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Social Contracts and Marketing Ethics

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Abstract

This paper describes the need and the search to date for a normative moral foundation for marketing. Social contract theory appears promising because of its clear correspondence to the exchange relationships central to marketing thought and practice. It is introduced in a specific formulation known as Integrative Social Contracts Theory. ISCT provides a coherent framework for resolving ethical issues arising between different communities and is therefore particularly appropriate because marketers frequently engage in boundary-spanning relationships and cross-cultural activities. The application of ISCT to ethical decision making in marketing is explored through the use of bribery as a major illustrative example. Implications for managers and researchers are discussed.

Social Contracts and Marketing Ethics

The need for normative theory to provide guidance in evaluating ethical issues is particularly pressing in marketing. There have been many instances of unethical conduct in marketing; indeed, marketing is viewed by some as the worst offender of the business functions (LeClair, Ferrell, and Ferrell 1997; Tsalikis and Fritzsche 1989). Social contract theory is evolving into one of the major alternatives for approaching business ethics. Although it has received limited attention from marketing scholars to date, its potential for analyzing marketing ethics deserves exploration.

In this paper, our purpose is to show the relevance of social contract theory to marketing, to introduce a specific social contract based approach, known as Integrative Social Contracts Theory (ISCT) (Donaldson and Dunfee 1994, 1995; Dunfee and Donaldson 1995), and to demonstrate ISCT's particular applicability to marketing ethics. Below, we examine the search to date for a normative moral foundation for marketing. We then introduce social contract theory and discuss its pertinence to marketing. Next, we explain ISCT and show in detail how ISCT may be applied to one of the more intractable problems of marketing ethics, that of bribery. Finally, we identify implications for managers and researchers.

The Search For A Normative Moral Foundation For Marketing

The literature on marketing ethics can be differentiated between descriptive and normative approaches. Descriptive approaches include attempts to describe or model ethical decision making (e.g., Ferrell and Gresham 1985; Hunt and Vitell 1986) and empirical studies of the ethical attitudes and/or behaviors of different populations, such as marketing researchers (e.g., Akaah and Riordan 1989) or salespeople (e.g., Bellizzi and Hite 1989). Normative approaches to ethics identify moral principles and methods of moral reasoning that justify judgments of what is

right and wrong. It is normative marketing ethics that is concerned with prescribing what managers “ought to do” when faced with an ethical issue. Reviews of the marketing ethics literature (e.g., Tsalikis and Fritzsche 1989) show that there have been a substantial number of descriptive contributions, but far fewer normative contributions.

The relative scarcity of normative articles reflects the difficulty in making non-controversial, yet definitive, ethical evaluations of marketing decisions and practices, though this is both necessary and important (Ferrell and Gresham 1985). Consider the substantial physical and financial harm that can result from unethical decisions about product safety, truth in advertising, and fairness in pricing. The evaluation of these decisions as ethical or unethical—by the decision maker(s), by those affected by the decision, by public policymakers, or by researchers—may be better informed by sound theories of normative marketing ethics.

The normative marketing ethics literature parallels the pluralistic approaches found in the broader business ethics field. Business ethicists have sought to develop frameworks for applying the classical ethical theories to business dilemmas. This work includes Kantian ethics (Bowie and Duska 1990; Evan and Freeman 1988), virtue (Solomon 1993), rights (Werhane 1984), utilitarianism (Buchanan 1988), justice (Hartman 1996), and social contract theory (Donaldson 1982, 1989; Donaldson and Dunfee 1994, 1995; Keeley 1988). Each of these frameworks incorporates foundational principles such as impartiality or consent as a basis for moral guidance. Advocates of individual theories argue for their superiority in dealing with at least a defined class of ethical problems, while others take a more ecumenical approach looking for a convergence of judgment among alternative theories (Hosmer 1994).

Within the literature on marketing ethics, a creative variety of frameworks and theories have been developed, typically relying upon one or more of the classical theories. Examples include a

diagnostic framework for assessing individual responsibilities of marketing executives for the consequences of their unethical actions (Mascarenhas 1995); a test that requires marketers to establish that consumers can exercise informed choice (Smith 1995); a contingency factor model of ethical behavior which incorporates an assumption that “marketers develop guidelines and rules for ethical behavior based on moral philosophy” (Ferrell and Gresham 1985, p.88); a framework presented as a series of questions based on theories developed by Ross, Garrett, and Rawls (Laczniak 1983), and later revised to include additional theories of moral philosophy (Laczniak and Murphy 1993); a descriptive model of ethical decision making in marketing that assumes most individuals apply both a duty-based and a teleological analysis (Hunt and Vitell 1986); and a framework suggested for integrating social responsibility and ethics into the strategic marketing planning process (Robin and Reidenbach 1987). Table 1 provides a selective sampling of this literature, indicating the level of focus (individual, firm or societal), the primary orientation (normative or descriptive), any explicit normative approaches taken, major examples used, and the role, if any, of social contracts or norms. Half of the chosen frameworks are pluralistic in that multiple ethical theories are recognized. This may have the consequence of restricting their ability to predict outcomes, because results may vary, even with the same contextual factors, depending on the normative theory chosen by a given moral agent. On the other hand, pluralistic approaches recognize a possible tendency for moral agents to either follow a multi-step pluralistic analysis in their own reasoning or to go back and forth between theories depending on the context of the decision required.

TABLE 1
Frameworks for Ethical Decision Making in Marketing

Article	Level/focus	Orientation	Normative Approach(es)	Use of Detailed Examples	Role of Social Contracts/Norms
Chonko and Hunt (1985)	Marketing managers	Descriptive	None	None	Implicit in discussion of industry and professional codes
Ferrell and Gresham (1985)	Individual marketers	Descriptive (framework)	Dependent on decision maker	None	Assumes group pressure may be a greater influence than group norms
Hunt and Vitell (1986)	Individual marketers	Descriptive (model of decision-making)	Deontological/teleological	Two short scenarios (gifts, auto safety)	Industry and organizational norms as source of deontological rules
Laczniak (1983)	Marketing decision makers	Normative	Non-teleological (Ross, Rawls & Garrett)	Six short scenarios	None
Mascarenhas (1995)	Marketing decision makers	Instrumental/Diagnostic	Pluralistic	Breast implants, consumer use profiles	Standards for fault/accountability
Robin & Reidenbach (1993)	Multi-level (societal/organizational/individual)	Normative	Descriptive (contextual, bounded relativism)	None	Implicit in descriptive component
Smith (1995)	Marketing decision makers	Normative	Consumer Sovereignty	Suzuki Samurai roll-over Retailer hi-lo pricing	Firm's obligation to the consumer is based on a social contract
Thompson (1995)	Individual marketer	Instrumental/Normative	Ethics of care/ethical relativism	None	Source of cultural meanings
Williams and Murphy (1990)	Multi-level (individual, organization)	Normative	Virtue	Johnson & Johnson, Nestle	Not explicit

Typically, the marketing-specific attempts at developing a normative framework have incorporated general summaries of the classical ethical theories, particularly utilitarianism, Kantian or other duty-based approaches, virtue, rights, and justice. Generally, they are agnostic as to the normative theory to be applied among those included within a given pluralistic framework. The prototypical normative model, Laczniak (1983) as revised in Laczniak and Murphy (1993, pp. 49-51), would apply the following questions in evaluating the ethics of marketing practices:

- i) Does the contemplated action violate the law? (legal test).
- ii) Is this action contrary to widely accepted moral obligations? (duties test).
- iii) Does the proposed action violate any other special obligations that stem from the type of marketing organization at focus? (special obligations test).
- iv) Is the intent of the contemplated action harmful? (motives test).
- v) Is it likely that any major damages to people or organizations will result from the contemplated action? (consequences test).
- vi) Is there a satisfactory alternative action that produces equal or greater benefits to the parties affected than the proposed action? (utilitarian test).
- vii) Does the contemplated action infringe upon property rights, privacy rights, or the inalienable rights of the consumer? (rights test).
- viii) Does the proposed action leave another person or group less well off? Is this person or group already a member of a relatively underprivileged class? (justice test).

An affirmative answer to any of the tests is assumed to indicate that the marketer's decision is quite probably unethical and should be reconsidered. Pragmatic considerations constrain the value of this approach. If every type of ethical theory must be satisfied, few marketing decisions would be likely to ever pass muster. Further, the answering of certain questions as yes is likely to

produce a no in another context. For example, a duty of justice that contemplates some reasonably equivalent distribution of benefits may consistently conflict with shareholder property rights. Indeed, Laczniak and Murphy (1993) acknowledge that there may be conflicting responses to their questions. Hence, while use of this framework undoubtedly has merit in assisting marketers to reflect on the ethics of their decisions, it is less satisfactory in providing definitive ethical evaluations of specific practices.

Approaches in business ethics based upon the classical theories, particularly those relying on Kantian ethics and utilitarianism, have been criticized as being too abstract and general to provide adequate guidance for managers (Stark 1993). The problems with utilitarianism are well known. In many cases, utilitarian analysis requires forecasting of unknowable future events (e.g., the percentage of women who would develop medical problems from silicone breast implants). Also, comparing different types of utilities is notoriously difficult. How, for example, should the joy and excitement of riding on a three-wheel all-terrain vehicle be measured against the associated physical dangers? Finally, the tradeoffs required by the underlying principle of impartiality—such that the utilitarian is indifferent to who is hurt and how—strike many people as counterintuitive.

Consider the marketing harmful pesticides banned in the U.S. to less developed countries. A utilitarian might well be comfortable balancing the “costs” of possible deaths overseas caused by the marketing of pesticides banned in the United States in less developed countries against the “benefits” of jobs retained in the U.S. But it is surely fair to ask whether a tradeoff of lives or physical well being versus income is fully consistent with commonsense morality. Although rule utilitarianism—utilizing predefined rules to deal with repetitive ethical issues—may resolve some of these problems, the inherent complexity of modern business and professional life vastly complicate its use as a realistic guide.

Duty-based (or deontological) approaches avoid some of the problems with utilitarianism by establishing clear duties, often based upon some rational criteria or assumptions concerning the nature of humanity. Even so, in some situations, it may appear that no obvious duties can be invoked or that duties are in conflict. In other cases, the recognition of duties is dependent upon unknowable facts. In many business-related contexts, duty-based theories produce conflicting obligations without any clear-cut method for resolving the conflicts. Thus, a manager acting under a perceived ethical duty to give appropriate consideration to the legitimate claims and interests of stakeholders finds little guidance in resolving competing stakeholder claims. For example, animal rights advocates might demand that a cosmetics company cease all testing on animals while consumer activists demand that the firm use all known effective measures for guaranteeing the safety of its products.

These and similar problems have led Robin and Reidenbach (1993) to note that the “grand narratives” of moral philosophy seem inadequate for the rich, complex context of the marketing function. They despair of identifying any unifying general ethical theory and instead argue for the development of a workable, ethical approach specific to marketing.

Few of the frameworks reference social contract theory, despite its increasing prominence as a theory in business ethics (Dunfee and Donaldson 1995), and its use elsewhere in the marketing literature. We turn now to explore whether social contract theory might be a useful addition to the frameworks for decision-making in marketing ethics, either as one of the alternatives in a pluralistic approach or as a primary theory in certain contexts. As a first step, we provide a brief introduction to social contract theory and its use in business ethics.

Social Contract Theory

Social contract theory has its origins in the social upheavals of seventeenth and eighteenth century Europe. The decline of feudalism and the rejection of the divine right of kings as a basis for obedience to the state gave rise to a search for a political philosophy legitimizing state authority. Consent theories of political obligation developed, best articulated by the English philosopher John Locke (1632-1704). He argued that “a citizen's obligation to obey the law can be grounded only in that citizen's personal consent to the authority of the law” (Simmons 1992, p. 919). In *Two Treatises of Government* (1690), Locke sought to identify a basis for the legitimacy of state authority. His resulting social contract justified the existence of the state and identified the reciprocal obligations of citizen and state. Subsequently, Locke's ideas informed the American Revolution, the U.S. Declaration of Independence, and the U.S. Constitution.

Locke was influenced by Thomas Hobbes (1588-1679), one of the earliest proponents of the social contract. Hobbes' *Leviathan* (1651) argues for the institution of an absolute sovereign as a way to further the peace of the community and thereby promote the preservation and comforts of its citizens (Hampton 1992, p. 543). Hobbes identifies a “state of nature”, a world without a state, wherein people act to satisfy their desires, principally self-preservation. He suggests (Hampton 1992, p. 544) this state of nature would be a “war of every one against every one” and that life would be “solitary, poor, nasty, brutish, and short”. Under these conditions, Hobbes argues, people would accept the only logical solution and agree to recognize an absolute sovereign. Similarly, in *The Social Contract* (1762), Jean-Jacques Rousseau (1712-1778) suggests that pre-social discord may be solved by individuals placing themselves under the direction of a “general will” (Reath 1992, p. 1114). Accordingly, three elements are common to most social contract theories: 1) consent of the individual; 2) agreement among moral agents; and, 3) a device or method whereby an agreement (actual or hypothetical) is obtained.

Social Contract Theory and Business Ethics

Questions about the legitimacy of business decisions are more common today than questions about the legitimacy of the state (Freeman and Gilbert 1988). Business ethicists are interested in justifications for the exercise of corporate power and the appropriate forms and effects of business decision making. Accordingly, the search for a basis for establishing that the pricing of a life-saving drug is “fair”, or that an advertising campaign using fear appeals is “right”, has much in common with Locke's search for a basis for obedience to the state.

Donaldson (1982, 1989) has constructed a social contract for business that provides for corporate legitimacy on the basis of the consent of those affected by business; i.e., corporations exist only through the cooperation and commitment of society. This suggests an implied agreement between the corporation and society: “If General Motors holds society responsible for providing the condition of its existence, then for what does society hold General Motors responsible? What are the terms of the social contract?” (Donaldson 1982, p. 42). Donaldson's (1982, p. 44) device for agreement (akin to Hobbes' “state of nature”) is to imagine a society without the productive organizations being analyzed—a “state of individual production”—and to recognize the problems solved by the introduction of productive organizations. As an alternative to a state of individual production, ordinary people, economically interested and rational, would consent to have productive organizations.

In this way, Donaldson uses social contract theory to establish the moral foundation of the corporation. He argues (1982, p. 54) that “corporations considered as productive organizations exist to enhance the welfare of society through the satisfaction of consumer and worker interests, in a way which relies on exploiting corporations' special advantages and minimizing disadvantages.” However, Donaldson does add a caveat. The inevitable tradeoffs that must be made, especially between the interests of consumers and workers (lower prices or higher

wages?), require that the contract must not violate certain minimum standards of justice; while welfare tradeoffs are permissible, organizational acts of injustice are not. Hence, at the minimum, productive organizations must “avoid deception or fraud...show respect for their workers as human beings, and... avoid any practice that systematically worsens the situation of a given group in society” (Donaldson 1982, p. 53).

Some moral philosophers are critical of social contract theory, denying the existence of actual contracts while arguing that hypothetical contracts cannot provide for meaningful consent and agreement. Hume (1711-76), for example, used the analogy of the press-ganged seaman, asked when at sea to “consent” to service. Anticipating this criticism, Donaldson (1982, p. 40) writes: “There may never have been a pen and ink contract, but remarkably enough, thousands of people have acted *as if* there were” (his emphasis). However, Kultgen's (1986, p. 30) critique of Donaldson's social contract for business argued that either it must be claimed that the contract is “a mere heuristic device” or that it exists or that it could be made to exist. Donaldson (1989, pp. 56-61) disputes this assertion; although, in his later work (with Dunfee), he has proposed Integrative Social Contracts Theory as a framework that incorporates actual (micro)social contracts. In sum, Donaldson (1982, 1989) has established the role of a social contract for business and the likelihood that it would be consented to by individuals.

Social contract theory is attracting considerable attention within the business ethics field. A special issue of *Business Ethics Quarterly* has been devoted to the topic (April 1995) and recent major books on business ethics have featured this approach (e.g., Donaldson 1982, 1989; Keeley 1988). Frederick (1995, p. 270), for example, refers to its “compelling theoretical significance” (also see Binmore 1994; Blau 1993; Hartman 1996; Macneil 1980; Medina 1993).

Social Contract Theory and Marketing

The particular relevance of social contract theory for marketing ethics lies in part in its shared focus with marketing on exchange. Essentially, under Donaldson's (1982, 1989) hypothetical social contract, the firm offers advantages to society—its customers and its employees—in exchange for the right to exist and even prosper. While at the same time, the exchange relationship between the firm and its customers is considered to be fundamental to marketing by many theorists (e.g., Hunt 1983, Kotler 1972). Clearly, the two are conceptually similar. Thus, there is an attractive conceptual congruity to using an exchange-based model of ethics to understand the ethical issues associated with and to provide ethical guidance for a domain based on economic exchange. As important, the shared focus on exchange grants social contract theory a unique advantage in offering prescriptive advice to marketers.

The concept of social contracts has been used both explicitly and implicitly within the general marketing literature. For example, Goolsby and Hunt (1992, p. 58) define social responsibility as relating “to the social contract between businesses and the society in which they operate.” Reidenbach and Robin (1990) include social contract items within their multidimensional ethics scale (MES). Moreover, various researchers have referred to “norms”, an implicit reference to generally understood standards or obligations derived from social contracts. Heide and John (1992, p. 34) define norms as “expectations about behavior that are at least partially shared by a group of decision makers,” and note that “specialized normative structures have been shown to govern individual exchange relationships between firms.” However, while the marketing literature makes use of social contracts or norms within exchange relationships, little attention has been given to their potential use in a normative evaluation of marketing practice.

Social contract theory has been used in marketing ethics-related empirical studies. In the context of direct marketing, Culnan (1995) used social contract theory to analyze privacy issues

associated with consumer awareness of name removal procedures. Robertson and Anderson (1993) implicitly used social contract theory when they found that sales managers and salespeople respond differently to the same ethical dilemmas and attribute this to differences in roles, responsibilities, and cultures among the two groups. We would suggest that the two groups may operate under different social contracts. Robertson and Ross (1995) make explicit reference to social contracts when hypothesizing about differences between students and salespeople in responses to ethically related scenarios. They found that salespeople, who better understand the norms operating in a selling situation, are less influenced by situational pressures than are students. Thus, there is some tentative empirical validation of the importance of social contract concepts in the thinking of salespeople.

Given the connections to marketing theory, it remains surprising that the normative marketing ethics frameworks have not made greater use of the concept of social contracts. In considering how social contract based approaches may be more directly relevant to marketing we now describe a specific social contract based approach to business ethics, Integrative Social Contracts Theory.

Integrative Social Contracts Theory

Donaldson and Dunfee's (1994, 1995) Integrative Social Contracts Theory relies upon real, contextual microsocial contract norms within an overall framework based upon a classical, hypothetical macrosocial contract similar to those envisioned by Rawls, Hobbes and Locke. The term "integrative" captures the fact that ISCT encompasses two very different types of social contracts: a hypothetical macrosocial contract used as a heuristic device, and actual microsocial contracts based within living communities. The use of the plural term, "contracts", refers not only to the two types of contracts, but also to the millions of community-based microsocial contracts whose norms are important in rendering normative judgments in business ethics.

Hence, ISCT is grounded in the familiar idea of social norms that serve as the foundation for rules of behavior within communities.

Following the classic contractarians, Donaldson and Dunfee envision rational humans seeking to design a binding, though unwritten, agreement establishing the parameters for ethics in economic relationships. In order to justify consent on the part of the contractors, they limit themselves to parsimonious assumptions and a minimalist global social contract.

The terms of the contract are based upon the global contractors' rational response to two assumptions. First, the contractors are assumed to be aware of, and concerned about, bounded moral rationality. Bounded moral rationality represents an extension of the well-grounded idea of bounded economic rationality to the moral sphere. It is assumed that individual moral agents lack the information, time and emotional strength to make perfect judgments consistent with their moral preferences. Thus, a breast implant salesperson who knows she is a committed utilitarian may not be able to apply her preferred theory because she lacks the time and information to determine whether the risks associated with the product may exceed its positive cosmetic and psychological value.

The bounded moral rationality assumption also acknowledges that global contractors may not be able to identify and agree to an omnipotent comprehensive moral theory. ISCT assumes (Donaldson and Dunfee 1995, p. 93) that the individual contractors would wish to retain the right to select their own values to the maximum extent possible and that they would "desire to participate in economic communities that reflect their personal and cultural values." In so doing, the contractors would be recognizing bounded moral rationality insofar as it limits the ability of moral theorists to design a moral calculus applicable to all decision contexts for all of diverse humanity.

The second parsimonious assumption is that the global contractors would, in response to bounded moral rationality, recognize the need for a community-based moral fabric as a necessary condition for both the generation of wealth and for the maintenance of an environment conducive to a good and productive life. Without this moral fabric, which is the purpose of the global convention, there is the threat of social denigration into Hobbes' "war of every one against every one".

In response to these core assumptions, Donaldson and Dunfee hypothesize that the global contractors would agree to the creation of a binding macrosocial contract. Donaldson and Dunfee argue that this global macrosocial contract is the only rational solution to the need for a moral fabric in the face of bounded moral rationality. Because it is assumed to be logically compelling, all rational humans are assumed to consent to its terms, which are spelled out below.

Moral Free Space and Protected Informed Consent

The first two terms of the macrosocial contract are:

1. Local economic communities may specify ethical norms for their members through microsocial contracts (i.e., the "moral free space" term).
2. Norm-generating microsocial contracts must be grounded in informed consent buttressed by rights of exit and voice (i.e., the "protected informed consent" term).¹

Communities are the core focus of the macrosocial contract. A community is defined in ISCT (Donaldson and Dunfee 1994, p. 262) as "a self-defined, self-circumscribed group of people who interact in the context of shared tasks, values, or goals and who are capable of establishing norms of ethical behavior for themselves." Corporations, subsidiaries, even departments or informal

units within an organization, along with partnerships, professional groups, trade associations, and nation states may all be ISCT communities in the context of a given ethical decision. In focusing on communities, ISCT recognizes that norm-governed group activity is a critical component of economic life.

The idea of moral free space is consistent with the contractors' desire to keep their options open. It also recognizes that communities are entitled to have differing norms. The parameters of ethical behavior in advertising may vary between Japan, France and the United States; for example, comparison advertising is not considered acceptable in Japan while it is in the United States. Acting within their own moral free space, each of these communities may generate indigenous "authentic" ethical norms. A norm is defined as authentic when it is supported by the attitudes and behavior of a substantial majority of the members of a community.

Proxies such as professional codes and standards may be used to point toward potential authentic norms under ISCT. But whenever there is evidence that most members of the community hold a different view, then the proxy does not represent an authentic norm. For example, the ethics code of the Professional Marketing Research Society of Canada (1984) specifies that "good practice" requires that interviewers indicate to the respondent "a reasonably accurate estimate of the duration of the interview." Yet, a survey of Canadian marketing researchers including PMRS members, by Laroche, McGown and Rainville (1986), suggests that providing respondents with accurate estimates of the length of research interviews may not be an authentic norm. Seventy-two per cent of their sample agreed that misleading respondents about the duration of an interview was a common industry practice, 76% had confronted the practice and 86% of these respondents had done it themselves. The ultimate, definitive source of norms lies in the attitudes and behaviors of the members of the relevant communities. Thus, the authentic norm of this

sample of the Canadian marketing research community appears to be that misleading respondents as to interview duration is acceptable.

A major impact of ISCT is to establish that authentic norms (that also satisfy the other requirements of ISCT given below) are obligatory for dissenting members of communities. The obligation stems from the consent given when one acts as a member of a community, perhaps by accepting the benefits of the community environment. However, ISCT imposes some additional requirements on the operation of the community. The community must respect the right of members to exit from group membership. Thus, a dissenting member of a community who is quite distressed about a particular authentic norm may elect to leave the community. An employee may, and generally should, leave a corporation whose values are significantly at odds with the employee's important personal values.

Similarly, we emphasize that an individual should have the opportunity to exercise voice within the community. This is consistent with much of the organizational justice literature emphasizing procedural justice. Often, some form of voice (e.g., the right to a “hearing” to present one’s side of the case) is critical in perceptions that a firm has acted justly (Lind and Tyler 1988). Individuals desire the right to influence the development and evolution of norms, and, perhaps most importantly, to be able to influence changes in norms they find objectionable. In sum, so long as the requirements of community recognition of voice and exit are met, and the attitudes and behavior of a substantial majority of the members of a community support a given norm, it qualifies as an authentic norm.

Hypernorms and Legitimacy

Thus far, the only mechanism that would protect a dissenting individual from having an ethical obligation to comply with a distasteful norm is the right to leave the community or to try to

change the norm. Beyond that it appears as though the “is” has become the “ought”. To avoid excessive relativism, recognizing that communities do indeed develop authentic norms supporting racial and gender discrimination and other problematic practices, it is assumed in ISCT that the original contractors would wish to recognize a thin set of universal principles that would constrain the relativism of community moral free space. Accordingly, the third term of the macrosocial contract states:

3. In order to be obligatory, a microsocial contract norm must be compatible with hypernorms (i.e., the “hypernorms” term).

Under ISCT, a hypernorm is a norm by which authentic norms are tested. The term “legitimate” is used to describe an authentic norm that has passed the hypernorm test. Hypernorms are defined (Donaldson and Dunfee 1994, p. 265) as “principles so fundamental to human existence that ... we would expect them to be reflected in a convergence of religious, philosophical, and cultural beliefs”. As expressed by Walzer (1992, p. 9), they would be a “set of standards to which all societies can be held—negative injunctions, most likely, rules against murder, deceit, torture, oppression, and tyranny.” This is a high standard for a set of universal principles and presumably the number and scope of such standards would be, as Walzer suggests, rather thin. This is appropriate when one considers the dominant role of hypernorms and their effect of constraining choice within local communities by overriding any and all inconsistent norms or standards. An overly thick set of hypernorms could constrain diversity across cultures by imposing a straightjacket of suffocating morality. Advocates of diversity in morality are rightly concerned about the threat of a professional or educational elite defining and enforcing a thick set of moral preferences on individuals based upon some stylized conception of the good.

An obvious question is how does one ascertain the existence of particular hypernorms? Donaldson and Dunfee (1994) describe the efforts of anthropologists, political scientists, and

philosophers, among others, who are searching for a convergence of beliefs and values at the global level. Scholars from many cultures and academic disciplines are asking similar questions concerning what humans commonly believe. An appropriate starting point would be an attempt to identify the extent of convergence among the convergence scholars.²

In support of the claim for the existence of hypernorms, one can point to studies finding similar methods of moral reasoning across cultures (Kohlberg 1968), and agreement concerning certain core principles across large samples of managers (Kanter 1991). The evidence from the many studies which seek to compare the attitudes and behaviors of managers from two or three cultures is mixed, but may be interpreted in a manner consistent with the concept of hypernorms. Although these studies show divergence of views on certain issues, such as software copying, they tend to show agreement concerning more fundamental concepts such as the value of trust (Swinyard, Rinne and Kau 1990). Further, it is not critical to the existence of hypernorms to show substantial agreement on a single form of expression. Walzer (1994, p.18) argues that “minimalism” (his term for what Donaldson and Dunfee call hypernorms) “is not foundational: it is not the case that different groups of people discover that they are all committed to the same set of ultimate values.” Instead, minimalism “consists in principles and rules that are reiterated in different times and places, and that are seen to be similar even though they are expressed in different idioms and reflect different histories and different versions of the world” (1994, p. 17).

Can examples be provided? Frederick (1991) studied six intergovernmental compacts (including the OECD Guidelines for Multinational Enterprises, the Helsinki Final Act, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises) to identify principles common to the set. Similarly, one could look to the statements of global organizations as potential sources of hypernorms. The Principles for Business developed by the Caux Round Table (which meets annually in Caux, Switzerland), is a prime example; as is the document

“Towards a Global Ethic,” produced by the Council for a Parliament of the World’s Religions. From these we can pull some samples, that seem at least to the authors to be intuitively correct as examples of hypernorms. Here are three candidates:

- i) Firms should adopt adequate health and safety standards for employees and grant employees the right to know about job-related health hazards (Frederick 1991, p. 166);
- ii) You should not lie; speak and act truthfully (Parliament of the World’s Religions 1993, p.11);
- iii) Businesses (should be expected to) honor their obligations in a spirit of honesty and fairness (Caux Round Table Secretariat 1994, Section 2, Principle 1).

Hypernorms thus bound the moral free space of communities. If, for example, a hypernorm prohibiting bribery can be sustained, then any authentic norm recognizing bribery among, say, a community of corrupt government officials in Russia, is not legitimate ipso facto. However, hypernorms do not provide a complete bounding of the moral free space of communities. The issue may still arise of conflict between two or more norms that are legitimate.

Priority Rules for Conflicting Norms

The final term of the macrosocial contract is:

- 4. In the case of conflicts among norms satisfying terms 1-3, priority must be established through the application of rules consistent with the spirit of the overall macrosocial contract (i.e., the “priority rules” term).

Multiple legitimate norms applicable to the same ethical judgment may conflict. This may happen when a transaction crosses two distinctly different communities, often the case in marketing and global business. For example, a European firm doing business in Beijing must decide whether it will follow the local practice of “Guanxi”. A Chinese official wants his son hired for a job at a U.S. plant. The action, acceptable in China, violates norms of fairness in the

U.S. Here, both norms are recognized as authentic, and both may be considered legitimate, because neither violates a hypernorm. To resolve such problems, ISCT specifies (Donaldson and Dunfee 1995, pp.105-6) a loose set of six priority rules derived from the basic assumptions and terms of the macrosocial contract and influenced by concepts underlying principles of international conflicts of law and dispute resolution. They are as follows:

- i) Transactions solely within a single community, which do not have significant adverse effects on other humans or communities, should be governed by the host community's norms;
- ii) Community norms for resolving priority should be applied, so long as they do not have significant adverse effects on other humans or communities;
- iii) The more extensive the community that is the source of the norm, the greater the priority which should be given to the norm;
- iv) Norms essential to the maintenance of the economic environment in which the transaction occurs should have priority over norms potentially damaging to that environment;
- v) Where multiple conflicting norms are involved, patterns of consistency among the alternative norms provide a basis for prioritization;
- vi) Well-defined norms should ordinarily have priority over more general, less precise norms.

Some of the more challenging issues of marketing ethics involve conflicting legitimate norms. The marketing research community, for example, may believe that some “soft” deception of respondents is acceptable to obtain results which further the goals of marketing research and contribute to the general economic welfare. The broader social community may have an opposite norm, thinking that full disclosure of who is behind research or its purposes is necessary to justify the respondent's participation. Thus, the research community is accepting of a utilitarian justification while the broader social community is concerned about dignity and a right to

consent. Both norms may pass the hypernorm and exit/voice tests so that both are legitimate. Under ISCT, the priority rules are to be applied as a set, not in isolation. For a given dilemma, several might be involved. The rules aren't given priority themselves in the writings about ISCT to date; they are presumably to be loosely weighed and applied without a strict calculus of relative value. In this case, the fourth rule, norms essential to the transaction environment, would support the soft deception. But the third, fifth, and (possibly) the second rule, may appear to support the norms of the broader social community, requiring disclosure to the participant.

The process by which ISCT may be applied ex ante by marketing practitioners to ethical dilemmas produced by conflicting norms is demonstrated in Figure 1.

(Figure 1 about here)

The Figure shows how the priority rules would operate in the case of a transaction crossing two (or more) communities, or in the case of a marketer facing a decision relevant to two (or more) communities having mutually exclusive norms in which he or she is simultaneously a member.

In the next section, we examine the issue of commercial bribery using ISCT. We summarize conventional arguments regarding its moral status and show how ISCT often provides important insights in judging marketing decisions that could involve bribery.

ISCT And Commercial Bribery

Marketing Ethics and the Issue of Bribery

Noonan's (1984) chronological account of bribery as a moral concept traces its origins back to 3,000 B.C. Despite its condemnation, bribery has persisted as a corrupt practice in human affairs. Nonetheless, Noonan foresees a time when bribery, like slavery, will become obsolete, at least in its central form of the exchange of payment for official action. This would be good news for business and, especially, for marketers. Bribery typically tops the list of practices that U.S. business executives would most like to see eliminated in their industry (Baumhart 1961; Brenner and Molander 1977); accordingly, it is prominently featured in most corporate codes of conduct. Chonko and Hunt's (1985) survey of AMA members found that marketing managers identified bribery as the most difficult ethical issue they faced. Trevino and Nelson (1995, p. 273) observe that it is the "most frequent source of anxiety for American business persons operating abroad." With the increasing importance of global marketing, the U.S. government, lobbied by business, has stepped up efforts to secure the prohibition of transnational bribery (Nichols 1997). The prototypical problem areas with global bribery involve the marketing function: promotional expenses such as travel and entertainment for purchasing agents, hiring of self-described marketing agents, customs payments in a channel of distribution, exchanges of gifts and entertainment during the negotiation process, and so on. Clearly, commercial bribery is one of the most important ethical issues in marketing.

Bribery has been studied empirically in marketing, but little attention has been given to a normative evaluation (notable exceptions are Fritzsche 1985; Laczniak and Murphy 1993). On the other hand, the ethics of bribery has been thoroughly examined in the broader fields of business and applied ethics. We rely on these analyses to define the concept of bribery and to provide the conventional moral arguments against bribery as well as justifications advanced in its favor. We then show how ISCT can be applied to bribery. Bribery is a particularly appropriate

issue for exploring the implications of social contract based analysis, especially bribery in a global context. Our discussion of bribery will involve the following two cases:

Honda (Jenkins 1996, Miller 1994, Robinson 1997, *Wall Street Journal* 1998)

During the 1980s and early 1990s, Honda dealers paid over \$15 million directly to Honda executives in order to get extra allotments of popular Honda and Acura models that typically sold at a premium to the manufacturer's sticker price. Gifts included shopping sprees in Hong Kong, cash and checks for children's college tuition. Two dozen Honda dealers and executives were indicted, including senior vice-presidents and regional managers. Two were convicted in court trials and 20 pled guilty. At the trial of the two convicted officials, the defense claimed that the bribery was an accepted practice at American Honda and that it was a way to keep salaries below the industry norm. Stanley Cardiges, the senior vice-president in charge of sales, was the main benefactor of the bribery, receiving over \$5 million during a ten-year period when his salary was \$125,000. Prosecutors called the case the largest commercial bribery case in U.S. history. Subsequently, 1,800 dealers sued in a class action alleging that they were punished if they failed to pay exorbitant bribes. Honda ultimately settled the case for \$330 million.

Young and Rubicam (Lipman 1990; Hall 1989)

In 1990, Young & Rubicam (Y&R) pled guilty to conspiring to violate the Foreign Corrupt Practices Act (FCPA) and paid a fine of \$500,000. The charges resulted from claims that Y&R had made payments to Arnold Foote, a Jamaican business executive, who used the money to bribe the Jamaican Minister of Tourism, Eric Abrahams, in order to win an advertising account for Jamaican tourism. The resulting contract produced the award-winning advertising campaign "Make it Jamaica, Again" featuring the song "Come Back to Jamaica." In bringing the indictment the U.S. attorney stated: "I'm not sitting here damning Young & Rubicam as a horrible, corrupt organization. Throughout, there were a lot of very honest people connected with this."

Bribery Defined

Bribery must be defined carefully to avoid ambiguity, both in determining its moral status and in identifying whether a given action constitutes a bribe. Bribery occurs where one person (the briber) provides an inducement to another person (the bribee) that is intended to be in exchange for the bribee doing, or not doing, something that would favor the briber and be contrary to the bribee's positional duty. One indication that bribery is a moral concept is evident from its definition as a violation of duty. Bribery has been defined more rigorously as follows (Philips 1984, p. 625-26):

P is bribed by R if and only if (1) P accepts payment from R to act on R's behalf, (2) P's act on R's behalf consists in violating some rule or understanding constitutive of a practice in which P is engaged, and (3) either P's violation is a violation of some official duty P has by virtue of his participation in that practice or P's violation significantly affects the interests of persons or organizations whose interests are typically connected to that practice.

Much analysis of bribery focuses on violations of duty by public officials, including activities outside the commercial sphere, such as payments to sway judges in criminal cases. Yet, it is apparent from the above definitions that bribery may occur within private-sector commercial transactions, as in the Honda example. Private-sector commercial bribery, as generally defined in U.S. legal statutes, consists of "conferring a benefit on an employee, agent, or fiduciary with intent to influence the recipient's conduct in his principal's affairs" (Noonan 1984, p. 578). In a principal-agent analysis, the bribee violates the trust of his or her principal and becomes the agent of another in exchange for payment. Accordingly, D'Andrade (1985, p. 239) has referred to bribery as the "alienation of agency".

The Moral Status of Bribery: Deontological and Consequentialist Approaches

Normative evaluation of bribery could draw on multiple theories of moral philosophy. Fritzsche (1985) and Shaw (1988) use theories of justice. However, the major works on bribery in applied ethics are largely deontological or consequentialist. This is not surprising; indeed, because of their importance, extant frameworks in marketing ethics also rely heavily on these theories (Hunt and Vitell 1993).

A Deontological Approach From a deontological perspective, bribery is wrong when it involves an intentional violation of a binding moral duty. In such a case, both the briber and the bribee may have engaged in an unethical act. The action of offering a bribe may be immoral because one should not entice others to do what is morally wrong (Carson 1985), among other reasons. The bribee's moral duty stems from a special obligation that comes with the position

that he or she holds: acceptance of a bribe conflicts with the bribee's binding obligations to a principal and thus would be a violation of a contract or a breach of promise (Carson 1985, Philips 1984). Where the agent is a public official, a broader obligation to the public may be involved. Abrahams' actions in the Y&R case violated his duties as a government minister, as well as broader obligations of public trust to the citizens of Jamaica.

In private-sector bribery, such as the Honda case, while bribees typically are in violation of duties to their employers, it is less clear that any broader duty exists. The Honda executives had obligations that derived from their employment contracts and their basic job requirements to allocate new cars in a certain manner. They accepted personal inducements to act inconsistently with that duty. D'Andrade (1985) extends this analysis to suggest that many employees of private businesses have a quasi-official status, similar to that of public officials.

A Consequentialist Approach. Bribery may be judged unethical from a consequentialist perspective when it produces overall bad consequences. Direct or micro-environmental effects may include the following. Bribery may lead to a suboptimal purchase decision by the organization on whose behalf the bribee ostensibly acts. The bribing organization may need to falsify its accounts to hide the payment, thereby defrauding stockholders. In its purpose of obtaining an unfair advantage for one supplier, bribery harms that supplier's competitors. In the Y&R case, it may be presumed that competing agencies were unfairly disadvantaged if they did not engage in bribery. Bribery may contribute to the corruption of the moral character of the bribee, which may lead to future harmful actions. In contrast, direct good consequences of bribery may also be identified—particularly by marketing decision-makers—including saving jobs, enhancing shareholder wealth, and maintaining an ability to pay creditors.

Indirect or macro-environmental effects of bribery can include economic inefficiencies. Public sector bribery is a form of rent-seeking by business that can lead to inefficient allocations of resources, including the diversion of time and resources away from the production of useful goods and services or the implementation of monopolistic pricing practices (Becker 1994; Nichols 1997). One effect of corrupt senior government officials is their tendency to favor public-sector spending that provides more opportunity for bribery, such as infrastructure and defense projects, rather than education or healthcare. Both public- and private-sector bribery distorts the market mechanism; the secrecy of bribery means that price information is less meaningful, again leading to allocation inefficiencies. More broadly, there may be diminished trust in the economic system. Other indirect consequences include the wider social harm of corruption. Nichols (1997) refers to its corrosive effect on the social structure, including the diminished happiness of the citizenry, reduced credibility and viability of the government, increased lawlessness, and even the potential for public disgust supportive of revolution.

Problems With These Approaches. In the abstract, at least, bribery appears to be generally unethical when analyzed from deontological and consequentialist perspectives. However, the application of these approaches to specific cases of bribery often requires complex judgments and extensive fact-finding. We must also consider the possibility that some justifications for bribery may carry moral weight.

From the deontological perspective, bribery is only *prima facie* wrong. This means that there may be considerations that override the duties violated under bribery; it is not a categorical rule (Pastin and Hooker 1988). Consider the manager who, in violation of company policy, made a payment years ago to a South African official *not* to enforce the rules of apartheid. Moreover, a briber may have overriding duties—such as to protect the welfare of other employees—when deciding whether to pay a bribe. Or one may have duties to oneself or one's family when

coerced, physically or economically, into making a payment. In addition, there may be problems associated with how duty-based approaches are applied. For instance, it may be difficult to identify the duties that an agent owes to his or her principal. It is often suggested that customs agents do not violate a duty when they take small payments to perform their duties because these payments are seen as an expected part of their compensation (though the right to accept payments is generally not expressly specified and there are often questions as to whether the right indeed exists and the scope of permissible payments). A similar argument was advanced to justify bribery in the Honda case, with low executives' salaries offered in justification. The payments were claimed to be part of the intended compensation scheme. Moreover, there may be conflicting duties. While some argue there is a duty not to bribe a public official, others argue for a counter-duty to shareholders requiring bribery of public officials when that appears to be the most profitable long-run business decision (Pastin & Hooker 1980).

Applying consequentialist theories to specific instances of bribery also can be difficult. The forecasting required to assess probable consequences may be beyond the capacity of both marketing managers and business ethicists. How, for example, should Y&R executives have weighed the negative effects of their bribery on competitors as compared to its positive effects on their own firm and even, perhaps, on the nation of Jamaica, if one assumes that they believed they could develop the best advertising campaign? Business ethicists have suggested similar arguments. Green (1991) has developed an explicitly consequentialist framework which would allow payments of bribes by smaller firms who otherwise might incur large harms if the inducement were not provided. Pastin and Hooker (1988) employed a consequentialist analysis as part of their attack on the FCPA (but also see reply by Alpern 1988).

Perceived positive effects of bribery, at least from the vantagepoint of the briber, may lead to its attempted justification. For instance, it may be argued that payment of a bribe may retain jobs,

save a substantial capital investment, or open up an important market. Thus it could be claimed that paying the bribe would generate significant positive returns to shareholders. Moreover, consider the direct negative effects of bribery listed earlier and how a potential briber might discount them. The bribee may have long ago passed the point where the briber is causing him or her any further moral harm. Falsifying accounts may be fraud against shareholders, but, if offset by a significant increase in shareholder wealth, this could be seen as no more than a minor reporting peccadillo. The bribe may serve to guarantee that the bribee chooses the “best” supplier for the organization for which he or she acts. Finally, doing harm to competitors may be seen as business as usual or, at most, one negative consequence in an otherwise entirely positive set of consequences. Although we are unlikely to ever know, Y&R executives may well have engaged in some of this reasoning in deciding to allow Foote to bribe Abrahams. In sum, under a consequentialist analysis, the ethical evaluation amounts to balancing numerous potential costs and benefits from the perspective of their impact on those affected by the payment. Such judgements are plagued by seemingly intractable problems of forecasting and incommensurability.

We examine the role of ISCT in responding to these and other concerns below. First, however, we provide a social contract based analysis of bribery.

The Moral Status of Bribery under Social Contract Approaches

As our earlier review of social contract theory would indicate, an evaluation of bribery from a basic social contract perspective would judge it unethical when it is shown to constitute a fundamental violation of the social contract between business and society. Philips (1984, p. 627) lends support to this analysis, suggesting that the moral obligations of the bribee stem from a social contract model of organizations: “By accepting a position in an organization... one tacitly

agrees to abide by the rules of that organization. To be bribed is to violate that agreement... and is, therefore, *prima facie* wrong.” Hence a basic social contract analysis suggests that bribery is often unethical, at least in the abstract. ISCT, as a particular formulation of social contract theory, allows that claim to be made much more strongly in relation to specific instances of bribery.

Consider how consequentialist and deontological theories might be applied to the Honda example. Some Honda dealers might well have concluded that bribery was a competitive necessity and that, if practiced by all dealers, would not result in bad (direct) consequences; conceivably, they might argue that there would only be good consequences. Further, they might well have had difficulty identifying a violation of duty by the bribees, if the practice were widespread and seemingly condoned by Honda. ISCT suggests a different and potentially more compelling analysis.

Bribery would be morally permissible under ISCT if all of the following conditions hold. First, the acceptability of bribery is an authentic norm of the communities involved; that is, a norm held by a majority of community members. Second, the norms of all relevant communities have been considered. Third, the acceptability of bribery is a legitimate norm; that is, it does not violate a hypernorm. Fourth, and finally, any conflict among communities’ norms is resolved by the priority rules in favor of the communities sustaining the acceptability of bribery. Below, we analyze the Honda and Y&R cases following this procedure.

In the Honda case, it is possible that the acceptability of bribery as a means of allocating new cars was an authentic norm of the Honda marketing managers and a subset of the dealers. The bribing dealers and the marketing managers accepting the bribes may have thought that the system was not adequately rewarding them, especially given Honda’s marketing success, and

that they were entitled to adopt a mutually beneficial system providing extra compensation. However, not all dealers shared this perspective. In a suit filed against Honda, a former Acura dealer in New Hampshire claimed that because he didn't cooperate, he couldn't obtain the cars he needed and was forced to sell his dealership (Robinson 1997). In the class action, 1,800 dealers sued charging that the bribery racket was under the direction of top company executives. If these protesting dealers represent a majority of dealers, the acceptability of bribery was not an authentic norm among the entire community of Honda dealers. Hence, bribery in the Honda case is not morally permissible under the first condition. If they are not a majority, or if the dealers are treated as multiple communities, then non-bribing dealers must at least be treated as a relevant community in the analysis.

In seeking to identify authentic ethical norms, it is essential to consider all potentially relevant communities. Hence, when communities having pro-bribery authentic norms are identified, it is important to take into account other relevant communities that might have anti-bribery norms. In the Y&R case, there is solid evidence that the broader political community in Jamaica condemned the practice of bribery. The fact that the payment was kept secret would appear to indicate that the participants were aware of a contrary norm in the broader community. The strong negative reactions in both the United States and Jamaica when the payments were disclosed constitute further support for the existence of an anti-bribery norm in those communities. Further, the broader communities are the ones that bear the negative costs of the practice and would rationally be expected to hold an anti-bribery norm.

Once all relevant communities and authentic norms have been identified, it becomes necessary to determine that the norms do not violate a hypernorm and are therefore legitimate. We believe that the practice in the Y&R case, which involved a coarse selling of public assets for private

gain, does violate a hypernorm. Bribery is condemned in some form throughout the world, as Nichols (1997, p. 324) makes clear:

Corruption and bribery cannot be claimed as accepted phenomena in any culture. These acts are condemned by each of the major moral and religious codes. They are criminalized by every country. And they are universally despised, particularly by those who endure corrupt governments.

This claim supports the idea of a convergence of opinion and wisdom to the effect that coarse public sector bribery is condemned by a hypernorm. The concept of a hypernorm is central to the application of ISCT. It serves as a constraint on the moral free space of communities while at the same time providing a source of guidance for ethicists and business decision-makers. The small set of hypernorms believed to exist as part of the assumptions of the macrosocial contract is universally applicable to all cultures and business functions. In that sense, there are not marketing hypernorms or U.S. hypernorms, per se. But there may be hypernorms that are especially relevant to a particular business function, such as marketing.

Accordingly, one possible hypernorm is that the bribery of officials who exchange significant public sector assets for substantial personal gain is wrong. An anti-bribery hypernorm is supported by the condemnation of bribery in explicit terms by texts of Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, and Sikhism; Adam Smith and Mao Ts Tung have also condemned bribery (Nichols 1997). Coarse public-sector bribery is legally prohibited in every country, even those considered the most corrupt (Nichols 1997; Noonan 1984). Indeed, a multi-cultural team explicitly applying ISCT has identified such a hypernorm (Fritzsche et al. 1995). A case might also be made that the coarser forms of *private-sector* bribery violate a hypernorm, even though this does not involve the violation of public trust that occurs when the bribee is a public official. There is, after all, a growing consensus across many world communities that bribery is wrong and that significant efforts should be taken to limit its

practice, prompting new initiatives by multilateral organizations, such the Organization for Economic Co-operation and Development (Mason and Jonquieres 1997).

The implications for the two examples are as follows. The coarse public-sector bribery found in the Y&R case violates a hypernorm, and thus could be evaluated on this basis alone as unethical under ISCT. The application of an anti-bribery hypernorm is more problematic in the Honda case because public sector officials were not involved. However, putting aside the possibility of a private-sector anti-bribery hypernorm, this case may still be problematic because it is not necessary to rely solely on hypernorms to determine whether the payments were ethical. We turn to the priority rules to resolve the conflict between the possible authentic norms that supported the payments and other norms that opposed the practice.

The priority rules are used to resolve conflicts in norms between communities. The third and fourth priority rules might be used to show that bribery in Honda would not be permissible under ISCT. The third priority rule determines priority based on the relative size of the communities. It would favor the non-bribing dealers if they represent a larger group, because greater priority is given to the norms of more extensive communities. The fourth priority rule determines priority on the basis of whether a norm is indispensable to the transaction environment. It would also appear to favor the non-bribing dealers, because an anti-bribery norm is arguably essential to their economic environment and would thus have priority over a norm favoring bribery that if widely adopted, could harm that environment.

ISCT and Justifications Advanced for Bribery

In a survey of over 2,000 U.S. business executives, Longenecker, McKinney, and Moore (1988, p. 343) asked respondents whether they considered the following scenario “personally acceptable”:

A company paid a \$350,000 “consulting” fee to an official of a foreign country. In return, the official promised assistance in obtaining a contract, which should produce a \$10 million profit for the contracting company.

Assuming that the official would act in violation of a positional duty, we have a clear illustration of bribery and an illegal act under the FCPA. However, less than half of the survey respondents condemned the payment perhaps because they believed that the payment could be justified. We now examine some of the popular justifications for making payments.

It is often claimed that “certain payments should not be counted as bribes, or that, even though they are bribes, they are still acceptable, generally as the lesser of two evils” (D’Andrade 1997, p. 47). Some payoffs may be defended as coerced by physical or severe economic extortion. Payments also may be justified as mere “grease payments”, legitimate third party commissions, or gifts. Justifications for bribery may also be based on arguments about cultural differences in transnational bribery or on claims of greater harm resulting from failure to pay the bribe. ISCT helps clarify these justifications through an emphasis on understanding community norms.

Extortion as Justification. Extortion payments are made under duress. Payment is demanded by the bribee, with the threat of serious harm for nonpayment. Nichols (1997, p. 317) defines extortion as “using the power of an official’s office to extract payments.” Corporate agents as well as government officials may practice extortion. In the U.S., a buyer for the retailer, J. C. Penney Co., was prosecuted for taking up to \$1.5 million from vendors. One vendor claimed that the buyer was engaging in extortion and sued Penney, charging that payment was a matter of survival: “If I had not paid him and he pulled the line as he had threatened, I’d have gone out of business” (Gerlin 1995, p. A16). This vendor explained that he could not report the buyer to the company because he was the Buyer of the Year and highly-regarded by Penney.

Acting as an extortionist is always morally problematic. Giving in to genuine extortion may also be problematic. Philips (1984) observes that it is morally wrong to pay off extortionists in some cases. Under U.S. law, evidence of duress is admissible to establish the nature of the intent involved in the payment. D'Andrade (1985, p. 245) also suggests that extortion payments are excusable under some circumstances, noting that "we just do not expect moral heroism." Turow (1985, p. 251) concludes that "bribery can be justified only if the bribe-giver is truly without alternatives."

An ISCT-based analysis of bribery focuses on community norms to determine when extortion demands should be resisted or, contrariwise, when they may be given into. While we may not expect moral heroism of marketers, there may be a legitimate expectation on the part of society of a certain amount of "moral courage" (Mahoney 1998), a willingness to face down evil and accept some self-sacrifice. However, the extent to which we might expect moral heroism by marketers will vary across communities reflecting differing norms about how to face extortion. For example, in a situation where corruption is negligible, strongly prosecuted, and rarely associated with threats of physical harm, there may be an increased expectation that marketers will not bow to extortion. Accordingly, acceding to extortion in many markets in the U.S. may be less morally justifiable than under circumstances often found in, say, Nigeria or Russia.

Grease Payments and Legitimate Commissions. A firm may make small payments to induce public officials to carry out their official and nondiscretionary duties, often referred to as a "facilitating" or "grease" payment. Although the action may have been carried out more expeditiously, it does not confer a substantial advantage on the party making the payment. Similarly, a firm may provide bona fide compensation to a middleman to promote or demonstrate its products and services. Both types of payment may be legal under the FCPA. The Act expressly recognizes that there may be small payments made to obtain permits or licenses to

do business, to get mail or phone service, to process visas or to get cargo loaded (particularly for perishable products). But judgment is required. What types of payments can be justified as facilitating payments? Or what happens when the marketing intermediary (or joint venture partner) uses part of the “commission” to pay a large bribe to a public official as in the Y&R case? Sometimes, it is argued that it is difficult to know where the payment is actually going and thus whether it is legitimate (Kaikati and Label 1980). The law seeks to determine whether there is an awareness of a high probability of the existence of a prohibited circumstance. Principles such as “willful blindness” and “conscious disregard” are used to prohibit a firm from purposely establishing opaque information channels to be able to deny knowledge of wrongdoing. While in some circumstances it may be difficult to account for the size or recipients of such payments, purposeful ignorance is not a permissible justification for bribery.

The ethical issue of when a payment may be proper runs parallel to this legal approach. The critical distinction is the nature of the official function purchased and whether it involves a violation of duty by the official (Nichols 1997, Philips 1984). However, companies often overlook this rather fine distinction. For instance, when Gulf Oil Corporation was attempting to expand its distribution in Italy it made off-the-book payments to government officials to secure the permits it needed to open new service stations. Gulf officials characterized these payments as “tipping” (Noonan 1984, p. 639).

Thus, an ISCT-based analysis recognizes that the social contract in some communities defines these payments as acceptable bribery or perhaps not even as bribery at all. The firm is responsible for knowing the relevant norms in the specific community in question and, more importantly, in the broader communities influenced by the decision. Such knowledge would allow firms to respond appropriately and avoid mistakes such as Gulf’s.

Gift Giving and Entertainment

Relationships constitute an important foundation for business. This fundamental fact is recognized explicitly in the marketing function through relationship marketing and selling. In many cultures, norms pertaining to proper behavior among individuals in all walks of life often specify the giving of gifts and the providing of entertainment in appropriate circumstances. However, bribes can also take the form of gifts and entertainment.

The U.S. has a long tradition of gifts and entertainment in business relationships. A large industry exists encompassing well known practices such as parties in corporate boxes at sports stadiums, special golf outings, and meals at fancy restaurants. Yet, in spite of what appears to be a strongly entrenched practice, there is some evidence of a counter-trend. American businesses seem increasingly to be questioning the role of gifts and entertainment in conducting business (Priest 1998). From an ISCT perspective, the norms of gift-giving and entertainment in U.S. business are changing. General Motors, for example, recently introduced a policy that forbids its employees from accepting free meals, hockey tickets, golf outings or most other gifts from vendors (Sedgwick 1996). Vendors complained that the new policy restricted the scope for building the social relationships necessary for good business relationships. GM's concern, however, is that their gifts and entertainment were tantamount to bribery.

Those who provide such largess are on the horns of a dilemma. If they believe that hosting buyers to corporate boxes makes no difference in the buyer's behavior, as is sometimes claimed, then how can they justify the expenditures to their shareholders? If they are spending the money and getting nothing in return, the shareholders would appear to have a legitimate complaint that corporate assets are being squandered. If, on the other hand, gifts and entertainment are in exchange for preferential treatment, then providing them may be considered an act of bribery.

Priest's (1998, p. 6) advice is to "build strong business relationships but don't be corrupted by them."

If the practice is consistent with background norms that provide the ground-rules, as it were, for proper gift giving in business transactions, then the practice may well be acceptable under ISCT. The norms specify the boundaries for acceptable social lubrication while also providing markers concerning what is excessive and out of bounds. The norms vary in their details over time and among industries. Perhaps in recognition of this phenomenon, many companies have policies that appear vague on accepting gifts because they ask employees to simply "exercise good judgment." This may be interpreted as instructing employees to rely upon their knowledge of industry norms and practices. Other companies have strict, often monetary, limits on what may be received. While such policies may reduce the appearance of bribery, they may also be at odds with well-understood norms of acceptable behavior. When this occurs, the overly restrictive norms are not likely to be well received by either vendors or their own employees.

Gift giving and entertainment, particularly in the context of business-to-business exchanges, may be formally analyzed using ISCT. Consider the trend whereby companies increasingly are sending out "no presents" letters during the December holidays. Absent evidence of close personal friendship, gifts (and entertainment) in excess of industry norms are indicative of bribery. These letters specify company policy concerning what its employees may receive as gifts and ask that suppliers observe these rules. This can result in a classic conflicts-of-norms situation. One firm, an aggressive marketer, uses gifts and entertainment to build relationships. The firm sending the letter, on the other hand, seeks to limit the pernicious effect gifts may have on its purchasing agents. While duties might otherwise be unclear and consequences difficult to parse out, ISCT approaches the conflict by directing the corporate policymaker to identify organizational, industry and national norms pertaining to gift giving (these norms will often be

well known or easy to identify). Under ISCT, if the firm sending the “no presents” letters is acting in a manner consistent with industry and national norms (and thus the letter refers to a legitimate, authentic norm), it should dominate the norms of the selling firm. Under the priority rules the “no presents” norm is essential to the transaction environment, is consistent with other community norms, and represents that organization’s preference concerning conflicts of norms.

Acceptability of Bribery in Some Cultures

Many cultures accept and encourage the presence of certain forms of gift giving in business and personal relationships. On the other hand, societies always face a concern that their economic systems be able to generate wealth and allocate resources efficiently, a goal that may be compromised by corrupt behavior. A plausible community response is to develop norms that specify the boundaries of acceptable behavior. This may help account for highly ritual gift-giving practices in many cultures. Background norms provide guidance as to the timing and amount of gifts and the context in which they may be given and accepted. Those who act outside of these norms do so at their peril.

Fadiman (1986) offers a rich description of how tradition plays an important role in business in non-Western cultures. He describes how he misunderstood requests for *Chai and Zawadi*—which can be Swahili terms for “bribe”—when conducting business in East Africa. He turned down his prospective business partner’s request for cash and a radio, only later to discover that they were intended for a feast in his honor that, in keeping with tradition, would have been an introduction to his partner’s social and business contacts. Building on this anecdote, Fadiman explains how in more communal societies there are often obligations of protection and assistance that extend beyond the nuclear family to an inner circle of “comrades and kin.” In these societies, there is a preference for business relationships with people in the inner circle who are known and trusted. Accordingly, there are various traditional ways by which such relationships are

developed, including the future favor and gift giving. Fadiman (1986, p. 126) explains, “any individual under obligation to another has entered a relationship in which the first favor must be repaid in the future.” This on-going process builds trust and is different from Western approaches: “Western interest lies in doing business; non-Western, in forming bonds so that business can begin. Westerners seek to discharge obligations; non-Westerners, to create them” (p. 126). Gift giving is one way of creating future obligation.

In some cultures, Fadiman (1986) suggests, gifts that would be viewed as unacceptable bribes in other cultures are still seen as merely gifts. Accordingly, he advises Western businesspeople to first understand the local context and then look for legal, ethical, and culturally appropriate ways to meet the local partner’s expectations. For instance, nonmonetary responses or public donations might be possible that meet the business partner’s desire for local recognition and to assist the community, as well as consolidating the relationship. As an example, Fadiman (1986, p. 136) refers to Coca-Cola in Egypt, noting that “to sell cola, Coke did not bribe ministers, it planted trees.”

But why not bribe if, apparently, it is culturally acceptable? Various writers agree that bribery is not unethical if it is an accepted practice in the culture where it takes place (Danley 1983 D’Andrade 1985; Philips 1984). Longenecker, McKinney, and Moore (1988, p. 341), after noting that for some people “the international setting modifies the ethical character of bribery,” reported that many of their respondents justified bribery with the adage, “When in Rome do as the Romans do.” At issue, then, is the acceptability of bribery within different cultures.

A justification often offered for bribery in foreign markets is that standards are different and, implicitly, lower. However, this claim is made notwithstanding the prevalence of bribery within the U.S. and other Western countries (in the 1997 rankings of the prevalence of corruption by

Transparency International, a highly regarded non-governmental organization, the U.S. ranked 16th, France 20th, and Italy 30th, where lower numbers mean less corruption). Moreover, while noting that in some societies there is not necessarily a violation of duties when an official shows favoritism to friends and kinsmen, Philips (1984, p. 636) warns of the risk of “bribery in ethnic dress.” It has also been suggested that Western businesspeople too readily presume a requirement for bribery, especially when frustrated by red tape and inefficient government practices (Pitman and Sanford 1994). Indeed, as noted in *The Economist* (1988), perhaps it’s LDCs that are brought down by MNCs, not the other way round.

ISCT provides a framework specifically set up to resolve the ethical issues arising between communities. According to our earlier analysis, bribery in a foreign country would be morally permissible under ISCT if its effects are limited largely to the community in which it is acceptable (assuming bribery does not violate a hypernorm). Thus, arguments in favor of bribery in certain culturally defined contexts may be interpreted in a manner consistent with ISCT. But it would be very rare that such a situation would hold. In practice, there would typically be some affected communities for which the acceptance of bribery is not an authentic norm. Of course, in any specific situation, this may be subject to empirical verification. What ISCT does in this instance is to prompt the marketer to identify all relevant communities. At least where managers have good knowledge of the countries and cultures where they operate, empirical research should not be necessary. If, as D’Andrade (1985) suggests, there is always a third party to bribery, we might argue that it is never sufficient to consider only the norms of the immediate participants in bribery. As in our analysis of the Y&R case, we must instead look to the broader communities within which bribery occurs. ISCT’s insistence on attention to the relevant communities and their norms, and its priority rules that favor larger or more extensive communities, can be generally expected to lead to the identification of overriding anti-bribery norms.

Competitive Disadvantage as a Justification for Bribery

Bribery has been justified as an unfortunate necessity, given that a likely outcome is the loss of business to a bribe-paying competitor. The justification often is tied to a consequentialist analysis with the briber arguing that payment preserves jobs, increases profits and produces future business opportunities. It may also be akin to the extortion argument, as the bribee's threat of lost business may be seen as a form of economic coercion. In that context, the justification offered under a deontological analysis would be that the briber lacked intent due to the overcoming of free will by the economic threat. The consequentialist argument has been implicitly recognized in the broad claim that U.S. companies are at a competitive disadvantage because of their inability to make payments due to the FCPA. However, evidence for this is mixed (*The Economist* 1988, Kaikati and Label 1980, Nichols 1997, Pastin and Hooker 1988).

The moral justification for a payment due to competitive disadvantage must depend in part upon the extent of the harm threatened. Competitive disadvantage is likely to be less significant when it pertains to a threat to future business prospects in contrast to a direct threat to existing and substantial capital investment. Whether competitors are likely to make payments to obtain the business should also be a factor. In the Penney case, discussed earlier, prosecutors discovered that other vendors had rejected requests for payment and not suffered, contrary to the extortion claim. In the Honda case, there is evidence of harm resulting to dealers who chose not to make payoffs.

Competitive disadvantage is less likely to justify bribery under ISCT. Only if authentic ethical norms support such payments, and even then, no hypernorms are violated, can ISCT be used to support such a payment. Further, there may be contrary norms in other communities, which would also not allow the briber to use competitive disadvantage as an argument in support of payments.

Implications Of ISCT For Marketing Ethics

A social contract perspective on marketing ethics, especially within the framework provided by ISCT, would appear to offer considerable insight on the issue of bribery, going beyond that provided by extant approaches. In this section, we illustrate ISCT's broader potential and consider its implications for managers and researchers by examining it in relation to other normative frameworks and noting its particular applicability to marketing. We then conclude this section by identifying opportunities that ISCT provides to researchers in marketing ethics and by showing how marketing research techniques may facilitate application of ISCT.

ISCT Compared to Extant Normative Frameworks

We first look at how ISCT supplements, complements or otherwise informs the existing models of marketing ethics. What are the general merits of an ISCT-based analysis, relative to extant approaches?

1. ISCT provides normative legitimization for the relevance of community and professional norms. Relativism is the bete noir of moral philosophy. Within the field of business ethics it is attacked as illogical and self defeating: relativism "represents an admission that our human reason can no longer be useful . . . that we must engage in . . . deception, physical coercion, even war, rather than try to do the admittedly difficult job of resolving conflicting moral viewpoints" (Freeman and Gilbert, 1988, p.39). In spite of this, some theorists of marketing ethics have explicitly (Robin and Reidenbach 1993) or implicitly (Thompson 1995) advocated a form of relativism as an effective approach to problems of marketing ethics. Fear of being branded a relativist may result in the downplaying of the role of community, organizational and professional norms. Yet, as recognized in most of the descriptive approaches to marketing ethics (e.g., Hunt and Vitell 1986, 1993), background norms are important in making normative

judgments about marketing practices. ISCT invokes the use of a traditional, accepted philosophical methodology (social contracts) to legitimate giving significant weight to authentic norms of marketing ethics. The ultimate impact of ISCT is to provide a middle ground in which marketing norms may be given weight, yet are checked by hypernorms and the occasional priority of other communities.

2. ISCT provides a formal definition for authentic norms and relevant communities that are often important components in marketing ethics frameworks. Many of the extant marketing ethics frameworks are designed to explain individual decision making (see Table 1). They are thus subject to the individuals' own preferences as to the choice of moral reasoning and the recognition of others' interests. This would seem to allow for an egoist to make successful use of the model. One response to a concern about potential egoism is to recognize a leavening role for social norms. Thompson (1995) recognizes them as a source of cultural meanings, Mascarenhas (1995) as the source of standards for fault or accountability, and Hunt & Vitell (1986) as a source of duties. Sparks and Hunt (1998) identify awareness of norms as an influence on ethical sensitivity. ISCT extends this recognition by specifying the sources of norms and the processes by which norms are to be identified for normative analysis.

3. ISCT encourages decision-makers to consider the norms of all relevant communities, and thus ensures a broad consideration of stakeholder interests. In addition to the eight tests in their framework for ethical reasoning, Laczniak and Murphy (1993, p. 51) add stakeholders, recognizing that "weighing the concerns of multiple stakeholder groups... becomes the essence of appropriate ethical decision-making... [and] the root of the complexity of such decision-making." ISCT, in its emphasis on the norms of relevant communities, provides a systematic method to encourage decision-makers to make sure that they have considered all possible communities that may have a significant interest in a decision. Sparks and Hunt (1998) found

that ethical sensitivity, which involves the ability to recognize and ascribe importance to an ethical issue, is learned. Their results indicate that ethical sensitivity of marketing researchers may be influenced more by organizational norms than by professional norms. They suggest that this may be due in part to the youth of the marketing research profession and its less systematic structures and activities compared to professions such as law, medicine and accounting. ISCT's emphasis on looking for relevant norms in broader communities may enhance ethical sensitivity on the part of marketing researchers.

4. ISCT acknowledges the role of a thin set of universal standards that can serve to limit the excessive relativism of some frameworks. The concept of a hypernorm is central to the application of ISCT. It serves as a constraint on the moral free space of communities while at the same time providing a source of guidance for ethicists and business decision-makers.

5. ISCT provides a means for dealing with cross-cultural issues. With the possible exception of Thompson (1995), the marketing ethics frameworks do not explicitly deal with the problem of cross-cultural application, including their use by someone more familiar with Eastern philosophies who may not be inclined to apply Western deontological or teleological thinking. The moral free space recognized in ISCT is open to cultural and philosophical diversity. Under many of the marketing ethics frameworks, divergent answers may be obtained when the framework is invoked by, on the one hand, a manager in the United States and, on the other, a manager in Japan. These frameworks and models are generally silent concerning how such divergence is to be handled.

ISCT's Particular Applicability to Marketing

The advantages of ISCT relative to extant approaches are applicable to its use throughout business ethics. However, we would suggest that ISCT is especially applicable when the

marketer's activity is spanning multiple communities with conflicting norms; particularly, for instance, in international marketing, relationship marketing, and personal selling and sales management. This leads to the first of our reasons why ISCT is particularly applicable to marketing.

1. The role of the marketing manager as a boundary spanner (Singh 1993); operating at the interface between the corporation and its customers, competitors, and channel members.

As a boundary spanner, the marketer is subject to the norms of numerous communities, including the marketer's firm, the marketer's department, the industry or marketplace, the individual customers, and the channel. Thus, ISCT's explicit recognition of numerous microsocial contracts and the communities that spawn them, provides a framework for understanding the ethical pressures on the marketer and for providing guidance to marketing managers.

2. The theoretical congruence of ISCT as a framework for examining exchange relationships.

We noted earlier that the exchange concept is fundamental to marketing and to social contract theory and thus that contractarian approaches appear particularly appropriate for ethical reasoning in marketing. ISCT sharpens these advantages by bringing clearer focus to the ethical ambiguities associated with exchange. Exchange occurs between parties who are each simultaneously members of multiple communities. Each party draws the norms that guide his or her beliefs, attitudes, and behaviors from a relevant set of communities. Moreover, the exchange transaction itself occurs in an environment which itself is often a community, each of which has developed norms that may significantly affect the exchange process (consider, for example, the global diamond business, sometimes nested within more general communities). Simply put, the exchange transaction cannot be fully understood without reference to the communities and norms in which it is embedded.

3. The potential for ISCT to integrate the normative and empirical streams of research in the marketing ethics literature. To date, in marketing as in many other domains, the two streams have followed separate courses with little or no overlap. In ISCT, the conflict between the “is” of empirical research and the “ought” of normative research may be bridged. Theoretically, ISCT requires both the normative and the descriptive to function adequately; thus, it defines a significant role for each. Practically, ISCT’s willingness to consider any authentic, legitimate norm as binding on the community and its insistence on the existence of numerous microsocial contracts that are community based offer considerable scope for the “is” of descriptive research. Yet its insistence on the existence of hypernorms and priority rules for dealing with conflicting authentic, legitimate norms offers a true normative foundation with considerable scope for continuing conceptual development. (We discuss the implications of ISCT for empirical research in more detail below.)

4. Social contract theory is all the more relevant given the development of relationship marketing (Dwyer, Schurr, and Oh 1987; Morgan and Hunt, 1994). This important concept, with its emphasis on fostering on-going, tightly linked relationships between buyers and sellers, implicitly acknowledges the role of shared values. Clear recognition of buyer and seller expectations concerning the other’s behavior will influence successful interactions and become reflected in norms that essentially frame their relationship. Perhaps more importantly, tightly linked marketing relationships may themselves become communities, with their own norms. A foundational principle of relational marketing is trust. Norms based in informal social contracts are critical to the development of trust in exchange relationships (Gundlach and Murphy 1993). Social norms provide a more flexible and enduring fabric for relationships than do other alternative fibers, such as litigation or government regulation. ISCT provides a framework for understanding and potentially resolving the ethical issues that arise in this context.

5. Managerial attractiveness – we believe that ISCT will be found to be intellectually comfortable for many educated, reflective marketing practitioners. The limitations of a strict use of utilitarianism or any one of the other basic models have probably led to the focus by marketing ethics researchers on composite models as they have sought realistic, pragmatic approaches. The basic notions of ISCT—community specific, authentic norms that are acceptable if they fit with a thin set of hypernorms and do not conflict with norms of other significant communities —would seem to provide a latitude for professionalism coupled with realistic checks and balances that should be appealing to marketing managers.

Implications for Researchers

Given the foregoing implications, we believe that ISCT provides marketing researchers with greater scope for making normative contributions to the marketing ethics literature by evaluating some of the more troubling ethical issues in marketing, such as: privacy obligations in the cross-marketing of financial services; conflicting goals in the marketing of for-profit health care; inter-segment differences in the acceptable level of product safety (especially across different country markets); conflicts of interest in personal selling; the acceptability of puffery in advertising; and fairness in pricing. Below, we show how empirical research may be critical to an ISCT-based analysis of some of these issues. We then conclude this section by identifying directions for further research that may advance ISCT.

Marketing Research Techniques May Facilitate the Application of ISCT. ISCT relies on actual community norms. This attribute imposes a prerequisite for the successful application of ISCT, accurate information as to community norms or adequate proxies from which to infer those norms. A number of marketing research techniques, particularly those associated with ascertaining an individual's brand or store loyalty, can be applied to this problem. Broadly, these divide into three classes of techniques: 1) direct inquiry, for example, techniques based on

Fishbein and Ajzen (1975); 2) indirect inquiry, for example, conjoint analysis-based techniques (Green and Wind 1975); or, 3) measurement of behavior. The first type is subject to self-presentation issues, making the latter two classes more attractive (though both are more complicated to administer). In particular, some conjoint analysis based techniques have the distinct advantage of being derived from preferences for complete scenarios rather than being directly elicited. As such, they are less susceptible to biases of both self-presentation and self-deception. And for deeper probing of community norms and the basis for those norms, other techniques, such as focus groups, might make a real contribution. Thus, well-established marketing research techniques are available to assist with the identification of authentic norms within defined communities.

This suggests a different approach to marketing ethics research, an approach that would be norm-focused rather than issue-focused. Studies could be conducted of the authenticity and legitimacy among norms espoused by marketing communities. For example, is there substantial agreement among salespeople in particular industries that denigration of a competitor's product is acceptable conduct?

Yet one of the challenging issues in applying ISCT is defining the boundaries of a community. Market segmentation techniques such as cluster or discriminant analysis and dimensional reduction techniques can be used to ascertain community membership and the parameters that actually define membership. More qualitative methodologies such as those associated with sub-cultural and reference group determination could also prove useful. Thus, in a sense, there is a symbiotic connection between ISCT and marketing. ISCT provides a useful ethical framework for marketing, but marketing provides the empirical techniques necessary to utilize ISCT at its best.

Research to Advance ISCT. Research on the more difficult ethical issues in marketing, possibly augmented by the application of marketing research techniques, represents one set of directions for future research. In addition, there is scope to further develop ISCT. First, in relation to hypernorms: Clearly, the application of ISCT would benefit from a more definitive set of hypernorms. This is no small task. A starting point might be to identify hypernorms that are especially relevant to particular business functions, such as marketing. Below, we suggest possible marketing-relevant hypernorms in the hopes that others will extend, and where necessary, modify our list. We base our suggestions on the assumption that they reflect a sufficient convergence of thought and opinion to satisfy the definition of hypernorm used in ISCT.

- Human beings should be treated with dignity and respect in all marketing transactions.
- Promises should be kept.
- Deception of any sort in marketing transactions or marketing research is wrong unless a substantial justification convincing to the membership of all relevant communities is possible.
- Property rights including intellectual property, consistent with widespread views of the nature of property, should be respected.
- Bribery of officials who exchange substantial public sector assets for personal gain is wrong.

Norms represent a second area of research that could advance ISCT. More specifically, what are the antecedents of authentic and legitimate norms in a community? How transferable are norms? How easy is it for firms or professional associations to impose norms on new members?

Conclusion

In this paper we have explored the very real potential that social contract theory in general and ISCT in particular has for the field of marketing ethics. We see them as complementing and strengthening the existing frameworks and constructs for marketing ethics. To recapitulate, ISCT has a number of significant theoretical advantages. First, it provides a core set of principles—hypernorms—which may be used to specify the line of the moral minimum that no marketing practitioner should ever pass over. Second, it explicitly recognizes differences across communities and the conflict that differing community-based norms engender and develops a process for resolving that conflict. Third, it offers a process for determining the appropriateness—that is the authenticity and the legitimacy—of a community-based norm. Finally, ISCT provides a legitimating theoretical foundation for much of the emphasis on norms, attitudes, beliefs and cultural meanings in the field of marketing ethics.

We have suggested a symbiotic relationship between ISCT and marketing. ISCT complements frameworks for ethical decision making in marketing and provides greater clarity concerning judgments about some of the difficult issues in marketing ethics, such as bribery. At the same time, marketing research, perhaps more than any other field, offers techniques that can allow ISCT to be effectively and efficiently applied.

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Endnotes

¹ Note that we have added voice to the macrosocial contract terms as initially envisioned by Donaldson and Dunfee (1994). Consistent with Hirschman (1970), we believe that voice is parallel to exit as a fundamental alternative for economic agents and, therefore, that the option to exercise voice must be present in order to justify the imposition of microsocial contract norms on economic agents. In addition, we have made a minor amendment to the fourth term of the macrosocial contract that establishes priority rules.

² For an elaboration of this and other issues about how decision-makers might apply ISCT, see Donaldson and Dunfee (1999), particularly chapter 7.