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Precis for *Ties that Bind*

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Precis for *Ties that Bind*

Abstract

We wrote the book, *Ties that Bind*, out of our conviction that answering today's questions require a new approach to business ethics, an approach that exposes the implicit understandings or "contracts" that bind industries, companies, and economic systems into moral communities. It is in these economic communities, and in the often unspoken understandings that provide their ethical glue, that we believe many of the answers to business ethics quandaries lie. Further, we think that answering such questions requires the use of a yet deeper, and universal "contract" superseding even individual ones. The theory that combines both these deeper and thinner kinds of contracts we label "Integrative Social Contracts Theory," or "ISCT" for short.

Disciplines

Business Law, Public Responsibility, and Ethics

Précis for *Ties that Bind**

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We wrote the book, *Ties that Bind*, out of our conviction that answering today's questions require a new approach to business ethics, an approach that exposes the implicit understandings or "contracts" that bind industries, companies, and economic systems into moral communities. It is in these economic communities, and in the often unspoken understandings that provide their ethical glue, that we believe many of the answers to business ethics quandaries lie. Further, we think that answering such questions requires the use of a yet deeper, and universal "contract" superseding even individual ones. The theory that combines both these deeper and thinner kinds of contracts we label "Integrative Social Contracts Theory," or "ISCT" for short.

ISCT does not overturn popular wisdom. While it asserts that the social contracts that arise from specific cultural and geographic contexts have legitimacy, it acknowledges a *limit* to that legitimacy. It recognizes the moral authority of key transcultural truths, for example, the idea that human beings everywhere are deserving of respect. The social contract approach we detail holds that any social contract terms existing outside these boundaries must be deemed illegitimate, no matter how completely subscribed to within a given economic community. In this sense, all particular or "micro" social contracts, whether they exist at the national, industry, or corporate level, must conform to a hypothetical "macro" social contract that lays down moral boundaries for any social contracting. ISCT thus lies midway on the spectrum of moral belief separating

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relativism from absolutism. It allows substantial “moral free space” for nations and other economic communities to shape their distinctive concepts of economic fairness, but it draws the line at flagrant neglect of core human values.

Our approach takes “moral free space” seriously. It insists that morality can be "conditional" or "situational" at least in the sense that two conflicting conceptions of ethics can sometimes both be valid, and that community agreements about ethics often matter. Two economic systems need not have precisely the same view about the ethics of insider trading. Their views about what is wrong with insider trading may differ, yet both may be legitimate. Nor does every corporation have to follow exactly the same conception of fairness as it designs flextime or seniority rules. It follows from our view that all economic actors must recognize the critical role of social contracts in the communities they impact. To fail to do so, as many companies have done in the past, is to display moral blindness.

On our view, as social contracts change, so too do the challenges for business. The ethical “game” of business today is played by different rules, and harbors different penalties and benefits, than it did decades ago. Broad shifts of moral consensus have occurred. In subtle, far reaching shifts, managers and members of the general public have gradually redefined their view of the underlying responsibilities of large corporations. Half a century ago, companies were basically expected to focus on producing goods and services at reasonable prices; today, corporations are held responsible for a variety of issues involving fairness and quality of life. In companies throughout the world, gender issues, racial issues, and questions of the clash between work and family, are included in the agenda of corporate management.

The challenge that we accepted in TIES was to find a theory that accepts basic moral precepts, such as "Don't lie," "Be fair," and "Respect the environment," even as it refuses to pretend that these broad-brushed concepts provide full moral clarity. The challenge was to articulate an approach that holds fundamental truths to be relevant even as it accounts for legitimate differences in business communities and historical periods. We believe that ISCT is such a theory.

The concepts that inform ISCT are at the same time simple and complex. The simple idea, as stated already, is that implicit agreements constitute part of the basic software of business ethics. Without these “social contracts” knowing what matters and what doesn’t ethically in a specific context is impossible. This very simple idea, however, needs explication and justification. Hence, ISCT is fitted with a more complex rationale and set of concepts.

In the extensive description of ISCT that we undertake in TIES, we begin with the same kind of thought experiment that was used to justify the traditional social contract arguments of Locke, Rousseau, Hobbes, and Rawls. We utilize the approach of the classic contractarian thinkers such as Locke, Hobbes, Rousseau, and Rawls, but we add an important point. They asked about what citizens would require of the government and how they would define political justice. We, on the other hand, inquire about what economic participants would agree upon as defining *business ethics*. In the traditional manner, we begin with a thought experiment that envisions the terms of a contract for the foundation for economic ethics that would be acceptable to a diverse set of imaginary contractors (some greed driven egoists, some deeply religious altruists, most probably in-between) representing the varied attitudes of the modern world. We assume that these

contractors are rational, i.e., not afflicted by inconsistency or logical confusion, and that they are knowledgeable, i.e., they know the range of facts accepted at the time as being true. We assume not, as Rawls does (Rawls, 1971), that these hypothetical contractors are ignorant of all facts concerning themselves. They may or may not know that they are Christian, Moslem, of a risk-adverse or risk-prone personality, etc. We assume only in this regard that they do not know in what economic communities they are members. For example, they do not know that they work for XYZ corporation, participate in country N's economic system, that they pay dues in worker union K, or ply their trade in profession P or industry Q. These facts about their economic membership are hidden to them. In a similar way, their level of personal wealth is obscured from them. They are ignorant of whether they possess a massive fortune, or nothing at all. Hence, one might envision all of rational humanity capable of voluntary choice, afflicted with the partial amnesia just described, gathering for a global congress to construct an agreement that would provide a fundamental framework for ethical behavior in economic activities.

We do not assume, as again Rawls *would* assume, that the contractors are ignorant of their economic and political preferences. An individual may know her preferences, that she prefers to be rich rather than poor, wine to beer, employment in a worker-owned rather over employment in an investor-owned firm, a Libertarian to a Socialist form of government. The question then becomes what terms, if any, would be acceptable to these contractors?

We assume that the contractors do not come to the table entirely bereft of moral principles. They at least bring with them the underlying senses of right and wrong with which they have grown up. They bring with them these settled understandings of deep

moral values. Because the contractors are unaware of other economic preferences and memberships, they lack detailed knowledge of their economic morality. Yet even as they lack such detailed knowledge, they know the basic values to which they subscribe. Some may profess philosophical utilitarianism. Some may profess philosophical Kantianism. Others may adhere to ethical principles articulated in their preferred religion (in Judaism or Christianity this might be the Ten Commandments; in Buddhism it might be the principles of the "Dhamapada"). And some may subscribe to the traditional principles that have been handed down to them historically through their family, their village, or their culture.

When these hypothetical yet rational global contractors confront the fact that it would be impossible to obtain an intellectual consensus concerning adoption of a single morality as the framework for global economic ethics, then how would they go about resolving their dilemma of finding a basis for agreement? We believe that they would nonetheless be motivated to find such a basis. First, we assume that many are driven by an innate moral sense which will lead them to seek and to recognize elements of a foundational morality. That is, most humans are "hardwired" to be ethical. Second, our focus is on *economic* ethics. In this domain there are special considerations that must be of concern to rational, knowledgeable contractors. For example, rational contractors would realize the vital importance of having a framework of morality as a foundation for economic interaction. Without a core common morality, the result would be the economic analogue to a Hobbesian state of nature. Economic life would be, using Hobbes's language, "nasty and brutish," if not also "short." Such chaotic economic conditions have prevailed from time to time in nations that lacked the social and political

background institutions necessary to sustain an ethical framework. In such a state, promises are not kept. Property is not respected. Violence is used to obtain economic advantage. Capital markets either become distorted, or fail altogether owing to a fundamental lack of trust.

Finally, we believe that rational contractors would rely upon a limited set of core assumptions in framing their search for a common economic ethics, where "economic ethics" refers to the principles establishing the boundaries of proper behavior in the context of the production and exchange of goods and services.

These are as follows:

- All humans are constrained by bounded moral rationality. This means that even rational persons knowledgeable about ethical theory cannot always divine good answers to moral problems without being acquainted with community-specific norms.
- The nature of ethical behavior in economic systems and communities helps determine the quality and efficiency of economic interactions. Higher quality and more efficient economic interactions are preferable to lower quality and less efficient economic interactions.
- All other things being equal, economic activity that is consistent with the cultural, philosophical, or religious attitudes of economic actors is preferable to economic activity that is not.

In virtue of these three propositions (above), individual contractors would desire the option to join and to exit economic communities as a means of leveraging their ability to achieve the benefits of either greater efficiency or greater compatibility with preferred

religious, philosophical, or community norms.

The hypothetical members of the global economic community would be capable of considering which norms would be best to guide all business activity in a way that achieves fairness. In this hypothetical state of nature, we argue that such rational global contractors would agree to the following *de minimis* macrosocial contract setting the terms for economic ethics:

1. *Local economic communities have moral free space in which they may generate ethical norms for their members through microsocial contracts.*
2. *Norm-generating microsocial contracts must be grounded in consent, buttressed by the rights of individual members to voice and exit.*
3. *In order to become obligatory (legitimate), a microsocial contract norm must be compatible with hypernorms.*
4. *In cases of conflicts among norms satisfying macrosocial contract terms 1-3, priority rules or “rules of thumb” must be established through the application of rules consistent with the spirit and letter of the macrosocial contract.*¹

¹ ISCT priority principles (also sometimes referred to as “rules of thumb”) are:

- A. Local community norms have priority unless adopting them harms members of another community.
- B. Local community norms designed to resolve norm conflicts have priority unless adopting them harms members of another community
- C. The more global the source of the norm, the greater the norm’s priority.
- D. Norms essential to the maintenance of the economic environment in which the transaction occurs have priority over norms potentially damaging to that environment.
- E. Patterns of consistency among alternative norms add weight for priority.
- F. Priority is given to well-defined norms over less well-defined ones.

We use certain core definitions throughout the book as we discuss the implications of the ISCT macrosocial contract. “Hypernorms” are principles so fundamental that they constitute norms by which all others are to be judged. Hypernorms are discernible in a convergence of religious, political and philosophical thought. An “authentic norm” is one that is generated within a community's moral free space and which satisfies the requirements of terms 1 and 2 of the macrosocial contract. Authentic norms are based upon the attitudes and behaviors of the members of their source communities. A “legitimate norm” is an authentic norm that is compatible with hypernorms. A norm has to be established as legitimate before it may become binding for members of the norm-generating community.

TIES details these core concepts and suggests ways in which they can be applied to business decisions. For example, we describe at some length an example of a structural hypernorm that we call the “hypernorm of necessary social efficiency,” or “efficiency hypernorm” for short. This hypernorm identifies duties to maintain the efficiency of societal systems, including economic institutions, designed to promote economic welfare and social justice. A norm, policy, or institution satisfies the efficiency hypernorm when it contributes to the efficiency of the provision of necessary social goods, that is, aggregate economic welfare or social justice. The hypernorm entails, among other things, that *economic* actors have duties to support efficient policies and institutions that promote liberty and due process, as well as minimal possibilities for health, food, housing, and education.

TIES emphasizes the role of communities as the source of authentic norms. The familiar concept of the corporate “stakeholder” is often useful in identifying relevant

ISCT communities. Stakeholders of corporations usually also constitute ISCT communities. In the book we offer many proxies and presumptions for use in identifying relevant communities, authentic norms, and hypernorms. The type of evidence required for such identifications will often be commonly known and readily available.

In TIES we illustrate the application of ISCT to specific issues. For example, we discuss at length how ISCT can be used to unravel the phenomenon of bribery around the world. ISCT reveals that bribery is typically condemned by high priority authentic norms and that most forms of bribery also violate hypernorms.

Thus, we offer ISCT as a means to highlight the ethical relevance of existing norms in industries, corporations, and other economic communities, even as it also must limit the acceptable range of such norms. Our aim is to reach beyond the generality of, say, Kantian Deontology or "virtue" ethics to allow a more detailed normative assessment of particular ethical problems in business.” It is a theory that accommodates the widely-held intuition that different ethical precepts are sometimes appropriate for different industries, companies and professions. The ethics of professional doctors need not be precisely the same as the ethics of journalists. Nor do the gift and entertainment practices within a Japanese keiretsu need to conform to the practices for government contracting within the United States. In accommodating diversity, ISCT recognizes variety in individual and cultural values and preferences. Thus, it refuses to impose a broad conception of the "Good" upon dissenters, even as it recognizes the relevance of transcultural moral understanding.

In sum, then, the same logic that sanctifies a handshake between two individuals turns out also to sanctify the implicit understandings of economic communities woven throughout the business world. These are the informal but critical agreements—or "social contracts" —that provide the warp and woof of economic life. These are the agreements that exist within industries, national economies, trade groups, and corporations, and, further, that are the implicit "contracts" critical for understanding business ethics. These, then, are the "ties that bind."

Rawls, J. 1971. *A Theory of Justice*. Cambridge: Harvard University Press.