

Dunfee Re Frederick: Nature and Norms

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I wish to add some additional comments concerning Bill Frederick's thoughtful essay on "Pragmatism, Nature, and Norms." Frederick's essay provides an opportunity to comment on potential uses and interpretations of ISCT. More specifically, it provides an opportunity to explain the pragmatic elements of ISCT and to discuss how those might connect with a naturalist approach. In supplementing our joint response, I must emphasize that my friend, co-theorist and colleague, Tom Donaldson, may not agree with all, or even any portion of, my arguments here.

My arguments are as follows:

1. There is substantial compatibility between the approach of *Ties* and the approach taken by Frederick. This is particularly the case in reference to authentic norms developed within the moral free space of communities.
2. *Ties's* approach may avoid the issues of interpretation and concerns about Social Darwinism that are raised by "naturalist" approaches.
3. The use of social contract logic in *Ties* can be seen as "natural."
4. Whether Frederick's concerns about the use of hypernorms in *Ties* will come to be realized is highly dependent on the outcome of searches for substantive hypernorms. It is quite plausible that the processes set forth in *Ties* for the discovery

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of hypernorms will produce results compatible with much of Frederick's approach.

5. *Ties* is unabashedly pragmatic.
6. There is a great potential for synergy between ISCT and a naturalist approach. Each provides an important dimension for the other. The challenge is to find the right frame for the interaction between the two.

I. NATURALISM AND AUTHENTIC NORMS

The approach of *Ties* emphasizes two interrelated dimensions, moral free space and hypernorms, as a means of finding a middle ground between extreme relativism and extreme universalism. *Ties* emphasizes norms throughout: specifically the authentic norms of moral free space and manifest hypernorms. In reference to norms in general Frederick states that "(n)orms of all varieties can have no other origin than as manifestations of a natural evolutionary development in which humans, their groups, and their variegated ways of life are embedded." The meaning of this statement is dependent upon the definition of "a natural evolutionary development." Frederick spells out his views on natural forces in some detail in his influential book, *Values, Nature, and Culture in the American Corporation* (1995).¹ He emphasizes, correctly I believe, a combination of experience and human intelligence.

As far as microsocial norms are concerned there is nothing in the Frederick sentence quoted above inconsistent with the ideas set forth in *Ties*. Our approach to discovering authentic microsocial norms is empirical. Whatever norms a community has developed (evolved) count. Findings are not ignored at this stage because they violate some substantive criterion. On the other hand, *Ties* is very concerned about whether decision-makers will accurately identify authentic norms. For example, what should be done about the possibility that coercion in a community may produce inaccurate readings of authentic norms? *Ties* deals with this by controlling for voice and exit through the device of procedural hypernorms.

The primary problem lurking in Frederick's approach is how one determines what is "natural." Naturalist theorists often appear to make claims that certain aspects of the status quo are not "natural." Great care should be exercised in making such claims,

particularly when certain practices are widespread, commonly appearing in certain contexts. For example Tim Fort and James Noone² integrate knowledge from anthropology and the concept of mediating institutions into an analysis of contractual theories of the firm. They argue that there is a natural size limit to human groups and ultimately conclude that "When societies are structured so as to require individuals to exist in associations other than their "natural" small bands, an inherent instability results from the coercive necessity of living together." I don't know whether Frederick agrees with this conclusion concerning "naturalness," but we need to know with precision the scientific principles being used to define what is natural.

There are many ideas put forward based on claims of scientific naturalism. Sometimes the ideas conflict with common-sense morality. Naturalists often disagree with each other. Scientific naturalism cannot escape the problems of justification and prioritization that plague most approaches to business ethics. Consider a few examples. A naturalist analysis may support the conclusion that rape is driven by the male sexual impulse and is quite consistent with patterns of sexual aggression seen in many species.³ Therefore the naturalist might argue that certain norms punishing rape are unnatural and unfair to males. (Just to make clear, under the approach in *Ties* authentic norms condemning rape are not discounted because they might be based on unnatural assumptions.)

Or a naturalist might discover a natural tendency toward working in homogenous groups, noting the existence of clans and family businesses throughout the world. There have indeed been historical studies that indicate that in certain circumstances more homogenous groups perform more effectively. For example, the sociologist Ed Shills found that homogenous units of the German army in World War II were more effective than units that also included Czechs or other non-Germans.⁴ Might some naturalists conclude that more diverse communities are less effective in certain important ways; that, for example, in dealing with strong outside threats a more diverse workplace may be problematic?

Disagreements as to what is natural appear to be common in regard to norms and policies pertaining to a sustainable environment. The disappearance of species and changes in climate have been part of nature for as far back as humans can observe. The actions of humans that wipe out species and influence climate

change are surely a part of that natural process. It really doesn't make sense to say that humans are unnaturally "hastening" climate change by releasing gasses that are bringing on global warming. Or that there is anything unnatural about wiping out species of wildlife. Humans are actors within the natural order. Of course, by thought experiments and other devices, humans can understand likely future consequences of present actions. Humans can thus pragmatically decide what to do about it, using whatever logics are persuasive. What is persuasive may vary from culture to culture and over time. But these logics, whatever they are and however they have occurred, can be seen as natural in and of themselves.

The naturalist must be careful not to fall into a Procrustean strategy of trying to use a misconstrued model of the natural to constrain what is seen to be deviant or abnormal behavior. In order to avoid charges of Social Darwinism, one needs to make a compelling case for what is claimed to be the natural order. As Amy Wax puts it: "although an outright denial of the influence of genetic evolution on human psychology is incoherent, it is a mistake to view that influence as decisively foreclosing the possibility of quite significant variety in social arrangements or patterns of behavior."⁵

ISCT mitigates the problems resulting from competing views of what is natural through its emphasis on hypernorms, and, perhaps even more importantly as a practical matter, the specification of priority rules of thumb for dealing with conflicting norms among communities. The latter are derived from long human experience and intelligence in dealing with conflicting laws in global or federalism contexts.

II. PRAGMATISM IN *TIES*

In my judgment, the approach of *Ties* is more purely pragmatic than an approach relying upon a substantive definition of what is natural. If one seeks to make judgements by determining what is natural evolution as opposed to, I presume, "unnatural" evolution, then one veers away from pure pragmatism. As stated in *Ties*, "(t)here are no preset conditions based upon certain assumptions about human nature that have to be met in order to have an authentic social contract norm. . . . Thus, evolution is intrinsic to the process by which norms generate and change. It is not an

external factor that must somehow be identified and then used as a Procrustean device to measure norms" (pp. 155–156). Instead *Ties* employs unabashedly pragmatic procedures for identifying authentic norms. And for the initial analysis of authentic norms, the findings are accepted whatever they happen to be.

III. THE NATURAL NATURE OF SOCIAL CONTRACT REASONING

Even though social contract approaches may recognize principles not directly derived from experience, I would like to consider the possibility that social contract reasoning itself is part of the natural order. The form of reasoning used by social contract theorists as a means of devising structures and parameters of socio-economic institutions may be a dominant method of societal organization that prevails over time. (On the face of it, societies that have been strongly influenced by the social contract theorists appear to have been highly successful on most measures of political justice and economic performance.) Social contract hypothetical thinking may be a superior technique for dealing with problems involving severely constrained information and community interests. Thus, social contract reasoning itself may be a natural form of human coping.

IV. HYPERNORMS AS TIES THAT BIND OR UNNATURAL SHACKLES

In what I have said so far, I see great compatibility between the approach of *Ties* and Frederick's comments in the review essay and also in *Values, Nature, and Culture in the American Corporation* (1995). Frederick's primary concern with *Ties* is, I believe, with the potential for the employment of a thick set of "unnatural" hypernorms that may turn into the mixed metaphor of "shackles that muzzle."

Hypernorms are an attempt to deal with the problems of extreme relativism. Frederick's negative reaction to the "naturalistic fallacy," particularly in the extreme way it is sometimes popularly, but somewhat inaccurately, presented, is fully justified. Of course,

those in the business of propounding non-empirical oughts would advocate as a fundamental principle: "thou shalt not devise an ought from an is." Philosophers using the popular strategy of attempted intellectual monopolization!

Frederick is concerned that we go too far in giving some credence to the naturalistic fallacy and as a consequence fall into a "philosophistic fallacy." But closer examination of Frederick's comments indicate that there are grounds for compatibility with his approach. He states that "(m)any of the hypernorms themselves appear to be an outgrowth of shared experiences in confronting large-scale, transcultural moral choices." Frederick, of course, should be comfortable with hypernorms that are "manifestations of a natural evolutionary development." The question becomes the extent to which *Ties* recognizes hypernorms that are inconsistent with this standard.

Ties moves beyond the prior writings on ISCT by breaking out hypernorms into three categories: substantive, structural, and procedural. Procedural hypernorms specify the rights of exit and voice essential to support microsocial contractual consent. Structural hypernorms are necessary for political and social organization, for example, the right to possess and exchange property. Substantive hypernorms specify fundamental conceptions of the right and the good.

I believe that Frederick's greatest concern is with substantive hypernorms. As discussed at some length, the procedural hypernorms can be seen as instrumental, insuring that authentic norms are accurately identified. If they are seen as also substantive, as Salbu suggests, then they may raise issues similar to those with substantive hypernorms. The structural hypernorms are quite capable of being interpreted in a manner consistent with Frederick's analysis in *Values*. If one moves Frederick's discussion of economizing, growth and systemic integrity to the societal level, one can see substantial overlap with *Ties'* discussion of the structural hypernorm of necessary social efficiency. The question of a structural hypernorm protecting a particular set of property rights requires some speculation. I was surprised that Frederick's discussion of property in *Values* was limited to a discussion of power in the context of corporate governance. Perhaps this is explained by the fact that his primary focus was on the American corporation. I

find nothing in *Values* directly inconsistent with that important structural hypernorm.

This leads, then, to the issue of whether substantive hypernorms constitute a thick set that encompass “unnatural” concepts of justice and rights. I firmly believe that it would have been a mistake in *Ties* to respond to the many requests to take a stand on whether substantive hypernorms derive from nature or reason. First, it was not necessary for our purposes; it does not make any difference regarding how such hypernorms are to be discovered or understood. Second, it would have been a distraction from our core analysis. Readers may have digressed into this issue and failed to comprehend the interrelationships central to the understanding of ISCT. Third, I don’t think that we could have done it (if at all) without an enormously time-consuming effort greatly delaying our project. The quote of Sisella Bok in *Ties* remains pertinent:

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

Thus, *Ties* left it up to a process of discovery that will be influenced by human experience and intelligence in its usage. In more recent writings, I have used the term “manifest” universal ethical principles. The term manifest emphasizes its double meaning: “capable of being rapidly and instantly perceived by the senses” and “capable of being easily understood or recognized at once by the mind.”⁶ In *Ties* we mentioned many candidate hypernorms. Some, or maybe many of them, will not hold up to the test of discovery that we suggest. Frankly, I believe that there is a real possibility that there is only a relatively thin set of discoverable substantive hypernorms. If that is indeed the case, that thin set should contain few, if any, that Frederick will find objectionable on the basis of his analysis in *Values*. The fact that there may be (only) a thin set of hypernorms is a strength, not a weakness, of the approach of *Ties*.

As we noted in footnote 6 in Chapter 6 in *Ties*, “(W)e believe that ISCT is quite compatible with evolutionary economics. We don’t believe, however, that it is essential that one identify with

precision, and in detail, the specific components of the evolutionary process, so that one could, for example, predict what the process of evolution is likely to produce in the future." In fact, I don't think that is presently possible to do this. Hence I remain pragmatically skeptical of the claims of "scientific" naturalists.

V. INTEGRATING ISCT AND NATURALISM

Naturalist, pragmatic views should influence the development of authentic norms within moral free space. Further, they can inform the search for hypernorms in important ways. Thus, they help to actualize the concepts put forth in ISCT. At the same time, the concepts in ISCT help to mitigate against some of the problems, such as social Darwinism, inherent in a naturalist approach. There appears to be a synergistic relationship between the two. In fact, each may be incomplete without the other. The questions and arguments raised by Frederick help to identify ways in which the two approaches can be integrated in an effective and realistic manner.

VI. PRAGMATISM REVISITED

The test of whether an approach to business ethics is pragmatic must ultimately be whether it proves helpful to those confronting and resolving problems in practice, not whether the approach cites to the sometimes extreme views of the pragmatist philosophers. Whether an approach will be successful in practice should be independent of whether the approach is linked to a particular conception of nature in formulating any principles, benchmarks or guidelines.

Frederick's ideas have been very influential, even becoming the subject of a full page story in the *Wall Street Journal*. Whether or not the approach of *Ties*, which does incorporate practice and experience, but is not linked to a particular conception of nature, will prove successful is yet to be fully determined. There have been various attempts to apply the ideas in very specific processes, and a number of academics and practitioners are attempting to apply the ideas to a wide variety of topics, e.g., bribery, the use of performance enhancing drugs in sports, the behavior of floor traders at a stock exchange, sourcing of apparel, and so on. Through these

attempts, the pragmatic, adaptable approach in *Ties* will continue to evolve, helped in large part by the ideas of commentators such as Frederick, Boatright, Salbu, Shaw, and Fort.

NOTES

1. William C. Frederick, *Values, Nature, and Culture in the American Corporation* (New York: Oxford University Press, 1995.)
2. Timothy L. Fort and James J. Noone, "Banded Contracts, Mediating Institutions, and Corporate Governance: A Naturalist Analysis of Contractual Theories of the Firm," *Law & Contemporary Problems*, forthcoming.
3. Randy Thornhill and Craig T. Palmer, *A Natural History of Rape: Biological Bases of Sexual Coercion* (Cambridge: MIT Press, 2000).
4. Edward Shils and Morris Janowitz, "Cohesion and Disintegration in the Wehrmacht in World War II," *Public Opinion Quarterly* 12 (1948), 280.
5. Amy L. Wax, "Against Nature—On Robert Wright's *The Moral Animal*," *University of Chicago Law Review* 63 (1996), 307–359, 311.
6. Webster's Third New International Dictionary (Chicago: G. and C. Merriam Co., 1976), 1375.