

A Critical Perspective of Integrative Social Contracts Theory: Recurring Criticisms and Next Generation Research Topics

Thomas W. Dunfee

ABSTRACT. During the past ten years Integrative Social Contracts Theory (ISCT) has become part of the repertoire of specialized decision-oriented theories in the business ethics literature. The intention here is to (1) provide a brief overview of the structure and strengths of ISCT; (2) identify recurring themes in the extensive commentary on the theory including brief mention of how ISCT has been applied outside the business ethics literature; (3) describe where research appears to be headed; and (4) specify challenges faced by those who seek to reform ISCT. Key themes in the critiquing literature relate to (a) the identification process for hypernorms; (b) justification of the recognition of hypernorms; (c) proposals for considering meso or meta norms; (d) clarification of the relationship between stakeholder concepts and ISCT; (e) problems with potentially unoccupied moral free space; (f) sources of ethical obligation within the ISCT framework; and (g) the potential role for concepts of stakeholder dialogue and engagement.

KEY WORDS: social contract, integrative social contracts theory, moral free space, hypernorms, stakeholder theory

Contractualist approaches to business ethics have become increasingly important over the past quarter century. The contractualist visions developed during this period constitute a wide-ranging set of sophis-

ticated and valuable ideas. See for example, Donaldson (1989, 1982), Keeley (1988), a special issue of the *Business Ethics Quarterly* (5:2) on the topic, and current research by Van Oosterhout et al. (forthcoming) and Wempe (forthcoming). Integrative Social Contracts Theory (ISCT) initially developed by Thomas Donaldson and Thomas Dunfee is an important example of a contextual approach within the broad domain of contractualist business ethics. ISCT will be the primary focus of this essay.

ISCT¹ was introduced in two articles published in 1994 and 1995.² In the intervening ten-year period, ISCT has become part of the repertoire of specialized decision-oriented theories in the business ethics literature.³ ISCT has been subjected to varied and extensive critiques questioning virtually every aspect of the theory. In 1999, Donaldson and Dunfee (hereafter referred to as TD2⁴) published *Ties That Bind* (1999), the book providing a full elaboration of their theory. In *Ties* they responded to the commentary existing at the time of its writing. Subsequently, they have twice responded directly to review essays on the book (Donaldson and Dunfee, 2000; Dunfee and Donaldson, 2000) and have written one book chapter summarizing certain critiques of the theory (2003). There has not, however, been any attempt to survey the overall literature on ISCT since the publication of *Ties*.

The intention here is to (1) provide a brief overview of the nature and strengths of ISCT; (2) identify recurring themes in the extensive commentary on the theory, including brief mention of how ISCT has been applied outside the business

Thomas Dunfee is the Kolodny Professor of Social Responsibility at The Wharton School of the University of Pennsylvania. He is a former president of the Academy of Legal Studies in Business and the Society for Business Ethics. He is a former director of the Wharton Ethics Program and the Carol and Lawrence Zicklin Center for Business Ethics Research. Professor Dunfee has written widely on topics in business law and business ethics.

ethics literature; (3) describe where research appears to be headed; and (4) specify challenges faced by those who seek to reform ISCT.

The nature and strengths of ISCT

It will be assumed that readers are familiar with ISCT. Those who are interested in an executive summary are referred to the entry on ISCT in the second edition of *The Blackwell Encyclopedia of Management: Business Ethics* (2005, pp. 243–247) and the précis written by TD2 (2001). The title of the theory suggests its basic nature. The term “integrative” is used to illustrate that ISCT is based upon a hypothetical social contract whose terms allow for the generation of binding ethical obligations through the recognition of actual norms created in real social and economic communities. A hypothetical social contract is thereby integrated with real or extant social contracts. The plural “contracts” is used to emphasize the fact that ISCT envisions multitudinous local community-based social contracts establishing binding ethical norms. These in turn are limited by universal moral principles called hypernorms.

Before summarizing the critical literature on ISCT, it is helpful to provide balance by detailing some of the recognized strengths of the theory. Doing so helps clarify the criteria by which challenges and suggested modifications should be judged. Frederick (2004) states that “(c)ompared with its current theoretical rivals ISCT is more comprehensive, more analytically sophisticated, more socio-culturally grounded, and more managerially operational” (p. 1). He goes on to note that ISCT uniquely integrates core concepts from philosophy, social science and managerial practice while recognizing core value sources from political, religious, economic and philosophic norms. These diverse foundations allow for an appropriate recognition of “the social embeddedness of localized rule-making within a highly diverse global economy” (p. 2). According to Frederick, ISCT accepts the necessity of economic efficiency while at the same time it provides for a system of procedural justice and due process. Within the business ethics academy, ISCT seeks to provide a bridge between normative and descriptive theorists.⁵

Ultimately, the primary purpose of ISCT is to provide a means of practical guidance to ethical decision makers, particularly managers. ISCT is designed to enhance ethical decision-making by requiring managers to consider the impact of their decisions on relevant communities while simultaneously insisting that they step even farther back and ask whether the decision implicates universal moral principles. At the most basic level, if all ISCT achieves is to influence managers to consider the interests of relevant communities and the existence of universal moral principles, it will have had a positive impact.

Whether ISCT has achieved its lofty ambitions is controversial as will become clear in the subsequent sections. Nonetheless, the goals and context of ISCT help clarify the difficulties involved in designing a conceptual framework capable of satisfying Soule’s (2004) “lax” standard of whether a framework can “illuminate the moral salience of commercial life and guide scholars, practitioners, and students through its complexities” (p. 2). Four fundamental concerns arise with approaches that seek to add concepts or procedures to the existing framework of ISCT. First, they can limit the applicability of ISCT, causing it to fall far short of its objective of providing general guidance on issues of business ethics. Second, depending on their nature, additions can limit the universality of ISCT, making it appear Western or even limited to the United States. Third, additional procedures can complicate the decision process making it much less useful as a practical decision tool. Fourth, they may cause the theoretical framework to become incoherent or inconsistent, for example, when concepts exogenous to contractarian thought are imposed on ISCT. With these caveats in mind, let us now turn to the identification of recurring critical themes in the literature on ISCT.

Recurring themes in the literature critical of ISCT

The substantial literature critiquing ISCT reveals several recurring themes. Multiple writers have raised questions about (1) the nature, value and even the existence of hypernorms; (2) the practicality of the theory for decision-making by managers; (3) the robustness of the theory; and (4) the sufficiency of its

justifications for creating ethical obligations for managers. The critical commentary is fragmented, with the commentators implicitly disagreeing with each other as much as they challenge ISCT. This is particularly true in reference to one of ISCT's most important components: substantive hypernorms. Fans of hypernorms (e.g. Hartman et al., 2003; Rowan, 2001; Shaw, 2000) want to see them reformed so that they can play an enlarged role in ISCT. Critics of hypernorms (Douglas, 2000; Frederick, 2000a; Hartman, 1996) see them as unnecessary to the theory or even as threats to the legitimate interests of key stakeholders. Others take a middle position advocating that the concept be refined and justified (Soule, 2002). In the sections that follow, the major foci of the most important criticisms will be summarized and analyzed. The first, questions about hypernorms, have generated the greatest attention in the critiquing literature.

Critiques concerning hypernorms

Hypernorms have been a lightning rod for criticism of ISCT. The recurring themes concern whether hypernorms (1) can be identified for actual decision-making; (2) are sufficiently justified in the ISCT macrosocial contract; (3) should be redefined in some significant way; and (4) are even necessary to the overall framework of ISCT. Implicit in some of these critiques is a fifth issue: whether hypernorms change or evolve over time and whether in a given context conflicting hypernorms might be identified, necessitating priority rules for hypernorms.

Identifying hypernorms

The usefulness of ISCT as a decision aid depends in large part on the ability of users to identify quickly non-controversial hypernorms capable of providing discrete guidance. This admonition applies with equal force to all three types of hypernorms: procedural, structural and substantive. TD2 have provided examples of candidate hypernorms but have resolutely refused to provide a comprehensive listing of substantive hypernorms. Nor have they encouraged others to do so. Instead, they see the search for hypernorms as a process that is "bottom-up in the sense that it is used to identify potential hypernorms relevant to a particular decision" (2000, p. 483).

Thus, they suggest that the application of hypernorms in a particular decision context is an inductive rather than a deductive exercise.

TD2 describe and emphasize a process by which decision makers may identify hypernorms relevant to a pending decision. Their pragmatic approach is to offer a set of proxies for identifying presumptive hypernorms. Suggested proxies include widespread global consensus, global industry standards, policies of NGOs and intergovernmental organizations, precepts of major religions and philosophies, global professional standards and consistency with laws of multiple countries (1999, p. 60). They do not, however, provide a detailed example of the application of such a process in their own writings.

Rowan (2001) is among those who find this process-based approach unsatisfactory. He claims that without a list of hypernorms ISCT is operationally impractical. Soule (2002) argues that the normative context of substantive hypernorms within ISCT is too vague to be useful to managers. His greatest concern, however, is that bias in identifying substantive hypernorms will distort the value ISCT brings to ethical decision-making. Soule is concerned that "(t)he chances for carelessly or opportunistically locating wrong, rogue, or conveniently self-servicing hypernorms are significant" (p. 119). Shaw (2000) shares this concern arguing that even TD2 are reading their own preferred outcomes into the examples they give for candidate substantive hypernorms. Shaw further argues that their examples are tainted by excessive weight given to U.S. practice.

Hartman et al. (2003) engage in an extensive analysis by which they seek to apply the proxies to issues pertaining to global sweatshops and sourcing. Their approach is to use hypernorms as proactive ethical rules. They do not seek to identify specific authentic norms and test those against hypernorms. Taking this approach, Hartman et al. are able to identify four highly generalized hypernorms. However, they find these unsatisfactory for providing specific answers to questions such as the precise number of maximum hours of work or amount of pay that would be appropriate in a given context. As a result, they conclude that ISCT is adequate for identifying some basic parameters for ethical analysis, but is incapable of providing the fine-grained distinctions essential to the resolution of important

current issues in business ethics. Although the manner in which Hartman et al. identified hyper-norms seems exemplary, their ultimate analysis is flawed by a failure to identify authentic norms capable of providing more fine grained analysis of the issues they investigated. Analogous to swinging a golf club with one hand, they used only the hyper-norm component of ISCT, without consideration of authentic norms. Had they applied ISCT by first identifying authentic norms in firms and host communities, and then testing those under hyper-norms,⁶ they should have gotten a much more satisfactory result. In most cases, authentic norms will provide the essential meat for the ethical analysis. In rare instances, it may be that hypernorms can be used alone, in a proactive manner and without reference to authentic norms to provide ethical guidance.⁷ The experience with ISCT-influenced analyses of ethical issues validates that the theory encourages active consideration of the possible existence of manifest universal ethical principles.

We can learn about the feasibility of identifying hypernorms from empirical research using the ISCT framework. To date, this research has focused on identifying cross-cultural norms by seeking to establish commonality across diverse business communities. Hisrich et al. (2003) conducted a broad survey of reactions to scenarios emphasizing ethical decisions involving manager subjects in the United States, Slovenia, Russia and Turkey. The authors considered consistent results across all four groups to indicate the existence of a hypernorm. Otherwise, they considered divergent findings to represent authentic norms. Spicer et al. (2004) conducted a survey of U.S. expatriate managers in Russia contrasting the results with a survey of managers in the United States. They used six scenarios, three of which were intended to represent issues invoking substantive hypernorms (based on hypernorm candidates described by TD2) and three of which were intended to represent "local" norms in contexts in which no hypernorms seemed applicable, where the local norms were expected to vary between the United States and Russia based on published behavioral evidence. Spicer et al. found a convergence of ethical evaluation and intended behaviors for the hypernorm-based scenarios, and divergence for the local norms. Bailey and Spicer (2004) extended this research by comparing the responses of

U.S. managers in the U.S. with the responses of Russians in Russia and obtained similar results. The question that immediately arises is whether the "hypernorms" discovered in those studies are consistent with ISCT. In fact, they may not be true examples of hypernorms. More analysis of convergence is needed before definitive conclusions can be reached.

TD2 have never indicated that hypernorms are merely the product of global consensus. Instead, global convergence of opinion is offered as only one of many proxies for substantive hypernorms. Thus, any findings of convergence have to be ratified by other proxies before a final conclusion can be drawn concerning the existence of a particular hypernorm. As they themselves recognize, the Hisrich and Spicer studies demonstrate the challenges of empirical research in this area. The fact that managers from two or even four countries agree in an assessment of whether an action is ethical does not, *ipso facto*, indicate the existence of a hypernorm. The convergence may solely represent the fact that there are identical authentic norms in the communities being tested. Perhaps even more important, these surveys were limited to managers. As a consequence they may not be reflective of the opinions of broader humanity and, instead, may only represent authentic norms for a multi-lateral or global business community. On the other hand, generating data on areas of agreement concerning specific issues in business ethics provides a starting point for seeking evidence of convergence that may ultimately result in recognition of specific substantive hypernorms. Further empirical research needs to encompass more communities and countries. Bailey and Spicer (2004) make a contribution by demonstrating how empirical research can be structured to provide insights concerning hypernorms. Although their research may not have yet definitively established specific substantive hypernorms, it does, nonetheless, produce useful and important insights. For example, they determined that expatriate managers in Russia who tend to socialize extensively with Russian friends are more likely to follow local Russian norms than U.S. norms of business ethics. This is certainly important information for managers of U.S.-based multinationals who rely on U.S. expatriates in their Russian operations.

On the normative side, Lucas (2001) applied the hypernorm of necessary social efficiency to condemn

certain strategies used by banks in marketing credit cards to college students. She concluded that the structural hypernorm would condemn the bankers' opportunism, which she argued created inefficiencies in capital and credit markets. Dunfee et al. (1999) identified a hypernorm condemning "coarse bribery"⁸ in applying ISCT to the phenomenon of bribery, specifically the use of bribes by the advertising agency, Young & Rubicam, to win an account with the Jamaican government. They justified the hypernorm on the basis of a convergence of legal, religious and philosophical condemnation of the practice. Smith (2000) applied ISCT to the publicizing of family planning to the Bangladeshi people and concluded that a hypernorm would condemn a coercive approach.

The efforts to identify hypernorms in the ethics literature are instructive. Hypernorms alone may in special circumstances provide guidance for resolving ethical dilemmas, but as Hartman et al. (2003) found, it may be difficult to identify the type of detailed guidance required for a satisfactory resolution of an issue. Lucas (2001) represents the opposite problem: overly fine-grained analysis at the hypernorm level. Applying a highly detailed hypernorm, which supposedly provides clear guidance for the resolution of a specific marketing practice in relation to a particular product marketed to an identified sub-set of customers, is problematic. The more specific and detailed an alleged substantive hypernorm is, the more likely it will be controversial with many disputing its existence. Soule (2004) challenges TD2's description of a substantive hypernorm supporting informed consent in medical research by providing contexts in which their candidate hypernorm appears counter-intuitive or seems to violate well-known ethical principles. The greater the number of substantive hypernorms claimed to exist and the more specific their application, the weaker their moral authority. If Moses had come down from the mountain with 128,000 commandments, their credibility and impact would have been greatly reduced.

Lucas applies the hypernorm of necessary social efficiency on the basis of a claim that the marketing practice at issue creates economic inefficiencies in capital and credit markets. Her approach raises questions about the nature and practicality of the suggested hypernorm of necessary social efficiency.

TD2 state clearly that the hypernorm they envision is not coextensive with economic definitions of efficiency. True, aggressive marketing of credit cards to college students may disrupt some credit markets. But it is not apparent how the marketing of credit cards to college students might rise to the level of affecting the overall efficiency of the US political and economic system in providing necessary social goods, which is the criterion emphasized by TD2. A relatively small reduction in *economic* efficiency should not suffice for the application of the hypernorm of necessary social efficiency as described in *Ties*.

One lesson from these applications is that, in most cases, ISCT should be applied in its full scope. That is, attention needs to be given to both authentic norms and to hypernorms. Hartman et al. (2003) make no effort to identify authentic norms relevant to the sweatshop practices they are evaluating. It, therefore, is not surprising that they are unable to realize specific guidance from ISCT concerning sourcing issues. They have applied the general aspect of ISCT while ignoring the context-specific component. In a sense, they have conducted a non-integrated use of ISCT. Presumably there are a number of communities that have relevant norms concerning workshop practices in developing countries. The citizens of those countries may hold discernible views relevant to a particular decision. Similarly, the global business community may have discernible norms delineating appropriate behavior. It may well be the case that some of the more controversial practices are conducted by firms that are outliers in their industries or in global business in general. The views of IGOs such as the ILO and WHO may well represent authentic norms relevant for evaluating specific sweatshop practices.

Lucas (2001) did seek to apply the full scope of ISCT, but ultimately relied upon the application of the hypernorm of necessary social efficiency. When she evaluated authentic norms she identified two key examples. One was the norm of the banks issuing credit cards that supported the use of aggressive marketing practices in marketing to college students. The other was a norm opposed to those practices that was associated with the broader community of U.S. citizens. In applying the six priority rules of thumb, she found that one was not applicable and one did not provide clear guidance while the other four supported giving priority to the anti-practice

norm of the broader U.S. community. Thus, when applying the full scope of ISCT, Lucas could have reached the same result without having to rely upon an expansive interpretation of the hypernorm of necessary social efficiency.

To date, it is a fair conclusion that some of those applying ISCT have had nontrivial difficulties in identifying hypernorms. Soule (2002, 2004) provides several suggestions that deserve further attention for resolving these difficulties in reference to substantive hypernorms. Soule recognizes that if detailed qualifications are added to hypernorms to enhance their action-guiding capacity, they are likely to become unwieldy in application and irrelevant in the event of rapidly changing circumstances. On the other hand, if they are left at a high level of abstraction they provide little or no guidance. In response, Soule makes two basic arguments. First, he takes some pressure off the need to identify accurate, precise hypernorms by recommending that they be recognized as only *prima facie*. He then proposes a search for managerial moral principles analogous to the principles developed by Beauchamp and Childress (2001) in the field of biomedical ethics. These principles could then be used to determine whether *prima facie* hypernorms are ultimately valid. Although Soule uses this approach to attack a candidate hypernorm of informed consent described in *Ties* (p. 249): “organizations may not use nonconsenting, uninformed human subjects for new drug development,” his approach appears basically consistent with that taken in *Ties*. TD2 advocate the use of presumptive evidence in identifying hypernorms. Such an approach results in the identification of tentative hypernorms that may be displaced as more evidence becomes available. Both approaches recognize elements of uncertainty. Soule goes one step further than TD2 by recognizing specific principles that can be used to determine the ultimate validity of hypernorms. The consistency of such an approach with that taken in *Ties* will be determinable only after a specific set of “managerial principles” are proposed and evaluated.

Reisel and Sama (2003, 2004) take a quite different approach to the issue of identifying substantive hypernorms. They propose IGOs as distributive mechanisms that serve as purveyors of hypernorms. Since these organizations represent very broad communities, they are considered a more credible

source for hypernorms. In one sense, they can be seen as translators of substantive hypernorms in contexts in which there is ambiguity, conflict or uncertainty. Reisel and Sama describe this approach in the conflict between social and economic obligations that the major pharmaceutical firms face in decisions whether to reprice AIDS/HIV treatment regimes for African countries afflicted by the pandemic. Reisel and Sama recognize problems with identifying the IGOs relevant to a given decision and the potential for conflicting views among relevant IGOs. In a recent paper (2004), they encourage the use of stakeholder dialogue/engagement as a contingency based approach to resolution of the problem. The promising recommendation of coupling ISCT with stakeholder dialogue has been advanced by several critics and will be dealt with in a subsequent section.

In summary, there is a great need for more normative and empirical research on the processes for identifying substantive hypernorms. Normative research can expand our understandings of voice and exit in the context of norm-generating communities. Normative scholars may identify additional structural hypernorms, for example, those recognizing certain property rights.

Justifying hypernorms

TD2 indicate that the source for procedural hypernorms is the macrosocial contract while the source for structural hypernorms is economic system-level microsocial contracts. (1999, p. 53). Substantive hypernorms derive from a “convergence of human experience and intellectual thought” (Id.). TD2 explain the “justification” of the differing types of hypernorms in ISCT as follows: procedural and structural hypernorms are justified by “specification” in the macrosocial contract while substantive hypernorms are justified by “recognition” by the macrosocial contractors. In the overall framework of ISCT, the original contractors consent to a search for manifest universal values relevant to resolving ethical dilemmas in business by virtue of their agreement to the macrosocial contract’s terms. Thus the search for hypernorms occurs in the context of decision-making; they are not to be fully “discovered” and listed *ex ante*. As a consequence, there will be ambiguity regarding substantive hypernorms. TD2

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accept this as unavoidable when developing a realist response to human cognitive limitations. They quote Sisella Bok in support of their approach:

(C)ross-cultural cooperation will continue to lag far behind existing needs unless it can draw upon fundamental values that have traditionally promoted the cohesion and survival of communities under stress. Agreement regarding their justification is unlikely but we can no longer afford not to press the long-standing dialectic regarding universal values' beyond today's conventional certainties about the self-evidence or nonexistence of such values" (1999, p. 52.).

Several commentators find these explanations unsatisfactory. Van Oosterhout et al. (forthcoming) argue that substantive hypernorms are ruled out by what they call the contractualist fallacy – the importation of unjustified and unjustifiable assumptions in setting up the macrosocial contract in ISCT. They characterize as erroneous the assumption that the sole solution to the problem of a Hobbesian-like economic environment is represented by the hypernorm conditions in the macrosocial contract described by TD2. Instead, they argue that ISCT fails to provide a basis for establishing the primacy of a particular set of action-guiding norms over other moral claims. ISCT ends up indeterminate because it cannot sort among the many sets of competing norms. Consistent with this critique, Boatright (2000) argues that there must be some external ethical theory that serves as the justification for hypernorms. He and others would import an ethical theory into ISCT to serve as the foundation for substantive hypernorms. Along with Soule (2002), Boatright (2000), and Van Oosterhout et al. (forthcoming), Douglas (2000) is concerned about the sources of substantive hypernorms because in his view they are not grounded in the macrosocial contract serving as the overall foundation for ISCT.

Certainly the issue of justification is ripe for further analysis. To date, criticisms have been focused primarily on objecting to the assumptions made by TD2 in setting up the macrosocial contract. The fundamental argument has been that, although plausible, the extant assumptions fail to satisfy the claim that they represent the only tenable solution to the specified problem. Van Oosterhout et al. (forthcoming) undertake to rectify this shortcoming by relying on commitments implied in the con-

tractualist framework itself. These include commitments to individualism, freedom, private property and free market exchange. From these commitments, they argue that norms and principles endogenous to the process of contracting and immanent to contracting practices can be derived. Such norms and principles can be instrumental in weeding out inappropriate norms generated within moral free space. This line of reasoning is promising. At the least, it can help to clarify the nature of substantive hypernorms.⁹ The assumptions underlying the setup of the macrosocial contract are clear in ISCT. If many find them plausible, that should suffice, at least in the near term. It may be possible that research on these themes will bolster the design of the macrosocial contract, providing greater clarity and ultimately greater acceptance of ISCT among decision makers.

Redefining hypernorms

Some critics have offered alternative approaches to the universalist/hypernorm dimension of ISCT. Lucas (2004), for example, now argues that all that is needed to guard against relativism in ISCT is a modified structural hypernorm of necessary social efficiency. Her work implies that she would modify the hypernorm to focus on aggregate economic welfare. She thinks it would be helpful if there were a convergence around certain substantive hypernorms, but does not think such convergence is essential for the operation of ISCT. Husted (1999) expresses concern that ISCT in general and hypernorms in particular are likely to give greater weight to elite values than to mass values. It is not clear whether his concern is that hypernorms are likely to be misidentified, or whether valid hypernorms would for some reason give preference to the interests of the rich and educated. As a solution, Husted would base hypernorms solely on philosophical argument, although he does not indicate exactly how that would be achieved. It seems highly likely that critiques focused on reformulation of the hypernorms concept will continue.

Necessity of hypernorms

Some believe that the concept of hypernorms is so fundamentally flawed that it is beyond salvation. Douglas (2000) is among those who argue that hypernorms should be dropped from ISCT because

they do not serve any functional role. Instead, he would emphasize the use of priority rules and microsocial norms. Similarly, Frederick (2000a) is no fan of hypernorms, referring to them as “cleverly but unfortunately named” (p. 473). He chides that, “reliance on hypernorms verges on commitment to what might conversely be called the “philosophistic fallacy” (in contrast to the naturalistic fallacy) wherein abstract, non-experiential moral principles are imposed on individuals, organizations, and communities. In other words, an “ought” attempt to produce a desired “is”.”

The scope and nature of hypernorms remains an open research issue, as are the justifications given for hypernorms. Hypernorms are an important bulwark against cultural relativism. If they are removed, leaving only authentic norms and the moral free space component of ISCT, then some other means of guarding against relativism is required. Arnold (2004) has proposed that the general concept of human rights be used as an alternative. This approach proposes a plausible and legitimate means for limiting relativism with reference to those types of authentic norms that implicate human rights. The problem is that his approach severely limits the range of issues encompassed by ISCT. How, for example, would principles of human rights be relevant to judging the legitimacy of norms pertaining to the use of soft money compensation in the brokerage business, or those supporting informal resale price maintenance in certain distribution channels? Thus, ISCT would stand mute regarding large categories of authentic norms common in business, which implicate other fundamental ethical principles outside of the domain of human rights. If hypernorms are to be dropped outright rather than redefined or repositioned, and ISCT is to be retained as a viable approach to ethical decision-making in business, then there needs to be some means of disallowing problematic authentic norms.

Evolving or conflicting hypernorms

Reisel and Sama (2004) identify a problem with possibly conflicting hypernorms. They suggest that in the case of repricing AIDS drugs for South Africa, global pharmaceuticals may get conflicting signals from hypernorms endorsing property rights and those supporting obligations to those in peril. The issue becomes significant when there are conflicting

authentic norms among relevant communities, as surely is the case in this context. Then, if different hypernorms give conflicting signals, it may be impossible to determine which authentic norms are legitimate. Reisel and Sama recognize that the problem may be due, in part, to an inadequate stipulation of hypernorms. If that is the case, then the solution is relatively straightforward. Correctly stipulate the hypernorms. If instead, hypernorms may indeed conflict, then some means is needed for prioritization.

Whether or not hypernorms can conflict is another dimension of ISCT on which TD2 are silent. It seems quite likely that different decision makers may identify incompatible hypernorms. The process of “looking up” encouraged by TD2 should increase the chances of quite different hypernorms being identified by decision makers from different cultures. When that happens, there are two alternative explanations possible. First, one of the decision makers may have mistakenly identified an incorrect hypernorm. Second, it may be possible that they have each accurately identified different relevant yet conflicting hypernorms, resulting in the possibility for mutually exclusive outcomes as Reisel and Sama (2004) suggest. This is certainly an important and interesting research issue. Are substantive hypernorms so basic and fundamental that by definition they cannot come into conflict? Or instead, because they derive in part from historical experience, can they constitute a set that contains mutually exclusive components? If the correct answer is the latter, then is it possible to derive some principles, consistent with the macrosocial contract, which would provide priority among inconsistent hypernorms?

A related question, on which TD2 are also silent, is whether hypernorms can change over time. Arnold (2004) imagines the global contractors coming together at different points in time to establish the macrosocial contract. Thus there would be macrosocial contracts formed at points in time, T1, T2, etc. He speculates that the preferences of the differing groups of contractors would vary and, as a result, the terms of the macrosocial contracts established at each point in time might differ in significant ways, particularly in reference to structural hypernorms. The question is an interesting one, particularly as it pertains to substantive hypernorms. As Don Mayer has argued, let us assume that the test for a

substantive hypernorm against slavery could not have been satisfied during the 18th century. Let us further assume that the test could be satisfied today resulting in identification of a substantive hypernorm prohibiting the ownership of one human by another. Does that mean that substantive hypernorms do change over time as a result of human experience and condition? Not necessarily. Another interpretation of the divergence in findings concerning substantive hypernorms could be that one of the identifications is incorrect. If that is the case, then the perceived difference is based on errors in the identification process rather than a change or evolution in the substantive hypernorms themselves.

Whether or not substantive hypernorms change would depend on understandings about their basic nature. If they were assumed to be immutable prescriptions from the natural law, as some would believe, then they would not be considered changeable. Our understanding of them may vary across time as we become more or less adept in discerning them. But they themselves would not change. On the other hand, if substantive hypernorms were assumed to reflect the wisdom and experience of humanity across time and circumstance, then they would be assumed to change on the basis of new wisdom and context. This is an additional issue worthy of further exploration.

Open research issues on the general nature of hypernorms include (1) identification of candidate substantive hypernorms that can be used by decision makers; (2) demonstration of the implications of candidate hypernorms for currently pressing ethical issues, such as obligations of major pharmaceutical companies regarding the pricing and distribution of AIDS/HIV drugs in sub-Saharan Africa; and (3) development of frameworks and processes for the recognition of substantive hypernorms.

Intervening norms: A role for meso or meta norms?

Several commentators have attempted to deal with a perceived gap between (too) general hypernorms and (too) narrow or specific microsocial authentic norms by recognizing an intermediate layer of norms. Reisel and Sama (2003) apply ISCT to the issue of whether pharmaceutical companies should distribute life-saving drugs on a below-cost basis in

developing countries. In order to assist and complete their analysis, they construct a set of “meso norms.” They recognize that their meso norms are “still microsocial contracts, in TD2’s lexicon” (p. 379). These meso norms are derived from corporations, nation states and regional governmental unions. They find that the norms generated at this level are in conflict, and therefore turn to the policies of intergovernmental organizations as credible sources of hypernorms because these organizations are assumed to be without specific affiliations, political biases or undue influence. They selected IGOs considered to be objective and inclusive, such as the World Health Organization, the International Labour Organization and the World Trade Organization. By focusing on the policies and statements of those organizations, Reisel and Sama conclude that what they call a macrosocial norm exists to the effect that pharmaceutical firms cannot be held solely responsible for distribution of life saving drugs in developing countries. Although their process is hard to square fully with the existing framework of ISCT, they are clearly considering three different types of norms in their analysis. Similarly Logsdon and Wood (2002) use a tripartite set of hypernorms, consistent norms and authentic norms (which they call moral free space) in a matrix establishing guidelines for business citizenship. They use the set to distinguish when a multi-domestic strategy is appropriate for business organizations in contrast to a globally integrated strategy.

The idea that an intermediate level of norms should be recognized in ISCT requires careful consideration. The fact that authentic norms can be associated with communities ranging in size and scope from small businesses, to nation states and ultimately to global business and international political entities can be a source of confusion. This might cause some to mistakenly characterize norms of regional governments or global institutions as hypernorms because they seem so removed from and superior to the norms of a single firm or a small political community. The range of communities and possible norms is so great that one may question whether the priority rules, the only remedy for sorting among them described in ISCT, are sufficient to the task. Perhaps a set of intermediate norms, based on either the size of the community or certain special characteristics of the community, is a

better way to deal with the problem. The norms of those communities would trump the norms of lesser communities while, presumably in turn, their norms would still be subject to a legitimacy test based on hypernorms. It would also be the case that such norms could stand alone in the absence of identified authentic norms. Thus ethical dilemmas could be resolved on the basis of meso norms alone without the presence of authentic norms. Reisel and Sama (2003) argue that certain communities' norms should carry greater weight because their sources can be assumed to be non-political and impartial or because they transcend nation states.

Several advantages might be associated with a meso norm approach. Identifying norms from broader economic and political communities would have the instrumental advantage of making clear that the norms of such entities are an appropriate component of ISCT analysis. Identifying meso norms could take a lot of the pressure off of the identification and use of authentic norms and hypernorms. As discussed elsewhere in this article, there may be circumstances in which it is difficult to locate and identify authentic norms or hypernorms. The availability of meso norms could provide another useful source for guidance, particularly because they may be more visible and easier to identify than authentic norms and hypernorms.

On the other hand, there are serious negatives likely to be associated with adding another layer of norms to ISCT. Questions have been raised about the user friendliness of ISCT, a topic discussed below. Grafting on another level of norm identification and an additional decision-making step would add to the complexity of the theory. Anything added to ISCT must be done in a manner faithful to its original structure and framework. Meso norms would have to be justified as part of the establishment of the original macrosocial contract. Advocates of such an extension would have to present a persuasive case why the original contractors would want to rely upon a middle set of norms. One could argue, in opposition, that such norms would restrict moral free space to such an extent that the original contractors would reject them. After all, the impact would be to constrict the areas in which local communities are entitled to establish moral rules for themselves. Further, an additional level of norms would violate the commitment to a parsimonious

approach that is the hallmark of ISCT as a solution to the problems of bounded moral rationality.

Advocates for adding meso norms to ISCT would also have to explain in detail how the process would operate when a decision maker is able to identify local community norms, meso norms of a more extensive community and hypernorms all relevant to a single decision. If they all point toward an identical resolution of the decision, there is no problem. But if they vary in the guidance given, how is such variance to be sorted out? Perhaps the stickiest questions would arise in circumstances in which hypernorms weighed against the application of a meso norm. How likely is such a circumstance? If the answer is that it is not likely, then meso norms would not add much robustness to ISCT. Perhaps most of the action would come from meso norms overriding authentic norms. This would highlight the importance of the criteria used for identifying dynamic meso norms capable of illegitimizing authentic norms otherwise compatible with hypernorms. The priority rules for sorting among conflicting authentic norms already give recognition to a more global norm and to consistency among community norms. In order to really add something to ISCT, a meso norm should be expected to produce outcomes that would differ from applying the priority rules of thumb to conflicting authentic norms. One case would be when authentic norms can't be recognized. Furthermore, the meso norms would have to differ from existing authentic norms. If they were just supersized authentic norms, they would be recognized already under ISCT and, when in conflict with norms of smaller communities, would have some priority under the rules of thumb. Therefore a meso norm would have to be a norm of a different type than the current authentic norms. The challenge for those who would propose an additional layer of norms is extreme. It seems likely that it will be easier to distinguish between the two sets of norms under the current structure of ISCT than to choose among three possible categories.

Questions pertaining to the use of ISCT by ethical decision makers

Many have questioned the user friendliness of ISCT. Critics argue that hypernorms cannot be practically

identified and that authentic norms are likely to be elusive, if they exist at all. TD2 did not help the case for user friendliness by publishing a four page decision tree for applying ISCT as an appendix to chapter 7 in *Ties* (pp. 208–211). Nonetheless, TD2 have argued that a major virtue of ISCT is that it causes decision makers to identify and focus on essential elements required for ethical decision-making in business. Thus, depending on the circumstances, using ISCT may direct attention to the relevant norms of professional groups, or instead, to a consideration of manifest universal moral principles. TD2 have stressed that ISCT is not intended as a formal calculus to be applied robotically in making a decision.

Insights may be derived by determining the manner in which others have applied the theory. Have they typically used all elements and gone through every suggested step, e.g. identifying relevant and appropriate communities, identifying authentic norms within those communities, testing those norms against substantive and structural hypernorms, and finally, using the priority rules to sort among multiple surviving norms? Or, instead, have they tended to focus on the aspects of the theory that reasonably appear to be most relevant to the decision at hand? To date, most of the applications of ISCT fall into the latter category. So long as they have focused on the critical elements, taking short cuts has not been problematic.

Some critics have suggested that ISCT is in the eye of the beholder and therefore subject to biased applications. For example, political or social biases could result in two individuals coming to contradictory conclusions when applying ISCT. Applications of ISCT to controversial issues may help shed light on this question. If the applications seem reasonable to most people, the criticisms should be muted. If instead, the applications seem highly questionable, the criticisms can be considered affirmed.

The issue of the availability of evidence to apply ISCT is critical to the usefulness of the theory. A manager facing an immediate decision cannot be expected to conduct research into the attitudes and behaviors of community members in order to make an ethical decision. TD2 anticipate this by suggesting the use of proxies and presumptions for both authentic norms and hypernorms. The ease, or lack thereof, that commentators have found in looking for relevant evidence to apply ISCT should provide useful insights on this issue.

Application of ISCT to specific ethical issues

ISCT has been applied to a wide variety of ethical issues, including gender discrimination where cross cultural norms conflict (Mayer and Cava, 1995); computer ethics (Conger and Loch, 2001); downsizing (Van Buren III, 2000); bribery (Dunfee et al., 1999); the role of corporations concerning the impact of relative wealth distribution on human health (Danis and Sepinwall, 2002); privacy and direct marketing (Culnan, 1995); consumer privacy issues in South Africa (Higgs-Kleyn et al., 2000); the marketing of family planning in Bangladesh (Smith, 2000); brownfield development (Poindexter, 1995); sweatshop labor standards (Hartman et al., 2003); costing issues involved with distributing life-saving pharmaceuticals in developing countries (Reisel and Sama, 2003, 2004); banks' marketing of credit cards to college students (Lucas, 2001, 2004); employee whistle-blowing and deviance (Warren, 2003); the influence of location between Russia and the United States on ethical attitudes (Spicer et al., 2004); a comparison of norms between entrepreneurs and managers in a cross-cultural context (Bucar et al., 2003); the globalization debate (Mayer, 2001; Madsen, 2003); the effect of national identity and degree of integration of expatriates into host country environments on ethical attitudes (Bailey and Spicer, 2004); identifying norms associated with urban prosperity initiatives (Cava and Mayer, 2004); corporate drug testing programs (Strong and Ringer, 2000); and understanding corporate governance in Russia (McCarthy and Puffer, 2004). Beyond these, TD2 have given many examples in their writings about ISCT.

It should not be surprising that within the overall experience in applying ISCT, divergent conclusions have been reached. Madsen (2003) advocates the use of ISCT to delineate policies for regulating the behavior of multinational enterprises as a way of "assisting the realization of anti-globalist hopes." Mayer (2001), in contrast, is concerned that giving priority to the norms of global or larger communities will result in enshrining the norms of global capitalism, concluding that "(T)he unfinished work of ISCT is the discovery of those transcendent standards for the process of globalization..." (p. 259). The few divergent findings appear to be fact dependent. They involve writers making broad statements based upon their varying factual

assumptions. There has not, to date, been a divergence in findings among writers engaging in a detailed normative analysis relying upon identified proxies for norms, nor among those conducting serious empirical surveys. This is probably due, in part, to the relative sparseness of the literature applying ISCT. Ultimately, variances among commentators applying the same ethical theory are to be expected whenever an analysis is fact or context dependent. Thus, one would expect divergence in findings among multiple consequentialists analyzing the same issue, to the extent that their essential factual assumptions vary concerning the likely impact of alternative decisions.

Most of the writers applying ISCT to particular issues, in whole or in part, have been able to come up with plausible results, with the notable exception of Hartman et al. (2003). On occasion, writers have come up with results that they felt were normatively unsatisfactory. Mayer and Cava (1995) were very concerned that ISCT was normatively inadequate for dealing with cross-cultural gender discrimination. They objected to the result that they obtained applying ISCT, although they did not formally base their objections on an alternative ethical theory. Instead, they had a particular view of what was right and ISCT did not produce a result consistent with that view. Normative concerns of this type are distinct from the issue of whether ISCT is sufficiently user friendly to provide guidance, under its terms and assumptions, for the resolution of ethical dilemmas. A review of this extensive literature supports the conclusion that ISCT helps to frame the discussion of certain ethical issues in a helpful manner by ensuring that there is a focus on identifying relevant communities and their norms, and that appropriate consideration is given to the possible existence of relevant manifest universal norms.

The relationship between ISCT and stakeholder concepts is a ripe area for further research. Their complementarities should be explored to determine how their respective insights and assumptions have cross-relevance. Research similar to that conducted by Heugens et al. (2004) holds promise for strengthening both concepts. They used interview-based research to analyze contracting problems in the context of managing stakeholder relations. The research supported their typology of four contracting problems: desolation, deception, defeasance and

defection. Understanding these problems has considerable relevance for stakeholder management.

The relationship between ISCT and stakeholder concepts
By emphasizing relevant communities, ISCT is broadly supportive of the key idea of stakeholder management: that the interests of those who are affected by or are at risk as a result of business decisions should be considered. That is not to say that ISCT is co-extensive with stakeholder management. The focus of ISCT is on communities and norms, not on individual stakeholders and interests not reflected in community norms. It may well be that the decision-maker community may follow a norm of stakeholder management, in which case, the overlap between stakeholder ideas and ISCT would be nearly perfect. But such an outcome requires the existence and identification of a “stakeholder” norm within a relevant, priority community. On the other hand, ISCT does not, within its decision framework, require the existence of a stakeholder norm. TD2 (1999, p. 248) summarize the implications of ISCT for stakeholder theory as follows:

1. Relevant sociopolitical communities are a primary source of guidance concerning the stakeholder obligations of organizations formed or operating within their boundaries.
2. Where norms pertaining to stakeholder obligations are not firmly established in the relevant sociopolitical communities, organizations have substantial discretion in deciding how to respond to stakeholder claims and interests.
3. All decisions affecting stakeholders undertaken by organizations must be consistent with hypernorms.
4. Where there are conflicting legitimate norms concerning stakeholder obligations among relevant sociopolitical communities, the norms of the community having the most significant interests in the decision should be candidates for priority. Otherwise, ... organizations have substantial discretion....

The relationship between ISCT and stakeholder concepts is dynamic. Relying on stakeholder concepts should produce better results in identifying ISCT-relevant microsocial communities. ISCT requires that consideration be given to norms of all

relevant communities by decision makers. This requires decision makers to consider the norms of communities who will be affected by their decisions, e.g. stakeholder communities.

Eastman and Santoro (2003, p. 444) note that “one of the most important theoretical contributions of ISCT is the solution it proposes to classic problems ... of stakeholder theory ... *i.e.* who to count as stakeholders and how to evaluate and prioritize among competing stakeholder interests.” Stakeholder theorists have not provided normative guidance for resolving competing stakeholder claims. ISCT provides a means for solving some, but not all, of the prioritization problems that exist when legitimate stakeholders present mutually exclusive claims. To the extent that competing claims are reflected in legitimate norms, the priority rules of thumb offered by ISCT can provide guidance. Or, if one of the competing claims runs afoul of a hypernorm, again ISCT is helpful. But when stakeholder interests are not reflected in a discernible legitimate norm, ISCT does not provide guidance. Such a situation might exist when a stakeholder community lacks knowledge or information relevant to the practice at issue.

Unoccupied moral free space

In ISCT, moral free space is the large domain in which communities of all sorts may generate community-specific moral rules consistent with their members’ preferences and experience (TD2, 1999, p. 83). When also legitimate, these norms are binding upon community members, subject to priority rules of thumb if competing norms from other communities are also relevant. The legitimacy test insures that all community norms are consistent with discernible hypernorms and that all norm-generating communities satisfy the procedural hypernorms protecting voice and exit. In *Ties That Bind*, TD2 suggest that there may be circumstances in which a community is unable to generate a moral preference in reference to a moral dilemma existing within the community (p. 250). For example, the members of a community may be strongly split concerning the correct behavior for issues such as firing workers for smoking cigarettes on the job, or having HIV-positive employees supervising children in day care

facilities. In other situations, a community may be unable to grasp the moral implications of novel or rapidly changing technologies or environments, for example, recent developments in genetic engineering, which hold out great hope for infertile couples while simultaneously increasing the risk of deformed fetuses.

So, if there are no legitimate ethical norms to provide guidance, how should the ISCT decision maker proceed? The next step should involve searching for discernible hypernorms applicable to the dilemma. If relevant hypernorms are found, they guide the decision. Unoccupied moral free space occurs when neither guiding hypernorms nor legitimate authentic (microsocial) norms can be identified. In such circumstances, the use of ISCT does not provide any moral guidance, and by default, managers may rely on other sources of values, including personal views or organizational values. Table I demonstrates how unoccupied moral free space might exist in regard to a particular ethical decision.

Two questions arise from the possibility of unoccupied moral free space. First, is unoccupied moral free space likely to be so large that ISCT lacks sufficient robustness for a meaningful theory of business ethics? Second, is leaving the decision to the individual and/or the firm an adequate solution to this problem?

Eastman and Santoro (2003) urge that “... more attention needs to be given to the question of how big (unoccupied) moral free space is” (p. 446) and go on to state their view that unoccupied “moral free space is quite large in corporate life”(Id.). Nielsen (2000) suggests that few corporate communities satisfy the requirements of providing adequate voice and exit

TABLE I
Unoccupied moral free space in relation to an ethical decision

Microsocial norm guidance	Hypernorm guidance	Neither provide guidance
One or more legitimate authentic norms exist to provide guidance ¹⁰	No legitimate norms exist, but recognizable hypernorms provide prescriptive guidance ¹¹	Unoccupied moral free space

options, which would presumably render them incapable of generating authentic norms. Husted (1999) argues that consent is difficult to ascertain in cross-cultural interactions and he would therefore only recognize authentic norms that pass a strong test of hypernorm compatibility. In order to evaluate these claims we must first be clear as to how moral free space may be perceived to be unoccupied. TD2 state that “(a)uthentic ethical norms reflect the aggregate attitudes and behaviors of the members of an identifiable community” (1999, p. 86). Thus, an authentic ethical norm is based upon a combination of behavioral and attitudinal consensus as represented in Table II.

As Phillips and Johnson-Cramer (2004) note, the norm-generating process is in constant flux as behaviors and attitudes constantly change over time. Although some important norms are surely stable over time, others come and go as communities adapt to changing practices and environments. The requirement that both attitudes and behaviors be considered surely reduces the number of authentic norms likely to be identified and therefore may increase the boundary of unoccupied moral free space. TD2 justify using both as follows:

Why invoke consideration of both behavioral and attitudinal evidence....? Neither alone guarantees that a putative norm reflects a consensus among the membership of a community. Behavior may easily be coerced and may not represent the genuine attitudes of the community members. Thus, attitudes are added to behaviors to guard against the possibility of coercion. A strong case could be made for relying on attitudes alone. {But the existing methodologies for identifying attitudes} may, on occasion, result in a false reading of group attitudes. Thus behaviors are added to attitudes to guard against the possibility of misreading a community consensus. (1999, p. 90).

TABLE II
Requirements for an authentic microsocial norm¹²

	No attitudinal consensus	Attitudinal consensus
No behavioral consensus	Norm not established	Norm not established
Behavioral consensus	Norm not established	Authentic microsocial norm

The perception that moral free space is unoccupied may be the result of two distinct possibilities. In the first instance, the perception arises because no authentic norm exists to provide guidance for the ethical decision. In that case there is an accurate reading indicating the absence of microsocial norms. The result is genuine unoccupied moral free space. In the second situation, an authentic norm in fact exists but the decision maker fails to identify it. In this circumstance, the result would be a mistaken conclusion that there is unoccupied moral free space.

Researchers applying ISCT to concrete issues in business ethics have apparently found information on behaviors more accessible than evidence identifying attitudes among members of a relevant community. Lucas (2001) applies ISCT to marketing techniques used to induce college students to acquire credit cards by relying on behavior as a basis for recognizing an authentic norm within the banking community. Spicer et al. (2004) survey intended behaviors among U.S. expatriate managers in Russia and U.S. managers in the U.S. as a means of determining the impact of national context on views about the ethical quality of business actions, but do not identify specific attitudes. Bucar et al. (2003) survey both attitudes and intended behaviors in seeking to identify authentic norms among entrepreneurs in a cross-cultural context. These and similar studies demonstrate that ISCT has influenced researchers to seek ethical norms pertaining to particular issues in specific communities, which could be used in ISCT-based ethical decision-making (Culnan, 1995; Higgs-Kleyn et al., 2000; Lucas, 2001; Reisel and Sama, 2003). Their struggles to come up with definitive evidence of norms demonstrate the current lack of hard evidence of behaviors and attitudes necessary to establish scientifically rigorous ISCT authentic norms.¹³ But academic research is not a necessary precondition for norms-focused ethical decision-making by those on the front lines. Surely, in many contexts, managers and professionals know with some certainty the parameters of key professional norms within their relevant business communities. Salespeople understand that it is considered inappropriate to promise a delivery date they know they are unlikely to meet to a buyer who must have the purchased product by a designated time. Supervisors know that it is wrong to ask an employee to falsify a document.¹⁴ Ironically, managers in the field may

find it easier to identify norms than business ethicists peering in from outside the arenas of business endeavor.

TD2 recognize the evidentiary difficulties facing managers who encounter novel ethical dilemmas falling outside standard practice. Their solution is to propose short-cuts for identifying norms. They set forth a number of proxies, including professional and corporate codes, media references, opinion surveys, speeches and statements by respected business leaders (1999, p. 105), industry and trade organizations, ethics consultants, even advocacy groups (Id. pp. 110–111). These proxies can be used to establish presumptive authentic norms. The effect of a presumptive norm is to provide a basis for decision-making unless or until there is hard evidence that such a norm does not, in fact, exist.

If, indeed, evidence of behaviors is more readily available than evidence about attitudes, one way to limit the area of unoccupied moral free space due to evidentiary failures would be to accept knowledge about behaviors as presumptive evidence of authentic norms. The presumption would be a weak one, so that any plausible evidence concerning inconsistent attitudes would suffice to overturn it. Thus, if there are protests or objections from any significant group, or if there is evidence of inconsistent behaviors, the weak presumption would fail. TD2 are rightly concerned about coerced behaviors and the possibility that ISCT might serve to validate coerced values. Nielsen (2000) and Keeley (1995, 1988) contend that coerced values are common, even innate, in the organizational environment.

These important concerns must be given significant attention in the process of identifying norms. Caution should be the watchword. However, there are also costs associated with a failure to recognize important norms evidenced primarily by behavior. Norms are often essential to efficient business behavior. They reduce transaction costs by providing a basis for trust. If most salespeople eschew falsely promising an unobtainable delivery date, that behavior should not be discounted as evidence of an obligatory norm solely due to lack of confirming evidence about attitudes. Further, when there is sustained behavior over a period of time, one can expect it to be consistent with attitudes. Otherwise cognitive dissonance would influence community members to modify their behaviors.¹⁵ The use of a

weak presumption based on behavior alone would help to enhance the robustness of ISCT by narrowing the scope of unoccupied moral free space.

The second explanation for unoccupied moral free space is that neither authentic norms nor hypernorms provide guidance for the decision. Undoubtedly, there are situations in which this is the case. TD2 indicate that these decisions lie outside of the domain of ISCT and therefore they offer no decision-making advice other than to suggest that, of necessity, the decision will have to be made by whatever values drive the individual or corporate decision makers. Eastman and Santoro (2003) propose that in such circumstances, the decision process is critical and they recommend emphasizing value diversity.

Ultimately, concerns about coercion or the recognition of false norms can be dealt with through a process of checks and balances. The use of a weak presumption, based on behavior, appears to be a reasonable solution. Members of relevant business communities should have ample means and opportunities to challenge coercive or false norms.

Whether unoccupied moral free space is a problem for ISCT depends in large part on what should be expected from an ethical theory. Stakeholder concepts are a significant complement to ISCT. Yet, even strong advocates of that approach, such as Ed Freeman and his colleagues, argue that it is a mistake to consider it a comprehensive moral doctrine, stating firmly that “(s)takeholder theory is not intended to provide an answer to all moral questions” (Phillips et al., 2003, p. 493). As a practical matter, the full information essential for a decision is often not available for any of the standard ethical theories and is particularly troubling for consequentialist theories. One value of ISCT is that it directs the attention of decision makers to the potential existence of action-guiding norms or manifest universal moral principles. The fact that there appear to be no relevant microsocial norms or guiding hypernorms is instructive in itself. It probably means that the issue is so disputed, novel or complex that there is no discernible consensus concerning correct behavior. In such a circumstance, one might become an advocate for a particular view of what constitutes ethical behavior for such a decision. If the advocate is able to persuade others to behave and think as she does, then over time an authentic norm is likely to emerge. Thus the discovery of unoccupied moral

space may be a catalyst for the emergence of new norms within a cycle of birth, modification and death of norms of business ethics. In this way, norms keep pace with the constantly changing business environment.

This leads us to a significant, but rarely analyzed, aspect of applying ethical theories to business decision-making. Do we need a unifying theory that by itself is capable of handling virtually any question that arises? Or, instead, can one envision a portfolio approach to business ethics in which decision makers reach into their tool bag of ethical theories to find the most appropriate one for a particular decision? Rarely does an advocate for the use of a particular ethical theory for resolving issues of business ethics make a monopolizing claim. Bowie is known as a committed advocate for a Kantian approach (Bowie, 1999). His 1999 book represents “an attempt to apply the essential features of Kantian moral philosophy to the business firm” (p. 1). After an eloquent and incisive treatment of the subject, Bowie concludes that “... Kantian capitalism will have done most everything a theory of business ethics could do. There may be other ways to achieve this end, but the Kantian theory of capitalism offers one clear blueprint” (p. 174). This is far short of a claim that Kantian theory is the only true way of making an ethical decision. Bowie’s qualified conclusion indicates that other approaches are relevant, perhaps even necessary in certain circumstances. It is not clear that a single theoretical approach is either intellectually desirable or consistent with how people tend to think when confronted with dilemmas. Empirical studies have shown that individuals tend to be flexible in how they judge ethical dilemmas in business. Instead of sloppy thinking or intellectual confusion, this may reflect a reality that some approaches are more useful for certain contexts. The best known decision-making scale in business ethics involves a multidimensional approach capturing three dimensions: equity, relativistic and contractual (Reidenbach and Robin, 1990). These dimensions were developed through analyses of managers’ reactions to scenarios. Reidenbach and Robin began with scales based on traditional moral philosophies. Interestingly, they discovered that:

...noticeably absent from the three dimensions are ideas which are most closely associated with utilitari-

anism and egoism.... Moreover, in debriefing analyses it was obvious that respondents had a difficult time in understanding and applying the concepts inherent in utilitarian thinking (p. 647). ... individuals tend to rely on a broad sense of moral equity dominated by concerns for fairness and justice, tempered by relativistic and social contract dimensions. (p. 649).

The social contract dimension in Reidenbach and Robin’s multidimensional scale is captured in two items: (1) violates/does not violate an unspoken promise and (2) violates/does not violate an unwritten contract. These concepts are essentially consistent with the overall approach of ISCT. The implication is that it is not necessary for a single theory to be able to answer all questions. Thus, the fact that ISCT may leave some questions for answering through other means is not a significant failure. Indeed, this is probably true for all theoretical approaches to business ethics.

In conclusion, unoccupied moral free space may be the result of evidentiary difficulties handicapping the recognition of authentic norms. The solution lies in developing better ways for recognizing norms. One suggestion, grounded in the approaches taken by several scholars applying ISCT, would be to make use of a weak presumption that behavior alone reflects the existence of an authentic norm. The presumption would be overcome by any plausible evidence indicating that the behavior has been coerced. The existence of unoccupied moral space due to the absence of action-guiding legitimate norms or hypernorms raises questions about the robustness of ISCT. The size of unoccupied moral free space is speculative and subject to dispute. It is unrealistic to expect that ISCT would provide guidance on every issue of business ethics.¹⁶ The absence of authentic norms pertaining to a particular ethical decision context reflects the natural evolution of norms wherein norms emerge to provide guidance on new ethical dilemmas produced by the ever-changing business environment.

Sufficiency of justification for ethical obligations under ISCT

A major implication of ISCT is that legitimate norms developed within microsocial communities are

ethically binding upon the members of the community. TD2 use the traditional social contract concept of hypothetical consent to set up their macrosocial contract. They envision that the initial contractors will recognize the ability of communities to generate binding ethical norms for their members in what is described as moral free space. Great discretion is left to communities as to how they generate norms and interact with their members. Thus, among other things, governance processes will vary greatly among communities as will the rules and terms of membership. The only limitations are those imposed by procedural hypernorms, e.g. the community must provide sufficient opportunities for members to exercise rights of exit and voice. The justification for the binding nature of legitimate local norms is the consent that can be found, first, in the overall macrosocial contract and, second, in the community member making instrumental use of the community.

A number of critics have challenged the stipulations and assumptions TD2 make concerning the macrosocial contract. Wempe (2004) makes an elaborate, articulate case that the four parameters (e.g. partial veil, sense for hypernorms) and three behavioral assumptions (e.g. bounded moral rationality) that underlie the macrosocial contract are insufficient grounding for the claim that the original contractors would accept the deal as described by TD2. Wempe is particularly concerned that TD2 reach outside of traditional social contract methodology to develop their key stipulations. For example, where does the assumption about bounded moral rationality come from? Wempe, Postow (2004) and Arnold (2004) all argue that TD2 fail to make a sufficient case that the original ISCT contractors would accept the proposed solution as the *only* viable one. Arnold (2004) makes the argument that men, who would comprise a nontrivial segment of the set of original contractors, would have no incentive to grant voice to women. Postow (2004) takes a different tack by arguing that ISCT offers a satisfactory meta-ethical basis for the validity of local norms, but none for their invalidity. Postow does not agree with the claim that contractors would be willing to put an agreement about economic behavior ahead of their religious beliefs. Instead, she advances the claim, highly plausible in a world plagued by terrorists, that some original contractors would prefer chaos if that

were a prerequisite to maintaining cherished religious beliefs. Nor will Postow accept the idea that a substantial majority principle would be sufficient to establish consent to the proposed macrosocial contract. Instead, she argues, any dissenting minority would refuse to agree to a super-majority rules principle. As an alternative she offers a concept of cosmopolitan pluralism. At this point the concept needs considerable fleshing out. Postow is coy about its ultimate meaning although she gives as an example a wide reflective equilibrium model undergirded by a standard of "appropriateness." Until we know precisely what "appropriate" means, we have to be cautious concerning the potential devils in the details for this proposed fix to the concerns about consent to the macrosocial contract.

Van Oosterhout et al. (forthcoming) are concerned that unborn children and the environment are left out of the set of original contractors. This standard objection, reflected in current debates concerning legal rights and the standing to enforce protective statutes, raises the oft-debated question whether it is sufficient to represent the interests of future generations and the environment by proxy, based upon recognition of these interests in current human preferences. Grandparents care about the future in which their children and grandchildren will continue to live after the grandparents die. Many care about the environment, tying their own interests into the continued well-being of the physical environment. In the context of ISCT, this question translates into whether the original contractors can be considered sufficient guardians of the future and the environment. TD2 have not been explicit about this, but it is possible to imagine that the original contractors appear from throughout time, so that the unborn will have voice in this process.

Phillips (1997, 2003) has been a constant and articulate critic of the consent justification offered in ISCT, advocating recognition of a principle of fairness to strengthen obligations to comply with legitimate norms. He objects to reliance on acts that imply consent, stating that they "are actually no consent at all" (2003, p. 102). He also criticizes TD2's argument that a lower standard of consent can be used to justify obligations to follow norms in commercial life because such norms are supported only by informal sanctions and mechanisms and do not invoke the coercive power of the state (p. 104).

TD2 replied specifically to Phillips, noting that what he is actually criticizing is the consent assumed by the macrosocial contract concerning the implications to be drawn from “membership” within a community. One of the key terms of the macrosocial contract involves the right of communities to develop binding norms for their members. The legitimacy of those norms is subject to the community recognizing appropriate voice and exit rights. Further, the norms will be tested against hypernorms. Nowhere in this framework is there a claim that one can only be bound by a particular rule/norm of a community when one has explicitly consented. Such an approach is untenable because it would mean that corporate employees could still maintain the benefits of a job while disavowing norms or rules against sexual harassment, or taking home corporate supplies for personal use and so on. Phillips’ essential argument is that obligations arise within a community, including a business corporation, only when a principle of fairness is met. Phillips’ alternative principle of stakeholder fairness is detailed and precise:

Whenever persons or groups of persons voluntarily accept the benefits of a mutually beneficial scheme of co-operation requiring sacrifice or contribution on the parts of the participants and there exists the possibility of free-riding, obligations of fairness are created among the participants in the co-operative scheme in proportion to the benefits accepted (2003, p. 92).

Van Buren III (2001, 2004) basically agrees with Phillips, but extends Phillips’ principle of fairness. He includes the right of participants in a mutually beneficial scheme of cooperation to participate in governance processes in proportion to the sum of their contributions to and sacrifices for the scheme. His extension is seen as a means of compensating for the powerlessness of disadvantaged stakeholders such as Mexican workers seeking to unionize a Maquiladora plant. Neither Phillips’ nor Van Buren III’s approaches are sufficiently broad to deal with the extensive range of communities and norms encompassed within ISCT. TD2 imply that Phillips’ approach is culturally restrictive, noting that it would be difficult to argue that culturally diverse macro contractors would agree to this as the only source of obligation. They do concede that his formal principle may resonate with certain microsocial

communities who would adopt it through authentic norms governing how the local community will operate. (1999, p. 162). Van Buren III limits his analysis to stakeholders, a special case of problems within business ethics. Not all ethical issues involving norms and community consent revolve around stakeholder interests and rights.

Critics have focused on large corporations in their examples and analysis and have assumed that there are certain standard or even preferred ways of exercising voice or establishing membership requirements. Although such firms are undeniably an important set for ethical analysis in business, TD2 mean to capture a much broader and more diverse set of communities. As a consequence, the definition of consent must be compatible with a broad range of communities operating in diverse cultures. The flexible definition of consent used by TD2 seems compatible with a Middle Eastern business firm committed to following Islamic teachings. The formalistic approaches of Phillips and Van Buren III do not.

TD2 emphasize that dissenters may exit the community, or that they may use voice and other means to try to change the norms within the community. TD2 recognize that, in extreme circumstances, a community member may engage in the moral analogue to civil disobedience and that such actions may be particularly appropriate in circumstances in which the member personally believes that a local norm violates a hypernorm (1999, pp. 42–43). Phillips and Johnson-Cramer, (2004) question whether this is sufficient and expresses concern that when norms are changing within a community, the members of the community may have difficulty identifying when they are free to not comply with a norm. They are surely correct that the evolution of norms within a community may create confusion and uncertainty. They note that ISCT provides no guidance concerning when a member can behave consistently with a new norm, a requirement before a norm can obtain status as authentic. When norms are changing an original norm may become unauthentic, leading to a transition period in which there is no authentic norm until a new one is established. This phenomenon causes some people to believe that violations of the old norm are unethical, while others hold a different view. Again, Phillips would rely upon his principle of stakeholder fairness. He would deemphasize the ISCT priority rules and

would encourage experimentation regarding ethical norms at the most basic community level.

The relationship between Phillips' fairness principle and ISCT needs further study. The general concept of reciprocity, central to his fairness principle, is probably reflected in several substantive hypernorms, if not constituting one itself. There are clearly strong overlaps, and judicious importation of the fairness principle into the ISCT decision process may enhance its value.

An important question is whether the approach to consent in ISCT is consistent with our intuitions and understandings about how communities work. The assumption in the macrosocial contract that communities may generate norms that establish ethical obligations for their members seems intuitive and correct. Whether the community is Shell Oil, a small dental practice in Newcastle, Australia, or a group of traders in Kuwait, we understand that certain expectations concerning ethical behavior will emerge within the group. We also understand that these expectations may be generated in remarkably different ways. Some may be formally promulgated through an elaborate, bureaucratic hierarchy, whereas other norms may come about through informal networking and influences. There is a considerable literature in organizational behavior studying and detailing methods of norm generation.

The issue then becomes whether these norms should be considered binding on members of the group.¹⁷ Under ISCT, they do not become binding if the norms violate substantive, procedural or structural hypernorms. The suggestions of critics such as Phillips and Van Buren III go beyond this and would impose a particular fairness-based approach in circumstances in which it would not be required by hypernorms. Thus the fairness standards are only relevant when (1) the community does not want to follow the procedure and (2) they are not required by hypernorms. Ironically, this fairness-based approach appears coercive in this context. As a consequence, their approach unduly circumscribes moral free space. Perhaps in highly stylized situations a fairness component would be appropriate, but the case for a major modification of the foundations of ISCT does not yet appear to have been made. On the other hand, this line of analysis would appear to hold great potential for further research.

Stakeholder engagement as a complement to ISCT

Calton (2004) has described moral free space as a pluralist mess. It is unstable, evolving and complex. As a means of making sense of this messy environment, Calton advocates recasting consent within an interactive learning process. He argues that consent becomes implicit within ongoing practices of stakeholder engagement. Calton is supported in his emphasis on stakeholder engagement by Phillips and Johnson-Cramer (2004) who speak of obligations of discourse, and by Reisel and Sama (2004) who now explicitly support the idea of dialogic stakeholder engagement. They see the dialogic process as a means of overcoming bounded moral rationality while evoking appropriate moral intensity. Van Buren (2004) also advocates community consultation as a "partial fix" to problems of powerlessness, which result in exclusion from the microsocial norm-generating process.

Calton and Payne (2003) explain in detail a multistakeholder learning dialogue (MSLD) process, which can resolve the paradoxes commonly encountered by managers dealing with interdependent relationships. They model a quadrant moving from local to global on one axis and from consensus to dissensus on the other. Calton (2004) argues that the focus of ISCT is primarily, if not entirely, in the consensus portions of the quadrant. The MSLD process is seen as a way of extending the scope of ISCT, which he believes can be best tested in the context of the idea of global corporate citizenship. Calton's ideas seem highly relevant to the evolution of ISCT. At the microsocial level, they can help ensure that voice is viable, thus providing a more fine-grained test of authenticity. They also can be part of the glue that holds together the assent essential at the community level. Norms supporting or even requiring the process could likely emerge within broader communities. In cases of conflicting norms, those from communities where MSLD is employed may be entitled to priority. Though the potential of these concepts seems quite high, a lot of work remains to demonstrate their specific implications for ISCT and to deal with normative issues, such as how to handle problematic norms developed out of MSLD processes.

Although in one sense stakeholder concepts and ISCT can be seen as competing for the attention of

moral theorists, in a more basic sense they can be seen as complementary. The rich literature on identification of stakeholders points the way toward recognition of ISCT-relevant communities. ISCT, in turn, provides a compatible normative basis for sorting among competing stakeholder claims and solving other thorny issues confronting stakeholder approaches.

Applying ISCT beyond business ethics

ISCT is a normative theory and as such might not be expected to have relevance for descriptive and instrumental business and social science disciplines. ISCT's relevancy would depend on the extent to which normative insights may be helpful in understanding phenomena or instrumentally useful in business decision-making. Warren (2003) recently made use of ISCT in developing a typology of employee deviance. Warren describes the erratic ways in which the deviance literature in management has historically treated the phenomenon. Some writers treat deviance as something undesirable, while others, often using whistle-blowing as a paradigm, consider it generally desirable. Warren's insight is to pose the question: deviance from what? She notes that there may be circumstances where one deviates from a local reference group norm, but is acting consistently with a hypernorm. This she calls Constructive Deviance. The opposite, when one acts consistently with a reference group norm that is inconsistent with a hypernorm is called Destructive Conformity. Destructive Deviance occurs when one deviates from aligned reference group norms and hypernorms. Constructive Conformity results when one acts consistently with aligned reference group norms and hypernorms. The framework of ISCT helps provide insight into the phenomena of deviance. Among other things, it makes clear the need to specify reference groups and also places community norms within a broader framework.

Jeanne Logsdon and Donna Wood have developed the intriguing concept of business citizenship in a series of recent writings. In 2002, they discussed how business citizenship could be implemented by a firm. They identify two distinctly different strategic approaches for dealing with cross-border operations.

Multidomestic business strategy "encourages the development of country- or region-specific products, politics, and practices" (p. 172). They describe this strategy as compatible with a "communitarian view of citizenship and with a large arena of moral free space" (Id.). In contrast is the *globally integrated* strategy where the corporation maintains "policies, processes and structures that are consistent with the company's expressed mission and values across all relevant cultures" (Id). This strategy is seen as "more compatible with the universal ethical principles' perspective on citizenship, but it does not go far enough in recognizing complex responsibilities that may legitimately differ from place to place" (Id.). Logsdon and Wood use ISCT to develop a "comprehensive" template for implementing global business citizenship. In their template, multidomestic strategy is constrained by hypernorms, while legitimate local norms need to be respected by firms employing a globally integrated strategy. They stress how the concept of moral free space allows for useful variations in normatively acceptable company policies as organizations confront the difficult and challenging issues posed by globalization and cultural variances.

There have been other uses of ISCT in affiliated literatures but none have been as elaborate as the treatments just described. Barge and Oliver (2003) use ISCT in support of their advocacy for managers to cultivate an appreciative spirit. They use the concept of moral free space to support a claim that in community contexts there are multiple meanings of appreciation subject to interpretation and negotiation. It seems likely that ISCT will continue to be used in contexts outside of the business ethics domain.

What next?

This summary of issues raised in the literature applying and critiquing ISCT has focused on recurring major themes.

There are many issues that are inherent in the approach taken in *Ties* and in some of the ISCT literature that have yet to be raised explicitly by commentators. Among these are the provocative claims for bounded moral rationality, which is developed over five pages in *Ties* (pp. 28–33) and is summarized as follows:

Critical Perspective of Integrative Social Contracts Theory

1. Individual moral agents are constrained in their ability to discover and process morally relevant facts necessary to implement their preferred ethical theories.
2. Ethical theorists are constrained in their ability to devise a calculus of morality that coheres well with settled moral opinions (p. 29).

This assumption is critical for the way in which the macrosocial contract is set up in ISCT. It also contributes to the flexible, inclusive design of ISCT. It is central to the project, yet it has been virtually unchallenged in the commentary. Does this mean that there is substantial agreement with the claim, at least among scholars of business ethics? It is known that there are some scholars, e.g. utilitarian decision theorist Jon Baron (1990), who would argue that the solution to any problem of perceived bounded rationality would be developing better decision techniques. Under this view, bounded moral rationality should be seen as, at most, a temporally bounded restraint. Baron's view may not be widely held. Further, his argument still does not eliminate the need for a short-term solution to the problem of perceived bounded moral rationality. Is there a better solution to the phenomena than the pluralistic, flexible approach to ethical decision-making that is the hallmark of ISCT? Maybe, but further research would have to put forward a plausible solution.

Another major component of ISCT that has escaped major criticism has been the priority rules of thumb offered for sorting among conflicting norms arising when multiple communities are relevant to a particular decision. Based on an analogy to choice of law principles dealing with conflicts arising from federal systems or competing claims of jurisdiction in international litigation, they are loosely derived from customary law and judicial rules of contract interpretation. Lucas (2001), Reisel and Sama (2003), Dunfee et al. (1999), Smith (2000) and Poindexter (1995) all make use of the priority rules in their applications of ISCT to specific ethical issues. They all essentially accept the rules as given and appropriate and do not challenge the concept, or the specific listing of six principles. The very flexible way in which the rules of thumb have been presented may contribute to this lack of criticism. TD2 suggest neither a hierarchy nor a weighting for the priority rules. Whether this general strategy is appropriate is

an open question. One might claim, for example, that the overall effect of the priority rules is to unduly restrict the moral free space of smaller communities or developing countries as the rules giving emphasis to larger communities and broader existing consensus work to their disadvantage.

Ten years on, there are a number of interesting and important unresolved issues concerning ISCT. To recapitulate they include the following:

1. Evaluation and refinement of the process of hypernorm identification
2. Elaboration of the theoretical foundations of all three categories of hypernorms
3. Identification of candidate substantive hypernorms
4. Elaboration of the structural hypernorm of necessary social efficiency
5. Identification and elaboration of additional structural hypernorms
6. Development of empirical research techniques relevant to the search for substantive hypernorms
7. Justification of all three categories of hypernorms
8. Analysis of whether hypernorms evolve, and, if so, the implications
9. Evaluation of the possibility that hypernorms may conflict
10. Evaluation of a possible role for meta norms
11. Analysis of additional ethical issues and controversies through the use of ISCT
12. Elaboration of the relationship between ISCT and stakeholder concepts, particularly the relevancy of stakeholder engagement
13. Analysis of the problem of unoccupied moral free space
14. Study of the development and evolution of authentic norms within communities
15. Analysis of how to identify authentic norms, including the possibility of a weak presumption based on behavior alone
16. Analysis of the theoretical justification of the macrosocial contract
17. Elaboration of the relationship between ISCT and fairness concepts
18. Evaluation and extension of the concept of bounded moral rationality
19. Elaboration and justification of the priority rules of thumb

These and other open issues require thought and resolution. The critical commentary on ISCT seems to be accelerating. It is a necessary part of the process by which ISCT is being refined and tested for its potential as a part of the portfolio of applied theories of business ethics. As of this writing, the major tenets of ISCT appear to have held up reasonably well. It remains to be seen whether that will be true for the next decade.

Notes

¹ The formal name has been a source of some confusion. Several journal articles misstate the name as Integrated Social Contracts Theory. Others have called it Integrative Social Contract Theory and the doubly wrong Integrated Social Contract Theory (e.g. Hartman et al., 2003).

² Donaldson, T., and T. W. Dunfee.: 1994, "Towards a Unified Conception of Business Ethics: Integrative Social Contracts Theory," *Academy of Management Review* 19(2), 252–84. The first article written on ISCT was Donaldson, T. and T. W. Dunfee.: 1995, "Integrative Social Contracts Theory: A Communitarian Conception of Economic Ethics," *Economics and Philosophy* 11(1), 85–112. However, the vagaries of the publishing process caused it to be published a year later. Some subtle changes were made in the explanation of the theory between the two articles. Evolution of the theory continued with the publication of *Ties That Bind* (1999) where, for example, the idea of a partial veil of ignorance was first introduced and hypernorms were broken out into three categories (substantive, procedural and structural). In addition the example of the structural hypernorm of necessary social efficiency was introduced in *Ties*.

³ ISCT is a separate listing in the *Blackwell Encyclopedic Dictionary of Business Ethics* and has achieved the status of being the subject of term papers for sale on the internet. For book reviews see Calton (2001a, 2001b), Fort (2000), Lavengood (2001), Rowan (2001), Salbu (2000), Sanchez (1999) and Shaw (2000). For additional commentary not specifically cited in this article see Bishop (2000), Cludts (1999), Donaldson and Dunfee (2001, 2002a, b), Dunfee (2001), Dunfee and Donaldson (1999), Frederick (2000b), Umezu (1995) and Wempe (forthcoming).

⁴ The awkward choice between using the first person or the third person in referring to oneself will be avoided in part by the acronym TD2.

⁵ This element is reflected in the title of the 1994 *Academy of Management Review* article – Toward a Unified Conception of Business Ethics.

⁶ And, if necessary, conflicts among competing norms should be resolved by the use of the priority rules of thumb.

⁷ The circumstances in which hypernorms could stand alone would include situations in which authentic norms do not exist or, existing, cannot be identified and hypernorms providing detailed guidance can be identified.

⁸ Coarse bribery is defined by Hess and Dunfee (2000) as "the promise or payment of a benefit that induces a public official to breach a duty pertaining to a significant community interest." (p. 595).

⁹ Of necessity, the Van Oosterhout et al. approach requires a position regarding an important question on which TD2 remain agnostic (1999, p. 59): whether hypernorms have a purely rational basis or instead are partially empirical and historical.

¹⁰ In the case of mutually exclusive authentic norms, the priority rules of thumb need to be applied (TD2, 1999, Chpt. 7).

¹¹ Whether hypernorms, standing alone, may be a source of prescriptive guidance is discussed in a prior section in this article.

¹² Danielle Warren suggested this table.

¹³ The same evidentiary limitations exit for all other ethical theories that are context dependent, e.g. consequentialism.

¹⁴ This is one possible explanation for the studies which find that student responders appear less ethical than professionals (Cole and Smith, 1996; Stevens and Fleckenstein, 1999; Wood et al., 1988). It is not because the younger generation is somehow less ethical as some Jeremiahs proclaim. The students are not aware of the professional norms that guide behavior in the areas they study. Once they obtain jobs, they will become aware of the generally understood principles of professional practice.

¹⁵ Or, of course, they could change their attitudes to conform to their behaviors.

¹⁶ TD2 (2003) make clear that they make no claim for ISCT as "the" unifying theory for business ethics. "Integrative Social Contracts Theory need not – indeed seldom does – eliminate all questions from a moral quandary. But it can provide logical vantage points from which to view an ethical quandary and, in turn, point towards a solution." (p. 115).

¹⁷ For purposes of this discussion, it is assumed that the norm exists and, therefore, it is ratified in the behaviors and attitudes of a substantial majority of the members of the community. The issue of whether the evidence available might point toward an ersatz norm is a distinguishable and completely different issue.

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*The Wharton School
University of Pennsylvania
Philadelphia, PA, 19104,
U.S.A.
E-mail: dunfeet@wharton.upenn.edu*