could not be extended to the establishment of the more universal norms (“hypernorms”) invoked in a later stage so as to remedy the problem of relativism.

The second solution mechanism, Dunfee’s idea of a “filtering test,” purports that local behavioral norms (ESCs) will only acquire moral status (even within the community) to the extent they pass some filtering process. That process consists in scrutinizing concrete consent-based local norms in the light of a number of general ethical theories, principles, insights, and prescriptions and so on. If a community-specific norm turns out to be incompatible with a set of these general theories etc., this constitutes a reason to hold those norms to be non-binding. On the other hand, once such a filtering test shows that these local norms do not contravene the restrictions generated by a set of general theories, this gives rise to a “*prima facie* obligation of compliance” (p. 42). Admittedly, Dunfee’s doctrine on this point remains very open: for him this is apparently a topic for future research – and by now we know that this was indeed to be an important part of his future collaboration with Donaldson. Nevertheless, some general lines are clearly set out in Dunfee (1991).

Dunfee points out, first, that the idea of a filtering test is primarily intended as a remedy for the problem of relativism. What he wants to establish is a set of criteria to depose of local consensus in appropriate cases. In other words, he wants to know under what conditions we can allow that within a certain community local norms are practiced which are incompatible with general principles. Second, there

is the idea that “most ethical theories and theorists” can be used for this purpose – the filtering process apparently has a rather omnivorous nature (p. 24). By way of possible examples Dunfee mentions utilitarianism, Kantianism, contractarianism as well as an ecumenic convergence of available frameworks (p. 33). Third, it may be noted that the number of degrees of freedom in determining whether a community-specific norm is to be taken as binding is deliberately kept large through the specification that such incompatibility must amount to more than an alleged or incidental contravention. ESCs are only rendered inoperational when there is a clear structural incompatibility with general moral principles or norms. Elaborating his suggestion more in detail, Dunfee seems to distinguish between a moderate and a (strictly) orthodox version of the filtering test, depending on whether “practices would be considered to be valid so long as they are not found wanting under multiple theories” or “under *any* of the theories” (*Ibid.*, italics in the original). In either case, the capacity for discriminating among local norms would seem to critically depend on which theories are actually chosen. However, it is clear that Dunfee expects that major theories or criteria available would largely produce the same results.

The third solution mechanism consists in a set of “priority rules.” Dunfee considers, respectively, consistency, transaction-connectivity, interest-quality, and community characteristics (p. 44). In case of filtering test-confirmed, but yet conflicting moral norms, these can be prioritized on the basis of “any significant consistency among several of the competing ESC norms in support of a particular outcome” (*Ibid.*). Another criterion may be to give priority to the norm pertaining to “the community with the closest connection to the transaction” (*Ibid.*). As to community characteristics Dunfee suggests that priority can be given according to the community is more formal and sizeable. Note, however, that these various suggestions for priority rules are just canvassed here as possibilities. They are not actually put to work so as to resolve concrete case examples.

To sum up: Dunfee’s three solution mechanisms each fulfill a clearly defined function. Through empirical discovery candidate local norms may be identified; some version of the filtering test will help to establish whether such candidate norms can

acquire the status of legitimate local norms; and priority rules will help to decide in case legitimate norms conflict when they get into conflict owing to the increased mingling of moral communities.<sup>5</sup>

Note that the methodological principle of empirical discoverability of norms only recurs implicitly in the later, co-authored version of ISCT. Dunfee (1991, p. 36) illustrates the idea by analogy to the general example of how a hunter establishes what kind of animal he is tracing, and it is further elaborated on the basis of an example more relevant to business ethics, i.e., the practice of insider trading in the banking industry in the United States. It is interesting to observe that Dunfee operationalizes this idea of empirical discoverability in a rather legalistic, and almost mechanical fashion: he considers five pieces of juridical “evidence” in the form of banking codes of ethics, statements by professional associations as well as empirical statistics and opinions. By strict analogy to the hunter example he then seems to argue that whenever sufficient “trails” to that effect are found, we can conclude that a local norm condemning insider trading exists. This working procedure may strike us as somewhat simplistic. Yet, this idea has more potential than it has been credited so far. In order to make clear why that potential has not yet been assessed at its true value, I need to say something first about some recent developments in the Business Ethics/Business & Society (BE/B&S) domain, as compared to some of the other social sciences.

### **The debate on a fact/value divide in the social sciences**

In many ways, the methodological principle of the empirical discoverability of local norms looks like the most distinct claim put forward in Dunfee (1991). According to this idea, there is no principled difference between the legitimation/verification of norms and the verification of facts. However, with the benefit of hindsight, we may well wonder to what extent Dunfee was lured here into the search for a solution to a quasi-problem which is based on a doubtful distinction between norms and facts. The fact that certain schools of thought at some point in the twentieth century used to construe a stark dichotomy between normative and empirical modes

of inquiry may well be seen as an unfortunate legacy which was insufficiently critically taken over from Logical Positivism and which has haunted the social sciences for far too long. Framing the problem in terms of a choice between the horns of an exhaustive dichotomy amounts to a fundamental bias in the discussion. As Pitkin (1972, see especially Chaps. IX–XII) has shown on the basis of an interpretation of Wittgenstein's later philosophy of language, this is a distinctly biased way of framing our inquiries into social and political matters. She suggests that the ambition to exhaustively classify all propositions and claims as *either norms or facts* was just as little self-evident – and indeed just as unhelpful – as the idea that one could exhaustively divide all merchandise available on a day market into either herring or fruit (1972, p. 219). By analogy, the idea of a strict distinction between normative and empirical methods of inquiry now strikes us as a way of thinking peculiar for the project for a value-free science which was indeed envisaged by Logical Positivism, but which certainly does not speak for itself. For that reason, the distinction between norms and facts should not be looked upon as an exhaustive, black and white division, but at best as a gradual matter.

Dunfee's suggested first solution mechanism therefore may have been prompted by what really is a misplaced concern for the subjectivity and – by implication – the relativism and the essentially contestableness of norms, which was informed by the highly uncritical legacy of logical positivism. I would like to suggest, more in particular, that Dunfee's first solution mechanism may have been shaped by a general tendency in the BE/B&S field clearly to be witnessed during the formative years of the ISCT project to get to a "convergence" or even an integration of normative and empirical approaches to the domain which seem equally to proceed from this unhelpful dichotomy. What is wrong in many of these integration – or convergence projects is the inherent bias in the framing of the question. Champions of the dichotomy between facts and norms characteristically assume that the realm of facts is clear and straightforward so that the remaining side of the dichotomy functions as a residual category in which everything which does not fit the realm of the facts is assembled under the denominator of "values." However, critics of the dichotomy have extensively documented that many

supposedly separable "facts" and "values" are often entangled (Putnam, 2002, Chap. 2). Value concepts such as "just," "considered," "cruel," "polite," or "rude" clearly also involve descriptive characteristics, and are subject to their own standards of propriety and rationality and cannot be invoked merely at will. The real problem of the dichotomy is not only that "it functions as a discussion-stopper," but also as "a thoughtstopper" (Putnam, 2002, p. 44).

The discussion of the fact/value dichotomy is a recurring theme in recent BE/B&S literature. I will give a brief account of this discussion based on scholarly opinions dating from the 1990s, so as to cover the formative period of the ISCT project. The first panel was published in a 1994 special issue of BEQ on "The Elusive Boundary between Fact and Value."<sup>6</sup> The driving force of this collection consists of an article by Weaver and Treviño, in which these authors distinguish three possible levels of integration of normative and empirical research in business ethics: parallelism, symbiosis, and full theoretical integration also called hybridization. In parallel inquiry normative and empirical approaches merely share an object of study. Symbiosis means that the two modes of inquiry take insights from each other but stick to their own "theoretical principles, methodologies, and metatheoretical assumptions" (1994, p. 133). Full integration/hybridization is involved when the two approaches supplement each other as elements of a single theory and involves a deliberate "commingling of the cores of the two disciplines" (1994, p. 136). Reviewing the existing literature, the authors then conclude that in present circumstances the half-way house of symbiotic inquiry seems to have the best prospects.

While Weaver and Treviño mention examples of research that can be classified according to their proposed categorization, it would of course be beyond the scope of a single article to establish the accuracy and feasibility of such a scheme. For such a purpose, the empirical extension of their claim is simply not sufficiently clear. However, even so, it seems safe to say that their paper speaks for more integration of normative and empirical approaches to business ethics as the eventual outcome of a process. As such we may classify these authors as prudent integrationists, arguing that for all sorts of practical reasons full integration is currently not yet feasible, but they leave no doubt about what in due course

would be a desirable state of affairs. Similarly, W.C. Frederick, who presided over and introduced the BEQ symposium, may be classified as a full-integrationist.<sup>7</sup>

More specifically within the Business & Society domain, the best assessment of the current state of the debate on a dichotomy between facts and values may be gathered from an exchange in the April 1999 issue of *Academy of Management Review*, which was devoted to a proposal for a “convergent stakeholder theory.” The lead article here was written by Jones and Wicks who signal the emergence of “a significant divergence of perspective” in the BE/B&S domains. In view of this state of the discipline, they embark on a project for a “normatively and instrumentally sound convergent stakeholder theory” (1999, p. 206).

Two remarkable observations stand out in this exchange of ideas between main authors engaged in a debate on the problem of a divide between empirical and normative approaches in B&S.<sup>8</sup> What may strike one first is the criterion for evaluation to which the authors appeal. It would seem as if a main aim of Jones and Wicks is to demonstrate that the proposal for a convergent stakeholder theory actually meets the criteria for full integration as set out by Weaver and Treviño in 1994 (Jones and Wicks, 1999, p. 216). However, if this is indeed the case, this ambition is of course hardly convincing in view of the fact that, in their own response, the very authors of these criteria duly reject these claims (Treviño and Weaver, 1999, p. 222). Second, what is remarkable, and what maybe taken as evidence for the somewhat untidy state of the present discussion on convergent stakeholder theory, is the manner in which Jones and Wicks seek to demonstrate their claims. For the material presented seems only intended as an example of a successful instantiation of convergent stakeholder theory. The method of proof thus boils down to an attempt to show that such a theory is *possible*. In addition to an example of their own making, the authors apparently have surveyed “nearly 30 descriptive statements” (Jones and Wicks, 1999, p. 216) to support the claim that we are witnessing the emergence of convergent stakeholder theory. However, the article itself does not account for the sampling design, the methodology, or the criteria on the basis of which this set of statements was scrutinized. This falls well short of ordinary standards for academic reporting.

However, maybe the most revealing indication of the state of the art is to be found in comments from the then Editor, explaining the circumstances which prompted this particular special issue. While the idea of an integrated approach to the fact/value divide in stakeholder theory had been often attempted in papers submitted to the journal, there never was sufficient agreement among reviewers to grant the publication of these submissions. This had also aborted an earlier version of the central contribution to the special issue. In order to overcome this stalemate situation somebody suggested to organize a symposium on the interplay between the empirical and normative research traditions in stakeholder theory. It was the process of exploring the possibilities for such a debate that prompted the Editor’s comment which may be considered as the most revealing piece of evidence on the current state of the art: “not only do scholars within camps hold strong beliefs, but within these camps are significant differences and viewpoints. Further, the experts disagreed fairly strongly on who belonged to what camp!” (1999, p. 183).

We may conclude therefore that the discussion on the propriety of the dichotomy between facts and values in the BE/B&S domain clearly has not yet fully crystallized as in some of the more established social sciences. In political theory, in particular, authors such as Arendt (1958), Cavell (1969), Pitkin (1972), Strauss (1962), Vögelin (1952), and Wolin (1969) have argued against a dichotomous manner of framing which already gives away the central aim of the debate. As a consequence of an uncritical acceptance of the dichotomy between facts and values, “those who should be its powerful critics have become unnecessarily defensive, conceding the axiom’s major premise” (Pitkin, 1972, p. 220). Instead of the standard framing in terms of a dichotomy between facts and values, Pitkin (inspired by the philosophy of language of the later Wittgenstein) suggests to consider concepts in political and social sciences as “forms of life” which are subject to clear criteria for their validity similar to the rules of grammar of a language.

As goes without saying, it would be well beyond the scope of the present text to elaborate in any detail what this means for the BE/B&S domain. However, it is entirely fitting, in the context of a tribute to Dunfee’s intellectual contribution to the

field, to point out that with his emphasis on the problem of multiple mutually exclusive moral norms, his 1991 sketch of a decision procedure to accommodate conflicts among local norms provided a perspective which can be considered central to the concerns of the BE/B&S domain. Elaborating this framework, Dunfee's gut feeling was that current norms should always be seen in the context of some community or other. And according as individuals and entrepreneurs form part of multitude of communities (as a result of processes known as "differentiation" and "globalization") there will be more conflicting norms. Dunfee's intent was to find a solution in the form of some filtering device backed up by a set of priority rules. However, maybe, taking our clue from an earlier discussion of the fact/value dichotomy and the proposal for a scientific study of politics, it would be helpful to consider this central question of business ethics in the light of the problem that the modern business condition no longer envisages a clear and unified conception of the public good, in the way this was considered self-evident in the political thinking of the ancient Greeks. In this tradition, political concerns were kept "pure" by banishing all force and necessities to the sphere of the private household. This original conception of politics was soon to be unsettled by "the rise of the social" (Arendt, 1958, pp. 38–49). The proliferation of intermediary forms of human collaboration in the "age of organization" enforced and intensified this process. In modern times we therefore witness a "sublimation of politics" (Wolin, 1960, Chap. X). There is no longer room for genuinely public causes. What results is a cacophony of rivaling partial interests all of which lay claim to the priority which was formerly reserved for the public realm. An observer well-up in the defining problems of the BE/B&S domain may well recognize a familiar picture here.

## Conclusion

Dunfee's three solution mechanisms each fulfill a clearly defined function. Empirical research will identify candidate local norms; some version of the filtering test will help to establish whether such candidate norms can acquire the status of *legitimate*

local norms; and the set of priority rules will help to accommodate cases of filtering affirmed, legitimate norms when they get into conflict owing to the intensification of contacts across moral communities. In many ways, this threefold scheme anticipates the structure of the argument in *Ties*. However, Dunfee (1991) also provides us with a new formulation of the basic question of business ethics: how to weigh the outcome of anonymous market forces, economic calculus, and utility maximalization against other types of value considerations. Dunfee's conceptualization of the problem of multiple moral norms generalizes this question to the more universal problem of value pluralism.

With the benefit of hindsight we may observe that the idea of empirical discoverability of local norms may have been prompted by the highly problematic dichotomy of norms and facts, an unfortunate legacy from Logical Positivism which nevertheless did inspire kindred spirits to press for a behavioral business ethics. As was documented above, Dunfee operationalized this idea of empirical discoverability in a rather legalistic manner, as he was apparently unaware of the far more sophisticated analysis of the grammar of social science concepts in the work of authors such as Austin (1965), Cavell (1969), Pitkin (1972), Winch (1965), and Ziff (1960). In this respect, Dunfee may have been wrong-footed by ongoing discussions in the BE/B&S domain. Against the backdrop of similar earlier discussions in parallel areas of the social sciences, Dunfee's attempt to rescue the normative domain from charges of relativism, now may strike us as unnecessarily defensive.

Finally, a far wider inference from this conclusion would be as to whether the basic question of business ethics could profitably be replaced by the much broader concern about the decline of the sphere of "the political" under the impact of the ascent of "the social." However, with the space restrictions cordially suggested by the editors of this memorial issue already pressed to their limit that inference will need to wait for another occasion.

## Notes

<sup>1</sup> For a more detailed analysis, see Van Oosterhout et al. (2005, pp. 390–391).



<sup>2</sup> See for actual commentary and criticism of the ISCT project, among others: Boatright (2000), Calton (2006), Douglas (2000), Fort (2000), Hartman et al. (2003), Husted (1999), Phillips and Johnson-Cramer (2006), Soule (2002), and Wempe (2008). See also Dunfee's own review of these criticisms in Dunfee (2000, 2006).

<sup>3</sup> Unless indicated otherwise, all page references are to Dunfee (1991).

<sup>4</sup> Compare Isaiah Berlin's point about the uncritical, but almost universally accepted assumption of monism in the history of political and social theory. This criticism underlies his theory of value pluralism (Berlin, 1969).

<sup>5</sup> For all practical purposes, the idea of a macro-social contract may be considered as a further instantiation of Dunfee's filtering test. In fact, Dunfee already indicated that as far as he is concerned Donaldson's heuristic social contract model (as espoused in Donaldson 1982 and 1989) constitutes the most promising candidate for such a filtering test (p. 33). The provisional sketch of priority rules was incorporated in the six samples principles discussed in Chap. 7 (Donaldson and Dunfee, 1999, pp. 184–190).

<sup>6</sup> This symposium was introduced by Frederick; papers were given by Treviño and Weaver (1994), Weaver and Treviño (1994), and Victor and Underwood Stephens (1994); responses were given by Donaldson (1994) and Werhane (1994).

<sup>7</sup> See also Frederick (1995), especially Chaps. 8 and 9.

<sup>8</sup> Other participants in this exchange of scholarly opinions were: Treviño and Weaver (1999), Gioia (1999), Freeman (1999), and Donaldson (1999). Swanson (1999) does not participate directly in the AMR discussion, but she does address the “integration dilemma” – or “the lack of unification of the normative and descriptive approaches” (Swanson, 1999, p. 506).

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