

Commentary

Donaldsonian Themes: A Commentary

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ABSTRACT: The articles in the special issue of *Business Ethics Quarterly* (2015), “Normative Business Ethics in a Global Economy: New Directions on Donaldsonian Themes,” were written by a set of outstanding scholars: Margaret M. Blair, Joseph P. Gaspar, Nien-hê Hsieh, Peter L. Jennings, Marietta Peytcheva, Andreas Georg Scherer, Amy J. Sepinwall, Andrew Stark, Danielle E. Warren, and Manuel Velasquez. In this commentary I reply to my colleagues, arranging my reply around the following themes: 1) the corporate moral agent; 2) the idea of a social contract for business; 3) managing ethics within corporations; and 4) values in business. I discuss each in turn. However, I reflect first on my idiosyncratic approach to business ethics.

KEY WORDS: social contract, personhood, moral agency, thought experiment, business ethics, hypernorm

THE AUTHORS OF THE ARTICLES in the special issue of *Business Ethics Quarterly*, “Normative Business Ethics in a Global Economy: New Directions on Donaldsonian Themes,” guest edited by Alan Strudler (2015), advance novel conceptions even as they critique Donaldsonian themes. Their excellent pieces may be organized into four broad categories: 1) the corporate moral agent; 2) the idea of a social contract for business; 3) managing ethics within corporations; and 4) values in business. I will discuss each in turn, but want first to reflect on my idiosyncratic approach to business ethics over the years.

The shadow of a single deep question falls upon all of us who write in the area of business ethics. It is “How can moral theory inform business?” The question is different from that of “how do we develop the best general theories of morality?” and it speaks to the fundamental challenge of applying moral theory to any human institution whose *modus operandi* is fact-based, such as business, medicine, engineering, the military, or education. David Hume famously raised the flag of morals in opposition to reason:

If we take in our hand any volume; of divinity or school metaphysics, for instance; let us ask, Does it contain any abstract reasoning concerning quantity or number? No. Does it contain any experimental reasoning concerning matter of fact and existence? No. Commit it then to the flames: for it can contain nothing but sophistry and illusion” (Hume, 1777: 166; italics in original).

Hilary Putnam, no stranger to the importance of empirical reasoning, is both more cautious and astute than Hume. His work illustrates why numbers and facts are

important but do not exhaust moral reasoning. Putnam shows how taking seriously the granularity of practice makes moral reason thrive. This is especially true for business ethics. We must be attentive to the details of practices, he asserts, in order to assess their meaning and moral status (1978). Drawing upon Dewey he insists that moral thinking involves looking for solutions to practical problems, problems that “‘we encounter in practice,’ specific and situated problems, as opposed to abstract, idealized, or theoretical problems” (Putnam, 2004: 28). Achieving an objective moral solution means for Putnam finding the one that fits; the one that is “more reasonable” (Ohtani, 2010). I take this to be the task of the business ethicist.

So where should we begin our journey towards “more reasonable” solutions? This question, an inevitable one for any philosopher living among business academics, was asked half a century ago by the Australian philosopher, John Passmore. Given the existence of an objective method in science, he asked, what are the “objective” methods of philosophy? In *Philosophical Reasoning* (1961), he answers his own question by detailing key methods of philosophical rationality and argument. Reading Passmore’s book as a young man I was struck by his painstaking care in isolating key rational strategies from the history of philosophy: for example, the infinite regress argument, the two worlds argument, self-refutation, arguments to meaninglessness (verifiability/excluded opposites/paradigm cases), and allocation to categories. But while Passmore restricts himself to philosophical reasoning generally, the same analysis must be made of moral reasoning. And when examining rational strategies in moral reasoning, a moment’s reflection shows that we must extend Passmore’s list. Surely Rawls’s rendering of “reflective equilibrium” (1971: 61) constitutes a possible method. Another would be Kant’s notion of “regulative ideas” (1788), sometimes translated as “regulative ideals.” This mode of reasoning utilizes a pure concept, which in turn, is used to guide thinking in a less-than-pure world.¹ And in modern times, the notion of an ideal speech situation derived from Habermas (1984, 1996) and referenced by Scherer (2015) serves as a guiding procedural ideal.²

One method that Passmore overlooks, however, and one that has marked my own work, is that of the moral “thought experiment.”³ In my 1982 book, *Corporations and Morality*, as noted by Nien-hê Hsieh (2015), I offered the thought experiment of imagining a state of nature (of individual production) and then later discussed how the terms of a social contract between business and society might emerge. Later, I critiqued the international strategy of nuclear deterrence (1985) using simple thought experiments related to moral “recalcitrance”; still later I examined the partiality shown to friends and family members in contrast to strangers (1990a) through a thought experiment envisioning a hypothetical world of perfect impartiality, “Equim.”⁴ Finally, I included a thought experiment in my exposition of an ethical “algorithm” (discussed by Andrew Stark (2015) in his contribution to the special issue) for arbitrating between home and host country norms in which managers hypothetically imagine their country at a different level of economic development.

One may well ask, “What, if anything, can a thought experiment show?” The answer is “a lot.” Notably, one of the most famous thought experiments, and the

one that persuaded me years ago of their power, comes from physics. In his “pail of water” thought experiment, Isaac Newton, after conducting a physical experiment with a rope and pail of water, asks the reader to imagine a pail of water turning round in outer space, bereft of gravity. His powerful thought experiment convinced readers and even his detractor, Leibniz, that physical forces operate relative to something other than simple physical bodies (O’Connor & Robertson, 2004).

Such thought experiments are more common in morality than many think. One of the best known is the construction of a social contract, one version of which I attempt in Chapter III of *Corporations and Morality* (1982). All social contract arguments may be viewed as discrete forms of thought experiment. Rawls’s far more famous version of the social contract thought experiment inspires Hsieh’s attempt (2015) to refine my social contract for business. A social contract thought experiment involves imagining hypothetically a state of nature or original position, and then proceeds to work out the results of that starting point. Another closely-related thought experiment, also referenced by Hsieh (2015), is T. M. Scanlon’s contractualist account of morality. Scanlon’s account involves applying a hypothetical condition to either an imaginary or actual act, namely, “an act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behavior that no one could reasonably reject as a basis for informed, unforced general agreement” (Scanlon, 1998: 153).

Thought experiments are powerful devices for helping clarify practical problems in ethics.⁵ Speaking with business managers over the years, I’ve been struck by how often a manager has said, “I was confused so I asked the front-page-of-the-newspaper question: ‘What would my action look like if it appeared on the front page of the *Wall Street Journal* or the *New York Times*?’” The simplest moral thought experiment of all is the Golden Rule. It involves imagining oneself in the shoes of another person and asking the question, “How would I want to be treated?” (Kant, interestingly enough, regarded the Categorical Imperative as an improved version of the Golden Rule.) In the context of business, the “algorithm” I constructed for managers when confronting a conflict between home and host country norms (and discussed by Stark (2015), involves a thought experiment that is reminiscent of the Golden Rule: namely, “Would our country find this norm acceptable at home if it were hypothetically at a relevantly lower level of economic development?”

The very possibility of methods such as regulative ideals, reflective equilibrium, procedural ideals, and thought experiments implies that while not “objective” in exactly the same way as the natural sciences,⁶ moral reasoning reflects a form of rational objectivity.⁷ We should assume it in the applied area of business ethics. The topic of normative ethical relativism is for hazy contemplation on a beach far from work.

THE CORPORATE MORAL AGENT

Blair’s Warning

Margaret Blair’s urgent warning about the disturbing direction of corporate law in the United States in her article “Of Corporations, Courts, Personhood, and Morality” (2015),

is timely and warranted. She correctly observes that when writing *Corporations and Morality* (1982) I failed to anticipate either the perverse uses to which the idea of corporate moral agency would be put, or the ferocity of the campaigns launched by dominant control rights holders of corporations for securing their own interests. Recent decisions by both the US Supreme Court and the Delaware Chancery Court clash with the moral responsibilities I assigned corporate moral agents (Blair, 2015: 415). These include the so-called “moral” rights touted in the Supreme Court’s rulings in *Burwell v. Hobby Lobby Stores* and *Citizens United v. Federal Election Commission, Inc.* These decisions have little defense in moral theory and are highly selective in their ascription of rights: “unlimited rights to expend resources on ‘independent’ political speech” (*Citizens United*), and a right to “exercise religion” (*Hobby Lobby Stores*) that, as Blair notes, the court even protects “from regulations that burden that right under the Religious Freedom Restoration Act of 1993” (416). In a different vein, the decisions in *eBay Domestic Holdings, Inc. v. Newmark* and *In re Trados Inc. Shareholder Litigation* in the Delaware Chancery Court emphasize one-sided responsibilities of directors to shareholders at odds with the social contract responsibilities to consumers and employees that I outlined in both Donaldson (1982) and Donaldson and Dunfee (1999). Blair’s conclusion is worth repeating: “From these cases, it would seem to follow that under Delaware law, at least, not-for-profit corporations can, and are expected to pursue some social mission, or perhaps a religious mission, but for-profit corporations are required to pursue profit, and may not sacrifice profit in order to further a social mission” (2015: 424).

Were I writing *Corporations and Morality* (1982) today I would emphasize even more than I did the distinction between a corporation as an artifact, as a socially constructed form of moral agency, and a human person. Corporate moral agency is plastic. It is malleable and should be shaped by democratic society working through its institutions. As Blair writes,

What matters for the question of corporate morality is whether the decision-making processes used in the corporation adequately support moral reasoning, and require the consent of parties affected by the corporations’ decisions. Recent Supreme Court decisions take for granted that they do, just as the Delaware courts seem to be taking away the discretion that might have at least permitted directors to consider the interests of any parties other than common shareholders (2015: 427).

Notably, the plasticity of corporate moral agency is not infinite. It must be shaped in a way that satisfies the values and interests of all economic participants. An outsider looking at the power relations at stake in the recent US Supreme Court and Delaware Chancery Court decisions might well conclude that current court battles are actually between the “haves” and the “haves.” The broad class of common share owners worry that if the corporation is allowed to pursue social welfare goals, their ultimate claim on the residual surplus of the corporation is threatened by do-gooder managers. Meanwhile, particular shareholders and the leaders (including donors) of certain not-for profit firms such as Citizens United worry that their rights to achieve their personal interests will be threatened by a government-imposed morality. In neither instance are the values of the average economic participant and citizen at stake.

Yet as I have argued in *Corporations and Morality* and elsewhere (Donaldson, 1982, 1989; Donaldson & Dunfee, 1999; Donaldson & Preston, 1995; Donaldson & Walsh, 2015), these are the very interests and values we must consider when evaluating the moral behavior of corporations.

Sepinwall's Challenge to a Conception of Agency

Amy Sepinwall offers us a detailed, well-plotted map of options in the moral agent/moral person controversy in her article "Denying Corporate Rights and Punishing Corporate Wrongs" (2015). Her painstaking analysis of moral options in the context of legal reality heightens the sophistication of agency debate far beyond the level of the 1980s conversation in which I engaged. Nonetheless, she worries about the approach I took, and criticizes the distinction between moral agency and "personhood" that I employed then. As it was articulated, she concludes, my strategy ultimately fails (Sepinwall, 2015: 517). I'm flattered that Professor Sepinwall has named an entire philosophical approach, the "Donaldsonian Strategy," after me. Unfortunately, I must decline the honor since, as I shall explain, there are important differences between Sepinwall's "Donaldsonian Strategy" and the one that I employed in *Corporations*.

In responding to Professor Sepinwall, it will help first to describe the moral agency conception I advanced in *Corporations*. As noted above, my argument construes corporations as artifacts. "We create them," I wrote. "We *choose* to create corporations and we might choose either not to create them or to create different entities" (1982: 37). But we may ask whether minimal requirements of moral agency exist in order for corporations to function in society, requirements that touch on both responsibilities and rights. I argue in *Corporations* that corporations must minimally qualify as moral agents to be held accountable. Moreover, we must ask what is needed for such an underlying minimal form of that moral agency. Two answers follow: 1) The capacity to use moral reasons in decision-making, and 2) the capacity of the decision-making process to control not only overt acts but also the shape of policy and rules. This view of moral agency aligns well with Denis Arnold's recent approach. Professor Arnold writes that "properly understood," corporations are "intentional organizations that are morally responsible for their policies and practices" (2016: 255). He continues, they are "corporate moral agents capable of being duty bearers and entities morally responsible for their actions because they have internal decision structures comprised of human agents, including the ethical infrastructure of the firm, corporate intentions understood primarily as plans, and the capacity for reflective assessment of corporate plans and practices" (Arnold, 2016: 262). These are minimal requirements. How, then, do we shape the responsibilities and rights of productive organizations beyond this minimum? In *Corporations* I answer this question by saying they should be shaped by moral argument; and, as noted earlier, the form of moral argument I feature in *Corporations* is that of a social contract thought experiment.

Sepinwall summarizes my strategy as follows: "Corporations, he [Donaldson] argued, are not moral persons, and so are not eligible for many of the rights that persons enjoy; but they are moral agents, and so ought to bear responsibility in many

of the ways that persons do” (2015: 517). So far so good. Sepinwall, however, continues by elaborating what she takes to be the “Donaldsonian Strategy”: “I consider accounts,” she writes, “that seek to establish that corporations should not enjoy rights grounded in moral personhood.” Next, she establishes her contention: “In particular, I contend, we might recognize corporate rights even if corporations are not moral persons; alternatively, corporations might legitimately be denied certain rights that we take to be foundational in our constitutional regime even if it turned out that they were moral persons” (518). Elaborating on this, she writes, “I consider accounts that seek to establish that corporations should not enjoy rights grounded in moral personhood, and I argue that the reasons theorists (including Donaldson) offer to deny corporations these rights can be overcome” (518).

The catch is that I argued that corporations *should* enjoy some rights for which human personhood is a sufficient condition, but not all such rights. Again, Sepinwall writes, “Corporations, he [Donaldson] argued, are not moral persons, and *so* are not eligible for many of the rights that persons enjoy . . .” (my italics). The problem lies in the word “so.” There is an important difference between saying that corporations should or should not enjoy a given right, e.g., to religious freedom, as I did in *Corporations* (I denied that corporations had such a right) and saying that the reason *why* they should or should not is because that particular right is guaranteed by moral personhood, and corporations are not moral persons. We should avoid the fallacy of denying the antecedent. From “if P then Q” it does not follow that “if not Q then not P.” From the proposition, “If something is a human person, then it has the right to religious freedom,” we cannot conclude that, “if something is not a human person, it does not have the right to religious freedom.” It may or it may not. As I mentioned above, in *Corporations* I argued that the determination of rights and responsibilities for corporations should be shaped by moral argument, and in particular by the social contract thought experiment. Sepinwall writes, “I contend, we might recognize corporate rights even if corporations are not moral persons.” I agree fully with her contention. Indeed, I argue in *Corporations* that corporations possess a number of rights also possessed by persons, even though I do not argue that they possess them *in virtue* of being persons. In Chapter 3 of *Corporations*, which follows the chapter on moral agency that Sepinwall analyzes, I use the social contract thought experiment to argue for particular but limited corporate rights. As Hsieh notes in his analysis of my argument there (42), Donaldson specifies rights and responsibilities for productive organizations. “In addition to the right to exist,” Hsieh notes, “productive organizations are assigned ‘recognition as a single agent, especially in the eyes of the law,’ as well as authority ‘to use land and natural resources’ and ‘to hire employees’” (2015: 435). These rights are also held by natural persons, but their justification does not flow from the fact that corporations are persons, but from the conclusions of moral argument derived from the social contract thought experiment.

Another element of Sepinwall’s argument is the claim that if something is a moral agent then it also qualifies as a moral person. This is a trickier claim, one complicated by the fact that Sepinwall introduces a separate category somewhere between moral agency and common, garden-variety personhood, namely,

“corporate moral personhood.” As Arnold points out in a critique of earlier work by Sepinwall, the move from moral agency to any kind of personhood is fraught with peril since the term “person” implies an ontological status. He writes, “persons in the ontological (not legal) sense have freedom of the will, the capacity to gain meaning, personal satisfaction, and happiness, from the pursuit of plans and life projects, and the moral status of ends in themselves. These characteristics are not shared by corporations” (Arnold, 2016: 261).

For clarity, I prefer the term that I used in *Corporations*, “corporate moral agency” to Sepinwall’s “corporate moral personhood.” “Corporate moral agency” doesn’t muddy the linguistic waters. But at least by making the move to establish a special category of personhood, Professor Sepinwall’s ideas and mine begin to converge. In the end, Professor Sepinwall and I agree that, at least beyond a few minimal requirements, the nature of corporate moral agency (or “corporate moral personhood” for Sepinwall) should be shaped by moral argument. This is what, as Sepinwall explains, List & Pettit (2011) recognize, and what Werhane (1985) attempts, albeit according to Sepinwall with defects. It is what Sepinwall herself does when, for example, she suggests that “it might be the case that protecting the rights of the corporation’s individual members nonetheless requires that we treat the corporation as if it has at least some of these rights” (2015: 524). And it is what I do in *Corporations* when I use the social contract argument to conclude that corporations have the right to act as a single entity under the law; and later in *The Ethics of International Business* when I argue that corporations have some correlative duties associated with human rights, such as to avoid depriving people of the object of a human right (Donaldson, 1989). This is the point that Arnold makes when he concludes “that there are multiple, compelling, and overlapping justifications of corporate human rights obligations” (2016: 255). In sum, we should structure the moral agency of the corporation cautiously, utilizing the best and most inclusive of moral arguments. Also, in the sphere of legal reasoning courts should utilize the best and most inclusive of legal arguments, something, as Blair demonstrates, US courts have failed to do.

What Morals do Corporations Have?

In their fascinating analysis of overlapping microsocial contracts, “When Ethical Tones at the Top Conflict: Adapting Priority Rules to Reconcile Conflicting Tones,” Danielle Warren, Marietta Peytcheva, and Joseph Gaspar radically shift the topic of corporate moral agency to that of culture (2015). They identify a neglected problem, namely, conflicting ethical tones in multi-organizational work settings. When discussing whether a corporation is a moral agent or moral person, we often assign it a monolithic personality. The truth, as Warren et al. show, is a manifold personality. Corporations reflect moral tones from employees at the bottom, from the middle, from the top, and from external professional and regulatory communities. They coexist in industries and other economic settings whose values often differ from their own. The problem does not end with conflicting moral tones. It persists in the skewed resolution mechanisms used by corporations, ones that fail by selecting a single tone and allowing it to dominate. By proposing a multi-tone resolution process informed by the priority

rules of Integrative Social Contracts Theory (ISCT) (Donaldson & Dunfee, 1999: 46), the authors offer a means to achieve reconciliation and corporate cultural unity. My late, dear colleague, Tom Dunfee, would smile to see this splendid deployment of the “priority rules” that he designed for ISCT used in such an inventive manner. I predict Warren et al.’s article will garner significant attention.

THE IDEA OF A SOCIAL CONTRACT FOR BUSINESS

Hsieh’s Critique of My 1982 Social Contract for Business

In his contribution to the special issue, “The Social Contract Model of Corporate Purpose and Responsibility,” Nien-hê Hsieh (2015) comments on my early version of the social contract between business and society in *Corporations and Morality* (1982: Chapter III). Hsieh’s account is illuminating both for its critique of my efforts and for the lessons it offers any future social contract design for business ethics. I agree with Hsieh’s distinction between “traditional” and “contemporary” social contract theory, and his assignment of my version to the latter category. The distinction dispels an ambiguity that I permitted when designing the contract. Hsieh begins by considering a criticism of my social contract offered by Kultgen. He writes,

Kultgen’s criticism [that the contract fails because it is hypothetical and not existent] seems to be independent of the existential status of the social contract. That is, even if the social contract is no less real than other normative concepts, such as rights and obligations, the point is that because consent to the contract is hypothetical, it cannot generate these obligations (Hsieh, 2015: 439).

The issue, as Hsieh correctly notes, is whether the “contract generates obligations” in the same way that non-hypothetical contracts generate obligations. The question of generating obligations is whether a specific social contract can serve as a kind of performative conceptual utterance, as a kind of “I do” implying consent to the commitments imposed by the contract. As Hsieh correctly notes, my social contract is a form of thought experiment meant to *clarify* obligations, not create them. In Hsieh’s language, my version of the social contract is a “heuristic” one. I would add that as a heuristic, the social contract thought experiment reflects a venerable tradition in moral reasoning. Consider Kant’s exposition of the Categorical Imperative in which he proposes the thought experiment in which one imagines oneself as a “universal legislator” in a “kingdom of ends” (a hypothetical state in which we imagine ourselves making the rules for a world in which everyone is treated as an end in themselves) (Kant, 1785). The act of imagining such a hypothetical world is clearly not itself a performative action that *generates* our obligations. Rather, it is a thought experiment that helps us *clarify* our obligations. As Hsieh observes, my version of the social contract is a distinctively “contemporary” one; one that does not fit the “traditional” Procrustean bed.

According to Hsieh, a more serious concern for my interpretation of the social contract is its indeterminacy. With all due respect, I am inclined to reply “So what?” To be sure, the contract is indeterminate regarding many issues that a longer, more detailed account of a social contract, *pace* Rawls, might clarify. But neither is it sterile.

If I am correct, and Hsieh grants as much, the thought experiment of the social contract in *Corporations and Morality* helps clarify at a minimum *why* society needs productive organizations. Productive organizations are defined as organizations in which two or more people combine their labor to produce a product or service. The thought experiment envisions a move from the state of individual production (in which individuals work and produce alone) to one in which they combine to work together (in productive organizations). In the state of individual production there are no “factories, banks, hospitals, restaurants, or railroads” (1982: 45). The exercise reminds us of another more famous thought experiment, namely, that of the pin factory in Adam Smith’s *Wealth of Nations* (1776). There Smith illustrates why workers laboring alone can account for a mere “pittance” of pins per person, but how by combining their labors through a division of such labor in a factory workers can account for a bounty of pins per person. The thought experiment in *Corporations and Morality* (1982: 45) thus spells out many of the obvious advantages of moving from a state of individual production to one that allows the emergence of productive organizations. Some of these are: 1) improving efficiency through maximizing the advantages of specialization; 2) stabilizing levels of output and channels of distribution; and 3) increasing liability resources. One of the ironies in the argument of *Corporations and Morality* is that the social contract shows why one of the principal moral obligations of the productive organization is to produce efficiently.

I agree with Hsieh’s argument that more precision would be gained were the social contract to introduce the specific form of economy, e.g., capitalistic or socialistic, that the society plans to institute. Hsieh writes, “an account that gives us no *prima facie* reason to rule out corporations is not the same as an account that provides a positive account for why parties will choose an economic regime that permits the formation of corporations” (2015: 446). That, however, is a different thought experiment and one I saw as a bridge too far to cross in *Corporations*. Paraphrasing Aristotle, we ought not to demand more precision than our conceptual schemes permit. Hsieh’s instincts are on-target, however; at the time I wrote *Corporations* I worried about the lack of specificity in the contract, and especially its opacity for the investor owned, for-profit corporation, that is, opacity regarding its peculiar duties, the rights of its owners, employees, etc. But I was convinced that I needed to tell the economic story from the beginning, starting with the generic issue of the productive organization, and assuming neither markets nor private property. I told that story first, although I grant that there is a larger story for a larger book (one which I later wrote with Tom Dunfee [1999]).

The final issue I shall address in Hsieh’s excellent article is that of justice versus consequences in the scheme of the contract. Hsieh writes,

[T]here is reason to doubt that the agreement of the parties counts in favor of social welfare as the rationale for assigning responsibilities to productive organizations. . . . Given that the parties also introduce obligations for productive organizations on grounds of justice, the question may be asked why the obligations grounded in considerations of social welfare are not better understood as grounded in other considerations, such as justice (2015: 442).

Does my account founder on the notorious rocks of justice vs. consequences? Hsieh is correct: the obligations of my social contract are grounded in considerations of justice as well as social welfare. But his critique assumes an exclusive disjunction between social welfare and justice. One of the practically wise aspects of the social contract thought experiment is that hypothetical contractors will concern themselves with both justice and social welfare as they ask questions about whether the state of individual production is improved through the introduction of productive organizations. The thought experiment does not require contractors to think like professional philosophers. It does not require them to specify whether their interests are framed in terms of principles or consequences. Surely the employee and consumer interests they consider can include the interest of being treated justly. Contractors can agree on obligations for productive organizations without wrestling Kant and Mill to the ground.

HOW SHOULD CORPORATIONS MANAGE ETHICS?

Stark's Algorithmic "Inversion"

We saw earlier how Warren, Peytcheva, and Gaspar (2015) examine ethical tones in the workplace and construct a promising strategy for reconciling those tones by utilizing priority rules drawn from ISCT. Andrew Stark (2015) offers a different set of practical recommendations to corporations. In his "Inverting Donaldson's Framework: A Managerial Approach to International Conflicts of Cultural and Economic Norms," Stark takes my own "algorithm" for reconciling conflicts between home and host country norms from *The Ethics of International Business* (1989: 101-108) and in my *Harvard Business Review* article, "Ethics Away from Home" (1996), and critiques and expands it (2015: 535-558). He in effect offers a thought experiment about a thought experiment.

My question here is a thought experiment. What different insights might emerge if we flipped Donaldson's framework around? Specifically: What if we viewed the kinds of conflicts that fall under Donaldson's "conflicts of culture" as arising not because the home and host exhibit a "fundamental" conflict in cultural norms, but because they are at two different stages of cultural development? And what if we viewed "conflicts of relative economic development" as conflicts that occur not because home and host are at two different stages of economic development but, simply, because their economies contemporaneously interact with each other in ways that generate normative conflict: call them "conflicts of economy" (2015: 535)?

To be sure, Stark's fascinating thought experiment does not amount to pure inversion of my algorithm. Pure inversion would mean flipping the criteria for resolving a conflict of culture with the criteria for a conflict of relative economic development. But the results of his inversion are clever and enlightening. They illuminate aspects of the conflict-of-norms conundrum that my original algorithm missed. He notes, for example, that Western countries were often themselves in "relevantly similar" cultural situations years ago, situations like those of some non-Western countries today. For this reason, MNEs may want to confront worrisome practices

abroad with more humility, and consider more sophisticated options when framing their responses. For example, whereas my original algorithm is framed as a binary, go/no-go decision, in which a company should either adopt/not adopt, say, the Japanese custom of giving gifts to business customers and partners whose dollar value exceeds the limits on gift-giving by most Western-based corporations, Stark opens the door to the possibility that a company might want to adopt the host country's norm, say by following Japanese gift-giving customs only if, at the same time, the MNE uses that opportunity to normatively critique the practice and support the Japanese reformers opposing it. "The US MNE can engage in those practices [for example, Japanese-style gift giving]," Stark writes, "but only if at the same time it helps advance the host-country critique they are each beginning to elicit" (2015: 544). Stark's approach reminds managers to be alert to the winds of moral change that blow around the globe, and to recognize that those winds are largely unidirectional (albeit mostly Western-inspired). Stark's reminder is worth the candle.

Nonetheless, I worry that Stark's approach expands moral free space dangerously towards normative relativism. My original algorithm allows some moral free space insofar as it permits MNEs in some instances to accept certain host country norms, even when those host norms appear to be "lower" than the home country norm. But I disagree with the extent of moral free space Stark's revision of my algorithm permits. Two of his examples are illustrative: 1) the hypothetical approval of gender discrimination in Saudi Arabia, and 2) "racist" policies in South Africa. Stark repeats a question I raised earlier about a whether a US manager, "coming as she does from a culture that prohibits gender discrimination in the workplace, having to decide whether her MNE, when doing business (e.g., sending a consulting team, opening a subsidiary) in Saudi Arabia, should accede to Saudi practice and bar women in its managerial positions" (539). Stark approves of the woman adopting the Saudi practice. He writes,

Then the MNE, by complying with Saudi practice while supporting the internal normative critique it's beginning to engender, ceases to be either hypocritical or ethnocentric. There's no hypocrisy—no inconsistency—between what the MNE would be doing at home and in the host, since at home even now it's doing business in a culture where the practical reality of gender inequity still exists, even as it's trying to change (544).

Later, Stark considers racist practices:

What about racial prejudice? . . . So could an American MNE participate in a version of that practice—apartheid being the most obvious example—as long as it was using its presence in the host country to advance a normative critique of the practice and help indigenous opponents in the struggle against it? Yes—unless those indigenous opponents themselves felt that their normative cause would be better advanced if western MNEs did not participate in the practice and pulled out of the country (545).

These examples are deeply troubling. Even approval by a victimized minority cannot guarantee the moral permissibility of a racist practice, at least if it is genuinely racist. And gender discrimination is not exonerated by speaking out against it. This is why in the original version of the algorithm, a Type 2 conflict (one based on cultural differences like those in apartheid, or Saudi gender practices, or Japanese

gift giving), there is an absolute, non-relative requirement that “the practice” not constitute “a clear violation of a fundamental international right” (Stark, 2015: 104). Racism in apartheid South Africa was simply unacceptable for MNEs. Interestingly enough, most MNEs refused to follow South African law that required racially segregated washroom facilities. Those MNEs were correct to refuse to segregate their facilities even though by refusing they had to break South African law, and even if local indigenous opponents might have approved of segregation. The exclusion of women from key managerial positions, similarly, constitutes a violation of the right to non-discrimination. However, it does not follow that all practices that seem bad fail the fundamental rights test. As I have written, gift giving practices in Japan, while perhaps wrong, may not rise to the level of violating a fundamental international right.

VALUES IN BUSINESS

Profitable Values in Society's Institutions: Jennings and Velasquez

In “Towards an Ethical Wealth of Nations: An Institutional Perspective on the Relation between Ethical Values and National Economic Prosperity,” Peter Jennings and Manuel Velasquez (2015) extend an earlier, tentative hypothesis from my “The Ethical Wealth of Nations” (Donaldson, 2001) that ethical values, at least when attributed “intrinsic” worth, contribute to national economic prosperity. The authors extend this “intrinsic values thesis” and propose what they call an “institutionalized values thesis,” one that holds that in order for ethical values to drive economic performance and contribute to a good society, they must both be ascribed “intrinsic” worth and also be “fully embedded in . . . the institutional fabric of society” (Jennings & Velasquez, 2015: 466).

In my 2001 article, I proposed four categories of ethical values—fairer distribution of goods, better government, ingrained social cooperation, and inculcation of economic duties—that I argued can drive economic performance. Jennings and Velasquez extend these four categories using the tools of institutional economics and sociology. “Fairer distribution of goods” is expanded to include “fairer access to opportunities”; “better government” is extended to become “better executed government”; “ingrained social cooperation”/ “inculcation of economic duties” is extended to become “internalized aspirational morality.” And, finally, the authors add an entirely new sector that I overlooked, namely, “respect for civil society.”

The authors are right to complain that I failed to address how these four ethical factors of economic prosperity relate to institutions. At the time, I merely acknowledged that my hypotheses linking the wealth of nations to ethics stood in need of additional empirical confirmation. What is striking about Jennings and Velasquez’s analysis is how it presents new empirical confirmation even as it provides a better framework for evaluating such confirmation. In short, the updating and augmentation of empirical research undertaken by the authors and their rearrangement of the question into a tripartite institutional framework of “democratic political,” “free market economic,” and “civil society cultural” institutions is long overdue. Moreover, some of their fine-grained analysis, for example, analysis of the obligations of

financial service industry participants to avoid systematically damaging the integrity of market, is well-timed in the wake of the financial crisis.

Scherer: Bringing Hypernorms into the Conversation

In his contribution, “Can Hypernorms Be Justified? Insights From A Discourse–Ethical Perspective,” Andreas Scherer (2015) correctly notes that in *Ties that Bind* (Donaldson & Dunfee, 1999) and elsewhere Dunfee and I decline to take a position on whether hypernorms have a rational (as proposed in the Kantian tradition) or an empirical or historical (as proposed in the Hegelian tradition) foundation. We also argue that it is not necessary to resolve this underlying epistemological question in order to identify hypernorms, and we remain agnostic on the ultimate source of hypernorms (Scherer, 2015: 492). My dear friend and coauthor, Tom Dunfee, was less convinced about the rational objectivity of morals than I and more tempted to rely upon patterns of existing moral belief to secure moral rights and obligations. We debated the issue often. Our ambiguity in *Ties* (1999) has caused great confusion for commentators. How can anyone know which hypernorms exist? How are hypernorms justified? Are hypernorms derived empirically or from reason?

Scherer’s critique raises issues of both practice and theory. I disagree with his critique on both counts, but not dramatically. As for practice, we philosophers must face reality. Metaethical disputes about the epistemic status of moral principles in business ethics need ring-fencing. Business stumbles when practiced on the rocky slopes of Mt. Olympus. The booming buzzing confusion of business demands action: wheat must be planted; grapes must be harvested. CEOs need not resolve the epistemic question of whether either a rational foundationalism of the Kant/Spinoza variety secures moral statements, or whether a more procedurally-oriented pragmatism of the Rorty/Pierce/Habermasian kind is best. CEOs’ expertise lies elsewhere.

Hence, the most relevant part of Scherer’s critique in my opinion is not its critique of ISCT’s epistemology, but how it urges Donaldson-Dunfee’s hypernorms to submit to constant scrutiny under rational discourse. Scherer is correct. In an interesting, but as yet unpublished manuscript, Markus Scholz and Gaston de los Reyes (2015) examine Scherer and Palazzo’s earlier critique of ISCT, and point toward a possible reconciliation between Dunfee-Donaldson and Scherer and Palazzo (Scherer & Palazzo, 2007: 1), a reconciliation they label the “enduring promise of justified hypernorms,” which hails well-debated consensual documents such as the United Nations Global Compact and ISO 26000 for establishing defensible moral boundaries on business behavior.

Taking Scherer’s critique one step further, I would add that not only the specification of hypernorms, but the creation and operation of corporate governance structures should reflect the ideals of communicative action, and, in turn, intersect with the broader ideals of deliberative democracy and public reasoning. In spelling out the ISCT agenda, Tom Dunfee and I neglected discursive requirements. We emphasized the importance of “voice” but said little about stakeholder communication and participation in the process of public reasoning. The best procedures for isolating principles in business should reflect something like an ideal speech situation and include employee voice, stakeholder dialogue, discursive democracy, and public conversation.

But let us not forget that participant-identified hypernorms serve as critical practical tools. For example, corporations memorialize limits on what's allowed when pursuing profit using credo statements that reflect first-order moral (hypernorm) status.⁸ Such statements list hard-to-disagree-with ideals/hypernorms such as "trust," "respect" and "integrity." Moreover, groups of economic actors generate workable precepts that they strive to uphold, e.g., the Caux Round Table Principles, the Ruggie Principles, the United Nations Global Compact, ISO 26000, mission statements, and codes of ethics (Caux Round Table, 2009; Kell & Ruggie, 1999; Ruggie, 2008a; Ruggie, 2008b). It is important that their conversations pause from time to time in order to memorialize such lists. Starting fresh every day is not an option.

The second issue Scherer raises is theoretical, and concerns deep epistemology. He questions the universality of hypernorms, and how hypernorms are to be understood. In doing so, he misses the boat. He criticizes ISCT for failing to nail down the exact list of hypernorms and the exact list of "clues" for the discovery of hypernorms. We offered eleven such clues, including items such as "consistently referred to as a global ethical standard by international media," "supported by global business organizations such as the International Chamber of Commerce or the Caux Round Table," and "known to be consistent with precepts of major philosophies." But we make clear in *Ties* that our aim is not to resolve such issues. While we do not adopt a discourse-ethics approach, we acknowledge that the issue of the specification of hypernorms is, and should be, the subject of constant debate and discussion.

I have been surprised by widespread concern from commentators over the determination of hypernorms, and am surprised by Scherer's concern in his special issue article. Perhaps Dunfee and I failed to stress the modesty of our ambitions. We demurred from attempting a single list of hypernorms, i.e., the set of first-order principles, for business. That task is herculean. But the world of practice does not need the last word, it needs only a few first words.

Let us back up. The concept of a hypernorm, that is, a norm that sits in judgment of lower order norms, is clear enough. It is the idea of an axiomatic principle or set of principles for moral decision making, and as such has been a topic for Western moral philosophers since Plato. It is famously interpreted by Kant and R. M. Hare in modern times, with Kant (1785) approaching it from the standpoint of metaphysics, and Hare from linguistics (1964). More recently Walsh and I devote considerable attention to its proper function in business through the notion of "intrinsic value," that is, a "positive value whose worth does not depend on its ability to achieve other positive values" (Donaldson & Walsh, 2015: 188).

Most philosophers are properly modest; they refrain from presenting grand, once-and-for-all lists of core values. Perhaps, *pace* Habermas, they realize that such lists should be the outcome of well-formed discussion and should be topics of ongoing conversation. We recall that the all-time champion of the universalizability of moral norms, Immanuel Kant, offers only four "illustrations" of attempts at universalization in his famous *Groundwork of the Metaphysics of Morals*, all of which involve not universal maxims, but the denial of potential universal maxims, or more properly, the denial of our ability to will the universality of specific defective maxims: 1) to make a lying promise; 2) to self-subsist without aiding others; 3) to allow one's talents to atrophy;

and 4) to succumb to the temptation of suicide (1785). Most philosophers don't attempt comprehensive lists (including Habermas, who is a moral universalist himself). A very few, e.g., W.D. Ross and his "prima facie duties" (1930), attempt lists, but such lists immediately provoke second-guessing.

However, it is extremely important that the guiding idea of universality should not be forsaken; it is crucial for regulating human activity both in business and elsewhere. Nation states, religious organizations, industries, corporations, schools, and other human institutions constantly construct and use lists that they believe enshrine core normative principles. From the standpoint of practice, doing so serves to regulate behaviors and policies. In the economic sphere, Corporation A may subscribe to and adopt the principles of the United Nations Global Compact, including the United Nations Declaration of Human Rights (1948) and the principles promulgated by the ILO; Corporation B may subscribe to the Caux Round Table Principles for Responsible Business (2009); yet another may utilize Donaldson's list of ten Fundamental International Rights (1989: 81). Better and worse lists are drawn up; hence the need for ongoing, well-formed discussion. But no theorist of business ethics who wants to improve corporate moral decision-making can resolve all issues about the items on these lists. That task will, and should be, left to others, especially to the actors themselves.

Dunfee and I offered a list of suggestions about how economic actors might distinguish bad from better and best from worst: hence the eleven item "checklist" to help to confirm or disconfirm the presumption of a particular hypernorm. Is our list "ad hoc," as Scherer suggests? Of course. Our principal aim was to present and explain the framework of ISCT itself: one in which moral free space is possible, but where such freedom must be limited by hypernorms. When assessing an authentic microsocial contract from the standpoint of its potential legitimacy, the key test of that legitimacy is its compatibility with first-order normative principles, i.e., hypernorms.

The irony here is that Habermas himself is strongly influenced by the moral rationalist, Kant, and Habermas himself adopts a form of moral universalism (1984). According to Habermas, the dictates of practical reason have an unconditional and impartial force for similarly situated moral agents (Bohman & Rehg, 2014: 32). This matches Kant nicely. In contrast, however, Kant assumes that every individual can reach the same conclusions about what morality requires, whereas Habermas insists that our duties can only be clarified through actual conversation with others affected by the issue.

To be frank, I worry that a dollop of moral relativism remains in both Scherer's and Habermas's accounts, relativism that stems from Habermas's final, near complete dependence upon process over reason (whether that "reason" be individual or communal). But this epistemic challenge to Habermas will need to wait for another day, and, regardless, is irrelevant for the applied study of business ethics.

To conclude, the articles appearing in the special issue devoted to Donaldsonian Themes are penetrating and productive. My personal contribution to those articles is often little more than having provided a vessel for the thinking of my colleagues. I am greatly honored by their contributions. Moreover, I owe an unpayable debt not only to the authors but to the handful of people who designed and created the special

“Donaldsonian Themes” issue: to Alan Strudler whose unflagging efforts at editing this volume are obvious; to Denis Arnold, Editor in Chief at *BEQ*, who served as final authority for the special issue, and who encouraged me with my commentary here; and to Bill Laufer who along with Alan Strudler created and managed the conference at the Wharton Business School, University of Pennsylvania, “Normative Business Ethics in a Global Economy: New Directions on Donaldsonian Themes,” at which many of the ideas in this issue first germinated.

NOTES

1. In the *Critique of Practical Reason*, Kant identifies three such regulative ideals that are postulates of practical reason (Kant, 1788), namely, God, freedom and immortality. But he also uses the notion of the regulative idea in other contexts.

2. Although not in Kant’s sense of a “regulative idea.”

3. The book, *Collected Thought Experiments in Philosophy* (Tittle, 2005), exhibits many examples of philosophical thought experiments.

4. In this article the hypothetical world of “Equim” is imagined, in which no person is more partial to any one person than to others. It is a world absent friendship and group or family preference, i.e., a world of equal partiality (Donaldson, 1990).

5. The power of the thought experiment in practical reasoning is connected to the power of the story or narrative in practical pedagogy. When speaking of the education of the Guardians, Plato points to the educative power of the story (1968). Modern case-method teaching as used at the Harvard Business School, the University of Virginia, and elsewhere fits a similar mold. Stories and narratives, as Ed Freeman has emphasized, are powerful devices for understanding (2010).

6. Although my former colleague and philosopher of science, James Blachowicz, has brilliantly questioned this recently (Blachowicz, 2016).

7. My friend and former student Tae Wan Kim and I explore this issue of ethical objectivity in management science (Kim & Donaldson, 2016), and show how an epistemic orientation that seeks objective moral reasons can benefit management research.

8. A longer discussion of such first-order moral precepts, e.g., hypernorms, universal principles, and intrinsic values, as well as their relevance to business can be found in “Toward a Theory of Business” (Donaldson & Walsh, 2015).

REFERENCES

- Arnold, D. G. 2016. Corporations and human rights obligations. *Business and Human Rights Journal*, 1(2): 255–275.
- Blachowicz, J. 2016. There is no scientific method. *The New York Times*, July 4.
- Blair, M. M. 2015. Of corporations, courts, personhood, and morality. *Business Ethics Quarterly*, 25(4): 415–432.
- Bohman, J., & Rehg, W. (Eds.). 2014. *Jürgen habermas*. (Vol. Fall 2014 Edition).
- Caux Round Table. 2009. *Principles for responsible business*, updated May 2010. <http://www.cauxroundtable.org/index.cfm?&menuid=8%20>
- Donaldson, T. 1982. *Corporations and morality*. Englewood Cliffs, NJ: Prentice-Hall.
- . 1985. Nuclear deterrence and self-defense. *Ethics*, 95(3): 537–548.
- . 1989. *The ethics of international business*. New York: Oxford University Press.
- . 1990a. Morally privileged relationships. *The Journal of Value Inquiry*, 24 (Spring): 1–15.
- . 1990b. Morally privileged relationships. *The Journal of Value Inquiry*, 24(Spring): 1–15.
- . 1996. Values in tension: Ethics away from home. *Harvard Business Review*, 74(5): 48–62.

- . 2001. The ethical wealth of nations. *Journal of Business Ethics*, 31(1): 25–36.
- Donaldson, T., & Dunfee, T. 1999. *Ties that bind: A social contracts approach to business ethics*. Cambridge, MA: Harvard Business School Press.
- Donaldson, T., & Preston, L. 1995. The stakeholder theory of the corporation: Concepts, evidence, and implications. *Academy of Management Review*, 20(1): 65–91.
- Donaldson, T., & Walsh, J. P. 2015. Toward a theory of business. *Research in Organizational Behavior*, 35: 181–207.
- Freeman, R. E., Harrison, J. S., Wicks, A. C., Parmar, B. L., & deColle, S. 2010. *Stakeholder theory: The state of the art*. London: Cambridge University Press.
- Habermas, J. 1984. *The theory of communicative action*. Boston: Beacon Press.
- . 1996. *Between facts and norms*. Cambridge, MA: The MIT Press.
- Hare, R. M. 1964. *The language of morals*. New York: Oxford University Press.
- Hsieh, N. 2015. The social contract model of corporate purpose and responsibility. *Business Ethics Quarterly*, 25(4): 433–460.
- Hume, D. 1777. *An enquiry concerning human understanding*. London: A. Millar.
- Jennings, P. L., & Velasquez, M. 2015. Towards an ethical wealth of nations: An institutional perspective on the relation between ethical values and national economic prosperity. *Business Ethics Quarterly*, 25(4): 461–488.
- Kant, I. 1785. *Foundations of the metaphysics of morals* (L. W. Beck, Trans.) (1959 ed.). New York: Library of Liberal Arts.
- . 1788. *Critique of practical reason* (L. W. Beck, Trans.) (1956 ed.). New York: Library of Liberal Arts.
- Kell, G., & Ruggie, J. G. 1999. *Global markets and social legitimacy: The case of the 'global compact.'* Paper presented at the Governing the Public Domain beyond the Era of the Washington Consensus? Redrawing the Line Between the State and the Market, York University, Toronto, Canada.
- Kim T. W., & Donaldson T. 2016. Rethinking right: Moral epistemology in management research. *Journal of Business Ethics*, doi:10.1007/s10551-015-3009-2.
- List, C., & Pettit, P. 2011. *Group agency: The possibility, design, and status of corporate agents*. Oxford; New York: Oxford University Press.
- O'Connor, J. J., & Robertson, E. F. 2004. *Newton's bucket*. St. Andrews University, UK: http://www-history.mcs.st-andrews.ac.uk/HistTopics/Newton_bucket.html.
- Ohtani, H. 2010. *Putnam's moral realism*. The 16th International Meeting of Hongo Metaphysics Club: 176–197. The University of Tokyo: <http://repository.dl.itc.u-tokyo.ac.jp/dspace/bitstream/2261/43993/1/bda007008.pdf>.
- Passmore, J. A. 1961. *Philosophical reasoning*. London: G. Duckworth.
- Plato. 1968. *The republic* (A. Bloom, Trans.). New York: Basic Books.
- Putnam, H. 1978. *Meaning and the moral sciences*. London; Boston: Routledge & K. Paul.
- . 2004. *Ethics without ontology*. Cambridge, MA: Harvard University Press.
- Rawls, J. 1971. *A theory of justice*. Cambridge, MA: Harvard University Press.
- Ross, W. D. 1930. *The right and the good*. Oxford: The Clarendon Press.
- Ruggie, J. 2008a. *Protect, respect and remedy: A framework for business and human rights*. <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>.
- Ruggie, J. G. 2008b. *Embedding global markets: An enduring challenge*. Aldershot, England; Burlington, VT: Ashgate.
- Scanlon, T. M. 1998. *What we owe to each other*. Cambridge, MA: Harvard University Press.

- Scherer, A. G. 2015. Can hypernorms be justified? Insights from a discourse-ethical perspective. *Business Ethics Quarterly*, 25(4): 489–516.
- Scherer, A. G., & Palazzo, G. 2007. Toward a political conception of corporate responsibility: Business and society seen from a Habermasian perspective. *Academy of Management Review*, 32(4): 1096–1120.
- Scholz, M., & Reyes, G. L. 2015. *Integrative social contract theory and the enduring promise of justified hypernorms*: 1–28. Unpublished work.
- Sepinwall, A. J. 2015. Denying corporate rights and punishing corporate wrongs. *Business Ethics Quarterly*, 25(4): 517–534.
- Smith, A. 1776. *An inquiry into the nature and causes of the wealth of nations*. Dublin: Whitestone.
- Strudler, A. 2015. Normative business ethics in a global economy: New directions on Donaldsonian themes. *Business Ethics Quarterly*, 25(4): xvii-xxi.
- Stark, A. 2015. Inverting Donaldson's framework: A managerial approach to international conflicts of cultural and economic norms. *Business Ethics Quarterly*, 25(4): 535–558.
- Tittle, P. 2005. *What if- : Collected thought experiments in philosophy*. New York: Pearson/Longman.
- United Nations. 1948. **The universal declaration of human rights**. General Assembly resolution 217(III), <http://www.un.org/en/universal-declaration-human-rights/>.
- Warren, D. E., Peytcheva, M., & Gaspar, J. P. 2015. When ethical tones at the top conflict: Adapting priority rules to reconcile conflicting tones. *Business Ethics Quarterly*, 25(4): 559–582.
- Werhane, P. H. 1985. *Persons, rights, and corporations*. Englewood Cliffs, NJ: Prentice-Hall.