

Citizens as Contractualist Stakeholders

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Abstract This article examines the way that for-profit businesses should take into account the interests of the citizens in the liberal democratic societies in which they operate. I will show how a contractualist version of stakeholder theory identifies the relevant moral interests of both shareholders and citizen stakeholders, and provides a method for giving their interests appropriate consideration. These include (1) the interests that individuals have with respect to private property, (2) the interests citizens have in receiving *equitable* consideration in the political process, and (3) citizens' interests which give them the collective right to determine the legal and economic structure of their societies. Using this contractualist analysis, I argue that corporations should consciously take into account the interests of citizen stakeholders when there is no other social mechanism for protecting their interests as citizens.

Keywords Ethics · Contractualism · Democratic theory · Political philosophy · Stakeholder theory

Introduction

How should for-profit businesses take into account the interests of the citizens of the democratic societies in which they operate? In this article, I will address how a corporation should balance the interests of these citizens along with the interests of its other stakeholders, especially including its stockholders.

A first step in answering this question is to show how business activity can substantially affect the interests of citizens *as* citizens. I shall focus here on how political activity by corporations can undermine the interests of citizens by undermining the proper functioning of liberal democracy.

The next step will be to examine two families of views concerning how businesses should consciously take into account the interests of democratic citizens. The “stockholder-oriented” views direct companies to focus on the financial interests of stockholders. The interests of citizens in the society in which they operate should be taken into account only as a matter of financial strategy. The “stakeholder-oriented” views direct companies as a matter of standing policy to consider the interests of a wide range of stakeholders, including democratic citizens.

After introducing these views, I will make the case for a stakeholder-oriented view that is informed by contractualist moral theory.¹ Briefly, contractualism identifies certain interests of stakeholders as morally relevant and lays out a procedure for giving their interests appropriate consideration in a given context.

With respect to political activity by businesses these include (1) the interests that individuals have in possessing private property and using it to help control and organize their own lives. It also comprises interests that individuals have as citizens in a democratic society. This includes (2) their interests in receiving equitable consideration in the political process, and (3) their interests in fairly participating in the political process to determine the structure of their societies. As we shall see, corporate political activities can sometimes undermine the satisfaction of these latter interests.

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¹ The principal text here is Scanlon (1998).

I shall use the contractualist procedure to argue that a business should consciously take into account the interests of democratic citizens whenever it engages in political activity except when it has good reason to believe that their interests in equitable treatment and political participation are reliably protected by other social mechanisms. I shall add to this the conjecture that in a wide variety of circumstances these morally important interests of democratic citizens can only be reliably protected if businesses engage in a great deal of self-constraint in the political arena.

Before developing this account let me contrast it with two other related efforts in the literature. One line of inquiry explores the extent to which it is appropriate to view corporations as citizens, and if so, what are their attendant rights and responsibilities. A prime example is provided by Crane et al. (2008) who not only demonstrate a variety of ways that the corporation is a political actor but also show how it does not fit easily into existing understandings of citizenship. They thus hold that corporate responsibilities are “inherently contestable”; however, they hope to advance the debate concerning corporate responsibilities by setting out the parameters in which it might take place (p. 205).

My work here accepts their finding that corporations are political actors but sidesteps the question of whether or how it makes sense to view them as citizens. Instead, I begin with the normative premise that human persons are the primary objects of moral concern in social and political philosophy, and derive from that assumption the appropriate social and political role of corporations. This present work thus has implications for whether and how to view corporations as citizens, but the concept of corporate citizenship does not play a mediating theoretical role.

I would also contrast the contractualist argument in this paper with other social contract arguments in business ethics. Donaldson and Dunfee (1994, 1999, 2000) defend Integrative Social Contracts Theory (ISCT) which combines a normative, hypothetical social contract with actual conventions among specific communities. On their theory, the normative social contract delimits moral free space in which particular communities and businesses are free to behave according to their own parochial norms.

While I agree with ISCT that a normative social contract defines the moral free space in which individuals and organizations may self-organize my approach differs in two ways. First, Donaldson and Dunfee see the social contract tradition as applying to limited subsets of morality. They see Locke, Hobbes, Rousseau, and Rawls as asking “about what citizens would require of the government and how they would define political justice. We, on the other hand, inquire about what economic participants would agree upon as defining business ethics.” (2000, p. 438)

I draw from that part of the social contract tradition that sees the device as a way of explicating *all* of interpersonal

morality. (e.g., Scanlon 1998) This allows me to see business ethics as entirely continuous with a more general contractualist theory of morality that does not need to be specifically developed to deal with topics in business ethics. This approach locates the substantive work in business ethics in identifying the relevant interests of individuals that are affected by the activity of businesses and resolving the conflicts among them. What counts as a relevant interest, and how to resolve conflicts among those interests are determined via the general moral theory of contractualism.

My approach to social contract theorizing in business ethics is thus distinctive because it identifies particular interests that individuals have that matter for the moral assessment of business activity and gives a method for resolving conflicts among these interests. This stands in contrast to Donaldson and Dunfee’s approach which appeals to agents’ *rationality* under a limited veil of ignorance about their own economic circumstances. In short, Donaldson and Dunfee’s approach relies on agents’ actual interests to generate moral results. The contractualist approach, on the other hand, identifies interests that matter for agents’ ability to live rational and meaningful lives.

In relation to the matter at hand, contractualism recognizes the moral relevance of interests that individuals have in controlling their own property and in participating in democratic debate and decisionmaking on equitable terms. It resolves potential conflicts among these interests by weighing how seriously they affect individuals’ capacities for rational self-governance. It thus can judge that the interests that one individual has in investing in a corporation that is unrestrained in its political activities is outclassed by the interests that individuals have in living in a political system that treats the interests of all in an equitable fashion.

How Corporations Can Affect Citizens as Citizens

While there are a variety of ways that businesses can affect the interests of democratic citizens I shall focus here on their direct participation in the political process. Consider, for example, a company that lobbies a policymaker to make the regulations on its industry less burdensome.

There are a variety of related reasons that a company might want to do this. Most simply, for-profit companies are motivated to increase profits, and lighter regulations can help them achieve that. A business might also seek to lobby for these things because they think it makes for good public policy. No doubt they are sometimes right about this; however, one should be skeptical of such claims if for no other reason than that companies often experience the costs of regulations and taxes, but often are not very well placed to understand their benefits.

Companies also sometimes try to lobby for stronger regulations. While this can be done for public-minded reasons, it can also be done purely out of financial self-interest. This is because burdensome regulations can make it difficult or even impossible for potential new competitors to enter their market.

Given these points about businesses' financial self-interest and their systematic bias in how they tend to see public policy debates one should be skeptical of businesses' claims that they are actually advocating good social policy when they engage in political activity.² Moreover, for-profit corporations have financial and managerial resources which allow them to wield a good deal of political power that is independent of the merits of their arguments. This can be democratically problematic even their arguments have a fair degree of plausibility.

For these various reasons corporate political actions can have a negative impact on many different kinds of stakeholders, including those who are not in a contractual relationship with the companies. Consider two recent forays into politics in the United States by companies in the energy industry.

Consider first efforts by the energy industry to deny, or in any event, cast doubt upon the existence of human-caused global warming.³ Such efforts are intended to help forestall legislation that increases taxes on carbon-based energy, or which imposes costly regulation on its production and use. The people potentially harmed by these political efforts include, quite literally, every person currently on the planet; however, it does not obviously affect each person as a *citizen*. To be affected *as a citizen* is to be affected with respect to one's role and interests as a citizen.

There are two ways that corporate political activity designed to mislead the public affects the interests of citizens as citizens. The first is that this kind of political activity is intended to guide the political process in a direction that does not give equitable consideration to the interests of all citizens. I will have more to say about what equitability amounts to later; but, the intuitive idea is that a properly functioning political process would give far more consideration to the interests of people whose ways of life, and indeed their very lives, are so threatened by the policy in question.

Deliberate attempts to mislead the public also undercut the interests that democratic citizens have in exercising

their share of their authority to make social decisions. These attempts to mislead citizens are analogous to how an agent is wronged in a fraudulent transaction. The agent is wronged because he is given false or misleading information that leads him to enter into a contract in a deliberately compromised fashion. The citizens are wronged because they are given false or misleading information that leads them to participate in the making of social decisions (including through, but not limited to voting) in a deliberately compromised fashion.

Another example inspired by recent events concerns corporate political efforts geared toward allowing deep offshore drilling, and toward limiting the requirements on safety equipment. Here, energy companies might not so much seek to mislead the public about policy matters so much as to cultivate special relationships with key legislators and regulators in a way that leads to permissive regulations or lax enforcement.

These special relationships can be cultivated in a variety of ways, such as by providing or arranging campaign contributions for key officials. It also includes hiring as lobbyists friends, colleagues, or even family members of policymakers. These lobbyists can use their personal connections to make sure that the interests of their employers receive dominant, if not exclusive consideration by the policymakers. Corporations can also use lobbyists and public relations firms to dominate the social space around other important social elites such as journalists who help fashion what counts as a "serious" political view.

In this second example, there are also plenty of third-party stakeholders. This includes everyone who relies on a stable oil supply and the residents of nearby communities that could be devastated by an oil spill. In this case, and unlike the first one, there are morally genuine tradeoffs to be considered between the need for a stable and affordable energy supply and the costs of curtailing the risks of obtaining that energy supply. Corporations certainly have a financial interest in participating in that debate, and bring to it a technical expertise that few others in society possess; but as in the first case, they should only engage in politics in a way that does not undermine the equitable treatment of the interests of all citizens in the societies in which they operate.

Secondly, they should participate in politics in a way that does not undercut the role of citizens to make informed social decisions through their elected representatives. At the very least dealings between corporations and policymakers should be transparent enough for the policymakers to be held politically accountable by the electorate for their interactions with corporations.

To summarize, corporations can affect the interests of citizens *as citizens* either (1) by acting in a way which undermines the equitable treatment of the interests of all

² I thank a referee for noting that companies can politically advocate on behalf of some stakeholders such as customers who want low prices and against workers who want higher wages. Companies may be advocating in good faith but not be particularly good at balancing the competing interests, especially when one set aligns with the interests of stockholders or managers.

³ For a review of Exxon's efforts to undermine evidence concerning global warming, see Mufson (2007).

citizens in the political process in their societies, or (2) by undercutting the ability of citizens to exercise their authority to make social decisions.

Ethical Considerations: Competing Narratives

How, from an ethical point of view, should corporations take into account the interests of citizens as citizens? There are at two sets of competing narratives about how corporate managers should think about decisions to engage in corporate political activity. One is broadly aligned with what I call “stockholder-oriented” views of business ethics. The other is aligned with “stakeholder-oriented” views.

A “stockholder oriented” view holds that business managers should make business decisions with the financial interests of stockholders in mind and not to pay attention—except for strategic reasons—to the interests of other stakeholders. The most prominent example of a stockholder-oriented view is found in the writings of Friedman (1970) who held that corporate managers have no social responsibilities other than to maximize profits while following the law and *some* social customs.

There are at least two seemingly (but only seemingly) contradictory narrative understandings of the relationship between business and government that are consistent with a stockholder-oriented view of business ethics. According to what I will call the *government-as-predator narrative* government regulation and taxes are costs to be avoided or minimized regardless of the public policy justifications lying behind those taxes or regulations. This leads to a mentality where business sees itself as the mouse that by all rights seeks to escape the clutches of the governmental cat.

The seemingly contradictory narrative holds that government is a tool (or perhaps a friend) of business that can provide monopolies, subsidies, or other special privileges. This *government-as-tool* narrative similarly tells corporations to not consider the public policy implications of their political activity and that they should rather focus exclusively on their bottom line when seeking favors from the government.

These two stockholder-oriented narratives—one which sees the government as an enemy and the other which sees government as a friend—can easily be held sequentially, or even simultaneously by the same company with regard to different aspects of public policy. For example, a company might, on the one hand, seek from the government a special license or monopoly that restricts or eliminates competitors and, on the other hand, do everything that it can to reduce or eliminate the taxes that it is subject to.

Despite their seeming contradiction the two narratives are unified—and thus can sit easily side by side in the same company—by a stockholder-oriented view of business

ethics which holds that corporations should engage in political activity whenever and however it suits their financial interests independently of how it affects the quality of public policy or the interests of citizens as such.

On one understanding of Friedman’s theory of corporate social responsibility this unifying point is justified by the role that corporations and others play in democratic society: it is the role of democratically elected policymakers to set up the legal framework of society so that corporations’ single-minded pursuit of their financial self-interest furthers the interests of all citizens. Part of Friedman’s thesis is that when corporate managers act for other social considerations they usually make things worse off for everyone.⁴

While this position may have merit in certain social contexts it does not in a society where corporations act in the political arena whenever and however it suits their financial interests. This is because this way of acting undermines the presumption that the rules of society are under effective democratic control, and that businesses are simply maximizing profits within a democratically blessed legal framework.

Given the power that businesses have to influence the shape of the law they cannot operate under the presumption that policymakers have set up society in such a way that they may focus exclusively on their own financial self-interest. If unchecked, their own political activity will ensure that the legal framework of society will be fashioned in a way that does not give equitable consideration to the interests of citizens, or which respects their rightful role to make social decisions.

In contrast to these two stockholder-oriented narratives of the relationship between business and government, there is a competing stakeholder-oriented narrative.⁵ As developed by Freeman, stakeholder theory rejects the idea that corporations should focus exclusively on the interests of

⁴ One can also hope to find restraints on corporate political activity in Friedman’s appeal to social custom. But his general tenor is against government regulation, for low taxation and against calls for intentionally pro-social behavior on the part of business. The first two elements weigh toward requiring businesses to refrain from advocating for unnecessary privileges or the establishment of lucrative government programs. The last element weighs toward businesses having no restraints at all in seeking profits through political activity.

⁵ Freeman has worked to downplay the differences between his view and Friedman’s. See, for example, Freeman and Phillips (2002) and Freeman (2008a). In this latter paper, Freeman admits a frustration with the failure of the Freeman–Friedman debates to create value for stakeholders. Despite his pragmatist desire to move past this debate Freeman still acknowledges differences between the stockholder and stakeholder approaches, and arguably papers over further significant differences.

stockholders and should instead try to *harmonize* the interests of all primary corporate stakeholders.⁶ Freeman argues that corporate managers should act in a way that moves the interests of all the main stakeholders in the same direction. In so doing a company is best able to achieve long-term business success.

Although Freeman does not (to my knowledge) specifically address *citizens* as stakeholders he does hold that corporations should harmonize the interests of community members along with the interests of other primary stakeholders. He notes that if companies do not engage in this kind of stakeholder management then they will be subjected to burdensome regulations that put the companies in an unnecessarily compromised financial position. (Freeman and Evan 1990; Evan and Freeman 1993) Although Freeman does not put it in these terms, it is consistent with the spirit of his theory to say that stakeholder theory recommends that corporate managers harmonize the interests of citizens of the societies in which they operate along with the interests of stockholders and other primary stakeholders.

Drawing from this way of speaking, I will call this the *harmonization narrative* of how corporate managers should treat the interests of all primary stakeholders, including the citizens of the democratic societies in which they operate. (Freeman 2008b) It is instructive to contrast the harmonization narrative with the two stockholder-oriented ones. The harmonization narrative differs in that it calls upon corporate managers to make decisions with the interests of citizens (as such) in mind, whereas the government-as-predator narrative and the government-as-tool narrative do not give any intrinsic weight to their interests.

One understanding of the harmonization narrative, though, does share an important core with stockholder-oriented views. On this understanding, the harmonization narrative is justified as an enlightened financial strategy, rather than as something fundamentally owed to all stakeholders.⁷ This strategic understanding of the justification of the harmonization narrative can be fruitfully

⁶ I mean “interests” here in a broad sense. Someone whose rights are at stake in a company’s actions has a distinctive kind of interest. Likewise for the shareholder who has an ownership stake in a company. Successfully managing for stakeholders involves understanding not just who has an interest in the company but on the kind of interest and what moral relevance that kind of interest has.

⁷ As a pragmatist, Freeman deliberately avoids committing to a justification of Stakeholder Theory; however, he does observe that if primary stakeholders’ interests are not adequately met the company will eventually suffer. He notes that “in a small business if you don’t manage your stakeholders every day, I don’t think you’re around for very long, large companies are basically harder to kill and so you can ignore some stakeholders for a while and it will take a while for that process to catch up with you but catch up with you it will.” (Freeman 2008b).

compared to an individual’s search for personal happiness. Even though I desire my own personal happiness, it may be counterproductive for me to focus exclusively on obtaining it. It may make more sense to also work for the happiness of friends or even strangers, and in so doing achieve my optimal personal happiness. If this is right then the narrative we ought to be telling ourselves is that our purpose in life is to work for the happiness of many or even all people, even though our true ultimate goal is our own happiness. Similarly, the strategic understanding of stakeholder theory takes it that even if our ultimate goal is to create value for shareholders, we best achieve that by creating value for all corporation’s primary stakeholders.

On pragmatic grounds, Freeman (1994, p. 418) avoids providing a justification for stakeholder theory and the harmonization narrative. I part company, though, with Freeman here. First, in opposition to the anti-theoretical strands of Freeman’s pragmatism I maintain that there is a contractualist normative core to stakeholder theory.⁸ Second, I want to explicitly repudiate the idea that corporate managers should adopt the harmonization thesis merely as a useful psychological strategy to achieve long-term business success. Instead, I hold that corporate managers owe consideration to the interests of various stakeholders even if giving that consideration does not serve the long-term strategic interests of the company.⁹

This is especially apparent in the case of citizens. Freeman maintains that if corporations do not engage in socially responsible activity then they will face even more costly forms of regulation. Whether this is the case, however, depends on the ability of society to effectively regulate companies that engage in socially irresponsible behavior. Recent events show how difficult this can be.

Consider the behavior of the financial industry with respect to the credit crisis of 2008. A strong case can be made that the crisis was fostered by socially irresponsible activities of the industry. This includes taking highly leveraged financial positions in which the downside risk would be borne, either for legal or political purposes, by other parties and ultimately by taxpayers. More concretely, banks could afford to take large risks because they could rely on government supplied insurance, or could rely on the fact that their companies were “too big to fail” and would receive a politically necessary government bailout.

⁸ Freeman rejects the idea that there is a “moral bedrock” for business. He holds that “Finding such bedrock...is especially fruitless on pragmatist grounds for there are no foundations for either business or ethics. All we have is our own history, culture, institutions, and our imaginations.” (1994, p. 418).

⁹ This comports with an earlier understanding associated with Freeman. He argues that there are normatively legitimate stakeholders other than equity shareholders. (Phillips et al. 2003, p. 481) I agree with this less pragmatic understanding of stakeholder theory.

As Freeman predicted for such socially irresponsible behavior there are currently efforts to regulate the financial industry. While this may result in sound legislation, I believe that there is a great likelihood that the resulting legislation will be too weak, and that this is due to the continuing political power of the financial industry. And even if the initial legislation is relatively good, subsequent legal and political maneuvering can quickly render it ineffective.

The relevant point here is that it is a contingent matter whether irresponsible political behavior on the part of corporations will lead to regulations that diminish their long-term business success. It may turn out that the financial industry (or the energy industry, or others) can operate with an indefinitely sustainable “value creation model” that opposes or gets around socially desirable regulations and can continue to do so even when these result in crises which test the stability or integrity of the free market system.

Of course, the harmonization narrative would not approve of such behavior. However, this matters for corporate behavior only so long as the harmonization narrative is not adopted as a matter of enlightened financial self-interest. This is because it may sometimes be an even more enlightened strategy—at least for some firms or some industries—to adopt the cat-and-mouse narrative and/or the government-as-tool narrative.

I thus would only want to embrace a stakeholder-oriented view which demands that corporations take into account the interests of citizens *qua* citizens independently of whether this is a sound strategic decision from a financial point of view.

All this puts me in the camp of someone like Norman Bowie with his development of Kantian stakeholder theory (Bowie 1999). But the general embrace of Kantianism leaves a lot of theoretical work to do. This is because the Kantian injunction to respect all *people* (and a fortiori all corporate stakeholders) leaves open the difficult matter of determining what is the appropriate way of giving people their due respect. Contractualist moral theory provides substance to Kantianism by identifying the morally relevant interests of individuals and how to balance them when they conflict.

Giving Stakeholders Their Due Consideration

Freeman’s recent articulation of stakeholder theory depends heavily on the idea that corporate managers should *create* value for stakeholders. This plausibly includes generating profits for stockholders and providing a livelihood and meaningful work for employees.

It would be a mistake, however, to see *creating value* for stakeholders as the only way to give corporate stakeholders

their due respect. Here, I agree with Friedman’s observation that corporate managers can give stakeholders their due respect without directly *aiming* to create value for them. He recognizes that persons can be respected by honoring their free decisions; when they have made truly free decisions to enter into contracts with corporations there is no further moral need for corporate managers to think about their wellbeing.

Indeed it can be patronizing and demeaning for corporate managers to make decisions based on how their actions will affect people who have freely chosen to enter into contracts with their companies. This is, after all, how one should think to act with respect to a child. For example, consider the context of corporate managers negotiating with highly educated professionals who are in much demand in the marketplace; or, consider the context of corporate managers negotiating with a strong, effective union that fairly represents the interests of members. In these contexts corporate managers very well may—and probably should—focus on the corporations’ financial self-interest (albeit in a way that takes long-term strategic considerations into account) rather than second-guess the decisions of those who are freely making their own decisions.

There are two critical caveats to make here. First, we should not be too quick to assume that non-coerced contracts between corporations and other stakeholders are, in fact, suitably free from the moral point of view such that corporate managers are entitled to not think about the interests of those stakeholders. For example, an employee’s uncoerced choice to take a job loses some of its moral significance when he has few or no other job prospects and there is a not a decent social security system in the society.

With this point in mind let me propose the following principle for corporate managers:

Principle for Contracting Stakeholders Corporate managers should always attend to the interests of their various stakeholders in order to determine *whether* their interests will be adequately protected when they are entering into a contract with the corporation. Once the corporation reasonably determines that those interests are sufficiently protected, corporate managers *need not* pay further attention to their interests. In the case where stakeholders’ interests are protected because they are making truly free decisions, corporate managers really *should not* be trying to second-guess whether they have adequately protected their own interests.

This point can be extended as we consider the second caveat concerning when a corporation should pay attention to the interests of its stakeholders. This concerns the interests of “third party” stakeholders who do not directly contract with a corporation but are still potentially affected

by its actions. This is relevant because while citizens often have direct contractual relationships with corporations, they do not typically have them *as citizens*.

Extending the prior point let me propose that:

Principle for Non-Contracting Stakeholders Corporate managers should determine *whether* the interests of non-contracting, or “third-party” stakeholders will be adequately protected when they are affected by corporate decisions. Once a corporation *reasonably* determines that those interests are sufficiently protected, corporate managers need not pay further attention to those interests (although they certainly may pay attention to those interests in order to fashion a sound long-term financial strategy for the corporation).

In certain contexts it may be reasonable for corporate managers to judge that the interests of citizens are adequately protected and they are thus morally free to make their own decisions solely with an eye toward their own profitability. Consider, for example, a society whose laws only allow corporations to make very small contributions to political candidates. In this case, corporate managers might reasonably conclude that the legal structure protects the interests of citizens, and that any decision to make a campaign contribution be made solely with respect to the financial interests of the firm.

In many other contexts however it is not reasonable for corporate managers to judge that the interests of citizens are adequately protected. Consider the actual context of the United States in the post-*Citizens United* decision era. Corporations are now legally free to make unlimited “independent” political speech either for or against political candidates or public policy issues. Corporate managers (or others such as Supreme Court Justice Antonin Scalia) might say that citizens’ interests are adequately represented because citizens have the ability to “separate the wheat from the chaff” in all political information.¹⁰ Following Gowri (1998), however, I observe that contemporary citizens are simply not equipped to do so in an adequate fashion.

In the following, I will address in passing why citizens are not capable of protecting their own interests in an age of unrestricted corporate political speech. My main focus, however, will be on a prior conceptual problem: How are we (including corporate managers!) to ascertain what the legitimate interests of citizens are so that we may determine whether those interests are adequately protected?

But first let me position my proposed principles for contracting and non-contracting stakeholders in the broader context of stakeholder theory. A central tenet of Freeman’s

has been the denial of the Separation Thesis, which holds that:

The discourse of business and the discourse of ethics can be separated so that sentences like, “x is a business decision” have no moral content, and “x is a moral decision” have no business content. (1994, p. 412)

My proposed principles give permission to business managers to not act with the sake of certain stakeholders in mind. This may seem like I am embracing the Separation Thesis, but this is not the case. On my account every business decision is fraught with ethics. In some cases business managers must explicitly take into consideration the interests of various stakeholders. If, however, they reasonably believe that those interests are adequately safeguarded, then they do not need to give those interests any *additional* consideration. This allows for a moral division of labor that still always places some moral burden on business managers to make sure that the interests of stakeholders are adequately protected.

Contractualism and the Legitimate Interests of Citizens

To identify *what* are the morally relevant interests of democratic citizens and *how* they matter I turn to contractualist moral theory, especially as developed by Scanlon.¹¹

Contractualism holds that an action or an arrangement of society is morally right if it is permitted by a principle which no one can reasonably reject.¹² This does not require that each person *consent* to a social arrangement in order

¹¹ It is outside the scope of this article to defend contractualism as a general moral theory or as the correct underpinning of business ethics and stakeholder theory. Let me make two points, though: any general moral theory can provide the moral foundations for business ethics, and could possibly count as a version of stakeholder theory. One can also seek theoretical underpinnings that are special for business ethics. Other things being equal one should aim for a general theory. Contractualism stands against utilitarianism, the other great general theory of morality. Contractualists aim to articulate and defend the idea that the separateness of persons matters, and that our interests may not simply be aggregated and maximized. Contractualists maintain both that it provides sufficient content to generate results, and that these results are more intuitively plausible than those generated by utilitarianism. For a full defense of contractualism (see Scanlon 1998).

¹² See Scanlon (1998) for a more formal statement of the account: “According to contractualism, when we address our minds to a question of right and wrong, what we are trying to decide is...whether certain principles are ones that no one if suitably motivated, could reasonably reject.” (p. 189) Shortly later, he states that “our thinking about right and wrong is structured by...the aim of finding principles that others, insofar as they too have this aim, could not reasonably reject.” (p. 191).

¹⁰ See Scalia’s dissent in *Austin* (1990).

for it to be morally legitimate. What matters is that there is no reasonable basis for rejecting the principles which supposedly justify that arrangement.

Contractualism specifies the reasonable grounds upon which one might reject a principle by appealing to the value of persons as rational self-governors. It holds that there are reasonable grounds for rejecting a moral principle if implementing it would negatively affect a person's capacity for self-governance to a given degree and there is an alternative moral principle that could be implemented in a way where no one else's self-governance would be negatively affected as deeply.

With this quick introduction to contractualism we can now identify the relevant self-governance based interests that citizens have with respect to the political activity of corporations. Two primary interests at stake are those relating to one's ability to control one's property and one's labor, and those relating to one's ability to participate in a properly functioning liberal democracy.

Both of these interests are complicated and can both be served and disserved by corporate political actions. In general, the existence of private property allows individuals to further their own interests and to plan for their own lives. Contractualism will thus give individuals a wide moral berth in which to choose how to use or invest their own property.

Contractualism will thus (likely) recognize the right of individuals to invest in for-profit corporations.¹³ It will recognize, however, limits on the kinds of corporations they may form. They may not, for example, form corporations which engage in political activity whenever and however it suits their financial objectives. Contractualism sees the moral justification of private property as lying in its ability to further its owner's capacities as a rational self-governor. However, a person who invests in a corporation which engages in political activity with no concern to the quality of the resulting public policy is susceptible to having her own property or labor work against her own political interests.

Contractualism will also limit corporate political activity to protect individuals' interests in participating in a properly functioning liberal democracy. One such interest is to be treated *equitably* in the political process.

The best way to describe an individual's interest in equitable treatment is to contrast it from having an interest in equal treatment. Contractualism seeks to reach impartial conclusions about morality by situating each person to reject a proposed rule or social arrangement on reasonable

grounds. Equality is a feature of the contractualist structure since every person has a symmetrical position within the contracting situation. Generally speaking, though, contractualism does not take the bare fact that one person has comparatively few resources to be reasonable grounds upon which she might reject a proposed arrangement of society.

On the other hand, Scanlon (2003, p. 207) points out that one can reasonably object to a distribution of resources on a number of other grounds which lead to results that would resemble an objection based on pure inequality. This includes objections to a social arrangement on the grounds that it:

- a. Leaves one in suffering, severely deprived or so powerless as to be socially stigmatized.
- b. Leaves one subject to morally unacceptable forms of domination/
- c. Gives one an inappropriately unequal starting place in society, or is inconsistent with the demands of procedural equality.

I will provide some examples of these objections (inspired by real cases) to illustrate how claims of inequitable treatment can have implications for the question of corporate political involvement.

First, individuals can reasonably object to corporate political efforts that aim to keep or put into effect public policy that would leave them severely deprived even as they were doing what society could reasonably ask of them.¹⁴ Consider individuals who are engaged in full-time work but lack secure, affordable access to a minimally decent level of healthcare. People who are substantially less healthy than they would be with such coverage are obviously affected in terms of their self-governance; but healthy people without secure access to affordable and decent healthcare are also compromised with respect to their self-governance since so much of their attention and concern could understandably be directed toward the fact that they lack that kind of secure coverage.

Imagine that there is proposed legislation that would ensure all workers had secure access to decent health coverage but which would negatively affect the bottom line of health insurance companies. Suppose now that the health insurance companies banded together with the express purpose of preventing the legislation from being enacted. Under these circumstances workers without secure access to health insurance would have *prima facie* grounds for objecting to this kind of political activity from the health

¹³ I will not attempt to address here the morality of capitalism itself; however, I think there is a plausible contractualist case that capitalist economies are so much more productive than alternative economic arrangements that their citizens are qualitatively better off as rational self-governors.

¹⁴ I should qualify that this is a reasonable basis of objection only if there is some other social distribution of resources where everyone who did what could reasonably be asked of them could live decent lives. I take it that this is possible in many contemporary liberal democracies.

insurance companies. (The force of these objections would depend, though, on the effect the proposed legislation would have on the self-governance based interests of others.)

Similarly, there are grounds for objecting to some political activity by corporations that aims to change bankruptcy laws. To continue the above case consider people without secure, affordable access to decent health insurance whose financial resources have been exhausted by a medical emergency.¹⁵ It is in the financial interest of creditors such as credit card companies to make it far more difficult for such people to seek relief from their debts through bankruptcy; however, individuals have a strong self-governance-based interest in being able to seek reasonable relief from burdensome debts. This interest is especially strong when they have accumulated their debts when trying to meet basic human needs such as keeping themselves or their family members healthy. Such people may have the grounds to object to corporate political activity that aims to restrict reasonable relief from burdensome debts that have been accumulated while trying to meet basic needs in a non-abusive fashion.

Next consider an objection to corporate political involvement based on the claim that it leaves one subject to morally unacceptable forms of domination. Workers who do not have good access to other jobs are often in a compromised bargaining position with respect to their employers. While there are various ways to strengthen the bargaining position of workers union representation can often be effective. Workers thus may have reasonable grounds for objecting to corporate political activity that aims to restrict the effective right of workers to join unions. These grounds are especially compelling when there is no alternative means being offered for workers to reach an uncompromised bargaining position. (One might propose, for example, a strong regime of government regulation to protect workers rather than relying on collective bargaining.)

Next consider an objection to corporate political involvement based on the claim that it violates the demands of procedural justice. Procedural justice requires that any social decision process, so far as it is possible, give appropriate consideration to the interests of each citizen. This means first that that process must respect the rights of individuals.¹⁶ This means that corporations may not promote legislation that, say, allows them to violate the privacy rights of their customers even if it would be profitable for them to do so.

¹⁵ In 2007, nearly half of all personal bankruptcies in the United States were due in part to the costs of medical emergencies. See Himmelstein et al. (2009).

¹⁶ This point was famously made by Rawls (1971) when he recognized that the first principle to be chosen from behind the veil of ignorance was the principle of equal liberties.

Second, this means that when there is a difference of opinion where individual rights are not obviously at stake the political resolution process should not systematically favor the interests of some citizens over the interests of others. In particular, the system should not systematically favor the interests of economic, social, and political elites or systematically disfavor the interests of socially marginalized persons such as the poor or members of racial or ethnic minorities.¹⁷ This entails that corporations should not aim to skew the political process to give their interests or the interests of their shareholders (or their managers) more than their fair consideration. When corporations do seek more than their fair amount of political consideration—whether through expensive lobbying or costly campaign donations—those citizens who receive less than their fair share may reasonably object to that activity.

Let me now turn to another democracy-based interest, the interest in *deliberative responsibility*. This interest derives from the fact that citizens can effectively represent their interests in the political process and can meaningfully participate in the making of social decisions only if they are relevantly informed about and have had the opportunity to adequately reflect on important social issues.

This interest in deliberative responsibility provides the basis for the “hearer’s interest” in free expression that some find at the root of the Constitutional protection of free speech in the American system.¹⁸ Gowri counters that the deliberative interests of citizens as “hearers” are actually made worse by an overload of political information, especially when some of that overload contains deliberate disinformation put out by corporations.

One way corporations have sought to mislead citizens is by supporting pro-corporate think tanks which seek to affect public discourse either to build up a false sense of crisis (e.g., concerning the solvency of social security) or to obfuscate a real crisis (e.g., concerning the existence of human-caused global warming).

Another way that corporations have sought to mislead citizens is by having supported “astroturf” organizations which claim to represent grassroots groups of citizens but which really are front groups for corporate interests. This kind of deception is illuminating since it is the vice which pay tribute to the proper method of determining public

¹⁷ Once the rights of individuals are defined and protected, the equal consideration of interests requires the principle of majority rule, except when doing so systematically disfavors the interests of some citizens. The idea here is that the principle of majority rule is a principle that cannot be reasonably rejected—unless it systematically discounts the interests of some. In that case, some modification of the principle of majority rule is in order. For a contractualist defense of the principle that the greater number is morally significant, see Kumar (2001).

¹⁸ See Scalia’s views referenced above in Austin (1990).

policy which is to respond to the legitimate interests of citizens who are representing *themselves* in the political process.

These cases help demonstrate that citizens' interest in deliberative responsibility does not support the idea that corporations have an unrestricted moral right to "speak" in the public arena.¹⁹ The moral point of this interest is to produce an informed citizenry that has engaged in sufficient reflection about important social issues such that they are competent to represent their own interests and values in the political process.²⁰

This means that corporations *should* speak in the political arena since a "society that includes a large business sector but in which that sector had no voice would be dangerously uninformed about itself." (Christiano 1996, p. 247) They are obligated, however, to provide information in a truthful way that will advance and not frustrate the goal of creating informed and reflective citizens.

This includes more than a negative obligation to refrain from deliberately providing false or misleading information. It also involves a positive obligation to volunteer critical information that citizens require to make good decisions regarding their own interests and values. In the case of companies in the news business it includes a positive obligation to present the news in a way that provides information that is useful for citizens trying to make decisions that faithfully reflect their own interests and values.

In addition to speaking truthfully corporations should take care not to distort the political process by crowding out or overwhelming other voices in the public arena or in the limited attention of public officials. Corporate political activity *can* promote the interest of individuals in deliberative responsibility when it is made in the context of a healthy democratic culture in which citizens and public officials are able to effectively hear all the relevant arguments for issues under consideration. Removed from that context, however, corporate political activity that is identical in content can undermine citizens' interest in deliberative responsibility.

This has three important implications for the question of corporate political involvement: first, it is critical that corporations abide by both the letter and the spirit of legislation that regulates the role of corporations and particularly

corporate money in the political process. Second, corporations should not attempt to influence the shape of these regulations other than by presenting trustworthy information to citizens and public officials in a context which allows them to rationally consider the best arguments and the strongest considerations regarding those regulations. Third, when there are not adequate legal restrictions on corporate political activity to foster a reasonably democratic political process it is incumbent on corporations to restrict their activity *voluntarily*. This means *at a minimum* that corporations should limit their political activity in a way that leaves space for legitimate countervailing parties to make their case in the public arena.

Conclusion

According to the contractualist stakeholder-oriented view, I have sketched here corporate managers must limit their corporate political activity to give citizen stakeholders their due consideration. The driving principle is that corporate political activity must not undermine the equitable consideration of citizens' interests in the political process, or undercut citizens' legitimate role to share in the making of political decisions.

When citizens' interests are not adequately being protected corporate managers must actively take them into account when deciding whether and how to engage in political activity. Among other things, this means that corporate managers:

- Must not aim to enact policy that leaves individuals in suffering, severely deprived or in a position of being dominated.
- Must not aim to legitimize the violation of anyone's rights.
- Must not skew, or aim to skew, the political process so that it gives undue consideration to the interests of some citizens over those of others.
- Must not aim to mislead voters or policymakers.
- Must not aim to distract voters from their true interests and values.
- Must follow the letter and spirit of morally legitimate laws that regulate their political activity.

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¹⁹ In discussing political finance reform Beitz (1990, p. 212) argues: "The speaker interest in uninhibited expression is counterpoised against voter interests in conditions of effective and responsible citizenship."

²⁰ As Christiano (1996, p. 254) puts it: "Until the moment when voting for representatives becomes necessary, the democratic process ought to be primarily a process of discussion and rational persuasion. It ought to promote the need of citizens to become informed about their interests as well as the interests of others and the claims of justice. The function of interest groups and political parties in this process is to contribute to discussion and persuasion."

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