IN DEFENSE OF A SELF-DISCIPLINED, DOMAIN-SPECIFIC SOCIAL CONTRACT THEORY OF BUSINESS ETHICS

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Abstract: This article sets out two central theses. Both theses primarily involve a fundamental criticism of current contractarian business ethics (CBE), but if these can be sustained, they also constitute two boundary conditions for any future contractarian theory of business ethics. The first, which I label the self-discipline thesis, claims that current CBE would gain considerably in focus if more attention were paid to the logic of the social contract argument. By this I mean the aims set by the theorist and method of reasoning by which normative conclusions are drawn in the contract model. The second, to which I refer as the domain-specificity thesis, argues that current CBE needs to be better adapted to its field of application and the specific goals which it aims to establish. I will substantiate these two theses on the basis of a comparative analysis of CBE with two earlier families of social contract theories.

The social contract model is one of the most promising theoretical constructs which is presently available to argue for norms of corporate morality. This model was originally used in the seventeenth and eighteenth centuries to argue the conditions for the legitimate exercise of political power. In the twentieth century, the model was used as a basis for a theory of social justice. Its use as a framework for corporate morality thus constitutes an entirely new field of application and it is with respect to this new use that this article makes two central claims. Both claims primarily involve a fundamental criticism of current CBE, but if these criticisms can be sustained they also constitute conditions which any future contractarian theory of business ethics must meet. The first claim, which I label the self-discipline thesis, asserts that current CBE would considerably gain in focus if more attention were paid to the manner in which the social contract argument is properly set up. If we consider the manner in which the argument was used in these two other application fields, it is clear that the model has its own characteristic method of argument, by which it seeks to support certain normative conclusions. For ease of reference I will call this the internal logic of the model. In its turn, this internal logic may be shown to form part of an argumentative strategy which can only be fully appreciated by taking into account the aim or purpose the theorist sought to establish by invoking the contract model. Such political usage of the theory I will refer to as the external logic of the social contract model. The self-discipline thesis then involves a twofold criticism of current CBE. The first criticism

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is that moral norms derived by present contractarian theories of business ethics pay insufficient attention to the internal logic of the social contract model, such as was exhibited by some of the famous earlier contract theories. A second, related criticism is that current CBE suffers from an insufficient understanding of the external logic, or to put this point more precisely: it expects too much from the social contract model. Whereas in earlier applications the contract model was essentially used as a *formal* argument, contemporary contractarian business ethicists erroneously seek to derive concrete, *substantive* norms for business ethics from the model.[1]

The second central claim, to which I refer as the domain-specificity thesis, argues that current CBE needs to be better adapted to this new field of application. A social contract theory applied to business ethics will work properly only if the argument is fine tuned to the "circumstances of business ethics."[2] This means, among other things, that we need to pay proper attention to the domain characteristics of business ethics and the assumptions made by theoretical representations of this field and consider how a social contract theory needs to be set up so as to fit the questions and issues central to business ethics.

I will substantiate these two theses on the basis of a comparative analysis of present CBE with two earlier families of social contract theories along a number of points of comparison. This will make clear that, as applied to these two other domains, there was a clear external logic to social contract theories which in turn set the scene for their internal logic. On the basis of a comparison how the contract model operates in these established domains, I will then go on to indicate how the contract model should be adapted to the realm of business ethics.

The upshot of this exercise in the history of the social contract argument is to clear the way for a further development of a sound CBE. Even though the potential of contract-centred evaluative thought has been questioned (Pettit 1993[3]), I think that the social contract model still is one of the most promising approaches for normative theories, including theories of business ethics.[4] More particularly, CBE may be able to answer questions which are left unanswered by the much more current stakeholder theory.[5] Prerequisite for a successful application to the domain of corporate morality, however, is that the social contract model must be employed in a more precise manner than was done by authors who have devoted themselves to this subject so far. In order to clarify this latter claim I will first give a concise review of some major contributions to present CBE.

The Social Contract Tradition in Business Ethics

Publications under the heading of a social contract for business add up to something like a genuine tradition. Various authors have addressed a cluster of related problems to come up with the idea of a social contract as a solution. It is slightly confusing, however, that completely different and mutually exclusive interpretations were ventured under the label of a social contract for business. Sometimes the label is even positively misleading. For example, contrary to what one would expect from a book by that title, Michael Keeley's *A Social-Contract Theory of Organizations* does not so

much provide a social contract theory as a plea for the use of a rights-based approach to organizational analysis, as opposed to the goal-based perspective which constitutes the dominant approach in current organizational sciences (1988: 9–20). Consequently he urges us to think of organizations not as entities pursuing some collective goal, but as structures of interactions of individuals bestowed with certain rights. It is true that, if we were to consider the *origin* of these rights, a social contract model would be perfectly suited to do the job. The point here is, however, that nowhere in his book does Keeley provide an explanation of where these rights come from.

In order to deal with the variety of interpretations given to the social contract as a basis for corporate morality, I will discuss here what I consider to be the three main important positions in the tradition of CBE. These can be indicated as macro-contracts, micro-contracts and an integrated perspective in which macro and micro perspectives are synthesized into a comprehensive view.[6] The first position is represented by Tom Donaldson's 1982 book, *Corporations and Morality*,[7] in which he deduces a normative framework so as to identify social responsibilities of corporations. The second position, which was put forward in a seminal article[8] by Tom Dunfee, interprets social contracts as "Extant Social Contracts." By this notion he means the gradual emergence of norms in various business sectors and communities. The third position was expounded in a co-authored book by Donaldson and Dunfee, which was entitled *Ties That Bind*[9] and was published in 1999. This may well be seen as a synthesis of the earlier deductive and inductive approaches. Of these three, Donaldson (1982) no doubt is the most faithful copy of classical political social contract theories as were used by Hobbes, Locke, and Rousseau. Proceeding from the idea that there must be something like norms for businesses, Donaldson seeks to derive these norms in a manner analogous to the classical political social contract tradition. For this purpose he proposes the idea of a "state of individual production." In this imaginary condition, everything is roughly organized as we know it, including all technological aids and resources. The one and crucial difference with the current system of corporate production is that individuals do not work together in "productive organizations." Hence, there is neither division of labor, nor social cooperation. Donaldson then asks

Table 1
Moral Norms for Companies on the Basis of Donaldson's 1982 Social Contract for Business Ethics

	Benefits	**Drawbacks**
Consumers	• Improving efficiency through a. maximizing advantages of specialization b. improving decision-making resources c. increasing capacity technology and resources • Stabilizing levels of output and channels of distribution • Increase liability resources	Minimize • pollution and depletion of nature • destruction of personal accountability • misuse of political power
Employees	• Increasing income potential • Diffuse personal liability • Adjusting personal income	Minimize • worker alienation • lack of worker control • monotony and dehumanization of workers

us to consider what life would be like in "a society in which individuals produce and work alone . . . a society without factories, banks, hospitals, restaurants, or railroads" (1982: 45). On the basis of this thought-experiment he derives a set of relatively straightforward, even blunt moral norms for corporate morality. The result of this exercise is summarized in Table 1.

Donaldson's system of moral duties for corporations has the merits of simplicity and clarity. He distinguishes two parties which are involved in the contract, i.e., employees and consumers, including potential consumers. Moral norms for business can then be divided into two categories, depending on whether they have beneficial or harmful effects on these two parties. Roughly speaking companies should strive to maximize benefits and minimize drawbacks. Being an early attempt at elaborating the notion of a social contract for business, the model is worked out in broad outlines only. It does not explain, for example, why parties to the contract are restricted to employees and (potential) customers. Nor does it provide a criterion how to deal with any conflicting maxims which could be derived from this system of norms. It is not clear, for example, how the call for maximal efficiency is to be reconciled with the duty to avoid worker alienation.

Be this as it may, for the purposes of this article the central point to observe is that the substantiation of the terms of this social contract is in one respect more loose and in another respect more substantive than in the versions of some of the more classical contractarians. It is more loose in that, while some terms would seem to have an intuitive plausibility, it remains unclear why this should be accepted as an exhaustive enumeration of all relevant concerns in business ethics. If the contract for business obliges companies to maximize efficiency, and to improve decision-making resources, why does it not also conclude that companies ought to reserve a fixed percentage of their returns for corporate social responsibility? If it urges companies to increase the capacity to use or acquire expensive technology and resources, why does not it also require a substantial contribution to health and education? Donaldson simply states that, proceeding from the choice situation as characterized, rational contractors will consent to the set of conditions specified in Table 1. In the absence of a compelling reasoning why rational contractors situated in Donaldson's state of individual production would agree *to these particular terms*, the social contract model is turned into a device for stipulating a system of norms for corporate morality. In another respect, however, Donaldson's contract is more substantive in that it seeks to establish what essentially are substantive criteria, such as maximizing the advantages of specialization and improving decision-making resources, whereas earlier social contract models were typically used as a *formal* argument.

If this criticism has any force, it may at once help to explain why in this earliest version the social contract is in fact rendered superfluous when, later in the book, it comes to developing solutions to concrete practical issues such as responsibility in corporate bureaucracies and employee rights. These practical issues are resolved by a series of other theoretical frameworks which are conceptually independent of the social contract. Thus, the problem of organizational responsibility is eventually resolved by what Donaldson presents as the bureaucratic model (1982: 124–27). And

the chapter on employee rights could easily have been contemplated without the social contract basis. This chapter sets out to explicitly reject the social contract model as being insufficiently precise (137). After discussing four more possible frameworks (perfect duties, basic needs and interests, equal freedom and the right to behave responsibly; 139–46), four categories of employee rights are eventually simply posited (freedom of speech, privacy, due process, and employee participation; 146–56). While no doubt these are all legitimate possible theoretical foundations, the point is that they may very well do without the social contract model. With respect to both instances of practical applications the social contract set out earlier in the book thus becomes redundant. Nor does this model play any role in the proposals to improve corporate morality with which the book ends (1982: chaps. 8 and 9).

In *The Ethics of International Business* (1989), Donaldson reproduces the social contract model as it was developed in his book from 1982. This perspective is then supplemented by a number of new theoretical frameworks such as the human rights perspective (chap. 5) and a theory of his own making, the so-called ethical algorithm which forms the core of his solution for the problem of reconciling conflicting international values (chap. 6). The point to notice here is that, eventually, when Donaldson turns to practical applications, it is this ethical algorithm which does all the work. And again, this prescription is entirely independent of the social contract perspective.[10] What was pointed out with respect to his 1982 book applies *a fortiori* to this publication: the contractarian framework remains idle when it comes to applying it to his own examples, i.e., the incident with the Union Carbide subsidiary in Bhopal, and the issue of disinvestment in South Africa under Apartheid.

Whereas the contract model in Donaldson's earlier work seeks to link up with the tradition of classical political social contract theories, the article by Dunfee proceeds from an altogether different notion of social contract, for which he coins the term "Extant Social Contracts." What this second author has in mind with this idea is best characterized as a series of conventions emerging from the business practice in various economic sectors and communities. Dunfee's main thesis in this article is that the existence of such norms (and their validity within a certain business community) can be established through empirical research. Dunfee mentions the example of the financial sector in which, on the basis of such empirical research, a norm against insider trading can be found operative. In order to characterize the difference between these two authors one might say that Donaldson is proceeding deductively, whereas Dunfee approaches his subject inductively. Both approaches have their own conceptual shortcomings. Donaldson appears to establish his principles more or less arbitrarily. Dunfee's inductionism lacks a criterion in terms of which one could accommodate possible conflicting local norms. In his article Dunfee himself indicates this lacking element, pointing out the need for further research into a "filtering-test" which could be used to accommodate such conflicts of norms (1991: 32–44).

Juxtaposing these two approaches, one is struck by their complementary nature. It would seem that the two approaches carry the solution to each other's shortcomings. Seen in this light it is hardly surprising that the authors decided to start working together, sometime in the early 1990s. This led to a number of joint articles, resulting

in their co-authored book from 1999. Here Donaldson and Dunfee develop what they refer to as an Integrative Social Contracts Theory (ISCT). And indeed, this theory can be seen as an attempt at integration, or a synthesis of the earlier deductive and inductive approaches. The authors distinguish two levels at which norms can operate, i.e., the level of macro-social contracts, which is based on the earlier ideas of Donaldson, and the level of micro-social contracts, in which we recognize Dunfee's idea of Extant Social Contracts. The leading idea of the book is that the macro-social contract may offer criteria in terms of which possible conflicts between local, community-specific norms may be resolved. The macro-social contract was to provide the filteringtest to resolve conflicting micro-social contracts.

In view of my criticism of Donaldson and Dunfee's contract project it is of vital importance to establish how they derive the terms of the macro-social contract. While the authors state that they "utilize the approach of the classical contractarians such as Locke and Hobbes" (1999: 26) the actual elaboration of the contractual reasoning is adapted from Rawls rather than any of the classical social contract theorists. In the ISCT version the initial contractual situation is defined in terms of four parameters, complemented by three behavioral assumptions (1999: 26–36). A first modification on Rawls's characterization of the initial contractual situation is that there is no uniform image of rational actors but an "undetermined mix of contractor preferences." Operative motives of these contractors range from greed-driven egoism to religious altruism and all shades in between. Second, and also in contrast to Rawls's description of the original position, contractors are *only partially* ignorant about their talents and other existential conditions. The only proviso Donaldson and Dunfee make in this respect is that contractors are unaware of what economic community they form part. They are ignorant of "facts of their economic membership" and their "level of personal wealth." A third specific stipulation the authors make is that, while contractors themselves are aware of their political and economic preferences, the participants in the thought experiment are not. The fourth characteristic of parties in Donaldson and Dunfee's initial contractual situation is that they have a moral sense for hypernorms. The image of the initial contractual situation is completed by three behavioral assumptions: contractors reason under conditions of bounded moral rationality; they will shape their preferences by decision criteria of quality and efficiency; and, finally, contractors are sensitive to the limits that may rise from culture, philosophy or religion.

According to Donaldson and Dunfee, these parameters and assumptions, taken together, lead contractors to consent to the following terms.

Table 2
Four Conditions of the Macro-Social Contract
According to Donaldson and Dunfee 1999

Local economic communities have moral free space in which they may generate ethical norms for their members through microsocial contracts
Norm-generating microsocial contracts must be grounded in consent, buttressed by the rights of individual members to exercise voice and exit.
In order to become obligatory (legitimate), a microsocial contract norm must be compatible with hypernorms.
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 macrosocial contract.

It may be pointed out that the terms of the new macro-social version of the contract differ considerably from the previous version, not only as to their actual contents[11] but also in the *nature* of the contractual prescriptions. We saw that, in his 1982 version of the contract for business, Donaldson specifies a series of relatively straightforward principles which he believes would stem from the contract between business and society. Their co-authored version of 1999 is essentially procedural in nature (cf. Salbu 2000). But the main point here is that in both versions of the macro-social contract actual norms of corporate morality are derived with less precision than the substantiation of principles carried out by earlier contract theorists such as Hobbes and Kant and their present day heirs, Gauthier and Rawls. As compared to these established contract theories, both the 1982 and the 1999 versions fall short of a satisfactory social contract argument since the resulting contractual terms do not follow from the manner in which the initial contractual situation is modelled. The behavioral assumptions made and further parameters of the initial contractual situation *simply do not logically compel contractors to accept the terms of the macro-social contract.* Donaldson and Dunfee apparently look upon the four clauses in Table 2 as if these constitute a unique solution to the choice situation defined, but their derivation is not precise enough to venture such a conclusion.

A good introduction to a more precise deduction of norms of corporate morality would be to consider the way the social contract argument works in two previous application fields. On the basis of a comparative analysis we can see in what way the argument needs to be set up so as to come to a convincing contractarian corporate morality. Next to the contemporary tradition of CBE, I distinguish contract-based theories of political authority from the seventeenth and eighteenth centuries and contract-based theories of social justice from the twentieth century. On the basis of this comparison I want to show that all worthwhile theories in these other two families are more or less attuned to the domain which they address. Moreover, within each of these two domains, all theories which still deserve our attention can be shown to have sought fairly specific aims, which need to be taken into account in order to see how the argument works. With a view to the further discussion in this article, I distinguish between any concrete *historical* aims social contract theorists intended to bring about by their theories (this is more obvious in some theorists than in others) and *theoretical* aims[12] which were attributed to these theories in interpretative studies and secondary literature. All theories in these two families exhibit a clear link between what the theory aims to bring about and the manner in which they were set up. In other words: the aim sought by the theory (the external logic) sets the scene for the basic contract argument (the internal logic).

Classical Social Contract Theories

The background of all social contract theories is to be found in the history of political theory, more precisely in the work of some "great political thinkers" from the seventeenth and eighteenth centuries. Although the precise elaboration of these contract doctrines varied from one author to another, a common function can be

attributed to all classical theories. This was to argue for (or against) the legitimacy of some political authority. Depending on the manner in which the theory is set up, it can be used to support the government of the day (when the prince is shown to be in accordance with the terms of the contract) or to criticize the acting government (when it contravenes the terms of the contract). Phrased in more theoretical terms, one could say that the characteristic function of political social contract theories was to answer the problem of political obligation.[13] This is the question as to why people would have to obey the law in the first place. Various answers can be given to this question, two of which I will distinguish here in particular. These are the political and the social contract answer. The political answer to the problem of political obligation is that people obey because eventually compliance with the law will be enforced by the "strong arm" (when the relationship of a state with its citizens is concerned).[14] This political answer suffers from a major shortcoming, however. The problem is that as soon as the law is no longer enforced, political authority will rapidly disintegrate. For this reason, a purely political answer to the problem of political obligation is not conducive to a stable order. Political theorists therefore went to look for a stronger argument. This was pre-eminently the function of classical political social contract theories. Notice, however, that this class of theories provides an *institutional* answer to the problem of political obligation: the analysis of life in the state of nature purports to show that everyone is better off by the institution of political authority. Since the argument is institutional, political social contract theories do not have to specify the contents of the law. Their function merely is to provide the "Grounds of Political Obligation."[15] A political social contract therefore only answers a meta-question: it explains why people should obey the law at all, but it does not address the substantive question what people are obliged to do, politically speaking. That task is characteristically delegated to the sovereign (McClelland 1996).[16]

For an understanding of the manner in which the contract model works when used as a theory of political authority, it would be helpful to look into its architecture. Political social contract theories characteristically centre on a division in three phases or conditions: a civil condition in which the state functions as it does. This is contrasted to an imaginary pre-political stage in which the state does not function yet. An analysis of this state of nature must make clear why this state is unstable and why it will degenerate into a state of war. The evident disadvantages of the state of war, together with the necessity of the degeneration of the state of nature into a state of war, constitute an argument why all should prefer the civil state to the state of nature. Any well formed political social contract argument thus links the analysis of life in the two pre-civil stages to some corresponding sketch of the civil condition. The more grim the image of the state of nature, the less attractive picture of political authority a theorist could afford. Broadening our perspective beyond this internal logic of each individual theory, it is easy to discern a connection between the historical and theoretical aims that were attributed to the various political contract theories and the narratives of individual contract doctrines. That connection I have called the "external" logic. In Table 3, I summarize both types of logic as they can be reconstructed in five major classical contract theories.

In the first place, this scheme illustrates that the specific form of government put forward in each of these political contract doctrines is presented as a solution to a problem which is diagnosed in the state of nature. Thus, according to Hobbes, life in this state of nature is so utterly objectionable that *any* form of government is to be preferred to the chaos of the state of war. What is important to him is merely that such political rulers should be sufficiently equipped to enforce the rule of law. Hence

Table 3
The External and Internal Logic of Some Classical Social Contract Theories

External logic

Internal logic

	Historical aim	**Theoretical aim**	**Image of man**	**Diagnosis of life in the state of nature**	**Proposed solution: nature of political authority**
Hobbes	End to religious civil wars	Order, stability	Rational man; mechanistic psychology	Uncertainty and anticipation to perceived threats causes a spiral of violence[1]	Sovereignty unlimited and undivided[2]
Locke	Glorious Revolution 1688	Individual basic freedoms	Reasonable man; Natural Law	Two problems: inconvenience and partiality in redress[3]	Sovereignty within clear boundaries[4]
Rousseau (*2nd Discourse*)	Signal corruptive impact of society on man	Social and political equality	Perfectibility and compassion	Psychological addiction to luxury causes dependency, but the rich have more to lose than the poor[5]	State of society is inescapble, but exploitative[6]
Rousseau (*The Social Contract*)	Unchecked government in Geneva	Popular sovereignty	Man is naturally good	Social life brings limitations, but nobody can contract out[7]	Unlimited and inalienably popular sovereignty[8]
Kant	Raise the state into a moral idea	Political community	Practical Idea of reason	Society is inevitable, but there is also a moral obligaion to support civil condition[9]	Ruling government must in all cases be respected[10]

[1] Hobbes 1991, chap. 13.
[2] Ibid., chaps. 18, 29.
[3] Locke 1988, chap. 2, §12–13.
[4] Ibid., chaps. 7–9.
[5] Rousseau 1988 (*Discourse on the Origin of Inequality*), 47, 53–58, 73, 82.
[6] Ibid., 98.
[7] Rousseau, 1988 (*The Social Contract*), book I, chap. 6.
[8] Ibid., book II, chaps. 2–4.
[9] Kant 1991, 73–87 (*On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,'* part II).
[10] Ibid., 81.

his emphasis that the sovereign power should be strong and preferably indivisible. Locke, on the other hand, pictures a far more agreeable state of nature, which only degenerates into a state of war because people tend to overreact in their role of judges in their own cause. In view of this rather more rosy picture of life in the state of nature, he finds room to set limits to the legitimate exercise of political authority.

Secondly, the table shows that this external logic is translated into the manner in which the state of nature is characterized and this again gives rise to a polemic on the manner in which man in the state of nature should be seen. Thus Rousseau explicitly polemizes with Hobbes on the subject of his negative image of man in the state of nature. This polemic covers the entire first half of *Discours sur l'origine de l'inégalité parmi les hommes*, his unsuccessful prize essay for the Academy of Dijon. For Rousseau, his predecessor's mistake was that Hobbes projected all sorts of essentially social characteristics into his image of man in the state of nature. Man is naturally good but inevitably corrupted by living in ever larger societies. Because individuals easily grow accustomed to the comfort and luxury of modern society, there is no way back to the bliss of life in small communities. His eventual solution, as set out in *Du Contrat Social*, is again much closer to Hobbes than to Locke as far as its lack of individual freedoms is concerned. What distinguishes him from Hobbes, however, is his conclusion that sovereignty should never be alienated from the people. Kant also explicitly argues with Hobbes over his interpretation of the state of nature. But in his reformulation, the social contract turns into an indication what a people should reasonably agree to. Civil obedience to the powers that be thereby becomes a civic duty.

Table 3 thus purports to show that in each of these classical political social contract theories there is a clear link between the aims which these theories sought to bring about and the manner in which each individual theory was set up. In each theory this external logic is translated into a specific sketch of the state of nature which in its turn prepares a conclusion on the political order preferred by the theorist (the internal logic). While it of course remains always possible to challenge any such line of reasoning, the whole point of each of these classical social contract projects was to persuade their audience by a deliberate argumentative strategy. The suggestion which I want to develop in this article is that, in order to get to a sound CBE, we also need to take into account the specific issues and problems which a theory of corporate morality is supposed to resolve. Before elaborating on this idea, I will first turn to a second family of social contract theories which evolved in the wake of John Rawls's seminal work on social justice.

Modern Social Contract Theories

Towards the end of the eighteenth century the social contract suffered a noticeable decline in popularity.[17] It was not until the second half of the twentieth century that this form of political argumentation was taken up again in the work of Rawls, who used the model as a basis for his theory of social justice. Rawls's (theoretical) aim with his innovation of the social contract argument was much more ambitious than the aims

we established for the family of classical political contract theories. Rawls's project may be seen as a twofold venture, intended to cope with both the unstable practice in contemporary liberal democracies, and the lack of an adequate theory to guide that practice. What was lacking in the democratic practice Rawls was addressing was a conception of justice in terms of which we would be able to determine how the fruits of social cooperation could be distributed fairly. While it is obvious that everyone living in society benefits from this cooperation, it is not clear what would be a just distribution of these benefits. To run a hospital, for example, you need doctors, nurses, administrators, cooks and cleaners, and so on. Eventually, none of these professions can be missed, so why should doctors earn more than the other professions? And if there are reasons why doctors should be paid higher salaries, should they earn two times or three times as much as the nurses?

Notice that in order to solve Rawls's problem it would not do to invoke the classical contract argument. Such a procedure would inevitably reproduce all sorts of improper inequalities between men: strong contractors would emphasize the importance of muscular power, smart parties would point to the importance of intelligence, and so on. A classical contractual approach would be unable to eliminate the impact of improper inequalities, like those arising from social background, sex or race. So before being able to face the simple problem of social justice, a preliminary problem needs to be addressed. This is the question as to how the basic institutions of society must be arranged to get to a fair starting position so that everyone is rewarded for his efforts and not for his natural talents of other characteristics like race or gender which individuals cannot influence. Our general intuition concerning social justice seems to be that irrelevant differences should not produce a better result in the distribution of the cooperative surplus. We want to reward hard work, but not social contingencies. For these are characteristics we cannot alter by choice. Any sound scheme of social justice would thus have to make up for "accidents of natural endowments and contingencies of social circumstance" (1971: 15).

If we consider how the need for a conception of justice was translated into the internal logic of Rawls contract theory, we see that his higher ambitions prompt him to model an initial contractual situation which is crucially different from the sketch of a state of nature in classical political social contract theories. Rawls carefully designs an initial contractual situation to ensure that the resulting basic institutions will be impartial. He invokes a complicated configuration of assumptions and theoretical tools so as to put together precisely the "device of representation" to suit these purposes. What sort of agreement would result depends on the parameters of the initial contractual situation such as the nature of the parties, the subject to be dealt with, the circumstances in which parties deliberate, the alternatives open to them as well as a specification as to what will constitute consensus (146–47). Each of these parameters has a specific function within Rawls's design. For example, the contractors are taken to be continuing persons such that every one's interests are represented one way or the other (128–29). In order not to engage in too concrete issues, contractual consensus is restricted to the basic structure of society (7–11). The idea of primary goods similarly serves to keep the subject of inquiry sufficiently general (90–95).

No doubt, the most renowned of Rawls's parameters was his famous idea of a "veil of ignorance" (1971: §24; 1993: I, §4). The function of this particular parameter within the structure of Rawls theory is that it helps to eliminate the sort of knowledge which would obstruct an impartial choice.

Rawls's main theoretical treatise merely applies to the problem of domestic social justice. The theory restricts itself to "domestic" societies, the existence of which is being presupposed by the theory, including an effective political authority and by implication a political social contract (1971: §38). Moreover, these societies are looked upon as closed systems into which all members are being born. The problem of immigration or possibly emigration[18] from the political community is not addressed in his 1971 book. In his later work Rawls dropped this postulate so as to consider the problem of justice between peoples (Rawls 1999). Once a system of national societies is formed, it should be possible, in Rawls's view, to get to a similar set of principles between liberal societies and in second instance even between liberal and hierarchical but "decent" peoples. One might say that whereas Rawls (1999) draws his attention outwardly, a theory of business ethics would need to extend its range not only externally to the realm of international relations, but also internally in order to elaborate on the system of entrepreneurial production in so far as this was not yet covered by Rawls's project for domestic justice.[19]

For reasons of space, I shall not discuss here in detail any of the other members of the family of social contract theories of justice, most of which were shaped in dialogue with the work of Rawls. In this connection, I think in particular of the work of Ackerman (1980), Habermas (1981, 1995), Gauthier (1986), and Scanlon (1998). While each of these authors makes use of his own variety of the social contract model, none of them has elaborated the device of an original position so extensively as did Rawls. Ackerman claims that the best basic structure is the kind of arrangement that will be supported in a dialogue that satisfies certain neutrality conditions. This means, for example, that no one taking part in the dialogue is allowed to assert either that her conception of the good is better than that asserted by any of her fellows, or that she is intrinsically superior to any of her fellows. Habermas, for his part, focuses on specifying the conditions of an ideal discourse situation which is to guarantee legitimate consensus. The ideal discourse situation consists of conditions of equality, where each has the chance to speak and where each can call anyone else's assertions into question. He believes that such a publicly oriented discussion will render it pragmatically impossible for parties to introduce any grounds that refer to their own good alone, or to that of one particular subgroup. Gauthier (like Rawls) uses rational choice theory to model the moral principles on which rational individual agents would agree. Unlike Rawls he does not restrict himself to the organization of the basic structure of society, but takes moral principles themselves as the objects of voluntary agreement among rational persons. He looks upon moral principles as agreed mutual constraints arising from the application of a maximizing conception of rationality to interaction among these rational persons. Scanlon,[20] finally, resorts to an essentially Kantian argumentation in which the normativity of his conclusions is based on an appeal to principles that no one can reasonably reject. In his approach *justifiability* is fundamental to morality.

An action is wrong if it is forbidden by a principle that cannot reasonably be rejected by the people with whom we live together and co-operate. An action is permissible only if it conforms to a set of principles for the general regulation of behavior that no one motivated to achieve agreement about those principles would reasonably reject. Moral principles are those to which everyone would agree if they were motivated by the aim of finding practical principles that others, similarly motivated, would not reject. A principle is only compelling as a moral principle if no one could reasonably reject it as a general principle of co-operation or coexistence.

Implications for Any Future Social Contract Theory of Business Ethics

On the basis of this survey of the two earlier families social contract theories we can now seek to bring out the implications for a better social contract theory for business ethics. But in order to prevent any misunderstandings: let me state clearly that I do not view it as my task, nor is it my intention, to prescribe what colleagues should be doing or to dictate the course CBE should take in the future. The primary function of Table 4 is to enable fellow theoreticians to get to informed decisions concerning the manner in which such an advanced CBE could be set up. The idea is, in other words, to look for each of the points of comparison at the manner in which this is instantiated in the earlier two families, so as to form an idea how the CBE equivalent could be shaped. A preliminary question to such a project is on the basis of which parameters the two families of theories could be compared. Generalizing from the earlier reconstruction of both classical and modern social contract theories, I suggest four points of comparison, i.e., the external logic, the internal logic, the domain characteristics and finally the assumptions made by the various theories. Each of these points is further divided into more specific items as is specified in the second column of the table and will be discussed below.

The Self-Discipline Thesis

As was explained, the first central thesis put forward in this article suggests that the social contract model works best when applied along the lines of earlier, eminent exponents of the social contract tradition. In the hands of these theorists the social contract was essentially used as a formal argument. It was not so much used to derive concrete laws or substantive norms but rather to provide criteria by which to evaluate existing institutions. On the other hand the use of the contract model only makes sense if it is used argumentatively, and not merely in a stipulative fashion. The question therefore arises what would be an appropriate CBE equivalent to the intricate relationship between external logic and internal logic in earlier social contract theories. What, in other words, could be taken as a proper subject and suitable aim for CBE? And what would be the sort of factors we want to correct so as to get to a result which corresponds to our established intuitions on corporate social responsibility?

The external logic of CBE. Whereas classical theories focus on arguing the conditions under which political authority can legitimately issue laws, and modern theories aim to design some basic structure of society so as to guarantee social justice, a natural

Table 4
A Comparative Analysis of Three Families of Social Contract Theories

		Classical social contract theories	Modern social contract theories	Contractarian business ethics
External family logic	Subject of inquiry	The state	Basic institutions of society	System of corporate production
	Parties to the contract	Individual citizens	Continuous persons	Business and society
	Theoretical aim	Political authority political obligation	Social justice	The status (and contents?) of moral norms for business
	Problem focus	Lack of political order	Lack of fair starting positions in distribution cooperative surplus	Lack of moral norms mutually binding all stakeholders affected by corporate action →the problem of normativity
Internal family logic	Problem-solution frame	Reconciling political order with individual freedom	Designing an endowment-insensitive, ambition-sensitive distributive scheme	• accommodation mutually exclusive stakeholder • incommensurability: lack of a common yardstick • collective action: why comply with moral norm if others do not?
	Functional initial contractual situation	State of nature: Models moral equality of individual citizens	Original position: Models fair social cooperation	State of individual production:[1] Models corporate morality at system level
Domain characteristics	Background conditions	Circumstances of authority	Circumstances of justice:[2] moderate scarcity and mutual disinterestedness	Circumstances of business ethics: • a system of production: added value by cooperation • a sanctioning authority
	Constituency	Natural constituency: national political community	Constituency fixed by stipulation: "the domestic case"[3]	The affected group includes interests: • beyond national borders • beyond domestic law • beyond economy → constituency not yet fixed: → the problem of stakeholder legitimacy
Theoretical assumptions	Access	Membership of target group is unproblematic	Membership of target group limited to domestic society; regarded as a closed system:[4] membership given	No such presuppositions can realistically be made: → the problem of stakeholder legitimacy
	Authority	No political authority (authority results from the contract)	Rule of law, to cope with problem of "partial complaince"	Rule of law, sanctions some social-economic order (e.g., property, market economy, etc.)
	Exit	Formal exit	No exit (by stipulation)	Burdened exit

[1] I adopt the terminology of Donaldson 1982, but not necessarily his characterization of the initial contractual situation.
[2] Rawls 1971: §22.
[3] Ibid., 8. Rawls 1993: VII. Rawls 1999: 26.
[4] Rawls 1971: 7–11.

topic for CBE to focus on would seem to be the legitimacy of the Western system of entrepreneurial production. Evident parties to this contract would seem to be two collective actors: business and society. On the basis of the observation concerning the formal nature of the aims set by classical and modern theories, my suggestion would be to focus this discussion on the status of moral norms for corporations rather than the actual contents of such norms. A problem focus in line with this profile is the question I have labelled the problem of normativity: this is the question why economic actors should take into account moral norms in the first place. The social contract model may thus be more useful to explain why moral norms can be obliging for corporations as much as for individual agents, rather than to use it to derive concrete norms of conduct for corporations. If this is a sound suggestion, it would follow that whereas many of the current reviews of Donaldson and Dunfee (1999) urge them to become more specific about the practical bearings of their hypernorms, the present writer believes ISCT actually seeks to provide far too concrete moral norms for corporations.

The internal logic of CBE. The question as to the internal logic of CBE is the most detailed level at which the comparative analysis can be used. It must be emphasized that elaborations which are presented here are just intended as examples, certainly not as an exhaustive enumeration of a CBE research agenda. Having clarified this much, when considering the various narratives concerning some imaginative state of nature in classical contract theories, it becomes obvious that in separate theories, but also when we generalize this point to the family level of classical contract theories, a specific function can be ascribed to the contract narrative. Generally speaking the state of nature theories serve to argue the moral equality of all individual citizens (cf. Kymlicka 1990: 60).

In the case of modern social contract theories the sketch of an original position serves to ensure a correct process of negotiation on the principles of justice, i.e., to eliminate biases such as irrelevant qualities or characteristics which should not impact the establishment of principles of justice and filter them as it were out of the process of negotiation. Modern contract theories seek to develop an "ambition-sensitive" but "endowment-insensitive" distributive scheme (Dworkin 1981, quoted in Kymlicka 1990: 75). In view of Rawls's adaptation of this design, the question then suggests itself how the initial contractual situation for a social contract theory for business should be shaped in order to produce an adequate theoretical underpinning of a framework for corporate morality. In order to answer that question we need a better insight into the main questions of the field of business ethics and the main goals we want a theory of business ethics to achieve. What, in other words, is the kind of problems we want to resolve for which the internal logic of CBE needs to be modelled?

Now, this is of course a most difficult question. The world of business is subject to rapid and continuous change. But I would like to suggest at least three common themes or issue-dimensions which may be discerned in many problems and concerns constituting the subject-matter of business ethics. These are not intended as an exhaustive list, but I believe that whatever else may be taken to form part of the realm of business ethics, at least the following three should be addressed. In this respect I

believe the social contract model may provide better guidance than can be found in the current state of the art of stakeholder theory. Equivalents of these problems were addressed by contract theories (although I do not claim that these problems were always "resolved" in a satisfactory manner). I merely observe that the contract model seems to provide a better starting point to contemplate these sort of questions than the stakeholder model. First, this is the question as to how mutually exclusive claims made by different stakeholders (such as employee-wages vs. return-on-investment) can be reconciled. Call this the problem of accommodation. A second question which seems to us to form part of the core of business ethics is the question as to how incommensurable qualities may be weighed against one another. Typical examples of this issue would be the clash between economic results and the environment (profit vs. planet) or the clash between workplace security and profit (people vs. profit). The difference with the problem of accommodation is that these sort of clashes are not only mutually exclusive, but moreover lack a common standard to weigh conflicting claims. Call this the problem of incommensurability. A third characteristic issue for business ethics would be the question what background institutions are needed in order to hold a corporate agent to some moral duty or other. Arguably, it would be unreasonable to require corporate agents to make certain sacrifices in the absence of an institutional background to prevent other, less scrupulous competitors to take advantage of such dutiful conduct. This is commonly known as the problem of collective action. My suggestion is that the internal logic of CBE could well be set up so as to resolve precisely these three types of problems. After all, classical and modern contract theories have been seen to resolve analogous problems. For that reason, I expect that, once the primary problem of conceiving common good for all economic actors is resolved (cf. Hartman 1986: chap. 3) and the question of stakeholder identity is thereby settled, the social contract for business would be capable to resolve the problem of accommodation, the problem of incommensurability, and the problem of collective action.

The Domain-Specificity Thesis

So far we have dwelled on the consequences of the requirements for a self-disciplined CBE. Now we must consider how the conditions issuing from the second thesis put forward in this article can be met. What, in other words, would be the main characteristics of the field of business ethics which CBE should take into account? This examination falls into two parts. First, this is a discussion of the domain characteristics of the realm of business ethics which needs to be taken into account in order properly to model the social contract for the work in this domain. Second, and related to this examination is the discussion as to the theoretical assumptions which any theory of CBE should make regarding its subject.

Domain characteristics of business ethics. As is well known, John Rawls, in the course of formulating his theory of social justice, launched the idea of circumstances of justice. With this term he refers to certain structural conditions which as it were form the background against which all questions and issues characteristic for the realm of social justice come to be considered. The main conditions Rawls singles

out are relative scarcity and mutual disinterestedness. Analogous to this terminology, we can ask what must be taken as the circumstances of business ethics. What are the structural factors shaping the background against which all issues in business ethics are staged. Again, without pretending to exhaustively list these factors here, it strikes me that all defining questions of business ethics presuppose a system of entrepreneurial production in which added value is created through cooperation i.e., division of labor and coordination of people. A further necessary condition for any question of business ethics properly so-called is that there should be something like an ordered society, i.e., there must be something like a political authority which ensures that promises and commitments taken on in the free market (ordinary common-or-garden contracts) are effectually carried out. This means that the contract for business presupposes a classical political contract.

A second important characteristic of the domain of business ethics is the question as to whom theories of business ethics actually address. In other words: who should be taken to be the audience of the business ethicist? In the case of two earlier families of social contract theories this question can be answered relatively easily. Classical social contract theories all presuppose a more or less natural group of people constituting the political community. The seventeenth and eighteenth centuries saw the formation of many of the national states as we know them today. The majority of citizens spent its days within the territory of one and the same national state. The question as to who forms part of the target audience never was an issue in this classical tradition of social contract argumentation. With Rawls this point does not play a role either, for the simple reason that this author restricts his theory to the domestic case. But it will be clear that the question as to the target audience of CBE leads to a radically different answer. For, defining issues of business ethics address the question how to deal with conflicts of interest extending well beyond the national state in at least three aspects. These are questions, first, as to the extent to which entrepreneurs in the Western world can "buy" a cleaner environment by transferring the production to developing countries with less stringent legislation. Often such a form of FDI is defended on the basis of the argument that developing countries cannot yet afford this strict legislation. Second, in any case typical questions of business ethics extend to matters beyond the legislation enforced in national states. To consult affected stakeholders in decisions often is not positively prescribed, but nevertheless forms part of the basic manners of parties in business life which constitute the core of business ethics. Finally, typical questions of business ethics extend beyond purely economic incentives. A company which says it conforms to moral norms but which at the same time expects economic profit ("business ethics is good strategy") is immediately suspected and not only among business ethicists of a Kantian persuasion. Because of these three important differences CBE suffers from a type of problem which does not arise for the two earlier families of contract theories. We may identify this as the problem of stakeholder legitimacy. This problem stems directly from the fact that the subject and the target audience of business ethics cannot be uncontestedly defined beforehand. This is a problem which the contract model is ill-equipped to solve. Political social contract theories would not be able to conceptualise, let alone resolve, questions concerning immigration, for

example. Similarly, CBE can only produce satisfactory results once the idea of a common good for all economic actors is established. This remains the ultimate condition which is presupposed by any contract argument and consequently also in the case of CBE it must be provided by some other means than the contract model.

Theoretical assumptions to be made by a theory of business ethics. There are at least three assumptions any theory of business ethics (thus including CBE) must make. These assumptions relate to the problem of access, authority and exit respectively. The problem of access deals with the conditions under which new members are allowed to form part of the community; the problem of political authority inquires into the conditions needed for a well-ordered society; and finally the problem of exit concerns the question in how far an individual can quit the community again when she disagrees with otherwise legitimate collective decisions.

Regarding these (sets of) assumptions classical social contract theories do not make really hard conditions in any of these three respects. We already saw that in the seventeenth and eighteenth centuries membership of the political community was unproblematic. With Rawls, membership is stipulated because of his assumption that society forms a closed system, which one can only join by birth and leave only by death. It will be obvious that, with respect to the domain of business ethics, these assumptions cannot meaningfully be made. In the context of CBE, the access issue therefore leads to the problem of stakeholder legitimacy.

Political authority does not appear as a necessary assumption in classical social contract theories. Rather it may be seen as the *result* of these theoretical models. In the work of Rawls an effective and well-functioning political authority forms part of the conditions of a well-ordered society. Similarly it would seem that political authority must be seen as a precondition for any CBE. If there is no sanctioning authority to enforce a certain socio-economic order, characteristic issues of business ethics cannot arise. Questions of business ethics typically arise with respect to issues that are not enforced under the law. But if there were no guardian to ensure compliance with established legal obligations, the load on voluntary moral duties for corporations would simply become to heavy. On the other hand, it simply would not be realistic to assume such effective political authority, as did Rawls. To quote just one example, typical problems of business ethics include problems such as dirty hands which conceivably involve the breaking of the law and hence do not fulfil the condition of strict compliance.

A cross-family comparison on the exit option leads to the following picture: a classical theorist like Locke laconically states that people who cannot agree with a certain political regime can always move to the untouched plains of America. And we saw that Rawls avoids the question of exit by stipulating society as a closed system. However, with respect to the defining questions of business ethics the exit problem is more complicated. It is true that individuals are formally free to leave an organization if they disagree with its working climate. But such exercise of the exit option involves costs which effectively limit the formal possibility to exit. Not every employee can change her employer from one day to the next. Similarly, stakeholders which can only withdraw from unwelcome effects of economic activity are not always

materially free to leave. A case in point would be people living in the vicinity of an expanding airport, who are exposed to ever greater noise levels. It follows therefore that the exit option must play a far more central role in CBE than it ever did in the two earlier families of contract theories.[21]

Conclusion

This article proceeded from the assumption that the social contract model forms a good framework by which the present fragmentation in business ethics theorybuilding can be remedied. In order to make further progress with this model, I have sought to draw attention to two crucial shortcomings which can be discerned in much of contemporary CBE. In current CBE the model seems to be used too imprecisely. A comparative analysis of the manner in which the contract model was applied in two more established domains has made clear that in these fields the contract model only works within some strict application conditions. These conditions arise from the presuppositions of the contract argument as well as the defining characteristics of the domain to which the model is applied. If a social contract theory of business ethics aspires to be more than an orienting metaphor,[22] proper attention must be paid to the theoretical suppositions, the characteristics of the domain and the task set to the theory. This requires, above all, a better insight in the proper function of the contract model.

As to the implications for future contractarian theories of business ethics, I have argued for a self-disciplined use of the contract model, taking into account both its external and its internal logic. While the model can be employed in a wide variety of ways, its should not aspire beyond the task the model can adequately support. Therefore, the contract model should restrict itself to a relatively formal argument, and not be tempted to prescribe substantive norms for corporate morality. On the other hand, the contract model only makes sense if it is used argumentatively and not just as a device for stipulating norms. A balanced use of the contract model requires moreover that the model should be adequately adapted to the characteristics and suppositions of the domain, in this case business ethics. This means, amongst other things, that we should be clear what sort of aims a theory of business ethics should fulfil and what theoretical assumptions need to be made to get to an adequate representation of the defining problems of business ethics.

Notes

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[1] I thank my colleague Hans van Oosterhout for suggesting this distinction as a concise manner of characterizing this crucial function of classical social contract theories.

[2] I coin this phrase by analogy with Rawls's idea of "circumstances of justice" (1971: §22). See also Table 4.

[3] Pettit 1993, chap. 6. Pettit distinguishes a separate category of evaluative social sciences which he indicates as political theory. Apart from law and philosophy this also consists of parts of modern political science and economics. For the purposes of this article, I take business ethics to form part of this same category. The drift of Pettit's criticism is that contract-centred evaluative theories are either defective (in their economic interpretation) or redundant (in their political interpretation).

[4] Cf. Jean Hampton (1995) who discusses some problems of this method of argument but also the promise behind the contract device.

[5] For a survey of the present state of stakeholder theory, see Mitchell, Agle, and Wood 1997: 855–65.

[6] Apart from the three positions identified here, other contract-based doctrines for business ethics include Anshen 1970 and Rogers, Ogbuehi, and Kochunny 1995.

[7] Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1982.

[8] Business Ethics Quarterly 1 (1991): 23–51.

[9] Boston: Harvard Business School Press, 1999.

[10] This was already pointed out by Bowie 1991 in his review of Donaldson 1989.

[11] Compare Tables 1 and 2.

[12] I thank my colleague Hans van Oosterhout for this suggestion. As goes without saying, this is no black and white distinction, but a sliding scale. Theoretical aims can be formulated at various levels of abstraction. The two families of social contract theory distinguished are characterized by the aims of justifying political authority and social justice, respectively. As appears from Table 3, more specific theoretical aims may be also be distinguished.

[13] For a concise characterization, see Pateman 1985, chap. 1.

[14] Similarly, according to this realist conception, the effectiveness of relations of a national sovereign state with foreign powers eventually depends on its sufficiently strong army, the equivalent of the strong arm in international relations.

[15] In the terminology of T. H. Green, a nineteenth-century theorist of political obligation.

[16] The question as to what precisely is to be left to the prerogatives of the sovereign and under what conditions is the subject of the distinction between alienation contract and agency contract (Hampton 1986). In an alienation contract, sovereignty is transferred to a prince in full and unconditionally, in the hope that he will establish peace. In case the sovereign fails to provide order, there is no redress. Consequently, no individual rights are reserved for the people. The agency contract, on the other hand, does put conditions on the transfer of sovereignty and consequently leaves more possibilities to rebel against an ill-functioning government. See also the penultimate column of Table 3.

[17] Googh 1957, chap. 12.

[18] The classical Lockean standpoint, which is inherently related to the notion of tacit consent, is that when someone does not agree he or she is always still free to go.

[19] See Rawls's definition of the basic structure of society in Rawls 1971: 7; Rawls 1993: chap. 7.

[20] I thank my colleague Theo van Willigenburg for sharing with me his deep knowledge of Scanlon.

[21] This has been noted by several authors. See Hartman 1996: 168–71; Donaldson and Dunfee 1999: 162–65; Phillips and Margolis 2001: 619–38.

[22] I thank an anonimous reviewer of Business Ethics Quarterly for challenging me on the assumption that there is any continuity of thought between the various theorists in the social contract tradition.

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