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Managing the Risks of Corporate Political Donations: A Utilitarian Perspective

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Abstract This paper applies a utilitarian analysis to corporate political donations. Unlike the more common rights-based analyses, it is argued that the optimal policy is the one that best satisfies society's rational preferences concerning donor influence, adequate financing, donor pressure and the cost of maintaining and enforcing the democratic system. This analysis suggests that a ban is best if it would be generally observed and sufficient financing from other sources is available, otherwise a donation cap is a better option. Further, lobbyists should be banned from donating small gifts and drafting bills for candidates. The impact of disclosure and other risk management mechanisms are also considered.

Keywords Utilitarianism · Goodin · Corporate political donations · Political finance · Lobbying

Introduction

Determining the optimal policy in relation to corporate political donations (that is, financial or non-financial contributions by corporations to political parties) is a challenge for all democracies. Former US Senator Bill Bradley, quoting Barney Franks, observed that 'being a politician or Congress person or a Senator is the only profession in America where you are required to take money from strangers and pretend that you don't owe them anything' (Fora.tv 2007, p. 5). Australian Federal Attorney-General Nicola Roxon stated 'I think people are very uncomfortable at what big wealthy companies can afford to do in our political system' (Colvin and Metherell 2012).

Johnson (2005) observes that policy options in relation to corporate political donations include: disclosure, contribution limits and prohibitions, *laissez faire* approaches, blind trusts, tax incentives, public subsidies, public funding and free media. A variety of justifications are presented in support of particular options.[1] For example, Hourigan (2006) counsels that corporations should be allowed to donate, in order to better represent the interests of their shareholders and employees. Young & Tham (2006) argue that corporations should not donate because they are non-democratic, non-citizen entities. Dworkin (2000) holds that the principle of citizen equality requires corporations to be prohibited from making donations out of their general treasuries—although they may donate money collected from willing individuals specifically for political activity. Fogg et al. (2003) observes that for many countries, it is more feasible to limit corporate donations than prohibit them completely. All regimes face compliance issues.

Unfortunately, the issue of corporate political donations defies an easy solution. Whilst it may be possible to prohibit corporations making traditional monetary donations,

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[1] All organisational donations are controversial, but corporate donations are the most controversial and widely discussed. It is beyond the scope of this paper to determine whether all organisations, including unions and non-profit entities, should be treated the same as corporations. One direction future research might take is to ascertain whether non-corporate organisations merit different treatment.

it is much more difficult to prevent them from engaging in activities which pose equivalent risk to democracy, such as lobbying, or indirectly supporting candidates by funding issue advocacy campaigns. Indeed, in 2010, the US Supreme Court ruled in the case of *Citizens United v Federal Election Commission* that the First Amendment protects the rights of corporations to fund independent political broadcasts. Corporations may be able to gain just as much appreciation from a candidate by funding certain broadcasts than by providing cash. In cases where there are constitutional or practical difficulties in establishing a ban, disclosure may the only response available.

In practice, many countries adopt disclosure as the primary mechanism to mitigate the democratic risk of corporate political donations. Pinto-Duschinsky (2002) surveyed the campaign finance laws of 104 countries and reported that 62 % had disclosure rules, whilst only 16 % had a ban on corporate donations (and only half of those comprised a complete donations ban). One of the supposed goals of political finance disclosure law is increased accountability of both donors and receivers. Disclosure can potentially inform voters (Nassmacher 2003b) by providing them with information concerning who is financing particular candidates and parties, which might in turn indicate the policy positions that the candidate/party is likely to adopt (Hourigan 2006). Further, disclosure may deter corruption (Davis-Denny 2005; Johnson 2005; Bauer 2007) by discouraging politicians from accepting suspect donations out of fear of a potential public backlash. Tham (2003) observes that there is a problem with relying on disclosure to mitigate democratic risk, arguing:

> All they [disclosure regimes] do is put into the public realm various details of donations. The effect of this, together with government actions which benefit donors, might give rise to suspicion of impropriety. But without more, this can only be a suspicion…. Moreover, this fog of inconclusiveness is all the more effective when political contributions are the norm for corporations. The sunshine may have been let in, but the smell remains (Tham 2003, p. 124).

A variety of theoretical perspectives have been brought to bear on the issue of corporate political donations. Some authors have expressed strong preferences, without explicitly grounding their analysis (Clawson et al. 1998; Centre for Political Accountability 2005; Grattan 2005; Hourigan 2006); while others have taken a legal perspective (Joo 2002; Sitkoff 2003; Dubs 2005; Mutch 2006). Surprisingly, this issue has received relatively little attention from within the ethics community. The most comprehensive analyses that have been performed to date, do so from the perspective of moral rights (Dworkin 2000; Young and Tham 2006; Stark 2010). Yet little consensus has emerged from this quarter, largely because there is disagreement concerning which particular rights take precedence.

This paper seeks to contribute to the understanding of the appropriate response to corporate political donations by taking a utilitarian perspective. Specifically, Robert Goodin's (1995) public policy utilitarianism is used to identify society's preferences and then evaluate the risks associated with the different options available. This approach avoids possibly intractable rights-based disputes, as utilitarian reasoning can provide solutions tailored to contexts, while rights-based reasoning remains tied to strict principles. If one argues that corporations have no right to democratic representation (Young and Tham 2006) or that corporate donations undermine citizen equality (Dworkin 2000), then corporate donations should be banned, regardless of potential benefits. Similarly, if corporate donations are deemed free speech, then restrictions are impossible.

Utilitarianism shifts the focus of analysis from whether corporate donations should be banned or not, to precisely what costs, benefits and risks are attached to various options. Therefore, a utilitarian analysis can provide policy guidance even when rights conflict. It can also consider how practical considerations, such as financial cost, might moderate support for a relevant right.[2] For these reasons, it is suggested that a utilitarian analysis can contribute substantially to optimising public policy in relation to corporate political donations. Indeed, Goodin's framework is designed to yield public policy recommendations. We, therefore, use this framework to evaluate the relevant risks of banning, capping or permitting unrestricted political donations by corporations.

The remainder of the paper is organised as follows. A summary of existing debates, regarding corporate political activity, is provided in the 'Corporate Political Activity' section. The 'Theoretical Framework' section explains Goodin's utilitarianism and its subsequent deployment in the following analysis. The 'Analysis' section applies Goodin's framework to banning, capping and leaving uncapped corporate political donations, while examining possible mechanisms that could be used to address these risks. This section also shows how disclosure can substantially modify these risks and options. Conclusions and limitations are then provided.

Corporate Political Activity

Most corporate influence on politics takes place through donations and lobbying, which are often discussed

[2] Healthcare provides an example of how the mere fact that a right exists does not mean that society can ensure it is fully promoted. There can be no question that citizens have the right to life and that healthcare is vital to realising that right. However, there is an obvious limit to the amount of resources that the state can spend promoting this right.

together. Increasingly, businesses employ representatives to create sympathetic relationships with legislators (Webber 1997). AccountAbility (2005, p. 18) reported in 2005 that there were an estimated 100,000 professional lobbyists worldwide, outnumbering legislators by a factor of thirty in Washington DC. Many corporations now eclipse nation-states in wealth (Anderson and Cavanagh 2000) and their increasing power is regarded with some concern (e.g. Korten 2001).

Whilst corporations, in some cases, have expertise and resources relevant to public decision-making, they are not always impartial observers and sometimes act in ways clearly contrary to the public interest. Ostas (2007) observes that lobbyists themselves are sometimes concerned about the corrupting potential of their work. Even Adam Smith expressed his misgivings about lobbying in *The Wealth of Nations*:

> The proposal of any new law or regulation of commerce which comes from this order [merchants] ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it… (Smith 1998, p. 157).

In the academic literature, corporate lobbying has been considered from both an empirical and an ethical perspective. Barker (2008), for example, showed how lobbying by the real estate industry has increased industry commissions. Brooks et al. (1998) found a relationship between corporate contributions and voting on agricultural issues. Cho et al. (2006) find that larger polluters tend to be larger political contributors, suggesting that such corporations may be seeking to manage the political risk caused by their operations. The Woodstock Theological Center (2002) has developed a series of principles for lobbying activity, by combining years of interview findings with various ethical perspectives. The first—and most important—of these principles is that lobbying must take into account the common good.

Clawson et al. (1998) take a more critical stance, arguing that business political activity should be viewed as 'a class struggle just as surely as are strikes and mass mobilizations' (Clawson et al. 1998, p. 21). From this perspective, corporations are (rightly or wrongly) attempting to guard their interests from attacks by unions, environmental movements and regulators.

In terms of moral theory, corporate lobbying and direct campaigning raise questions of corporate free speech rights. The concept that corporations are legal persons is now well enshrined (see Nace 2003 for an interesting account of the road to corporate 'personhood' in the US), but whether corporations possess moral or legal rights and if so, which rights and what they entail, remain contentious questions. Hamilton and Hotch (1997), citing Pava and Krausz (1995), argue not only that corporations may have particular knowledge or expertise that can aid in making sound public policy, but also that they have a social responsibility to lobby when they can help.

Stoll (2005) draws on the work of Rawls and Habermas to suggest that granting free speech to corporations, by virtue of their greater economic power, effectively silences other citizens. Further, she observes that John Stuart Mill's three defences[3] of individual free speech cannot be readily applied to corporations, which are (and arguably should be) more concerned with advancing profits than seeking truth.

Mayer (2007) further observes the irony of accepting that corporate free speech will assist public debate. Corporations have a history of suppressing unfavourable information by: shredding important documents; using the threat of frivolous lawsuits to silence criticism; and attaching non-disclosure clauses to legal settlements. As free speech is not held to the same standard of truthfulness as commercial speech, granting corporations the right to free speech would increase their ability to produce misleading advertisements. This is unlikely to be in society's best interest. It would be better, Mayer (2007) argues, for corporations to instead engage in more truthful dialogue.

Prior literature has also considered the specific issue of corporate political donations. Lascelles (2005) argues that corporations should be permitted to represent their interests because they are affected by policy decisions; they represent people whose financial interests are affected by policy decisions; and as large taxpayers, corporations have a right to some influence on policy. Hourigan (2006) goes even further and argues that the need to represent shareholders, customers and employees is a sufficient reason to allow corporate donations.

Conversely, Young and Tham (2006), who advocate eliminating corporate donations, argue that corporations have no claim to democratic representation because they are not citizens. They further argue that as corporations have a plutocratic, undemocratic structure, they lack a derivative right to democratic representation. Yet it cannot be simply assumed that only citizens are entitled to democratic representation—this is precisely the question at issue. It is not obvious that possessing a plutocratic, undemocratic structure

[3] These reasons are: (A) to preclude the speech of others is to assume one is infallible; (B) truth is discovered in the collision of various opinions and (C) active and lively debate is the only way to ensure that we are not engaging in dogmatism and prejudice.

negates any claim to democratic representation—perhaps any representation is better than none.

Dworkin argues that corporate contributions made out of general treasuries breach citizen equality, as 'corporations are free to use their vast general wealth to wield political influence that few if any individual citizens can' (Dworkin 2000, p. 379). For this reason, Dworkin opposes the use of general corporate treasuries for political involvement, though he would permit corporations to seek funds for use in politics.

Stark (2010) identifies eight different activities through which corporations influence political decisions, evaluating their moral status by examining the extent to which they contribute to both freedom of expression and the risk of corruption. The benefit to freedom of expression is ascertained by looking at two factors: whether the speaker's own reasoned views are being expressed and whether these views are being expressed in a reasoned way. The most valuable forms of expression satisfy both conditions. Corruption risk is assessed by determining whether the activity is capable of causing what Stark terms 'full quos' or 'half-quos'. Full-quos—which is shorthand for the Latin term *quid pro quo,* meaning receiving one thing in exchange for something else—occurs when an activity is capable of causing a legislator to alter their position on an agenda issue. Half-quos occur when the nature of the activity makes it unlikely it will cause a position change, but may cause legislators to adopt a new position on a non-agenda issue or reorder priorities in a new agenda. Half-quos may have less potential to damage democracy than full-quos, but they are still problematic, as they may prime legislators to have sympathetic stances on emerging issues.

Ultimately, Stark (2010) finds that the only ethical activities are funding issue advocacy campaigns and engaging in small money lobbying, which is building relationships through the provision of meals and other small gifts. Stark deems these two activities ethical because they provide the most valuable form of democratic expression, while only risking a half-quo. This analysis, however, ignores the fact that political activity may present important information, even if it is not the speaker's own view, or expressed in a reasoned way. Sometimes it is more effective to communicate through rhetoric, slogan or sarcasm, rather than through argumentation.

Various strategies for regulating corporate donations have been proposed. Leigh (2004) prefers blind trusts, suggesting they would sever the link between money and favours, but unlike restrictions or bans, would ensure the availability of funds. Ramsay et al. (2000) recommends allowing corporations to donate only if shareholder approval is gained and donations are disclosed in annual reports. These strategies are discussed more in the 'Disclosure and Other Risk Management Mechanisms' section. For now, the next section deploys a utilitarian framework in order to permit the proper consideration of costs, benefits and risk.

Theoretical Framework

Utilitarianism was selected for this study because it corresponds to the public policy objective of promoting the public good. Goodin (1995, p. 26) observes that utilitarianism 'ensures as best as we are able to ensure in the uncertain world of public policy-making that policies are sensitive to people's interests or desires or preferences'. Goodin's (1995) utilitarian framework is designed for public policy issues and explicitly tracks the relevant risks, costs and benefits.

Utilitarianism has recently been applied to moral issues in business ethics, such as CEO pay (Moriarty 2005), using antidumping laws against competitors (McGee 2008b) and insider trading (McGee 2008a). Goodin's utilitarianism framework has been referenced by several studies. Hargreaves (2008) cites Goodin's argument that utilitarianism is compelling for public, rather than private, issues. McNamee et al. (2001) draws upon Goodin's observation that policymakers can deal with the multitude of preferences that exist in society, by focusing on relatively common welfare interests. Sobel (1998) cites Goodin's work on preference satisfaction.

Goodin's (1995, p. 25) key assertion is that 'policies are justified because ultimately they are utility-maximising in some sense or another'. The quality of a policy depends on the extent to which it maximises utility, although legislators have significant latitude in deciding which of the various conceptions of utility are the most relevant for any particular decision. Generally though, Goodin (1995) considers a policy to be utility-maximising when its general observance can be expected to best advance society's interests—or, at least, advance society's interests as well as any conceivable alternative. Society's interests can be determined by ascertaining people's rational preferences at the time the policy is expected to take effect.

In the matter of corporate political donations, the policy that would best advance society's interests would be the one which best minimises the risk that the various preferences involved in the issue will not be satisfied. The term 'risk' is used because it is difficult to be certain of the utility effects of a policy. Policies can only be viewed in terms of the likelihood or 'risk' that it will cause utility benefit or detriment.

In applying utilitarian philosophy directly to political philosophy, Goodin addresses the criticisms that utilitarianism has attracted: being too cold and calculating; requiring too great a sacrifice; and for failing to account for rights, integrity and special obligations. Goodin contends that these criticisms lose their force when utilitarianism is used to guide public—rather than private—decision-making. He observes that:

> The strength of utilitarianism, the problem to which it is a truly compelling solution, is as a guide to public, rather than private conduct. There, virtually all its vices—all the things that make us wince in recommending it as a code of personal morality—loom instead as considerable virtues (Goodin 1995, p. 8).

Utilitarianism may encourage its individual users to disregard any special obligations owed to one's friends and family, but a dispassionate mindset is appropriate for public decision-making. Basing policies—especially foreign aid or welfare policies—upon utilitarianism is not too demanding. It may require a sacrifice from the society as a whole, but such sacrifices will be spread amongst everyone, and should not be too great for anyone.

Goodin concedes that even in the public policy domain, optimising utility may entail policies which violate people's rights—especially on issues such as censorship, land rights, compulsory acquisitions and sedition laws. Further, utilitarianism may yield policies which require people to violate their own integrity. However, it would be rare for major or systemic violations of rights or integrity to contribute substantially to the public good for the following reason:

> Many of the cases involving sacrificing the interests of the few to the many (or of the many to the few) generate the purported utilitarian payoffs only if it never becomes public knowledge what we are doing. Once it becomes public knowledge that, as a matter of policy, we are willing to hang innocent people to assuage a baying mob or to carve up one person to generate spare parts for others, then everyone starts worrying: Who will be next? The anxieties occurring across the whole population will more than suffice to cancel the utility advantages of carving up one person or throwing one prisoner to the mob on any given occasion[4] (Goodin 1995, pp. 22–23).

Whilst there may be situations in which the greater good could be advanced by making a heinous decision, Goodin's utilitarianism would rarely recommend such options as the people using it must consider both the long and short term consequences. Only a huge utility gain could justify an apparently heinous decision. This huge utility gain and expected hypothesis lack of better options might be good reason to believe that this 'heinous' decision really is the one that should be taken.

A final problem for utilitarianism concerns how utility, at least partially, is determined by people's preferences. People may have preferences that involve harm or disrespect to others, so it seems perverse or illegitimate to include such preferences in a utility calculation. Goodin (1995, Chap. 9) provides a complex account of how to 'launder' such preferences, arguing that:

> 'Utility information' can and should be seen to include information about *why* individuals want what they want, about the *other things* they also want, about the *interconnections between* and *implications of* their various desires, and so on…. The ultimate goal of enriching our utility information in this way is to use it to launder people's preferences (Goodin 1995, pp. 132–133 emphasis in original).

There are four grounds for laundering preferences. First, there is good reason to disregard those preferences which will clearly *not* contribute to the public interest. Political candidates or corporations may prefer a system that advances their own interests over the public good, but such preferences can be disregarded. Second, preferences can be laundered if people are merely ignorant of the true situation or have failed to properly consider the implications of having that preference satisfied.

The third case where laundering can occur is when people hold a reciprocal forbearance. These situations occur when people would prefer an activity be banned, but in the absence of such a prohibition, will engage in it. It would be reasonable to ban the activity in such circumstances. It may be that many corporations would prefer corporate donations be banned, rather than to have the freedom to donate. In such situations, banning donations would be justified.

A fourth opportunity for laundering concerns people who, either explicitly or implicitly, hold a preference *for* a preference. An example of people holding an explicit preference for a preference would be people who dislike increased tax, but who would explicitly prefer to support a public funding system, if it could be expected to reduce undue influence. In such a situation, the preference for no increase in tax could be disregarded, in favour of the more relevant preference for a public funding system.

A fifth laundering opportunity occurs by considering implicit preferences. Disregarding explicit preferences may be necessary to avoid what Hardin (1968) terms 'the tragedy of the commons', i.e. a situation where allowing everybody to pursue their rational economic interest is disastrous for all concerned. For example, the best way to satisfy people's desire to catch fish may not be to allow

[4] Theoretically, the government might try keeping their policies of right violations secret. However, Goodin (1995, pp. 76–77) argues that should the policy of keeping secrets ever be discovered, the disutility caused by people's worry will be even greater, as there is uncertainty as to how and when such violations will occur. Thus, in order to justify keeping secret a right-violating policy, the utility gains would have to be very high.

unrestricted fishing, but rather to impose fishing quotas to maintain fish stocks.

Considering implicit preferences provides the utilitarian justification necessary to create laws which are detrimental to an industry's short term profits, but necessary to maximise their long term profitability—whether or not industry supports such laws. History has shown that industry does not always know what is most conducive to maximising long term outcomes. For example, Black (2004) describes how the Japanese government funded an excessive number of public works projects in exchange for kickbacks from contractors. This ensured that during economic downturns the construction industry not only failed to shrink, but actually grew. When this bloated sector inevitably became unsustainable, not only did many construction firms fail, but many of the banks that extended credit to the construction industry were either financially crippled or insolvent. This naturally sent further shockwaves through the Japanese economy.

To briefly recap, from Goodin's (1995) perspective, the moral obligation of government is to enact policies, for which it is expected that their general observance will best, or equally best, advance society's interests.

Interests can be deduced from society's expected rational preferences at the time the policy will come into effect. The next section applies Goodin's framework to the case of corporate political donations, in order to consider whether donations should be legally permitted; and what mechanisms might be present to reduce the risks raised by the various reform options.

Analysis

The analysis begins by outlining the preferences associated with corporate political donations. This is followed by with a discussion on how varying the level of corporate donations can influence the risk that these preferences will not be satisfied. The final part of the analysis discusses disclosure and other mechanisms that can influence the risks concerning corporate political donations.

Preferences Concerning Corporate Political Donations

A review of the literature regarding corporate political donations reveals four main preferences.[5] The first concerns **donor influence** (Dworkin 2000; Nassmacher 2003b; Johnson 2005). In an interview on Fora.tv, former US Senator Bill Bradley observed that 'lot[s] of times the legislative efforts reflect[s] the money more than the commitment to serve all the people' (Fora.tv 2007, p. 2). Corporate donations can potentially be used to win subsidies, influence the drafting or application of legislation, secure contracts or otherwise affect decision-making. Clawson et al. (1998) argue that many executives fear that if they fail to maintain a political presence, a well-intended but unreasonable policy may cause significant damage to their businesses. Many corporations view their political activity as a way of protecting themselves from labour, environmental groups and regulators. Nevertheless, corporations, either individually or as a class, should not have excessive influence over political decisions.

Ironically, corporate contributions and lobbying create risks for industry as a whole, by allowing underperformers to survive using legislative favours. As previously noted, the Japanese government's policy of keeping an excessive number of construction companies in business exacerbated subsequent economic problems (Black 2004). Further, Clawson et al. (1998) argue that any attempt to implement coherent legislation is undermined when each business attempts to secure a special deal for itself and that the overall effect is detrimental to business as a whole. The reasons to prevent any donor, including corporate donors, from having excessive influence over public policy are not reasons to preclude corporations from any participation, and indeed corporate participation can be advantageous. Dworkin, for example, acknowledges both that 'citizen equality is seriously impaired when corporations are free to use their vast general wealth to wield political influence that few if any individual citizens can' (Dworkin 2000, p. 379); and that the corporate sector may be able to provide important information on electoral issues that might not otherwise be available. Corporations can be considered to have appropriate influence when they provide input based on relevant expertise into decisions or make other useful contributions, but do not have their interests prioritised over the public interest.

A second preference concerns **adequate financing** (Pierre et al. 2000; Nassmacher 2003b; Johnson 2005). If a political finance system fails to provide sufficient operating funds to parties, moral and practical risks eventuate. Parties may attempt to compensate for a shortfall by seeking out loopholes or through non-compliance (Fogg et al. 2003). A donation policy which adversely affects minor parties more than major parties may discourage or exclude new entrants; and hence narrow political debate. Fundraising exigencies may also steal time from politicians' legislative activities; for example, US Senators Bill Bradley and Alan Simpson claim that the pressure to raise funds interfered with the legislative activities of the Senate (Fora.tv 2007).

[5] It is not possible to source preferences directly as polling data provides insufficient information. A 2007 Gallup Poll survey (Newport and Carroll 2007), for example, found that 47% of 1,001 Americans deemed political action committee funding acceptable; whilst another 47% deemed it unacceptable, but did not identify specific preferences for the donations system.

A further preference concerns **donor pressure.** Sitkoff (2003) and Smith (2003) observe that politicians have been known to pressure corporate donors into contributing, which not only places corporations in difficult positions, but also risks bringing the political system into disrepute. It is, therefore, undesirable for corporations to be pressured into donating. The problem is exacerbated if corporate executives subsequently pressure their employees to donate.

A fourth and final preference concerns the **cost of maintaining and enforcing the democratic system** (Smith 1999; Select Committee on Electoral and Political Party Funding 2008). This risk concerns the cost to the public purse—not the cost to individual companies or other donors. The risk here is that spending money on the electoral system does less good than spending it elsewhere. It is in the public interest for the cost of both government spending on campaigns and electoral administration, as well as compliance costs for citizens, be no higher than necessary.

There is a strong likelihood that these preferences will conflict. For example, ensuring adequate financing may conflict with ensuring appropriate donor influence. Each possible policy option can thus be viewed as a trade-off between the risks associated with different preferences. It is quite possible that no single policy offers a superior trade-off; and hence there are multiple solutions with equivalent utility. While Goodin acknowledges that applying his framework will not always result in the identification of the single-best solution, he further argues it is still useful, observing that:

> …even when utilitarianism proves indeterminate, it sets the terms of that public debate. It tells us what sort of considerations ought to weigh with us, often while allowing that how heavily each of them actually weighs is legitimately open to dispute. Even where utilitarianism is indeterminate, it is not silent. To fill in those lacunae, we do not need to turn to some other principles altogether. Rather, in such cases utilitarianism speaks with many voices, and political argument in such a setting can (and utilitarians would say 'should') consist simply of a debate among them (Goodin 1995, p. 21).

Likewise, this paper does not identify a single policy that will solve all problems associated with corporate donations in every context. The analysis does, however, identify the risks associated with different mechanisms and provide policies which are likely to be optimal for a given set of contextual factors. This analysis begins by assessing how varying the level of corporate political donations changes the risk that preferences will not be satisfied.

Varying Maximum Donation Level and Risk

Donation levels form a continuum, with a donation ban at one pole and an uncapped situation at the opposite pole. A cap could be anywhere between these poles. The lower the donation cap, the more its risks will approximate those of a donation ban, while the higher the donation cap, the more it mirrors the risks associated with no cap. The term 'donation restriction' is used here to refer to either a cap or a ban.

With respect to donor influence, permitting higher donation amounts will increase the risk that corporations will wield excessive political power. As previously noted, this may create risks for industry as a whole in the form of incoherent legislation and allowing underperformers to survive. Further, higher donation limits create the risk that corporate executives as a class will have excessive influence over the political process. Former US Senator Bill Bradley observed that politicians are increasingly becoming 'obligated to a class of Americans who can afford to contribute sizable amounts of money' (Fora.tv 2007, p. 2)[6] which led to legislation benefitting this class, rather than the public interest. Given that corporate executives can potentially make decisions that have huge effects on people's standards of living, allowing this class too much freedom might be detrimental to society.

A donation restriction might seem likely to reduce the risk of inappropriate influence because this would lessen the inequity between corporate and citizen power. Without appropriate safeguards, however, restrictions may only result in donations being driven underground (Orr 2004). Pierre F. Côté, former Chief Electoral Officer of Québec, testified in front of the Standing Senate Committee on Legal and Constitutional Affairs (2006) that restrictions are difficult to enforce as:

> We would be fooling ourselves to think that one way or another people will not sidestep the prohibition…financing by the public, or going door to door, is no longer enough to cover the increasingly high cost of election campaigns, especially the ever increasing cost of TV advertising…

Prohibitions will, therefore, be ineffective, if parties resort to 'more devious means to obtain additional support' (Fogg et al. 2003, p. 171). Corporations may also simply employ other lobbying methods, such as direct appeals to the public (i.e. issue advocacy) or employing lobbyists. Restricting corporate donations will not reduce inappropriate influence, unless the restriction is generally observed, which in turn requires donors and receivers to accept the validity of the law. Such acceptance is likely

[6] This comment referred to individual donations, but the point also applies to corporate donations.

only when corporations are genuinely able to represent their interests, for example, within consultation processes; and therefore, have less reason to incur expense and risk bad publicity by actively seeking out loopholes.

The second risk concerns inadequate financing. At a minimum, parties and candidates must reasonably expect funding sufficient to permit a contest of ideas.[7] Goodin (1995, Chap. 2) contends that, contrary to the libertarian position, state intervention should not be opposed as a matter of principle, which means that instituting a public funding system is acceptable, if it is needed to permit such a contest.

While increased restrictions increase the risk of inadequate financing and may lead to citizens not making an informed voting decision, the converse is not necessarily true. Allowing large amounts of money into elections may not necessary cause citizens to become more informed, as it may be used to purchase superficial, or even misleading, advertisements with no informational value. Indeed, large or uncapped donation limits might simply raise the level of funding necessary to run a competitive campaign.

This risk is also affected by opportunities to garner sufficient financing from other sources. Generally, corporations support major parties. It is, therefore, unlikely that a ban or cap will significantly affect minor parties or prevent the formation of new parties. Further, while major parties may depend more on corporate donations they also tend to have the largest support bases; and hence a corporate donation ban leaves them with a range of alternatives. The collective implication of these factors is that a donation restriction might not adversely affect adequate finance levels.

Norton (2011) argues that without funds from unions or business, the Labor and Liberal parties would likely never have developed in Australian politics. Although unlikely, it is, therefore, possible that restricting business donations may hinder a minor party and prevent it from realising the benefits that its competitors enjoyed when they were being formed. One solution to this problem is to exempt parties from corporate donation restrictions when they hold less than a specified number of seats, which would enable parties to gain 'seed funding' without creating significant democratic risk.

Risk three is donor pressure. The larger the donation cap, the greater the perceived benefit of contributions. Therefore, there is greater incentive for politicians to pressure corporations to donate. Where the maximum allowable level of corporate donations is much smaller than the maximum allowable level of individual donations, there is an increased risk of employees being pressured to donate. However, equalising amounts or having a lower cap for individuals would offset this risk.

It is difficult to determine which point along the restriction continuum would create the most utility by minimising system cost. Having no cap has the greatest potential to minimise cost, as there should be no enforcement costs and major parties are less likely to require public funding. However, there is no guarantee that this potential will be realised, as parties may want public funding, no matter how much corporate money they collect. Further, the absence of a cap makes it more important to have other mechanisms, primarily disclosure, to counter the problems associated with corporate donations and implementing these mechanisms may offset the savings on enforcement costs.

The above analysis shows that there are risks associated with both restricting and allowing corporate donations. The major risk associated with unrestricted corporate donations is that donors (both corporations and managers) acquire inappropriate influence, although it is not certain that restricting corporate donations will eliminate this risk. The major risk associated with restricting corporate donations is that it might lead to parties having inadequate funding (necessitating greater public funding) and also result in employees being pressured to donate.

The option that best manages these risks varies according to the particular policy context. However, the utilitarian approach enables us to derive the first two key principles of this analysis. A complete list of principles is provided in Table 1. First, *corporate political donations should be banned if it is expected that such a ban will be generally observed and will not lead to inadequate political funding.* Second, *where a corporate donation ban is not possible, the next best option is to set a donation cap.*

The first principle states that if it is expected that a corporate donation ban will not cause problems with regard to adequate funding and will be generally observed (i.e. both corporations and parties do not seek to exploit loopholes or pressure donors; and that a breach by one party will not cause all parties to follow) then this ban is likely to be the optimal policy, as it will reduce the chances of corporations having inappropriate influence over the political process. The second principle recognises that if parties and corporations will not generally comply—i.e. non-compliance will be the rule, not the exception—or if parties are deemed to need corporate money, then the next best option is to set a donation cap. Parties and corporations may be more willing to comply with a cap, than a ban, as it allows some corporate funds to change hands. Ideally, any cap should be sufficient to discourage parties and corporations from exploiting loopholes and indexed to inflation, in order that the incentive for compliance remains.

[7] The term 'reasonably expect' is used because parties cannot reasonably expect to gather sufficient funding if they make no effort to acquire funds.

Table 1 Summary of utilitarian recommendations

1. Corporate political donations should be banned if it is expected that such a ban will be generally observed and will not lead to inadequate political funding
2. Where a corporate donation ban is not possible, the next best option is to set a donation cap
3. Contributions to fund express advocacy campaigns should be treated the same as corporate monetary donations (i.e. banned if possible, otherwise capped)
4. Lobbyists should be banned from raising campaign contributions on behalf of candidates/parties
5. Small money lobbying—i.e. when lobbyists buy legislators lunch or provide small gifts—should be banned
6. Donations in the form of bill drafting—or paying for bill drafting—should be prohibited
7. Mechanisms such as a secret refund booth should be implemented to mitigate the risk of employees being coerced into donating
8. Executives should be limited to asking living people—shareholders, employees or other stakeholders—for money and must only use those funds for pre-specified political activity

In all likelihood, corporations will still be able to obtain some level of inappropriate influence, but installing a cap restricts this possibility. Such a cap will need to be supported by legislation which prevents corporations from donating through multiple subsidiaries and closes other such loopholes. If corporations cannot be generally expected to comply with the cap, then it makes little difference where the donation level is set.

An important consideration is whether different donation requirements should be imposed on special cases such as industries that either have strong influence over the government or have a particularly high stake in government decision-making. Industries which have strong influence over the government include those with higher ability to shape public opinion (such as the media) as well as those that generate a significant amount of the nation's revenue (such as resources companies in some instances). Perhaps surprisingly, donations from organisations in such industries actually tend to pose less democratic risk than their counterparts, as it is unlikely that donations will grant these organisations benefits that they would have been unable to obtain by virtue of their special influence. The primary democratic risk posed by such organisations is via their non-donation activities, which must, therefore, be managed in other ways (such as promoting independent, publicly funded broadcasters) and such activities are beyond the scope of this paper. As donations are not the primary source of democratic risk in relation to these organisations, Goodin's framework does not provide a compelling case for different rules.

For industries that have high stakes in government decision-making (such as property developers) the democratic risk posed by donations is heightened. Given the reliance on favourable political decisions for profitable operations, both the frequency and amount of donations from these industries are likely to be higher than that of their peers. This increased activity, however, does not change the nature of the risk posed by these industries—it merely makes the risk more acute. The ultimate recommendation in relation to donations—banning where it is practicable, and disclosing where it is not—therefore, becomes more urgent and clear-cut in such cases, but they do not change the recommendation itself.

As noted above, direct donations are not the only means by which corporate activity can impinge on the democratic process via the donation process. The next section derives utilitarian principles to respond to these forms of donation-related activities.

Principles Relating to Other Corporate Donation Activities

Stark (2010) has identified numerous mechanisms which corporations might use to influence the political process and this section derives a number of principles for dealing with them. These are general principles only, however, as it is possible that a given democracy may have factors at work that alter the utilitarian calculation, such that the principle provided is not applicable.

The third principle is that *contributions to fund express advocacy campaigns should be treated the same as monetary donations*. Given that campaign contributions are typically spent on advertising, it makes little difference to democratic risk whether a corporation donates money directly or whether it, instead, donates the advertising. The same conclusions drawn concerning contributions can be applied to donations of candidate advocacy campaigns—namely, that this activity should be banned, assuming compliance and adequate funding. If a ban is impractical, then the next best option is installing a limit.

The fourth principle is that *lobbyists should be banned from raising campaign contributions on behalf of candidates/parties*. Allowing this activity risks permitting undue influence, while restricting this activity removes that risk, with little chance of giving rise to the opposite risk of causing inadequate financing. After all, parties are capable of raising money without lobbyists.[8]

The fifth principle is that *small money lobbying—when lobbyists buy legislators lunch or provide small gifts—should be banned*. Banning these practices will not create democratic risk, as no significant public preferences will be left unfulfilled. By contrast, there is some risk that small money lobbying will establish cosy relationships within which undue influence may be exerted. Indeed, the pharmaceutical industry provides evidence that even small gifts may create influence (Katz et al. 2003). Democratic risk is thus minimised by banning small money lobbying.

The sixth principle is that *donations in the form of bill drafting—or paying for bill drafting—should be prohibited.* Stark (2010) reports how US Senator Gorton introduced a bill scaling back the Endangered Species Act that Egan (1995, p. 20) states was 'written by a group of Washington, D.C., lawyers who represent timber, mining, ranching and utility interests that have been most critical of the law'. The problem with this activity is that it narrows the terms of debate, allowing those who finance those bills undue influence over decision-making. As the risk to democracy from allowing donors to draft bills or pay for such drafting exceeds the benefits, this activity should be banned. This principle does not suggest that industry or other interest groups should be prevented from recommending amendments to a bill, merely that they should not be permitted to write bills that members can introduce into the legislature. Given the crucial nature of legislation to the public, if candidates lack the resources to introduce bills without first having them drafted by interest groups this activity becomes a compelling case for public funding.

Another technique lobbyists use is what Stark (2010) terms 'small information lobbying', which involves lobbying a pitch to legislators at receptions, charitable events or in other widely attended social venues. While events with expensive attendance requirements should be treated as corporate donations (and thus the first two principles would apply), there is no clear utilitarian recommendation concerning events genuinely open to the public. Meeting someone at an event appears to be a legitimate way of influencing opinions and banning it may arguably result in people having too little influence. Additionally, if such a ban was deemed to best advance the public interest, then one must ask whether the ban should be also applied to others. If one side of the debate obtains too much advantage by engaging in small information lobbying, then it would follow that the risks to democracy would be reduced even further by preventing all other sides from doing the same thing—meaning it should be illegal for political activists, charity representatives or even ordinary citizens to attempt to communicate with politicians at public events on any political topic. It is only if it could be shown that it was especially problematic to allow corporate lobbyists to engage in small information lobbying, that utilitarianism would require a selective ban. It is doubtful, however, that such justification exists.

A final form of influence involves corporate contributions that are not made from the general treasury, but rather from segregated funds consisting of money people have given with explicit permission that it be used in electioneering activity. Such segregated funds are typically maintained by a political action committee (PAC). Although Dworkin (2000) is a critic of corporate donations, he advocates in favour of allowing donations from segregated funds, arguing it is in line with the requirements of citizen equality. By contrast, Stark (2010) argues that this practice is not justified by his democratic principles, as it allows the formation of *quid pro quo* relationships without providing the most valuable form of democratic expression.

There are risks associated with both allowing and disallowing PACs. Permitting PACs increases the risk that employees, particularly managers, will be coerced into donating money. Clawson et al. (1998) report that almost all funds collected by PACs comes from corporate managers, rather than shareholders. They argue that managers are vulnerable to coercion as they lack union support and want to show their bosses that they are team players by contributing. Worse, as executives can direct how segregated funds are used, they can potentially use employee money—in addition to their own—to advance their own class interests.

Yet banning corporate PACs is problematic as it would have the effect of prohibiting citizens with a stake in a company from pooling their resources to help fight political battles. Further, in countries where citizens have a constitutional right to freedom of speech and assembly, banning corporate PACs may be impractical. Where a PAC prohibition is permitted, it would increase the risk that corporate stakeholders will have less influence in the political process than is appropriate. This risk, however, is substantially mitigated by the fact that even without PACs large corporations will still have political influence via their economic power and personal contributions from executives. Small businesses are unlikely to have an influential PACs, hence they should be mostly unaffected by a PAC ban.

For most countries, the ideal solution would be one that minimises both previously discussed risks, such as requiring every corporate PAC to set up a secret refund booth (as described in the 'Principles Relating to Other Corporate

[8] A US Gallup Poll (Newport and Carroll 2007) surveying 1,001 Americans found that 75% thought that it was inappropriate for Presidential candidates to be receiving campaign contributions from lobbyists. Although poll data are not the most reliable proxy of public preferences and are subject to change, this poll indicates that currently there is a clear public preference to ban lobbyists from donating (at least in the US).

Donation Activities' section). This secret refund booth would allow stakeholders who want to contribute money to do so, whilst allowing those coerced into donating to pretend to donate and then secretly reclaim their money. The seventh principle is, therefore: *Mechanisms such as a secret refund booth should be implemented to mitigate the risk of employees being coerced into donating.*

One final issue is that if donations are legal, how should corporations respond? In other words, if executives believed they should adopt a political contributions policy, in accordance with Goodin's public policy utilitarianism, what would it look like? Following from the discussion immediately above, the ideal solution—the one that presents the least amount of democratic risk—would be to make donations only from segregated funds. The eighth principle is: *Executives should be limited to asking living people—shareholders, employees or other stakeholders—for money and must only use those funds for pre-specified political activity.* Such political activity should of course stay within the corporation's licence to operate and be concerned with maximising overall utility, not just return on investment, and employees should at no stage feel coerced into making contributions. No attempt should be made to undermine the democratic process or avoid the requirements of transparency.

Observing this eighth principle would prevent shareholders having their funds used to support causes that they actually oppose. Also, as there is much less controversy about citizens, as opposed to corporations, attempting to influence democracy, there are fewer concerns about undue influence. Further, should these segregated funds fail to raise sufficient resources to allow proper representation, executives cannot be blamed for failing to represent shareholders in the political realm.

This section has argued that in most contexts a ban on donations is the optimum way to manage democratic risk. If a democracy deemed it necessary to keep corporate donations, however, for reasons such as an inability to enforce donation bans, there are several mechanisms that could reduce the associated risks. They are discussed in the next section.

Disclosure and Other Risk Management Mechanisms

Policymakers who choose not to ban donations have a number of options for managing democratic risk. Disclosure of donations is likely to play a particularly important role.

Though the nexus between donations and decisions cannot be fully uncovered, disclosures may still play an important role. Many decisions are complex and controversial, with plausible reasons and strong advocates on opposing sides. It may, therefore, be impossible to know whether a decision was made to benefit donors, or for more public-spirited reasons, even when full disclosure exists. Even so, disclosure may help citizens identify potentially troubling donor-party relationships, thereby discouraging politicians from prioritising donor interests (Garrett and Smith 2005; Johnson 2005; Hourigan 2006; Bauer 2007).

In other words, political finance disclosure may lead to *transparency*, but it is far less likely to lead to true *accountability*, as this requires both donors and receivers to take responsibility for their actions. Corporations and politicians can hardly be called accountable for political donations, if they can disclose their activities without fear of any consequences.

Theoretically, one way in which politicians may be held accountable would be for citizens to change their vote in response to a donations scandal. Practically, however, there are numerous reasons why individuals may not react in this way. For instance, other parties may not have policies that the citizen supports and/or may have donation scandals of their own. An election may be held months, or even years, after the scandal, by which time the citizen has forgotten about it. Further, a citizen may ignore the situation completely if he or she believes it is normal for politicians to be in situations where there is an obvious conflict of interest and nothing can be done about it.

It is even more difficult for citizens to hold a corporation accountable for political donations. Citizens will rarely be so angered by a suspicious corporate political donation that they will boycott the organisation's products, organise protest marches, run a campaign telling people about the donation or engage in any other form of protest. While there have been instances where citizens have harassed small business, after learning about their political contributions (Lourie 2009), this is not a desirable mechanism for accountability.

Ultimately, the best chance that disclosure has to reduce democratic risk, thereby fulfilling a primary function of political finance disclosure, is by creating the possibility that those who partake in suspicious activity will be publically named and shamed. No one likes public humiliation, and this is especially true for politicians and corporate directors for whom reputation is central to their livelihood. For this reason, politicians and corporations may avoid putting themselves in a situation where there is a significant financial conflict of interest, for no other reason than avoiding being in, or associated with, a scandal.

The degree to which a disclosure regime successfully manages risk depends greatly on its design. The discipline of accounting, although traditionally associated with financial reporting, has long been concerned with the characteristics of disclosure that make it useful. The International Accounting Standard Board's (2010) conceptual framework, for example, identifies characteristics essential to the production of useful data as being: relevance, materiality, representational faithfulness, comparability, verifiability, timeliness and understandability. Perhaps surprisingly, despite the increasing interest in social accounting as a distinct discipline (Mathews 1997; Gray 2002; Mathews 2004; Gray 2005; Lamberton 2005; Parker 2005; Gray and Guthrie 2007; Unerman et al. 2007; Owen 2008), the principles of accounting disclosure have not yet been applied to political donations.[9] Outside of accounting, Wilcox (2005) makes a number of recommendations for optimal disclosure regimes, including requiring that corporations report: their full business name (so there is no confusion if the full name is used for one donation and initials for another); their full business address (to identify coordinated employee contributions); and any other election-related activities, such as mobilising volunteer labour, distributing election guides etc. The Campaign Disclosure Project (2008) suggests over sixty criteria for evaluating electoral disclosure; however, this list is clearly designed with individual donors in mind and has no criteria specifically for corporate donors.

In practice, as noted above, disclosure is a widespread mechanism, being required by 62 % of the 104 countries surveyed by Pinto-Duschinsky (2002). Donations are often disclosed via what may be termed a 'central database regime'. Under this model, reporting entities (donors, parties, candidates) provide data to a central agency (or agencies) charged with making that information available through a database. A database format permits people to search donation records by party, donor, donor industry, donation amount or electorate. These databases exist in many countries, including Australia, Canada and the US. In other contexts (such as pollution emissions), databases have played an important role in improving performance; Stephan (2002) suggests that key success factors include the ability to focus on the 'worst' performers and facilitated media access.

In addition to database disclosures, Ramsay et al. (2000) recommend that corporate donations be disclosed in annual reports. This would permit shareholders, employees or other stakeholders to see a corporation's overseas donations and also prevent corporations from obscuring donations, via use of interposed entities. This is an important recommendation and one that would enhance the ability of disclosures to mitigate democratic risk.

While disclosure may play an important role in relation to managing donation risk it is not a panacea. Disclosure alone cannot prove that corruption has occurred; cannot prevent politicians from pressuring organisations; and cannot ensure there is adequate financing. Further, the extent to which disclosure regimes are effective is highly contingent on the particular features of the regime. In light of these shortcomings, a number of other mechanisms to manage donation risk have also been proposed.

Ackerman and Ayres (2006) propose a 'secret refund booth', in which all candidates deposit contributions into an escrow account, where the funds are held for a certain period. Any donor wanting to reclaim all or part of their money would have a short window to do so. Candidates would not be informed of the refund, nor would it be reflected on the official record of donor contributions. Such a system may do little to reduce the risk of inappropriate influence, but it would offset the risk of donors being pressured into contributing, by allowing them to pretend to contribute and then secretly reclaim their money. The disclosure system of a secret refund booth would operate as normal, except that reports would show the maximum amount donors *may* have contributed, rather than record what *was* contributed. Such disclosure is still useful, as it shows the network of financial relationships that may exist. Even when a donor has reclaimed their donation, knowing the donation they pledged is still valuable, as parties and candidates may be unaware of this fact and act as though the contribution had in fact be made. (Indeed, if the secret refund booth works as intended, this is exactly what is supposed to happen.)

Leigh (2004) suggests that an alternative to disclosure is a blind trust, which would entail donors contributing to a third party (such as a bank or election agency) who would then pay the political beneficiaries without identifying donors. A blind trust would allow corporate money into the system—thus reducing the risk of inadequate financing—without the risk of donors having inappropriate influence or being pressured to contribute. However, influence might remain in play, as nothing would prevent corporate players claiming large contributions, whether or not these were made. Further, the blind trust will suppress donation information (Hourigan 2006) making it unavailable to voters and is vulnerable to issues of information security. Ultimately, the main benefit of a blind trust may be to prevent donors being exposed to persecution by supporters of other parties.

More recently, Leong (2009) proposed the creation of a democratic enhancement fund. This involves all corporate donations going into a general pool to be redistributed according to a set formula, such as every party with at least one seat being entitled to one share of the money per seat contested in the last election, while sitting independents are entitled to one share each. Given that any party will likely receive less than the combined totals received by their rivals, politicians have little reason to pressure donors to donate to the fund; or to sell favours in exchange for money being placed into the fund. The benefit that corporations derive from donating into this fund is that they can gain

[9] Some social accounting researchers have, however, utilised corporate donation data as a variable when conducting research on a related topic (Roberts et al. 2003; Dwyer and Roberts 2004; Roberts and Bobek 2004; Cho et al. 2006; Cho et al. 2008).

Table 2 Factoring influencing optimal policy concerning corporate political donations

Factor(s) influencing optimal policy choice	Effect
Financial resources of democracy	Affects ability to fund programmes, such as disclosure, democratic enhancement fund
Media and education	Affects value of disclosure programme in informing citizens
Information technology necessary to support tax credits	Determines feasibility of offering tax credits to donors
Risk of donor intimidation	Affects whether there should be disclosure or a blind trust
Willingness of citizenry to contribute money to political parties	Influences the need to allow corporate money into the system
Extent to which candidates are expected to provide lavish gifts to major contributors	Influences the need to allow corporate money into the system
Whether candidates need to run elections against candidates from their own party in order to get a seat	Influences the need to allow corporate money into the system

access to politicians, but in a way less likely to be publically criticised. Some might object that this will cause money to go to candidates whose policies are not supported by the corporation, but considering that corporate donation policies tend to be non-partisan, this is not particularly problematic. Further, this would allow a corporation to actualise the typical claim that their donations support democracy.

The democratic enhancement fund might be particularly useful in an emerging democracy, where strong governance structures and public financing have not yet been developed, but where there is a significant corporate presence. Such a fund might be administered by a global agency to ensure that money earmarked for the political process is appropriately allocated. Corporations are likely to want stable governments and may be willing to contribute towards that end an amount above and beyond their taxes. Indeed, De George's (1993, Chap. 3) argument, that multinational organisations should contribute to the development of host countries, might even suggest that organisations have a duty to help finance a stable democracy.

The mechanisms to manage risk optimally depend upon the nature of the democracy in question, as summarised in Table 2. Developing countries may lack the resources to provide public funding or the media landscape and educational infrastructure necessary for a disclosure regime to be effective. Developing countries may also lack the information technology and administrative capability to provide tax credits to people who contribute to political parties, a strategy which Nassmacher (2003a) reports has helped encourage private donations in Canada. Alternatively, some democracies may have citizens with such a high willingness to contribute to political parties that it is unnecessary to implement such mechanisms to supplement their existing fund-raising efforts.

There are also several factors which might increase the level of funding candidates/parties require, giving additional reasons to allow corporate funding or a democratic enhancement fund. In some cultures, candidates are expected to give gifts to major contributors or supporters (Ferdinand 2003), which significantly increases costs. Further, in some electoral systems, such as the US, candidates incur electioneering costs in competing with candidates from their own party, in addition to candidates from other parties.

While the above factors may be significant, the particular features of a democratic system in terms of structure are unlikely to substantially affect donation-related risks and mitigation strategies. There are several pronounced differences between the typical modern Parliamentary system and the US Federal system, such as the relatively strong ability of the US Supreme Court to influence legislation and the ability of a minority of US Senators to filibuster a bill. The US and many Parliamentary democracies also have Senates which are arguably not structurally democratic, but for differing reasons.[10] However, both of these systems have a major similarity—most legislators require money for election campaigns. As a result, regardless of whether the system is Parliamentary or Federal, donors have the opportunity to influence legislators and the risks surrounding these donations are similar. At most, there may be subtle differences in the level of risk experienced, but both the Parliamentary and Federal systems are exposed to the same type of risks and the utilitarian principles previously derived are equally applicable.

This section has provided an overview of several mechanisms which could help manage the risk of corporate political donations. The next section concludes the paper by revisiting the advantages and disadvantages of using Goodin's public policy utilitarianism and then summarising the findings of this paper.

[10] Senates may be structurally undemocratic in multiple ways. In the US, for example, each state is allowed two senators, despite significant differences in population levels. Members of UK House of Lords were traditionally appointed under a hereditary system, although more democratic methods of selection are now gradually being implemented.

Conclusion

This paper shows that assessing the issue of corporate political donations from a utilitarian perspective can offer valuable policy guidance. Robert Goodin's (1995) public policy utilitarianism was used to evaluate different ways of partially satisfying society's preferences. The four main preferences examined were: donor influence, adequate financing, donor pressure and the cost of maintaining and enforcing the democratic system.

Adopting a utilitarian perspective has three main advantages. First, utilitarianism allows a more nuanced view than insistence that democratic principles justify corporate donations (Hourigan 2006); or that democratic principles *do not* justify donations (Young and Tham 2006). The major argument for restricting corporate donations is to reduce undue influence; while one of the gravest concerns around restricting corporate donations is that it will hinder the development of new parties, with Norton (2011) observing that without funds from unions or business, the Labor and Liberal parties would likely never have developed in Australian politics. However, by banning corporate donations to some parties, while making allowances for those with less political power, both of those concerns can be addressed.

Utilitarian reasoning permits such a tailored solution, whereas rights-based reasoning may not. If one argues that corporations have no right to democratic representation (Young and Tham 2006) or that corporate donations unbalance citizen equality (Dworkin 2000), then it follows that corporate donations should be banned, regardless of whether they can be used to help political minorities. Similarly, if corporate donations are deemed free speech, then restrictions are problematic. Utilitarianism directs the focus away from whether corporations have the right to give, to whether it is beneficial for them to give; and in doing so, encourages flexible and context sensitive solutions.

A second benefit of utilitarianism is that it provides a justification for selecting one democratic principle over another when they conflict. Hourigan (2006) and Stark (2010) view corporate finance as involving a conflict between freedom of expression and corruption minimisation. Utilitarianism recommends the option which is in the society's best interest.

A third advantage is that utilitarianism can justify incremental improvements, so long as the new solution is better than the current system. Adopting a democratic enhancement fund, though flawed, might, therefore, be recommended in some instances.

Contrary to the positions derived from more rights-based arguments—such as those offered by Young and Tham (2006), Dworkin (2000), and Hourigan (2006)—this paper argues that there is no best 'one-size-fits-all' policy. Instead, the optimal policy option for a particular democracy depends on contextual factors. This accords with Fogg et al.'s (2003) statement that it is sometimes more feasible to limit, rather than prohibit, corporate donations.

Overall, however, the optimum policy is likely to be a ban on corporate donations when it is expected that the ban will be generally observed and will not cause parties to be unduly financially constrained. A ban best mitigates the risk of corporations (and executives as a class) from obtaining undue influence. It may also serve to reduce the risk to industry caused by supporting underperforming businesses or inefficient legislation spurred by corporate vested interests.

If a ban would be ineffective, or if enforcing it would jeopardise adequate political funding, then the optimal policy option is to limit corporate donations. The limit should be set at the lowest possible level that overcomes these problems, although it should probably be indexed to inflation, so that the limit does not become obsolete. Lobbyists should be banned from raising campaign contributions on behalf of candidates/parties; donating small gifts; and drafting bills or paying for the drafting of bills. Additionally, contributions used to fund express advocacy campaigns should be treated the same as corporate monetary donations. Further, executives should not donate money from the corporate treasury, but instead be required to obtain the money from stakeholders. Mechanisms, such as secret refund booths, should be implemented to prevent employees from coerced into contributing.

A major implication of this study is that there are situations where banning donations is not the best policy option. Even when the legislature does prohibit corporate donations, it may be unable to limit other forms of corporate political influence, especially those viewed as forms of free speech. For instance, as previously noted, the US Supreme Court ruled in *Citizens United* that the First Amendment protected the rights of corporations to fund independent political broadcasts. In such cases, disclosure is likely to be an important mechanism for mitigating the democratic risks associated with corporate political activity.

In contexts where donations cannot be banned, disclosure can reduce the risk of inappropriate influence, but it cannot entirely eliminate this risk due to the difficulty of establishing whether corruption has occurred. Further, while political finance disclosure may lead to *transparency*, it is unlikely to lead to true *accountability,* as citizens have little power to hold politicians and/or corporate donors responsible for their donation practices. Nevertheless, disclosure may reduce democratic risk by creating the possibility that those who partake in suspicious activity will be publically named and shamed. Politicians and corporate executives may avoid putting themselves in a situation where there is a significant financial conflict of interest, if for no other reason than to avoid being embroiled in a scandal.

Systematic database-type disclosure has benefits of informational access, timeliness and searchability over disclosure in corporate annual reports. As noted by Ramsay et al. (2000), however, disclosures via corporate annual reports may improve transparent reporting to shareholders as well as help reveal the ultimate sources of donations. Adoption of such supplementary reporting is, therefore, to be encouraged. A secret refund booth could reduce the risk of donors being pressured to donate. A blind trust may obscure donor-receiver relationships, but it could be invaluable in preventing donors from being pressured into *not* donating. The democratic enhancement fund shows the possibility of a regulatory mechanism that reduces the risk of inadequate financing, without increasing the risk of inappropriate influence in circumstances where an outright ban is impracticable.

The criticality of managing the democratic risk of corporate political donations means there are a number of important avenues for future research. In addition to developing (or rebutting) theoretical arguments contained within this paper, such research could seek to empirically confirm the assessment of donation preferences and derived principles in a variety of settings, via engagement with the general public. In contexts where donation bans are impossible, research might also focus on the factors which render a disclosure regime most effective. Future research might also develop (and ideally pilot) the idea of a democratic enhancement fund operating in countries with a less developed political funding system.

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