Editorial introduction: where is business ethics?

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Where is business ethics today? And with this, where are business ethics today? Where do we find them? Are there enough? These questions strike us today, and present us with our starting points. First of all in considering how business ethics has evolved, and what state it is in. But also, in asking where business and ethics are today and how and where they might be in the future. Starting out with these seemingly innocent questions, we face a set of somewhat more troubling questions about the location of business ethics. For some, business ethics is quite easy to locate. When seen as a business function, an academic discipline or a part of business school education, business ethics is often taken as something that obviously has a location. If business ethics is readily locatable, then it can be disciplined, generalised, taught and instituted as part of best practice and corporate strategy. But are business ethics so easily locatable? Are they a ‘something’ characterised by a ‘thingliness’ that might allow them to be taken in hand and put to use? If business ethics are not open to such reification, then we might find that ethics in business involves a basic dislocation relating to phenomenal experiences arising when things are out of place. Business ethics would then take place when, as was sensed by Hamlet, things are ‘out of joint’. The experience of whistleblowers and the victims of corporate malfeasance is certainly one of deeply felt dislocation. If we find business ethics in these practices, might ethics also be found in other spaces of dislocation?

That is how our invitation to the 13th European Business Ethics Network UK conference, held in Bristol, 6–8 April 2009, commenced. The conference took place at a time in which the global financial crisis was still unravelling, and the invitation to the conference was motivated by two considerations in particular. On the one hand, it seemed as if, after the tragedy of 9/11, which signified liberalism’s death as political doctrine, we were now witnessing liberalism’s death as economic theory (Žižek 2009). While this crisis itself represented a failure of business ethics, the farce consisted of the way in which it unravelled, but also of the way in which it was responded to; namely, with very little. If 3 years after the crisis, very little has changed (Elliott et al. 2010), then what space is there for business ethics in the neoliberal economy, if it can’t even seize on the dislocations caused by the crisis to create spaces for ethics in business? On the other hand, business schools were to take at least some blame for the global financial crisis, as their narrow teaching and research had eschewed wider social and political questions (Corbyn 2008). During the conference a further article in the Guardian circulated in which business schools were considered ‘academies of the apocalypse’ (James 2009), and the teaching of business ethics was considered at least a partial remedy.

The set task for the conference was therefore to think through the limitations imposed on business ethics by neoliberal capital, while focusing on the spaces in which business ethics might nonetheless be taking place. The keynote by Mark Fisher reiterated the bleak outlook already introduced by Žižek (2009): what Fisher (2009b) calls ‘capitalist realism’ describes the cultural logic of neoliberal capital which presents itself as the only game in town: it is...
easier to imagine the end of the world than the end of capitalism. Moreover, while some might look towards the anti-capitalist movement as an inspiration or extreme variety of business ethics, Fisher (2009a) in his keynote argued that the ideology of neoliberal capital is already anti-capitalist, as demonstrated by the movie *Wall-E*, whose anti-capitalist message merges perfectly with its commodity form. This emphasis on the frightening continuity and persistence of neoliberal capital at the expense of business ethics also featured in other contributions to the conference. For example, Campbell Jones (2010) argued that ‘the subject supposed to recycle’ itself more often than not presupposes ‘the economic system supposed to not recycle’ (37, emphasis omitted). If our own recycling contributes to reproducing an economic system programmed not to recycle, then it doesn’t signify an opening for business ethics, but must instead be kindly refused. In another presentation, Casper Hoedemaekers (2011) explored how viral marketing plays with jokes that go too far, and in doing so captures a certain *jouissance* of transgression that could otherwise serve to undermine the economy of desire of neoliberal capital, rather than sustaining it. If we can’t even laugh without reproducing capital, what space is left for business ethics?

The contributions to this special issue selected from the conference continue these lines of enquiry. They can broadly be categorised in two or three sections. Where the first three contributions (Brei and Böhm, la Cour and Kromann, Veldman) show how the corporation in its legal form and through its managing of social responsibility eschews genuine business ethics, the latter three contributions (Dempsey, Woźniak, ten Bos) search for openings in the discipline and personal practice of business ethics. And where the first set of contributions (Brei and Böhm, la Cour and Kromann) represents two specific studies and critiques of how corporate social responsibility works as ideology, and the second set (Veldman, Dempsey) looks beyond the abstractions of the field of business ethics for openings within it, the third set (Woźniak, ten Bos) turns to philosophy for business ethics that does not start from abstraction but from the bodily and experiential. In this issue we therefore move from critique through reconfiguration to new spaces for business ethics.

Vinicius Brei and Steffen Böhm demonstrate how we can understand corporate social responsibility as cultural meaning management. They disentangle the marketing of ‘ethical’ bottled water to show how these campaigns, which turn a fundamentally banal product into one in which we can invest our ethical desires, are part of the legitimation and reproduction of neoliberal capitalism. If these initiatives can be seen as part of an ethical response by capitalism to its critics, one which Brei and Böhm present as part of the ‘new spirit of capitalism’ (Boltanski and Chiapello 2005), then they are yet another example of how ethics and responsibility have been subsumed under the capitalist accumulation process. Brei and Böhm invite us to look elsewhere for ethics, and contribute to this search by providing a vocabulary with which to unravel the way the cultural meaning of commodities is constructed, and by emphasising the necessity of a re-politicisation of these processes.

The contribution by Anders la Cour and Joakim Kromann proposes yet another exploration of the linguistic and symbolic gymnastics of contemporary capitalism. La Cour and Kromann read corporate social responsibility reports in order to show how company involvement in philanthropy relies essentially on the use of euphemisms to paint over the hypocrisies involved in appealing, simultaneously, to purely economic and purely philanthropic discourses. While la Cour and Kromann show how this polyphony of the corporation avoids it getting caught in acts of hypocrisy, they emphasise that this procedure is not one of the dissolution of hypocrisy, but of its displacement. If CSR reports then manage mostly successfully to brush over the dislocations produced by corporate practice, we need to look elsewhere for places where contradictions and hypocrisies become visible and thus may be contested.

If the papers by Brei and Böhm and by la Cour and Kromann show how corporate social responsibility in many ways forecloses business ethics, the contribution by Jeroen Veldman considers how it might be possible to ascribe agency and ownership, and thus responsibility, to the corporation. Highlighting the importance of different legal representations of the corporation for business ethics, Veldman shows how both natural and artificial entity theory underlie the modern concept of
incorporation. He outlines different positions of legal scholars on issues of governance that result from the contradictions between the two theories. While for Veldman the term ‘corporate’ has lost most of its meaning in corporate governance, to think of the corporation as a separate legal entity only serves to engender inconsistent positions. Nonetheless, the notion of incorporation produces dangerous fictions, and Veldman invites us to consider how these are implicated within the political economy of the corporation.

The contribution by James Dempsey, in a different context, also warns of abstractions, not the dangerous fictions of the corporation that Veldman is concerned with, but the abstractions of integrative social contracts theory. Dempsey argues that this theory has been undervalued as a resource for rethinking business ethics, as its reception has been marked by an emphasis on the concept of ‘hypernorms’ to the detriment of a consideration of the role that moral free space plays in theory advanced by Donaldson and Dunfee. Dempsey proposes a re-reading of their theory, via Rawls, ‘as a genuinely pluralistic approach to business ethics in the tradition of pluralistic theories of political philosophy’. Where a focus on hypernorms leads to a theory concerned mostly with abstract norms, for Dempsey the radicalism of integrative social contracts theory lies precisely in the way it differs from the abstract and universal nature of traditional theories of moral philosophy. It is the concept of moral free space with its radically pluralist implications that holds the key to understanding this theory’s potential.

Where Dempsey seeks to recover a space for a renewed business ethics from within the ruins of the existing discipline, Anna Woźniak’s strategy is to look outside and towards the Danish philosopher Søren Kierkegaard for a critique – again – of the abstractions of the field of business ethics. Woźniak demonstrates how critical theorists in business ethics have fallen prey to the dangers of speculative thinking by removing the link of abstraction in thought to their own existence. Woźniak proposes that the ethical is not to be found in thought that seeks to grasp the world-historical, but rather in its opposite. The focus on reflexivity in our discipline is for Woźniak not a solution but yet further proof of the ways abstract thought has led us astray. Rather than gazing at our own pure abstract subjectivity in the act of reflection, for Woźniak it is a matter of ‘making oneself infinitely interested in one’s own existing’. She also draws – some might think surprisingly in this context – on the arguments of Milton Friedman to suggest that ethical responsibility should not reside in any anonymous system but must always remain with the individual. One is ultimately accountable to oneself.

The last contribution, by René ten Bos, based on his keynote at the conference, complements this attack on abstraction and this turn to philosophy by exploring the moral significance of gestures. ten Bos warns against language and its abstractions and proposes a focus on the physicality of morality. For ten Bos ethics is profoundly bodily and gestural, yet it is this dimension of ethics that is most easily foreclosed in business ethics’ quest for the systematic. Against the way language is dressed up in business ethics (as we see in the first two contributions to this special issue) ten Bos presents the nakedness of gestural ethics. For ten Bos it is only by rediscovering these lost gestures and reaffirming misgivings about the possibility of moral language that we might save business ethics. The issue therefore ends with a plea for a return to the body and the self. Yet an eerie reminder of the reflections on the state of neoliberal capital remains: how is it to be accounted for in its very abstraction and fictitiousness?

To return to our opening question: where is business ethics? If not definitive answers, then we trust at least that readers will find plenty of rich intellectual provocation and stimulation in the pages that follow.

References


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The moral significance of gestures

René ten Bos

Introduction

One of the strange effects of the current financial crisis is the widespread attention to the nature of the apology. CEOs all over the world have profusely apologized for the wrongdoings of their companies. If one takes a positive angle on this, one might argue that this shows how much business people have become aware of their social responsibilities. If one opts for a more cynical approach, one might think that CEO apologies are just so many instances of window dressing. Whether they are sincerely intended or not has always been a somewhat moot issue, not only in daily practice but also in the academic literature.

What is an apology? One way to approach this question is to make a distinction between ‘excuses’ and ‘apologies’ (Gill 2000: 25). In both cases, we are dealing with so-called ‘remedial activities’. Excuses differ from apologies, however, because they involve a denial of responsibility. If a person’s action causes problems for someone else but if it has been performed unwittingly or unintentionally, excuses are generally considered to be appropriate. An apology, on the other hand, always implies an acceptance of personal responsibility and an explicit acknowledgement of the wrongfulness that has been caused. It is therefore safe to say that under the present, crisis-ridden circumstances, a CEO who thinks that he or she can get away with excuses will only aggravate the moral outrage. The least that people want to hear, given the seriousness of the situation, is an apology. One might argue that the apology is, in comparison with the excuse, more authentic and hence more appropriate when things do really matter. The other side of the coin is that the apology is also more vulnerable to critique and scepticism. Even when it goes wrong, it carries more weight than the excuse.

Apologies also occur in areas other than business. One might think here of a thief who stole a gem from an older lady and, remorsefully, returns it to her, or of a statesman who apologized for his nation’s wrongdoings in the past (slavery, genocide, etc.). In all these and other cases, the issue of authenticity seems to play an all-important role as well. Politicians, for example, routinely apologize for wrongdoings caused by them or by other people for whose acts they are held responsible (Cunningham 1999). But why do we feel that Willy Brandt’s genuflection before the Warshaw Ghetto Memorial in 1970 was much more convincing than the ‘deep
sorrow’ Tony Blair expressed in 2006 over the slave trade in which Britain had been involved? We surmise it must be related to this somewhat nebulous concept of authenticity. Goffman (1971: 113–114) was one of the first commentators to stress the importance of authenticity not only in politics but also in daily affairs. Apologies, he famously argued, will not work if they are solely offered as a means of ‘impression management’. However, his suggestion that authenticity and efficiency assume each other as far as apologies are concerned has been taken issue with. Lazare (2005), for example, argued that even insincere apologies can serve important social functions. Yet, Lazare’s position has in its turn been criticized by Smith (2008: 93), who argues that apologies should never be approached from the perspective of instrumentality. Does this mean that instrumentalism is a kind of inauthenticity? And that a lack of instrumentalism engenders authenticity?

Smith analyses the apology from an entirely prescriptive standpoint. He claims to be not so much interested in what an apology is as in what an apology should be in a given situation. It is, after all, the context and the situation that determine what makes an apology efficient and authentic. In order to sustain his prescriptive position, Smith has to find a formula that allows him or his readers to judge whether in a given situation an apology fails or not. The notion of a ‘categorical apology’, which he defines as a ‘benchmark for apologetic meaning’, is what should perform the job (2008: 142). To be categorical, an apology must meet three criteria:

(a) It must be issued by a person who is proximately responsible for unjustified harm. The intensity of an apology and its moral significance tend to evaporate as soon as intermediaries issue it.
(b) The person who apologizes should show that he or she is knowledgeable about the kind of harm that was caused. He or she should also clearly indicate what kind of moral principle was violated by inflicting this particular harm.
(c) The apology should be the expression of serious regret. Here again, there is a demand to be authentic.

It is Smith’s hope that he will be able to elucidate the meaning of his subject by discussing all sorts of situations and contexts in which apologies were issued in the light of his categorical ideal. There is no doubt that this generates several insights into what apologies can do under specific circumstances. But after reading Smith’s book, the reader remains a bit perplexed about what apologies are. Smith refuses to define them and apparently is resigned to the idea that they are somewhat enigmatic. More precisely, he refers to apologies as ‘enigmatic gestures’ (2008: 25). He thus assumes that apologies are gestures, but he does not explain what we should understand by this. Even though Smith’s book is to be commended for many reasons, he assumes rather than elucidates the moral relevance of his subject.

The goal of this article is, as the title indicates, to lay bare the moral significance of gestures and therefore of apologies and, as we will see, of other kinds of gestures as well. The gesture’s moral significance can be related, it is suggested, to three different but interconnected elements. First, it will be pointed out that the concept of the gesture allows us to understand the physicality of morality. When a person issues an apology, he or she normally uses language and the use of language is, as we will see later on, a physical experience. Moreover, morality oftentimes makes itself manifest as a bodily feeling. The ‘voice’ of our conscience is not a voice but rather a nagging feeling in the belly. Brandt’s genuflection did much more than words could do. Second, the gesture is all about self-transformation and about the transformation of the other. In this sense, it nearly always evokes an element of initiation. This is perhaps also why sincere or authentic apologies are so difficult to issue: people oftentimes shy away from the idea that they should be initiated into, let us say, a different stage of life. Third, the gesture is anti-teleological in the sense that it does not serve or does not have a goal. To put it somewhat differently, the gesture belies the idea of a predetermined result. It certainly produces effects, but these effects cannot be calculated or predicted. It will be argued that gestures allow for a certain openness that is essential to all morality, including the morality of our business leaders. Yet, it may be the openness of the gesture that belies organizational rationality.

The paper consists of two sections. In the first section, a brief survey of the philosophical literature on gesture will be provided. This survey should then
function as an overture for the second section, which will discuss the aforementioned three gestural elements – physicality, initiation, openness. The conclusion is not that gestures are always clear, commendable or good. The conclusion is rather that they allow us to understand how complicated morality has become in a world that increasingly focuses on results and excellence.

**Gestures: between nature and culture**

Michel Guérin (1995: 73), a professor of aesthetics in Aix-en-Provence, France, has complained about the ‘impensé du geste’ in Western philosophy: it has by and large not been an object of serious thought. This is, Guérin argues, a sad situation for philosophers should take an interest in sense and if something makes sense, creates sense, *is* sense, then it would be the gesture. Indeed, there is a ‘syntagmatic redundancy’ in the gesture that makes it replete with sense.

To start unravelling just some of the meanings involved, we may start by saying that gestures are simply what people do with hands or other parts of the body. People who are lacking words, who cannot find words, or who cannot find the *right* words oftentimes resort to gestures to make themselves understood. In this sense, the gesture is just a poor substitute or supplement of spoken language. As such, it points to something that the speaker cannot express in words, but that she/he nevertheless deems to be vital. This vitality will be diluted as soon as the gesture becomes too complex. The same effect can be seen if it takes too much time. The idea of a slow gesture seems to be contradictory. The gesture always seems to be in a kind of hurry. This also implies that a gesturing individual quickly has to assure himself/herself of the correct reception of what he/she intended to signify. One of the problems that he/she faces is that his/her gesture is somehow difficult to rectify. A gesture of helplessness is something that an audience does not forget easily. This is also what makes the gesture different from language or metalanguage: in and by language, one can easily correct what one has said. Linguistic meaning can always amend itself. What is being spoken relates to what is being intended by the person who speaks. By means of its complexity, its variety, its curved senses, its emphasis and its restraint, the speaker of a particular language is always able to resort to the ‘inexhaustible panoply of willing-to-say’ (Guérin 1995: 13). It is exactly the richness of language that can undermine the credibility of what is said. A business manager who offers apologies in too eloquent a style will only cause irritation. A business manager who apologizes in a non-verbal way does not run this risk. People *see* that she is really concerned about what happened.

For Guérin, language is always dressed up. Gestures, however, are naked. Language is sumptuous, but frugality is the hallmark of gesture. Language allows for volubility and eloquence, the gesture is restricted to a domain of necessity. Whereas you can add more and more words to the conversation that you are having with a person, the gesture is necessarily condensed. Hence, at face value, there seems to be a contrast between ‘the misery of the gesture’ and the ‘exuberance of language’ and it is exactly this contrast that has led people to think that language is superior to gesture (Guérin 1995: 14). In other words, gesture is often understood as an *Ersatz*-language, a kind of substitute language that is of necessity the lesser language, not more than a signal, the efficacy of which depends on two criteria: right timing and good reception. Gestures are always considered to be simple. But if this is the case, how can it be that gestures pop up when language fails? Again, why do people resort to gestures when they cannot convince each other, when they cannot find the right words, when they are desperately looking for words?

One can make a distinction between ‘expressing oneself by means of gestures’ or ‘talking with gestures’. In the first case, gesture is a substitution for language but in the second case gesture is what accompanies language. As a *paralinguistic* (rather than *sublinguistic*) phenomenon, the gesture might reinforce, exaggerate, suppress, underline or even set the tone. It renders language expressive in the sense that it provides listeners with certain bits of information about whatever it is that the speaker wants to convey. The gesture gives a new kind of
modality to what is being enunciated and this modality is capable of influencing the overall sense. During the process, it is always the body that allows the speaker to provide the abstract content with an affective silhouette. As such, gestures furnish interpretations of what is being said with a holistic imagery. They enrich and simultaneously simplify the content. But whatever they do, they are always powerful revealers of personalities, interests, even passions. Ultimately, it is only the gesture that ensures that the chain of speaking is not more than just an abstract flow of air. By means of gestures, you show that it is you who speaks and not merely some body. What the gesture shows, in other words, is that it makes a difference who is speaking. Hence, there is a utilitarian and a pragmatic dimension about the gesture, but also an expressive and an affective one. It embodies language; it opens it up to the physical.

For many Western philosophers, it has always been difficult to accept that language is fundamentally related to the body. They argue that we can understand the meaning of certain concepts without paying attention to physical elements. For example, the word ‘horse’ means horse no matter how it is expressed (loudly, softly, with fear, with enthusiasm and so on). The relation between language and body has therefore been denied (Cavavero 2005). However, if we claim that gesture and not only conceptual significance is substantial to what language might mean, then we also claim that we should rethink the relation between body and language. Can we, when we are listening to the apologies of business people all over the world, really separate signification from comportment? In other words, can signification completely align itself with a pure, disembodied form of language? Whoever looks at Brandt’s famous ‘Kniefall’ in Warsaw on YouTube will understand that meaning is not necessarily a denial of the body.

That gestures can convey meaning renders the very idea that a pure, non-physical language exists, an idea that goes back to Plato, impossible. This is also what makes the gesture, being a holistic phenomenon, unanalysable or rather: to analyse it or to think about it simply means that one has to leave the gestural universe. ‘The more the gesture thinks about itself’, writes the French philosopher Émile Alain, ‘the more it irritates itself’ (quoted in: Guérin 1995: 15). The important thing to bear in mind here is that gestures apparently belong to a non-reflective world. This implies that gestures that are made intentionally, on purpose or strategically will lose their expressive quality. This is probably why Brandt is much more convincing than Blair, whose apology was carefully prepared and directed. The more one intends to make sense with gestures, the more one risks losing sense. Guérin emphasizes the essential inchoateness and purposelessness of gestures. This is, of course, contestable. There is no doubt that many gestures can be made on purpose. From the ancient Romans to contemporary politicians such as Tony Blair or Barack Obama, there has been considerable knowledge on how to use gestures effectively. Yet, Guérin and others (Flusser 1994, Agamben 2001) argue that a gesture that is not made on purpose is almost by definition more meaningful and expressive than a gesture that is deliberately made. Turning back now to a business context, there is, for example, a huge difference between an artificial smile of a company employee who did a course on customer friendliness and a person’s ‘real’ or ‘spontaneous’ smile. Here, too, the argument seems to invoke a certain understanding of authenticity that might be lost as soon as gestures are produced artificially.

It is interesting to dwell a little more on the issue of smiling. In his book on laughter, Henri Bergson (1906: 32–33) provides us with yet another reason why we might feel uncomfortable with artificial gestures. He argues that gestures – and laughs and smiles are gestures too – cannot be imitated or repeated. More precisely, one simply cannot imitate another person’s smile or friendliness without becoming laughable. The paradox here is that a person’s ‘real’ smile or ‘real’ friendliness is nothing to smile about – perhaps one can say that one should smile back – but phoney smiles or phoney friendliness have a certain comical twist about them. Bergson explains that ‘involuntary’ gestures do not belong to life anymore but infuse it with an automatism that is in fact just imitating life. It is this imitation of life that he deems to be an essential ingredient of what is comical (1906: 149).

The idea that gestures belong to life itself and are not imitating it is important to Guérin as well (1995:
He claims that gestures basically attest to an animal-like *vouloir-dire* (a willing-to-say) that in turn, on a very basic level, coincides with a *vouloir-vivre* (a willing-to-live). The gesture is therefore seen as having a very strong link with life as such. To make it susceptible to an aesthetic regimen implies that its essentially non-reflexive nature, its secret link with life itself, will of necessity be undermined. Nevertheless, there is always this link with technique: there is a technical use of gesture in sign language, in lectures, in public talks, in theatre, and even at the checkout in the supermarket. Gesture is also a bodily technique that gives information about who someone is or rather about what this particular person is (the condition in which she finds herself: her role, her function, her state of despair, her happiness and so on). Gestures allow for a certain kind of homogenization that requires cultural habits such as taste, skill and memory, which all help to foster some sort of communality. This is why the gesture is deemed to be politically relevant as well: it helps to foster communality (Agamben 2001: 63).

Guérin, who has been our major guide so far, argues therefore that the gesture has a ‘double mandate’: it is *natural* and it is *cultural*. When he claims, for example, that the gesture prefigures technique or skill, he wants us to believe that it is somewhere between nature and culture. It is not difficult to see how this might apply, for example, to discussions about leadership. When a political leader or a CEO gives a lecture, the audience usually expects her to be more than just the words she utters. It is as if the body tells something about the veracity of what is being said. Non-verbal behaviour has an enormous impact on the credibility of leaders. In this sense, the leader should come across as someone who is simultaneously natural and culturally skilled. We will come back to the issue of leadership.

Summarizing, we can say that even though the gesture is non-reflexive, it *is* a technique, something that is acquired, something that shows cultural skills. ‘*Le geste démarre toute culture . . .*’: all culture starts with the gesture. With it, we enter a zone of indifference between nature and culture. Gestures are the pedestal of all culture. That they are somewhere between nature and culture, between initiation and imitation, between symbolism and technicality is probably the single most important reason why people cling so strongly to them. Exactly because they are so closely linked to nature, they are so difficult to give up. Yet, at the same time, they fear gestures for their ambivalence. One should never think that Brandt’s genuflection was condoned by all of his contemporaries. On the contrary, many people believed that statesmen are never to bend their knees. When in 1995, in the wake of what became known as the ‘Brent Spar’ affair, Cor Herkstroëter, by then the CEO of Shell, apologized to the general public for the company’s ‘technocratic arrogance’, he was vehemently criticized by shareholders and other financial watchdogs (ten Bos 1997).

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We saw that gestures, being somewhere between nature and culture, are intimately connected to the body. Does this also hold for linguistic gestures such as apologies? Most apologies are, after all, linguistic. Brandt’s genuflection is a remarkable and important exception to the rule. Its uniqueness, however, lies in its silence. Oftentimes, when harm has been inflicted, people expect words. This is what must have been on Herkstroëter’s or Blair’s minds as well. After Brandt, most of us do not want politicians or business leaders to routinely bend their knees when they want to repair harm.

So far in this section, we have taken gestures literally, that is, as movements of the body that are somehow connected to what is being said. But when we discuss apologies, we do seem to venture into the domain of language. The gesture can be understood as a *stylistic* element of a particular spoken or written text as well. There are, of course, many ways in which people produce texts. A great variety of textual expressions – from apologies to poetry – can be seen as ‘gestural’. What are we to make of this and how is this related to embodiment? We will argue that a text, even a piece of poetry, gains in gestural quality if it has a *transparent* relationship with the body.

Transparency is an important aspect of gesture. Smith’s three requirements for what he understands as his ideal apology – proximity, knowledgableness and authenticity – seem to invoke a certain kind of
transparency. The relation of the person who apologizes for the harm that has been inflicted should be clear not only to the victim but also, if necessary, to the general public. We already saw that it is difficult to think of gestures that are unclear. This is basically why they are so difficult to rectify. A political leader who made an obscene gesture will be held accountable for this for a long time. It sticks, as it were, in the public’s eye. Apologies will oftentimes not work. It is very difficult to correct wrong gestures by better gestures. Tony Hayward, former CEO of BP, finally apologized for the catastrophic oil-spill in the Gulf of Mexico, but the general public did not believe him any more after a long series of ‘gestures’ intended to disguise the real facts about the disaster (ten Bos and Dunn 2011).

The Canadian philosopher and poet, Jan Zwicky, allows us to gain a better idea of what transparency might be all about. In her discussion of the lyrical – which she defines as the attempt to grasp the whole in one single gesture (Zwicky 1992: 143) – she uses many concepts that have become popular too in organizational life: not only transparency but also integrity, authenticity or trust. Zwicky shows how much these concepts are intertwined with the gestural. We will see below that this implies that these concepts should be related to the body as well. If the link with the body is absent, then all these concepts will function as ‘empty shells’ – which cynics argue is the precise role they are expected to play in both organizational and political life (see also: Ungericht and Weiskopf 2006).

Utterances or concepts, Zwicky claims, can be gestures exactly because they can make things transparent. To achieve this transparency, an utterance should render ‘what is on the other side of the glass easier to understand, accept, respond to, or love’. This is what Zwicky subsequently relates to a certain understanding of integrity – an utterance becomes a gesture if it facilitates the integrity of our being in the world and if it purifies vision’ (1992: 46). Zwicky adds that the lyrical image is a gesture of ‘great particularity’, like the ‘single droplet that draws our attention to the stillness of the pool’ (1992: 128).

There is no doubt that this is language that not many people in organizational settings would condone. Why would one resort to poetic language in order to understand what transparency or integrity can be all about? Is it not enough to simply define both as a sort of openness? (Berggren & Bernshteyn 2007, Florini 2007). Can one seriously contest the idea that openness is ‘good’? Well, things are always more complicated than they seem. The Italian philosopher Mario Perniola (2003) took issue with the idea that transparency and openness equal good. He points out that transparency is not simply about openness, directness or the possibility to see through things or people. In medieval philosophy and theology, transparency was always related to reflections about transparent materials such as glass and crystal. This allows one to think of the concept in entirely different ways than openness: transparency is about grace, fragility, solidity, distortion and discretion. We surmise that these are all words that somehow seem to fit in perfectly well in the discussions about apology. Where Smith claims that apologies are ‘enigmatic’ gestures; Perniola points out that transparency as such is enigmatic. Indeed, the effort to ignore the enigma, that is to say, the effort to think transparency without secrecy or discretion is, according to Perniola, nothing less than a new form of militancy that aims to make everything trivial, uncomplicated, practical and open (2003: 102).

People in organizations constantly experience what this militancy is all about. Auditing processes become more and more pervasive. The underlying idea is that the performance of every single member of the organization should be rendered transparent. Michael Power (1998: 2) warns against the totalitarian aspects of this kind of transparency:

Could one imagine a society, or even a group of people, where nothing was trusted and where explicit checking and monitoring were more or less constant? Even Popper’s ideal community of scientists engaged in daily conjectures and refutations could not carry such attitudes back to their family lives or even to the cashier at the laboratory canteen. Pockets of doubt and checking may be created and institutionalized but surely not as an entire principle of social organization? The more one thinks about it, the more apparent it is that the imperative ‘never trust, always check’ could not be
a universalizable principle of social order: constant vigilance is somehow autodestructive.

Perniola urges us to think with more subtlety about concepts such as transparency or integrity. The sceptic might argue that such a subtlety can only be achieved in the lyrical world depicted by Zwicky rather than in the real world of organization and politics. Like Perniola, Zwicky is very well aware of the ‘materiality’ of transparency: water, glass, snow, rock and crystal play all-important roles in her book. She argues that we have to think with these metaphors if we are to understand what the transparency of a gesture might be all about. So then, what does it mean if a gesture is like a droplet of water that makes us aware of the stillness of a pool?

It might be about nothing less than the truth provided that we do not understand this as ‘correspondence with some bit of the world’ or as ‘systematic intra-linguistic coherence’ (1992: 464). If the gesture makes available some kind of truth, then this truth should be thought of in terms of integrity, that is, in terms of being a whole with the world. This allows us to make more sense of the earlier discussed idea that the gesture belongs to life as such. Guérin and Zwicky seem to agree that the gesture is at least in this sense superior to language, which stands accused of alienating human beings from the world. What makes us superior to the natural world – language – is also what leaves us with an irredeemable nostalgia: a feeling of not being in touch, of having lost some kind of connection or solidarity, of exclusion even (Cavavero 2005: 113). Only when language gets lyrical, when it tries to grasp the whole in one single gesture, is it possible to have communion with the world. The price one pays for this is that one gets a language that is subhuman or superhuman, a language that is no longer worthy of its name; in fact, not a language at all but indeed a gesture. Zwicky suggests that a gesture towards the world is what puts our reasonability into question exactly because it contests ‘normal’ language. If one opts for community with life or with the world, one should give up the idea that we can understand both from a systematic point of view. The will to systematality amounts therefore to a lack of integrity.

Our relationship with the world, if there would be any, can only be non-systematic. It cannot therefore be managed or programmed. The refusal to subject the world to forms of scientific or managerial control stands, if we are to believe Zwicky, as the hallmark of integrity. A concept that Zwicky frequently uses in relationship with gesture and lyrics is ‘resonance’. Without resonance, she claims, there is no meaning (1992: 438). This entails that meaning can never be restricted to what words denote or to what words may signify thanks to the linguistic system in which they appear. This is why someone like Wittgenstein could easily claim that to know the meaning of a word is not exactly the same as being able to explain it. A word, a poem, a sentence – they can mean something to a person even though she may not be able to offer an explanation of what the gist of this meaning is. ‘To mean is to make a gesture’, Zwicky comments (1992: 439). We can use language just to escape logocentrism and systematicity. But it needs to be a language that is grounded in a silent harkening to the world; that is, the only language that resonates with the world, which hears it and communicates with it. It is a gestural language and it is, Zwicky argues, ‘the human response to presence’ (1992: 442).

A gestural openness to what things are presupposes the presence of a responsible and contemplative mind. Zwicky hints at a poetic sense of responsibility, almost in a literal sense of the word, that is to say, as a way of responding to the world. To put it more precisely, it is a way of responding to what Heidegger (2003: 293) once referred to as the ‘unprotectedness’ (Schutzlossein) of the world. To be able to respond in this way is what integrity might be all about.

3

No doubt, the ideas presented in this section may be too abstract and too theoretical for people who take an interest in organizations and organizational ethics. Nonetheless, we gained some understandings about what transparency and integrity can be. What would, for example, integrity in a corporate world be if it is not about a certain kind of attunement to or a concern about the state of the world? For Zwicky (1992: 440), the possibility of integrity lies
exactly in an ‘acknowledgement of the preciousness and losability of what is’. The gesture is what opens us up to this possibility. Zwicky’s analysis of lyrical gesture has – at least in two senses – a very strong nostalgic touch about it. In the first place, the gesture oftentimes sheds light on the vulnerability of special things, persons or creatures all worthy of our attention. In the second place, the gesture allows for a meaning that means in a way that most people in our society – and not only people working in organizations – do not understand anymore. The subtle attentiveness required does not seem to be something that many people are up to nowadays. It is as if they have alienated themselves from the worthiness of the events that are taking place. If it is only the gesture that allows us to bestow a meaning on these events that is not banal, then the all-important question will be: are we still capable of the gesture? Have we not lost its power?

Lost gestures

1

In the previous section, we saw how our discussion about the gesture opened up new perspectives on concepts that have become fashionable in organizational discourse. One of these concepts was ‘integrity’. We saw that integrity amounts to a communion with the world that belies system and management. We also saw that integrity, thus understood, needs the gestural. The intimate relationship of the gesture with the body is what allows for a communion with, and an openness to, the world. Now, the physicality of the gesture might still appear as a somewhat loose idea when we are talking about lyrical gestures. Our main concern throughout the paper has been the embodiment of morality. It is, of course, not difficult to understand that physical gestures are embodied. In what sense, however, are lyrical gestures embodied? And what does this mean for organizations that use or experiment with some of the concepts that we have discussed?

The experience that we all have when we speak (or write) language is not only intellectual but also physical. Admittedly, the concepts that we use – transparency, authenticity, responsibility, integrity and so on – may, as concepts, be very difficult to link to the body. But even when we speak in very abstract terms, we do something physical. Nobody is capable of taking that experience away from us. You can tell men, women or children to be silent, but you cannot deny that there was a time when their mouth opened up. The physical experience of speaking will constantly rebel against everything that tries to deny it.

How physical language can be is something that is experienced, for example, by all those who are the first to raise their voice against an injustice somewhere in the world or by those who have to address for the first time in their lives a large audience. It is as if the entire body trembles and the heart becomes heavier with each word that is uttered. It is ‘I’ who speaks and the awareness of that is mediated by the entire nervous system. Oftentimes, the speaker senses that her voice becomes strange, as if it comes from elsewhere, from a space that allows for no escape. The body seems to have become an echoing well that has been sealed off once and for all. To talk out of this nervousness is what makes speaking a highly physical process. The speaker performs with her body and constantly experiences its presence. Whoever has to speak up the truth – in making a confession, in swearing an oath, but also in a conversation with the partner at home – may sense how uncontrollable forces start to take over the body.

The Italian philosopher Giorgio Agamben (2010: 77) deplores what he sees as the lack of reflection about the physical aspects of language. For example, oath swearing has always been understood as a profoundly religious act. In fact, it is a gesture. People swearing an oath transform themselves, and enter a different space where unknown and unpredictable forces reign supreme. These forces are not religious, Agamben argues. What people experience when they swear to speak the truth or when they swear allegiance to each other is, in the first place, that they are language speakers. The experience that one speaks, the experimentum linguae, is also an experience during which people become slowly aware that all claims of sovereignty are ridiculous. If one speaks up in front of a huge audience, one stakes nothing less than one’s own life (2010: 86). As such, the experience of speaking is a
profoundly ethical experience, one that may allow for a new kind of communality that is not grounded in the idea that people speak the same language everywhere, but rather in the fact that they can and do speak (Agamben 2007: 10).

This line of reasoning assumes that ethics involves the willingness to risk or stake one’s own life, something that becomes clear when a person raises her voice. Language becomes physical and hence gestural. Now, one may wonder how this sheds light on our previous discussion about apologies. Do we ever have the feeling that top managers who apologize for the harm done by their corporations stake their own lives? What, in fact, do we expect when people working in corporations do apologize? If the apology carries with it the kind of experience about which Agamben muses, an experience that tells us that the person has changed his or her life, then it might be possible that the apology creates a new situation, perhaps even a new kind of communality. Unfortunately, it is rare that the general public thinks that such a profound experience undergirds the apology. Too often, its gesture remains shallow because people do not feel that something substantial has changed. It is perhaps interesting here to point out that the word ‘sorry’ has an etymological link with ‘pain’ or ‘wound’ (‘sore’). Hardly ever do we have the feeling that top managers who say sorry do experience any pain or wound at all. They cling to their implacable sovereignty.

2

Many discussions about gestures are, as we have seen, about whether they are authentic or not. Above, we saw that both Guérin and Zwicky seem to agree that the gesture has something unreflective: it does not need to think or to be rendered explicit in order to be effective. But we also noticed that it was precisely the gesture that has been subjected to all sorts of techniques and codifications. Indeed, during the era of baroque and mannerism, gestures were primarily regarded as a matter of technique. Spontaneity became crucial only after the 18th century. Influenced by romanticism, commentators started to think that communication can only be optimized if it remains unspoilt by technique, etiquette and codification. Spontaneous rather than codified gestures were increasingly considered to be more authentic and more universal than ‘normal’ language (Pethes 2000, Knowlson 2006). The inevitable paradox here is, of course, that spontaneity itself may become codified: the more people start to argue that the body is more natural than anything else, the more this body becomes subjected to a new regime, a new discipline that tells us to be spontaneous or natural. This also lies at the heart of the problems that organizations have when they think about highly valued concepts such as ‘integrity’ and ‘transparency’. They need to codify and to control. Yet, it may only be spontaneity that allows for the embodiment of whatever is being denoted by these concepts. But how can one control spontaneity?

There is probably no thinker who went further than Antonin Artaud when it comes to thinking of the relationship between spontaneity and gesture. His ‘Theatre of the Cruel’ was a place where only gestures counted. The pure gesture – Artaud also speaks of ‘pure theatre’ – was a gesture beyond codification. Artaud’s theatre is not about language, let alone about psychology, but about poses that are much better expressed by gestures than by words. The point of these gestures is that they are to produce affects rather than that they are representations of them. This is why Derrida (2001: 306) could argue that Artaud is not about subconsciousness at all, something that has haunted the interpretation of the man’s work and thought for a long time. If Artaud is about anything, then it is about lucidity and consciousness.

This is not to say that words do not occur in Artaud’s theatre but that their function has drastically changed. As Derrida (2001: 302) argues, ‘[t]hey will once more become gestures; and the logical and discursive intentions which speech ordinarily uses in order to ensure its rational transparency, and in order to purloin its body in the direction of meaning, will be reduced or subordinated.’ Here, it becomes clear what might be meant when we say that words become gestures again. Derrida argues that words can be linked to the body. The word should become flesh again and thus should the focus be on its sonority, intonation or intensity. In fact, what one should do is try to enact the ‘eve of the
origin of language’, when what is being articulated is ‘no longer a shout but not yet discourse’, when concept and sound, signified and signifier, or pneumatical and grammatical are not yet separated. Artaud’s theatre is not about constructing a silence or a muteness, but rather about constructing ‘a stage whose clamor has not yet been pacified into words’. It is all about restoring a world in which ‘gesture and speech are not yet separated by the logic of representation’ (Derrida 2001: 30).

The ethical question raised in this article is whether organizations are in any way capable of this kind of embodiment? Are they, in other words, still capable of gesture in this sense? What we have suggested in the discussion on the problem of the apology is that organizations may have lost this capacity because they have lost a sense of embodiment. The world of organization and management is a part of a broader culture in which words function as empty shells that are no longer attached to what people feel or sense. If words are not linked to this pre-rational reality, if they have lost any touch with the realm of the body, how are we supposed to believe the person issuing apologies, swearing an oath of allegiance or speaking out the truth?

Max Kommerell, a German literary theorist, is credited with having argued that our society, or more precisely, its bourgeoisie has lost its gestures (Agamben 1999, 2001, Fleming 2000). It is not difficult to link Kommerell’s ideas to Artaud. The crisis he diagnoses, a crisis he describes as the loss of gestures, consists in the fact that the spirit does not enter life anymore. What can possibly be meant by that? Gestures are so important because they mediate, as we have seen, between thought and life, between culture and nature, between interiority and exteriority, between the immaterial and the material and, finally, between words and body. All the thinkers discussed in this paper are obsessed by exactly the problem of how we are to think the zones of indifference between the elements of these pairs. Only then might it be possible to navigate some sort of path between them. Somehow, our culture has lost the ability to relate thought and life, the inner and the outer, the soul and the body. The gesture, Kommerell argued, is ‘a language of interiority in the body’ and without the possibility of such a language our society is, as Fleming (2000: 541) describes it, ‘torn asunder into two spheres, two realms: one of pure interiority, one of pure exteriority, without mediation, without a physiognomic gesture to unite them.’ Hence, we have poetry without rhythm, music without soul, prose without poetry, politics without beauty, leadership without heart and, indeed, organizations that keep on using hollow phrases that refuse to become embodied.

Artaud repeatedly points out that the gesture means itself and not something else. It is not, as was maintained by Flusser (1994), an expression of an inner state of mind (Stimmung). The gesture is just itself and does not point to something else. As such, it does not have consequences in the sense that it does not have an end or does not have a purpose. To be more precise: the gesture produces affects, but it can never control the consequences of this production. The poet cannot control how readers will interpret her words or actions, and the same holds for painters, philosophers, political and organizational leaders. This lack of control is what we mean when we say that a person puts her life at stake by means of gesturing or voice raising.

Gesture and morality are closely linked to each other. Both have no goals in the sense that they cannot be thought of in terms of means and ends (Agamben 2001: 60). This is why we feel so disgusted by business managers when they claim that business ethics is good for profit. We sense that morality cannot be subjected in this way to a regimen of means and ends. Morality is not efficient. Like the gesture, it is what it is and it is open to many consequences. It is, as Agamben would argue, pure mediality, something that has nothing to say in terms of propositions and which nevertheless makes sense. This is why philosophers – from Wittgenstein to Agamben – always harboured misgivings about the possibility of moral language. The more one speaks about ethics and morality, the more we may surmise that the language used is not embodied at all. That morality does not fit into means-end schemes, that it does not have any calculable consequences, is what makes it to resist all codification.

3

We will end with one more example: ‘trust’. Here again, we have a concept that is widely debated in
organizational discourse. Yet, no one seems to understand that trust is, if anything, a gesture. If you would trust a 10-year-old child to run an errand, then you have to accept the possible consequences: it might lose its money, it might get lost, it might get caught up in a fight and so on. Of course, you may fear these consequences and decide to follow the child and try to be in control of events. This is what organizations always do when they are talking about trust: employees are, as we have seen, routinely followed by audits, appraisals or performance measurements. It is also what politicians do when they make contracts with public institutions or companies.

Everyone talks about trust but forgets that it is gestural. We have seen that this means a lot of things. It means, for example, that trust cannot be codified, that it cannot become a managerial project, that it requires a certain openness to the world that we have tried to link to integrity. Trust is what transforms the body as well: it may make it at ease, but it also may create a great nervousness, especially when one is not entirely sure about the consequences of it. We have tried to argue that it is the body that opens up the person to the world, something that we have linked to integrity. We may wonder whether organizations are in this sense capable of trust or integrity. Both become routinely codified, organized and rendered calculable. And as a consequence, both are no longer linked to what people feel or to what is embodied. They are only shadows of what they might be. That trust is about incalculability and insecurity and not about control and codification is made clear by Painter-Morland (2008: 219):

[T]rust is a response to relationships that can never be fully reciprocal. To trust is to rely on the goodwill of another without being able to fully approximate, fathom, or predict what the implications of doings so will be. It is precisely this quality of trust that allows it to fulfil a function that contracts cannot.

Our description of how organizations cope with the problem of trust once more illustrates why so many of the concepts used in organizational discourse remain disembodied. In this paper, it has been argued that this is a serious moral problem. We need concepts such as ‘gesture’ to address this problem. They do not only allow us to think the body when we are talking about morality, they also help us to understand that in many senses morality belies organization and management. Organizational moral discourse has never been ‘grounded’ in the body. It never had an eye for the gestural. It never understood that morality goes beyond words, codes or legislation. In this sense, it is part and parcel of culture that has lost its gestures and therefore fears nothing more than its own morality.

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Pluralistic business ethics: the significance and justification of moral free space in integrative social contracts theory

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Integrative social contracts theory (ISCT) has been an influential theory in normative business ethics for well over a decade, drawing attention both as an object of criticism and as a source of inspiration. In this paper I argue that, despite this attention, the fact that it is a genuinely pluralistic theory, in the tradition of pluralistic theories of political philosophy, is often overlooked. It is in the notion of moral free space that this pluralism is most clearly expressed. This oversight is unfortunate for two reasons. Firstly, it prevents the potential of ISCT, as a normative theory of business ethics, from being appreciated fully; secondly, it leads us to ignore resources that could help tackle its most problematic flaws. In this second respect, I show how some of these flaws could be addressed by paying closer attention to the similarities between ISCT and John Rawls’ theory of Political Liberalism.

Introduction

Since Thomas Donaldson and Thomas Dunfee first introduced their integrative social contracts theory (ISCT) (Donaldson & Dunfee 1994, 1995, 1999, Dunfee 2006), it has been acknowledged as a promising and novel attempt to construct a genuinely action guiding theory of business ethics (Mayer & Cava 1995, Rowan 1997, 2001, Boatright 2000, Fort 2000, Frederick 2000). In applying the theoretical apparatus of social contracts to questions of business ethics, Donaldson and Dunfee draw on resources that have been used by scholars from disciplines as diverse as normative political theory, positive political theory, economics, ethics, corporate law and economic organisation theory (Heugens et al. 2006). In fact, in making use of this flexibility in the idea of social contracts by using them in two distinct ways, Donaldson and Dunfee give us one of the most novel aspects of their theory. Taken as a whole, ISCT is a normative theory. One of its central building blocks is what Donaldson and Dunfee term the ‘macrosocial contract’; this is not to be understood as an actual agreement between identified parties, but rather as a thought experiment where a hypothetical contract is proposed and we are invited to accept that a group of imaginary contractors with certain stylised characteristics would agree that this contract should set the ground rules for a system of economic ethics. We are then invited to accept that the stylised nature of these contractors gives us good reason to think that their conclusions are binding on our conduct. In this respect, ISCT most closely resembles normative political theory in its application of social contract theory, both classical (Hobbes 1651/1968, Locke
However, it is in the particular terms of the macrosocial contract that Donaldson and Dunfee introduce a second aspect of social contract theory. Central to the hypothetical contract is the acceptance that individual communities should be given significant scope to determine the moral rules by which they are governed, at least in the field of economic activity. This being the case, we need to know how these communities decide on the rules that will apply to them, and what these rules are. In answering these questions Donaldson and Dunfee arrive at the notion of the ‘microsocial contract’ – the actual agreements or contracts that are agreed upon by real communities in the determination of the particular principles that will apply to them. This combination of hypothetical macrocontract and actual, or extant, microsocial contracts within communities to determine the rules of economic ethics that apply in any given situation is ISCT’s genuine innovation.

It is here we can introduce the notion of ‘moral free space’. It is moral free space that is the lynchpin between the macro- and microcontracts; Donaldson and Dunfee define it as ‘[t]he freedom of individuals to form or join communities and to act jointly to establish moral rules applicable to members of the community’ (Donaldson & Dunfee 1999: 38). It is moral free space that macrocontractors are supposed to endorse as a means of legitimising the idea that communities should have the power to determine their own moral rules. However, ISCT does not allow communities complete free rein in determining the moral rules that apply to them. Instead, it proposes that community agreements be limited by ‘hypernorms’, ‘principles so fundamental that they serve to evaluate lower-order norms’ (Donaldson & Dunfee 1999: 44). Donaldson and Dunfee divide these hypernorms into three categories, the most commonly discussed of which, and most often criticised, are the ‘substantive hypernorms’. These hypernorms ‘specify fundamental conceptions of the right and the good’ (Donaldson & Dunfee 1999: 52), and unlike the other kinds are neither specified nor implicit in the terms of the macrosocial contract. All that the macrosocial contract has to say about them is that they do, in fact, exist and Donaldson and Dunfee consider that this is enough for ‘decision makers’ to be going on with, allowing them to commence their search for such norms.

In this paper I focus particularly on the notion of moral free space. I will start by arguing that, as a theoretical concept, its significance has been underestimated. It is significant for two reasons: first, it is the basis for establishing ISCT as a genuinely pluralistic approach to business ethics in the tradition of pluralistic theories of political philosophy; second, the fact that moral free space is established by a contract argument offers a genuinely novel justification for this kind of pluralism. I will go on to argue, however, that it is the elucidation of this method of justification that lets the ISCT project down. In making this argument I will consider various criticisms that have been levelled at ISCT, but focus on those of Ben Wempe (Wempe 2004, 2005, 2007). While I do not accept all the arguments that Wempe makes, I will show why he comes closest to diagnosing the most significant flaw of ISCT by focusing not on the ways in which the theory is ultimately unsatisfactory, but rather on a prior ‘misunderstanding of the nature of the contract device as a method of argument’ (Wempe 2007: 703). I will conclude by suggesting that, while the contract approach fails as a method of justification for moral free space, the fact that ISCT draws so heavily on the kind of pluralism found in liberal political theories, especially that of Rawls (1993), offers a way to resurrect some elements of the theory and answer some of the persistent challenges that it has faced.

In the course of this argument I hope to provide a distinct perspective on the theme of this special issue: where is business ethics? At least, I will show that it has been underestimated how novel an answer ISCT provides to this question. The supposed ability of microcontracts to determine with complete freedom the moral rules that exist within certain communities takes business ethics firmly into the space of actual agreements made in real communities between identifiable individuals. This is very different from the space occupied by traditional theories of moral philosophy, which are both abstract and universal. Nonetheless, in the macrocontract and the hypernorms that accompany
it, ISCT incorporates a significant element of such moral theory. While the focus of ISCT may be in the space occupied by actual agreements, this space is only made significant in the first place by the position it occupies in the broader theoretical framework, and by the legitimisation that this framework grants.

The ISCT project: the significance of moral free space

In general, and as noted already, the response to ISCT as a theoretical proposal has been enthusiastic. However, this response is largely down to the promise shown by the approach and not a belief that ISCT is entirely satisfactory as a theory of business ethics. Indeed, as much as it has been praised for its novelty and potential ISCT has been criticised for a variety of perceived failings. Much of this criticism has been focussed on the idea of ‘hypernorms’, particularly the ‘substantive hypernorms’ that are introduced independently of the main contract argument. They are criticised for a lack of justification (Rowan 1997, Boatright 2000, Frederick 2000, Soule 2002); for the lack of specification of actual hypernorms (Rowan 1997, 2001, Soule 2002, Hartman et al. 2003, Van Oosterhout et al. 2006, Soule et al. 2009); for a lack of clarity in how they should be identified (Mayer & Cava 1995, Husted 1999); and for not fulfilling their role as effectively as could be achieved by alternative approaches (Douglas 2000).

Besides these issues with substantive hypernorms, concerns have been raised with other elements of the ISCT project. Examples are its lack of clarity regarding the definition of, and identification of, legitimate microsocial contracts (Boatright 2000, Rowan 2001) and a failure to apply an appropriate theoretical device given the subject matter at hand. In this spirit Frederick (2000) emphasises the pragmatic nature of problem solving in business, while Calton (2006) argues for a more ‘pluralistic process of moral sense making’. Under the weight of these criticisms interest in the further development of ISCT as a theory of business ethics has waned; rather it has taken the role of inspiration for related yet distinct developments. In this vein it has lent weight to the development of Rawlsian approaches to business ethics (Hartman 1996, Hsieh 2004, 2009) and the generalisation of this idea to the application of theories drawn more broadly from political philosophy (Moriarty 2005, Heath et al. 2010). While it is true that ISCT faces significant difficulties, these commentaries have in general fallen too easily into an elucidation of some or other of the criticisms outlined here and have not given sufficient focus to the quite radical ideas embodied in the notion of moral free space; to see that this is the case we must understand the motivation behind ISCT.

ISCT is a normative theory of business ethics. One approach to tackling this subject area has been to apply traditional theories of moral philosophy more or less unaltered; for example, Aristotle (Solomon 1993) and Kant (Bowie 1999). Less obviously, the tradition of pragmatism was heavily influential in the development of stakeholder theory (Freeman 1984), which has been increasingly invoked as a normative approach to business. Donaldson and Dunfee term such theories ‘universal’ and a central aim of ISCT is to provide an alternative approach to business ethics (Donaldson & Dunfee 1999: 12–16). By ‘universal’ they mean theories that offer principles that are intended to be applicable quite generally across all people in all societies and at all times. What are the possible alternatives to such theories? One is ‘relativism’, which ‘is grounded in the assumption that a person or culture believing an act is morally correct, helps make it morally correct – or at least to make it correct for that person or that culture’ (Donaldson & Dunfee 1999: 20). In other words there are no such things as general principles, but only principles applicable to certain people and groups of people, and these principles are only established by the beliefs of these people or groups.

Donaldson and Dunfee, however, do not endorse relativism. Their aim is to convince us that both these types of approach to moral questions are unsuitable for addressing the ethics of business, and that ISCT strikes a salient balance between the two (Donaldson & Dunfee 1999: 19–24). While arguments against relativism in its pure form are widespread (see, for example, Williams 1972: 34–39), the same is not true of arguments against the relevance of ‘universal’ theories. Donaldson and Dunfee’s argument against using such theories in a
business context is based upon a charge of ‘imprecision’. They try to illustrate this claim with examples of how practices that exist in different communities conflict. The idea is that despite this conflict neither practice appears to be unacceptable, and this fact cannot be explained by theories that want to apply one set of rules across all communities, for example ‘[s]ome cultures emphasise property-rights dimensions of intellectual property, while others emphasise cooperative behaviour and societal sharing of innovations. Some tightly constrain the use of firm-derived (inside) information in securities markets, while others show considerable indifference to the phenomenon’ (Donaldson & Dunfee 1999: 16).

This assertion is highly controversial and there is much that can be said on the subject. However, this is not a debate that I will enter here since, irrespective of how it is settled, there is much to be gained by understanding how Donaldson and Dunfee attempt to steer a course between universalism and relativism by offering a theory that is ‘pluralistic’. Pluralism is an idea that is already established in moral and political philosophy, although it has been used to mean different things; Donaldson and Dunfee themselves add to the confusion by explicitly claiming that ISCT can be understood to be pluralistic in various ways (Donaldson & Dunfee 1999: 22–24). However, our focus is on the basis of ISCT as a normative theory that is distinct from universal or relativistic theories. Here we may distinguish between two broad ideas. Moral pluralism is a view about the values that underlie moral philosophy; in essence it argues that morality is based upon a number of different values that are neither reducible to each other nor to a more fundamental ‘super value’ (Mason 2008). Moral pluralism, understood in this way, is not a view that can be contrasted with universalism or relativism because it says nothing explicit about how generally those values are applicable or how they are derived.³

In contrast to moral pluralism, we have political pluralism, which Mason explains as follows:

Political pluralism usually starts with the observation that there are different value systems in use in the world, and there are various positions that arise out of that observation [...] probably the most common version of the view is that some of these systems (the reasonable ones) ought to be tolerated.

This most common version of political pluralism thus denies that there is a single, universal theory that applies to everyone, but equally places limits on the kind of theories that can be considered legitimate, so denying the other extreme, that of relativism. ISCT is a very close relation, if not a version, of political pluralism (albeit constrained to the economic realm). To see this, and to see just how distinct a view this is, we must understand the theory better and the nature and role of moral free space. The basic background against which ISCT is set is one of disagreement. Donaldson and Dunfee start their book with two examples based on the oil company Royal Dutch/Shell (Donaldson & Dunfee 1999: 1–3). The first concerns Shell’s behaviour in Nigeria, where their efforts to secure a gas development project were attacked by critics as helping to bring about the trial of nine environmental activists, including the author Ken Saro-Wiwa; moreover, they were also attacked for making no effort to dissuade the Nigerian government from implementing the death sentences which were subsequently handed down. The second example concerns Shell’s plans to dispose of the Brent Spar oil rig in the North Sea, and their televised confrontations with Greenpeace protestors who tried to halt the operation. Donaldson and Dunfee argue that ‘Shell’s travails were ethical in nature, and harmful to its standing in both the business world and the eyes of the public’ (Donaldson & Dunfee 1999: 2). Shell, it thus appears, had contravened rules established in the common ethical beliefs of the business world, but why is this important? According to Donaldson and Dunfee, to understand both the nature of these beliefs and their substance requires ‘a different approach to business ethics, an approach that exposes the hidden but all-important understandings or “contracts” that bind industries, companies and economic systems into moral communities. It is in these economic communities, and in the implicit understandings that provide their ethical glue, that the stuff of business ethics is found’ (Donaldson & Dunfee 1999: 3).

The disagreement that these examples illustrate is twofold: on the one hand, it illustrates a disagreement
over time, where the Brent Spar episode ‘forced Shell ... to recognise that Europeans had shifted their ethical attitudes towards the environment’ (Donaldson & Dunfee 1999: 5). On the other hand, it illustrates disagreement between contemporary communities, because Shell was also forced ‘to recognise that some countries, Nigeria for example, had distinctly non-European ethical expectations for companies’ (Donaldson & Dunfee 1999). It is here that Donaldson and Dunfee give us an idea of how they plan to deal with such disagreements; they say:

Our approach confirms that the social contracts that arise from specific cultural and geographic contexts have legitimacy – but only within limits [...] The social contract approach that we will adopt holds that any social contract existing outside these boundaries must be deemed an illegitimate one. In this sense, all particular or ‘microsocial’ contracts, whether they exist at the national, industry, or corporate level, must conform to a hypothetical ‘macrosocial’ contract that lays down objective moral boundaries for any social contracting.

(Donaldson & Dunfee 1999: 6)

This approach in itself, however, gestures towards another significant locus of difference in the way that issues of business ethics are addressed. This difference is in the methods that are used to investigate these issues, and through this, the kinds of questions that are investigated.4

One group of researchers approaches business ethics through empirical or behavioural ideas, i.e., through concepts that describe and explain factual states of affairs [...] The other camp focuses on normative concepts, i.e., ideas that, while not necessarily grounded in existing business practices and structures, are what ethicists call ‘prescriptive’.

(Donaldson & Dunfee 1999: 9)

Donaldson and Dunfee are interested in developing a normative theory of business ethics, but their interest in the questions and methods of empirical theories and their integration of these into ISCT is what gives their approach its distinctive pluralistic character. According to Donaldson and Dunfee, both traditional (normative) moral theory and empirical research have their weaknesses when brought to bear on normative questions in business. The weakness of the empirical approach they deal with quickly, referencing Moore by saying that ‘[t]o suppose that one can deduce an “ought” from an “is”, or, what amounts to the same thing, that one can deduce a normative ethical conclusion from empirical research, is to commit a logical mistake some dub the “naturalistic fallacy”’ (Donaldson & Dunfee 1999: 9). Equally, ‘normative’ approaches (by which they mean universal theories) they have already dismissed as ‘imprecise’. Their solution is to overcome these weaknesses by combining the two approaches. By establishing a hypothetical macrocontract Donaldson and Dunfee imbue their theory with normative content; but by having the macrocontract refer to community specific microcontracts (discoverable empirically) they enable ISCT to attain the precision they think impossible in traditional normative theorising. It is the notion of moral free space that allows this combination to be achieved, and this can be seen in the terms of the macrocontract that they set out (Donaldson & Dunfee 1999: 46):

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

It is here that we can see the strength of the pluralistic vision that Donaldson and Dunfee set out. We might think that the significance of moral free space could be understood in two ways: a weak way and a strong way. The weak way of understanding it is to say that (legitimate) community-derived norms have prima facie normative validity, whereas the strong way is to say that they and they alone determine our appropriate substantive ethical
judgements. That is, if a microsocial contract is legitimate, then it is not just one consideration among many that we must take into account in our moral reasoning, but rather it is the last word in moral matters for members of that community. Provided that the process for arriving at these norms conforms to certain constraints, the weak assertion is uncontroversial; for example, an analogous assertion would be that, if I promise to meet you at midday in a certain place then I have a *prima facie* obligation to meet you at that place at midday. However, if ISCT were interpreted as being concerned only with *prima facie* obligations it would not be a very interesting theory, in part because it would not tell us much we do not know already, and in part because it would only present a very partial account of economic morality: it would accept that there is more to economic morality than legitimate community norms, but not tell us anything about what else we should take into account. It is clear from the way that Donaldson and Dunfee discuss the microsocial norms, however, and in particular their characterisation of ‘moral free space’ in which these norms are situated, that they consider such norms to be valid in the strong sense.

It is the strong understanding of moral free space that gives ISCT its genuinely pluralistic character, allowing different and distinct value systems to exist side by side, each determining the moral rules for the community in which they apply. While this pluralistic character is central to both Donaldson and Dunfee’s understanding of ISCT and their motivation for constructing it in the first place (Donaldson & Dunfee 1999: 19–24, Dunfee 2006), it has received relatively little attention. Commentators have instead tended to focus on supposed faults in the theory, as outlined earlier. However, such criticism loses weight and lacks insight if it does not engage with the driving motivation of the theory. Rowan (2001) does engage with the idea of ISCT as a pluralistic theory, but only to argue that, in fact, it is better understood as a form of modified universalism. In arguing for this, Rowan makes a valid point against Donaldson and Dunfee’s assertion that universal moral theories are ‘imprecise’ by noting that general principles, when contextualised and applied to specific situations can generate focussed results. He thinks that ISCT is just an example of such an operation, but this is to misunderstand the idea of moral free space. It is not a space in which high-level principles find specific interpretation, but a space that is genuinely open to whatever (legitimate) principles the community decides upon.

Thus ISCT is genuinely pluralistic and not just a modified version of universalism, and it is this pluralism that is often overlooked. When this is recognised we can see the distinct place that ISCT has in the field of business ethics theorising. It offers a perspective quite distinct from theories that rely explicitly on a single normative perspective to reach prescriptive conclusions, for example Solomon (1993) and Bowie (1999); and it stands alongside, and is of significance to, attempts to investigate how theories of political philosophy might apply to the realm of business, such as Hartman (1996), Hsieh (2004, 2009), Heath *et al.* (2010) and Moriarty (2005). In the final section of this paper I will argue that ISCT is strikingly similar to Rawls’ theory of political liberalism (Rawls 1993), and could benefit from drawing more deeply on this theory. Hartman, in fact, draws on this work of Rawls in order to develop his own theory, which has a distinctly pluralistic character, while Hsieh, on the other hand, focuses on Rawls’ later theory of justice between nation states (Rawls 2001) in drawing conclusions for transnational businesses (Hsieh 2004, 2009). Heath *et al.* (2010) and Moriarty (2005) focus less on applying any given theory of political philosophy to business ethics but rather provide more general arguments for why this type of application is an important way of advancing business ethics theorising. ISCT, seen as an application of political pluralism to the business realm is either directly relevant, or provides important context, to all these questions. In the next section I will look in more detail at the method by which ISCT reaches its conclusions. This will illustrate both the novel means by which it attempts to establish pluralism, and some of the root causes of the issues that it has faced.

**The ISCT method: is moral free space justified?**

So far I have argued for the significance of moral free space in establishing a truly pluralistic theory of
business ethics. The question now is whether Donaldson and Dunfee succeed in justifying the existence of moral free space. In order to answer this we must look in more detail at the theoretical construction of ISCT. Donaldson and Dunfee start the exposition of their method by considering the contractors who will be party to the macroagreement. They outline the features that these contractors will have: they are rational and knowledgeable and they are not as ignorant as Rawlsian contractors, with the only facts hidden from them being their membership of economic communities, and their level of personal wealth (Donaldson & Dunfee 1999: 26); Donaldson and Dunfee imagine all qualifying representatives of humanity as being party to the contract. Importantly, each contractor brings with them moral principles that they hold before the contracting process. Donaldson and Dunfee characterise these as ‘settled understandings of deep moral values’ and identify them with the ‘hypernorms’ that will be central to their exposition (Donaldson & Dunfee 1999: 27); they are agnostic, however, about the source of these values, accepting that different contractors will draw their beliefs from various sources – philosophy, religion and cultural values, for example (Donaldson & Dunfee 1999). It may seem strange to think of an array of contractors with settled moral positions getting together in order to agree on an approach to morality. Donaldson and Dunfee explain this by saying: ‘Because the contractors are unaware of other economic preferences and memberships, they lack detailed knowledge of their economic morality’, and it is this lack of detailed knowledge that is addressed by the contract that they strike.

Donaldson and Dunfee make further assertions about their contractors, but the most important from our perspective is that they will accept the thesis of ‘bounded moral rationality’ (Donaldson & Dunfee 1999: 28–33). This assumption consists itself of at least four elements: firstly, that all humans encounter difficulties in processing and interpreting ethical data; secondly, that they possess limited resources for gathering information to make moral decisions; thirdly, that they have a limited ability to construct moral theories that account for common-sense moral convictions and preferences; and finally that ‘one [cannot] know in advance what the correct rules of business ethics are for a specific system without having detailed information about the system and its participants’ (Donaldson & Dunfee 1999: 32). It is the contractors’ acceptance of bounded moral rationality that is central to their agreement to establish moral free space. Given that they all have an interest in establishing some kind of economic morality to avoid a Hobbesian state of nature in economic activity (Donaldson & Dunfee 1999: 27–28), and given that bounded moral rationality prevents agreement on a ‘thick’ moral system (Donaldson & Dunfee 1999: 37), moral free space is the rational solution. It puts in place substantive limits to acceptable behaviour in economic affairs, but also allows significant leeway for each community to address the challenges presented by bounded moral rationality. Thus, as set out earlier, the macrocontractors establish the existence of moral free space in the first term of the contract, specify its limits in the second and third terms, and address the issue of conflicting norms in the fourth term. This, crudely put, is the way that Donaldson and Dunfee use the contracting argument in order to justify the notion of moral free space. But does their argument achieve this aim? To answer this question I will consider the challenges to ISCT proposed by Ben Wempe (2004, 2005, 2007).

Whereas the various critics of ISCT outlined earlier focus on specific elements of the theory, it is Wempe who focuses on the question we have in hand – whether the set up of the macrocontract justifies an acceptance of the notion of moral free space. Wempe’s criticism is based upon a comparative analysis of two uses to which the contract model has been put successfully in the past: the establishment of conditions for a legitimate use of political authority, and the formulation of principles of social justice. Using this analysis, Wempe identifies features that these supposed successful uses of the social contract model have in common, and from this derives key design criteria for any social contract theory, including theories of business ethics (Wempe 2007: 703–711). The first of these criteria is quite a general one that relates to the theoretical aim of the theory; he calls this ‘self-disciplinedness’. The idea is that no application should try to accomplish more than is reasonable given the nature and the limitations of the contract model.
In particular, he argues that previous successful applications of this model have been, and the social contract for business should be, ‘restricted to establishing general principles rather than concrete solutions to practical problems’ (Wempe 2007: 707).

In this vein, Wempe outlines what such general principles look like: in the case of classic social contract theories the aim is to establish the legitimacy of polity authority; in the case of theories of social justice, the aim is to establish the legitimacy of the basic structure (Wempe 2007: 705). On Wempe’s account, however, ISCT faces a problem since ‘[t]he principal ambition of ISCT is to seek to adjudicate possible conflicts between microsocial contracts originating from different economic communities by means of identifying universal, more fundamental principles called hypernorms’ (Wempe 2007: 698). Later he says that ‘[i]n the ISCT project [. . .] the contract seems to be invoked to establish some fairly concrete results [. . .] [T]he authors intentionally proceed from individual cases and decide in each individual case whether a covering hypernorm applies’ (Wempe 2007: 707). It is slightly unclear how the theoretical aim is to be understood here, but at any rate it is not, in Wempe’s view, the establishment of appropriately general principles to which the contract approach is suited. It is on this point that I disagree with Wempe. As I have already argued, the primary aim of the macrocontract in ISCT is to justify the claim that microsocial contracts establish ethical norms that determine absolutely ethical requirements in the economic context, through a legitimisation of moral free space. This aim, much more than the secondary one of adjudicating between competing community norms, conforms to the criterion of ‘self-disciplinedness’ that Wempe sets out. It is a ‘general principle’ as opposed to a ‘concrete solution to practical problems’ and as such looks much more like the kind of conclusion that a group of contractors might agree upon. However, appearances can be deceptive, as we will see.

The other criterion proposed by Wempe that will be important to understand is that of ‘task directedness’ (Wempe 2007: 709–710). This criterion appears to have two key parts: first the identification of a suitable task for the contract argument to pursue; and secondly, the successful and focussed direction of the argument to address that task. It is the second part that is most important here and relates to the focusing of the proposed theory on the task at hand. Thus task-directedness is best understood as addressing the contractors, their characteristics and initial situation before contract. Given the aim of the macrocontract is to legitimise moral free space, this specification must do two things. First, it must lead us to the conclusion that such contractors would agree to a contract that endorses moral free space as a realm of action in which empirically determined microsocial contracts have authority, subject to the constraints of hypernorms. Secondly, it must convince us that specifying contractors in such a way that they reach this conclusion is in some way independently justified, thus giving us a reason to accept their conclusions and likewise endorse the notion of moral free space. If we can endorse the Rawlsian contracting situation as appropriate because it models a situation which is fair (Rawls 1971: 15–16), what is it that the contracting situation in the business context models that makes us willing to endorse its conclusions? ISCT, as it stands, does not appear to be able to provide adequate justification in these two respects.

In particular, it is doubtful that such contractors would agree to a contract that endorsed moral free space. It is here that doubt can be cast on the notion of ‘bounded moral rationality’, the contents of which I outlined earlier. This notion is supposed to be legitimised because it will be accepted as a starting assumption by all contractors. Each contractor is assumed to arrive already in possession of moral principles, drawn from across the spectrum of possible moral positions. Many of these positions will be incompatible with the notion of moral free space: why should the act utilitarian, for example, who already has a definite normative position regarding any substantive ethical judgement, endorse an agreement which allows communities to determine their own norms, many of which will be in opposition to his? The answer to this, presumably, is that he has accepted the assumption of bounded moral rationality. However, despite Donaldson and Dunfee providing reasons why we may want to adopt this assumption (Donaldson & Dunfee 1999: 28–33), it does not seem unreasonable for the act
utilitarian simply to decline from adopting it for the very reason that he adheres to act utilitarianism. If the assumption of bounded moral rationality does not hold, then the contractors will not agree to accept moral free space and the most that we may hope from the contracting situation established in ISCT is that all parties will agree that microsocial contracts are prima facie normatively significant. Each contractor will have their own explanation for why this is the case, and the contract model itself is providing nothing beyond a statement of rather trivial agreement. Thus, in conclusion to the second part of this paper, while the most significant feature of ISCT is its proposal of a genuinely pluralistic theory of business ethics, the method it uses to justify this conclusion does not succeed. It does not succeed because the macrocontractors, as characterised and as a result of the ‘settled understanding of deep moral values’ (Donaldson & Dunfee 1999: 27) that they bring with them, simply would not accept the assumption of bounded moral rationality and so would not agree to the existence of moral free space. And it is moral free space which is at the heart of ISCT’s pluralism.

Political Liberalism and the justification of moral free space

In the previous two sections I have outlined just how significant the notion of moral free space is in ISCT, allowing it to propose a genuinely pluralistic theory of business ethics; I have also given reasons why, as it currently stands, ISCT fails to provide sufficient justification for us to accept the existence of moral free space. In this part I explore in more depth why this justification fails, and from this suggest a way forward with the ISCT project that promises to overcome the various problems raised with the theory. This exploration focuses around the observation that I made earlier, that the pluralism proposed by ISCT is of a kind with that found in pluralistic political theories, particularly liberal political theories. The best known of such theories is that of Rawls (1993),10 and so I will draw on this account to see if any light can be shed on the issues faced by the ISCT project. We can start by reminding ourselves that ‘political pluralism usually starts with the observation that there are different value systems in use in the world’ (Mason 2008), and that this is also the observation with which Donaldson and Dunfee commence their consideration of the economic realm (Donaldson & Dunfee 1999: vii). The particular brand of pluralism that Donaldson and Dunfee set out, as explained, is one in which only a subset of these value systems should be tolerated (those that fall within moral free space). This is also the stance taken by Rawls in the political realm, and to illustrate why ISCT faces the problems that it does in justifying the notion of moral free space we can consider how Rawls addresses the challenge of justifying the idea that there will be multiple acceptable value systems, and of circumscribing the acceptable from the unacceptable.

The notion at the heart of Rawls’ account is that of ‘reasonableness’; by understanding what this notion is and how it is used we will make significant progress in getting to the bottom of the issues faced by ISCT. The first thing to note is that ‘reasonable’ is contrasted with ‘rational’. Rationality is concerned with how individuals pursue their own ends and interests; it is concerned with how these ends and interests are adopted and then the means that are taken to achieving them (Rawls 1993: 50). The capacity for rationality is, in Rawls’ view, connected to a particular moral power – the capacity to have a conception of ‘the good’ (Rawls 1993: 52). Reasonableness, on the other hand, is connected to a quite distinct moral power – the capacity to have the burdens of judgement (Rawls 1993: 54). These burdens of judgement consist in the many hazards that exist when people who are reasonable in the first sense attempt to use their reason and judgement to come to conclusions regarding the requirements of justice. Rather than specify directly what it is to be reasonable, Rawls connects it with two virtues in people: the first is the readiness to ‘propose fair terms of cooperation and to abide by them willingly, given the assurance that others will do likewise’ (Rawls 1993: 49); the second is to accept the ‘burdens of judgement’ and their consequences for the legitimate exercise of political power (Rawls 1993: 54). These burdens of judgement consist in the many hazards that exist when people who are reasonable in the first sense attempt to use their reason and judgement to come to conclusions regarding the requirements of justice. Rawls sets out various considerations that will be included in the burdens of judgement (Rawls 1993: 56–57), and it is interesting to note that these bear a striking similarity to the concerns that Donaldson and
Dunfee include in their account of bounded moral rationality (which, we should recall, is at the heart of their justification of moral free space) (Donaldson & Dunfee 1999: 28–33).

It is this idea of reasonableness that leads Rawls to his endorsement of pluralism. Given that people who are willing to propose and abide by fair terms of cooperation will disagree regarding appropriate systems of cooperation, reasonable disagreement will exist. Given that these same people, being reasonable, will accept that the root of this disagreement lies in the burdens of judgement, they will accept a system in which different people or groups of people endorsing distinct systems of cooperation are tolerated. Reasonable pluralism will be accepted (Rawls 1993: 54–58). How is this different from the account of pluralism provided by ISCT? It is different in one crucial respect – Rawls does not attempt to establish the basis of his pluralism – the idea of ‘reasonableness’ – through a social contract argument. Instead, he is very clear that this idea is not the kind that needs a basis, it is itself a basic notion and quite independent from that of rationality (Rawls 1993: 51). In particular, he is clear that ‘the reasonable’ cannot be derived from ‘the rational’ and he condemns as in error those who have tried to do this:

They think that if the reasonable can be derived from the rational, that is, if some definite principles of justice can be derived from the preferences, or decisions, or agreements of merely rational agents in suitably specified circumstances then the reasonable is at last put on a firm basis.

(Rawls 1993: 51–52)

Having said this, he goes on to argue that despite being distinct, the two notions of reasonableness and rationality are complementary, and both need the other in order to make sense (Rawls 1993: 52). Thus we may think of the issues faced by ISCT as traceable to an attempt to derive a standard of reasonableness (the acceptance of moral free space) from the notion of rationality (embodied in the contractual situation). Regarding the possibility of demonstrating this claim of the independence of reasonableness and rationality, Rawls is somewhat circumspect; indeed he is not sure it will be possible to prove that this is the case and this just has to do with the nature of philosophical questions at the fundamental level. The best we may be able to do is to show that any attempts to achieve such derivation fail; one such attempt being that of Gauthier (1986) (Rawls 1993: 53).

This discussion of the kind of pluralism found in Rawls’ Political Liberalism has been very cursory. Nonetheless we can draw on this discussion to illustrate the earlier arguments I made on the strengths and weaknesses of ISCT. We can also, perhaps, suggest some avenues of investigation that might help address the problems that ISCT has faced. Firstly, then, we can think of ISCT as falling into the general pattern described by Rawls of theories that try to derive a standard of reasonableness from an argument based on rationality. The issues with the contractual process of ISCT raised in the last section are in line with Rawls’ prediction that any theory that attempts such a procedure will fail (for the reason that both concepts are in fact basic). These issues I isolated to the claim that the contractors in ISCT would not endorse moral free space unless they had accepted the assumption of bounded moral rationality, but given that this assumption conflicted with their deeply held moral beliefs it was not obvious why they would endorse it. In Rawls’ terms, ISCT seems to want to derive reasonableness from a contract argument, but this argument cannot get off the ground unless a significant element of reasonableness (the acceptance of the burdens of judgement, i.e. of bounded moral rationality) is already assumed. This is why Rawls says that as far as theories that attempt to derive the reasonable from the rational appear to succeed, ‘they rely at some point on conditions expressing the reasonable itself” (Rawls 1993: 53).

Here, then, we might find the first idea that could help in addressing the problems of ISCT. One of the central concerns with this theory is that it seems to be implausible that the contractors would agree to the idea of bounded moral rationality in order to establish the legitimacy of pluralism, unless they already endorsed such pluralism, at least implicitly, prior to the contract argument getting off the ground. Thus, we might wonder whether we could in fact do away with the contract mechanism altogether. If Rawls is correct, then this approach
is doomed anyway, because it amounts to trying to derive a condition of reasonableness from an idea of rationality. Why not, then, accept that reasonableness is basic and does not need to be derived this way? Looked at like this, the acceptance of pluralism is simply a straightforward consequence of these features of the parties concerned – their possession of the basic features of rationality and reasonableness – not a further conclusion that must be demonstrated by a contract argument. Indeed, we can see that the basis for establishing ‘reasonableness’ as a basic feature of the ‘contractors’ in ISCT is already present in the notion of bounded moral rationality. This condition is not established through the contract argument, but rather assumed to be accepted by the parties pre-contract; the problem at present being that this assumption seems somewhat arbitrary. If ISCT were to follow Rawls’ lead, it would focus its effort on providing independent justification for why the acceptance of bounded moral rationality is a basic feature of appropriately disposed contractors (i.e. that it follows from possession of a basic moral capacity for justice), and not worry about the contract argument at all. If Rawls’ argument is accepted, once bounded moral rationality is established, moral free space and pluralism will simply follow as a matter of logic.

If we were to accept that the kind of pluralism that Donaldson and Dunfee want could be established by aligning ISCT much more closely to the pluralism of political liberalism in this way, we might also find that some of the other criticisms by which ISCT has been besieged can be addressed. I will not attempt any kind of survey of how this might be done here, but I will mention one prominent case, that of the problems associated with the notion of ‘substantive hypernorms’. Substantive hypernorms, we can recall, are the universal moral conditions that limit the extent of moral free space and hence determine which value systems will be acceptable in the pluralistic system, and which unacceptable. One of the most significant problems with Donaldson and Dunfee’s account of these hypernorms is that they are supposed to be established independently of the contract argument, but instead are derived from the common understandings of morality that all contractors bring with them. Insofar as the significant conclusions of ISCT are supposed to be established through the contract argument, this approach to substantive hypernorms appears strange and inexplicable. However, if it is accepted that in fact the supposed ‘contractors’ bring with them all the necessary substantive conditions required to establish pluralism (as seems to be the case if we follow the Rawlsian approach and ascribe to them both rationality and reasonableness), then the establishment of the hypernorms that bound moral free space have exactly the same status as the conditions that establish that space in the first place – they could also, for example, be inherent in the notion of reasonableness in the same way as the acceptance of pluralism. Moreover, and addressing a further common objection to the notion of substantive hypernorms, Rawls provides some significant guidance as to how such bounds might be established in his discussion of what constitutes, in his terminology, a ‘reasonable comprehensive doctrine’ (Rawls 1993: 58–66).

Conclusion

In this paper I have tried to highlight what I take to be the most significant feature of Donaldson and Dunfee’s ISCT – that it aims to establish a theory of business ethics that is genuinely pluralistic, in the tradition of political pluralism, as exemplified by Rawls’ approach in Political Liberalism. This pluralism is understood as legitimising a number of different value systems, although in order to count as legitimate they must fall within certain bounds. In discussing ISCT, I have focussed on the notion of moral free space because it is in this notion that the pluralism of the theory is encapsulated. It is also in the justification of this idea that the flaws in ISCT are to be found; in essence, the contract argument that is supposed to achieve this justification does not appear to fulfil its purpose because we are not given sufficient reason for thinking that the contractors, as characterised, would agree to the assumption of bounded moral rationality that is crucial to the establishment of moral free space. I have gone on to suggest that this flaw may not be down simply to the particular details of the ISCT model, but rather be a result of trying to use the
contract model to justify an idea that no contract model could possibly justify. It is this point, or something similar, that I take Wempe to be making when he accuses Donaldson and Dunfee of ‘misunderstanding [. . .] the nature of the contract device as a method of argument’ (Wempe 2007: 703). In investigating this idea further, I have discussed the approach taken by John Rawls when he sets out to justify a pluralism of a very similar kind in the political realm (Rawls 1993). In doing this I have elaborated the idea that the device of social contract theory is simply inappropriate to achieve such an aim by discussing Rawls’ assertion that pluralism is rooted in the idea of reasonableness which is itself a basic normative concept and as such not susceptible to ‘justification’ by any method (Rawls 1993: 51). I have concluded by suggesting that by embracing the approach described by Rawls, but in the economic realm, ISCT could achieve its aim of endorsing a pluralistic theory without the need to rely on a problematic contract argument. Moreover, in removing the contract element the theory as a whole is placed on the same level as the substantive hypernorms which already play an important role in Donaldson and Dunfee’s approach. In this way the status of these hypernorms begins to look less problematic, and we gain access to the quite significant resources of political philosophy in addressing the (so far problematic) question of specifying the hypernorms that exist.

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Notes

1. The inclusion of pragmatism in a list of ‘universal’ moral theories is controversial. See, for example, Freeman & Phillips (1999) for a useful discussion.
2. See, for example, Rowan (2001) for an explanation of how universal theories can generate different community level judgements once contextualised.
3. An example of moral pluralism would be a view that took there to be two fundamental values – freedom and equality – but also held that it was impossible to express the value of freedom in terms of the value of equality, or vice versa, or to convert one to the other. Moreover, such a pluralistic view would also not accept that both values could be expressed in terms of a third ‘super value’, such as ‘utility’. However, such a characterisation of this view tells us nothing about whether it can be applied quite generally across all people or not, and if not how its application should be determined. Thus moral pluralism is compatible with universalism, relativism and political pluralism, all of which tackle this latter question.
4. Moreover, as a methodological disagreement, it exists not among communities that form part of society, but rather among students of business, both academic and in the practising community.
5. In characterising his contracting situation Rawls (1971: 118–123) makes his contractors ignorant of all facts that seem morally arbitrary in order to allow them to reach an agreement that is fair. Donaldson and Dunfee’s rationale for limiting their contractors’ ignorance to the facts of their economic status appears to be that they are only interested in establishing a ‘framework for ethical behaviour in economic activities’ (Donaldson & Dunfee 1999: 26). It is an interesting question whether such delineation of ethical domains is possible or desirable, but I will not pursue it here.
6. The idea of a Hobbesian state of nature in economic activity again relies on the coherence of the notion of a distinct domain of economic activity and economic ethics.
7. Wempe does not specify the question that he addresses in exactly these terms, but given that his stated aim is to assess ‘the quality of [ISCT] as a social contract argument’ (Wempe 2007: 697), and given that, as I have argued, the aim of the main (macro) contract in ISCT is to establish moral free space, Wempe’s argument provides illuminating insight.
8. Here it is important to note the distinction between the theoretical aim, which is the formal result that the theoretical mechanism is intended to demonstrate, and the practical aim, which is the use to which this formal result will be put. For example, by achieving the theoretical aim of legitimising political authority, Locke (1689) aimed to achieve the practical aim of supporting the claim of William III to the consent of the people.
9. Clearly, general principles should guide solutions to practical problems; nonetheless, this does not mean that the contractors themselves must deliberate on, and pronounce a solution to, each of these problems individually.

10. In this work Rawls makes a significant departure from his earlier approach to the questions of social justice (Rawls, 1971). This departure is a result of his realisation that he had, in effect, assumed that all members of a society, when properly disposed, would be able to endorse a single value system, which would guide their notion of justice. This assumption he came to believe was an error, and his pluralistic theory of political liberalism was the way he addressed this error (Rawls 1993: xv–xviii).

11. Here ‘distinct systems of cooperation’ is taken to be synonymous with the ‘different value systems’ discussed by Mason (2008) in his characterisation of political pluralism.

References


