

# Rethinking the Ethics of Corporate Political Activities in a Post-Citizens United Era: Political Equality, Corporate Citizenship, and Market Failures

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**Abstract** The aim of this paper is to provide some insights for a normative theory of corporate political activities (CPAs). Such a theory aims to provide theoretical tools to investigate the legitimacy of corporate political involvement and allows us to determine which political activities and relations with government regulators are appropriate or inappropriate, permissible or impermissible, obligatory or forbidden for corporations. After having explored what I call the “normative presumption of legitimacy” of CPAs, this paper identifies three different plausible strategies to criticize and object to corporate political involvement: the “egalitarian” strategy, the “corporate citizenship” strategy, and the “market failures” strategy. It constitutes an attempt to develop the market failures approach to reflect on CPAs. My main claim is that within such an account, the idea that corporations have a license to operate considerably limits their right to engage in political activities.

**Keywords** Corporate political activities · Equality · Efficiency · *Citizens United v. Federal Election Commission* · Market failures · Social license to operate · Joseph Heath

I can do more for General Electrics by spending more time in Washington and assisting in the development

of responsible tax policy rather than I can by staying home and pricing refrigerators.

Reginald Jones, former CEO of General Electric<sup>1</sup> Organized Baseball had compromised the very principles of Fair Play in which the sport was grounded; they had consented to tamper with what was dearer even to General Oahart than the survival of this league: the Rules and Regulations.

Philip Roth, *The Great American Novel*

## Introduction

The aim of this paper is to provide some insights for a normative theory of corporate political activities (CPAs hereafter). Such a theory aims to provide theoretical tools to investigate the legitimacy of lobbying practices and allows us to determine which political activities and relations with government regulators are appropriate or inappropriate, permissible or impermissible, obligatory or forbidden for corporations in their political efforts. After having explored what I call the “normative presumption of legitimacy” of CPAs, this paper identifies different plausible critical strategies to *object to* strong corporate political involvement. It first aims to expose two “classical” critical strategies, an “egalitarian” one and a “corporate citizenship” one. It then aims to develop a third strategy, inspired by the so-called market failures approach to business ethics, one that focuses on the norms of efficiency as a public policy goal. I argue that such an account, by laying out the contours of what McMahon labels as the “implicit morality of the market”

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<sup>1</sup> Attributed to Jones by Birnbaum (1993).

(McMahon 1981), offers us a specific understanding of the common idea that corporations have a “license to operate.” My main claim is that under this specific reading, the idea that corporations have a license to operate considerably limits their right to engage in political activities.

### The Ethics of Corporate Political Activities: A Surprising Neglect

The recent United States Supreme Court decision *Citizens United v. Federal Election Commission*, granting corporations the same rights as individuals to spend money on advertisements supporting or opposing candidates for office, highlights and raises significant concerns about the role of corporations in politics (Christensen 2010). *Citizens United* seems in fact to both *support* and *extend* the possibility for corporations to actively engage in politics, making those who already worry about the role of corporate wealth in politics react by decrying the decision, which was quickly denounced by President Obama as being “devastating” for democracy.<sup>2</sup>

Obviously, businesses are already significant users of the “advocacy politics” of democratic societies (Alzola 2013; Néron 2010a, b). There are a number of reasons for this. First, firms, especially in some industries, have been able to gain a privileged position in policy debates due to governments’ reliance on some industries to favor economic growth (e.g., the car industry in certain regions). Second, regulatory systems are sometimes slow to evolve and adapt to complex and rapid changes, especially in some industries producing innovative technologies. Facing change and complexity, governments and regulatory bodies need to work in partnership with industry’s key actors, and sometimes rely heavily on industry research and information. In fact, it is often the case that firms are encouraged by governments themselves to help shape and reshape their regulatory environment (Whellams 2008, p. 10).

It is important to distinguish two understandings, systemic and intentional, of the political impact of corporations. From a systemic point of view, business firms are political actors because they are important social institutions with considerable financial and organizational resources that have a profound impact on a wide range of constituencies. This is not, however, my main preoccupation in this paper. I am concerned with the activities of corporations *intentionally* trying to influence and impact public policies, regulations and laws, or political processes as a whole (Néron 2010a, b). These CPAs typically include

(1) lobbying, that is the attempt to influence legislation and (2) involvement in electoral campaigns, which can refer to (i) corporate political action committees (PACs) contributing to candidate campaigns (in the US context); (ii) spending on advertising in support of candidates; (iii) contributions to party voter-mobilization efforts; and (iv) spending on advertising to promote a specific position on a specific policy issue (Stark 2010).

Also, while the literature on corporate political influence focuses primarily on corporate expenditures, it is crucial to highlight the political activities and efforts of their executives and board directors as *individuals* (Bonica 2014). As Bonica notices, “donating to political campaigns is nearly universal among corporate elites” (Bonica 2014). Based on the sample of executives and directors of Fortune 500 companies, his research shows that at least 83 % of them have made political donations, and of those who did not contribute, many are simply foreign nationals that are prohibited by law to do so (Among those who are permanent residents and legally permitted to do so, 90 % of directors make donations). This phenomenally high rate of giving combined with the high total amounts donated suggests that directors and executives play an important role in corporate political involvement (Bonica 2014, pp. 19–20; Bonica et al. 2013).

At this point, it is worth noting that these corporate political behaviors have been surprisingly overlooked in the literature on business ethics and corporate social responsibility (CSR). As Leonard Weber pointed out, “business and corporate social responsibility literature contains little discussion of the ethics of business efforts to influence public policy decisions” (Weber 1997, pp. 72–73). In a similar vein, Christensen argued that “there is an urgent need for study of the ethics of engaging in corporate political activity” (Christensen 1997, p. 88).<sup>3</sup> However, as David Silver recently reminded us, although Weber and Christensen made these remarks back in 1997, business ethicists still tend to neglect this issue (Silver 2014).

This is not to say that one cannot find any study of business and government relations. There is a vast academic literature on CPAs. Scholars like Epstein and Mitnick, to take only two examples, have provided fruitful insights and empirical data that can help us to achieve a better understanding of the various ways businesses interact with governments and regulatory agencies (Epstein 1969; Mitnick 1993).<sup>4</sup> My point, also recently made by Alzola, Néron, and Silver, is that, in general, *normative theories* of corporate rights, obligations, virtues, and so on,

<sup>2</sup> See Dworkin (2010) for an analysis of President Obama’s stance and a critical analysis of the decision (and also Lessig 2010). For a critique of *Citizens United* based on a desire to find firm grounds for the distinction between individuals’ and corporations’ rights to free speech, see Sepinwall (2012).

<sup>3</sup> For some thoughts about the importance of the determination of “corporate *political* responsibilities”, see Néron and Norman (2008) and Crane et al. (2008).

<sup>4</sup> See Hasen (2011) for an excellent account of the political science literature on CPAs, especially lobbying.

have failed to think seriously about CPAs (Néron 2010a, b; Alzola 2013; Silver 2014).

Even more surprisingly, these political behaviors have also been overlooked by recent scholarship on “political” corporate social responsibility (CSR).<sup>5</sup> As Néron argues, the literature on political CSR usually favors a rethinking of the division of moral labor between states and corporations within new forms and patterns of social governance (Néron 2013). It typically attempts to *justify* a new set of political tasks and responsibilities for corporations, assuming they will act with an eye to the common good. However, the growth of this body of literature has not led to a serious investigation of the moral permissibility of “classical” CPAs, such as lobbying and electoral spending.<sup>6</sup> Moreover, it does not really open the door to more skeptical views that would critically challenge the permissibility of such activities, like the one defended by Reich (2008). In various works, Reich draws on a sharp normative distinction between the market and politics and argues for an “apolitical thesis,” i.e., that the latitude given by society to firms to pursue investors’ interests within the market implies forbearance from pursuing them in the political sphere. This is why, according to Reich, corporations have a “meta-responsibility” to respect the political process by staying out of it (Reich 1998, 2008).<sup>7</sup> Unfortunately, such a stance does not appear under the political CSR radar.

The goal of this paper is precisely to seriously investigate this critical-skeptical possibility, by trying to provide a better theoretical account of the reasons one can adduce to *criticize* and *object to* intense CPAs. I do so by first exploring what I describe as the “normative presumption” in favor of the legitimacy of corporate political activities and strategies such as lobbying. I then illuminate three different theoretical avenues or strategies that aim to show how corporate political involvement could be labeled as being morally problematic or wrong, despite this normative presumption. I examine two “classical” strategies and then try to provide grounds for an underdeveloped one, by using

what Joseph Heath calls a “market failures approach” to business ethics.<sup>8</sup>

## A Presumption of Legitimacy

A few words about the case for CPAs are needed. Even if CPAs are the source of constant worries, there is what I shall call a strong *normative presumption* in favor of the legitimacy of CPAs. For the purpose of this paper, I would suggest this presumption relies on three broad lines of argument:

### *The Associationist Argument*

Corporate political involvement is grounded on the importance of freedom of speech and how it is linked to freedom of association. Liberalism sees voluntary associations as a crucial expression of individual freedom of speech and the freedom to petition governments. Individuals should be free to form groups and join associations in order to defend their interests and points of view. According to Stark, freedom of expression, through freedom of association, extends to groups such as corporations (Stark 2010; Ostas 2007). For instance, the promotion by a corporation of a specific position on a policy issue (iv) is best viewed as the continuation of the right of individuals to advance their views on policy matters.

### *The “Madisonian” Argument*

A long tradition of democratic thinkers inspired by James Madison stress the importance for healthy democracies of the confrontation of a plurality of “factions” representing different interests. As Madison puts it, “[American] democracy depends on active and diversified participation by special interests. As long as many interest groups are active in the system, they will check one another and in that way, one or few select groups cannot dominate the system.”<sup>9</sup> Corporate political involvement is therefore justified on the basis that it participates in the maintenance of such confrontational dynamic.

One could draw a distinction here between two versions of the Madisonian argument. According to a *power version*, a healthy democracy flourishes when the influence of powerful actors is counterbalanced by the action of various groups. From this point of view—and this was Madison’s main concern—the participation of private groups like

<sup>5</sup> There is now a growing body of literature on this topic, closely associated with the development of the notion of “political CSR.” See Crane et al. (2008) and also Whelan for a recent defense of political CSR (Whelan 2012), and Néron for a critical look (2010a, b, 2013).

<sup>6</sup> For example, Stark (2010), who has published some of the most sophisticated scholarly works on the permissibility and limits of corporate political activity, is clearly not a “political CSR” theorist. The same thing could be said about the illuminating analysis proposed by David Silver in a recent paper (Silver 2014), in which he contrasts his attempt to normatively theorize corporate political activities with the current literature on “political CSR.” See Scherer et al. (2013) for a recent attempt by political CSR theorists to investigate these questions within a political CSR framework.

<sup>7</sup> This idea seems close to what Silver (2014) calls a “political passivity principle”.

<sup>8</sup> See also Norman (2011) for an important formulation of this approach, which has also been modified and pursued in other directions by Pierre-Yves Néron (2010a, b) and Martin (2013).

<sup>9</sup> See Hamilton and Hoch (1997). The quotation is from Weber (1997, p. 256).

corporations in politics is a useful way of counteracting the power of the government. According to an *epistemic version*, the “diversified participation” of many groups, among them corporations, is useful because it expands the variety of inputs and perspectives; it improves the *quality* of our decision-making processes, and therefore improves the *quality* of our public policies. From such a point of view, what matters is that corporate lobbyists, among other groups, can provide lawmakers with technical information and inform them about how special interests stand on issues. As John F. Kennedy himself suggested, lobbyists can be viewed as “expert technicians and capable of explaining complex and difficult subjects in a clear, understandable fashion. [...] They engage in personal discussion with members of the Congress in which they can explain in detail the reason for positions they advocate.”<sup>10</sup>

### *The Extensionist Argument*

According to this third argument, corporations should engage in politics when it is in their financial interest to do so. I call this the “extensionist” argument because it suggests that the basic logic of the metaphor of the invisible hand *extends* to the political realm.<sup>11</sup> From this point of view, corporations should simply be allowed to act in a self-interested way and zealously promote their own interests in the political arena, as they do in the market. As Silver notices, this argument is frequently invoked in public debates and widely practiced (Silver 2014).<sup>12</sup>

Interestingly, Hamilton and Hoch go further and propose a “stakeholder” version of this argument (Hamilton and Hoch 1997). Using the tools of stakeholder theory, they argue that lobbying should be considered in the set of social responsibilities that firms ought to assume because by doing so, they promote the interests of their various stakeholders. Hence, active corporate political involvement ought to be understood as a socially responsible practice. From this perspective, active corporate lobbying is therefore not only permissible but also *obligatory*. Responsible corporations therefore *ought* to lobby, and a failure to do so would be a failure to respond adequately to some of the most important demands that we can legitimately address to firms.

<sup>10</sup> Quoted in Ostas (2007, p. 34). The quotation is from 1956, before Kennedy became president.

<sup>11</sup> Here, it should be noted that in some ways, the associationist argument also “extends” an individual behavior (free speech) to corporations. For the sake of argument, I am referring only to the last argument as the “extensionist” one, because I will be concerned later with the limits of the logic of the invisible hand argument. I also think that the differences between the two arguments are clear enough.

<sup>12</sup> Silver (2014) articulates another version of this argument, one that he calls the financial interest principle. He ultimately rejects it.

My goal is not to articulate and expose these arguments in detail here. It is simply to have in mind some of the most plausible arguments in favor of strong corporate political involvement in order to better grasp the critical arguments of those who look skeptically on CPAs.

### **Two Critical Strategies**

CPAs are, to use Prakash Sethi’s words, “delicate tools” (Sethi 2001, p. 14).<sup>13</sup> As Stark rightly points out, each CPA mentioned above can be viewed, at one and the same time, as an (allegedly) legitimate expressive act and as a (potential) source of corruption (Stark 2010). Taking these anxieties into account, the question that we have to ask, then, is if there is any reason, despite this normative presumption of legitimacy, to consider CPAs as morally problematic? Why and under which conditions is it possible to succeed in criticizing corporate political spending and lobbying? Why does Reginald Jones’s quotation in the epigraph of this paper appear worrisome? I would like to suggest that there are three plausible strategies here. My main objective is to highlight the strengths of the last one.

### *The Egalitarian Strategy*

Let us examine first an “egalitarian strategy” to criticize CPAs. The aim of this first critical strategy is to draw on a broad account of egalitarian liberalism and to focus on the (allegedly problematic) relations between corporate political involvement and ideals of democratic equality (Alzola 2013; Dworkin 2002).

In order to articulate these concerns, it is useful to consider three basic requirements of a genuine egalitarian democratic community, as suggested by Dworkin (2002). The first requirement is democratic deliberation, which demands that citizens of such a community should be able to deliberate about their collective life and exchange reasons about ways of organizing society it. The second requirement is popular sovereignty, which demands that the people, and not public officials or elites, should ultimately be in charge. The third requirement is citizen equality, which demands that *all* citizens should be viewed as equal in having an opportunity to participate in political debates. This third requirement is crucial from an egalitarian perspective, as it aims to protect minority voices from majoritarian abuses.

Egalitarians draw attention to the negative impact that corporations can have on the *quality* of democratic deliberation. Businesses can significantly influence the content of public debates by amplifying some views and undermined the credibility of others, as in the case of the Global

<sup>13</sup> See Sethi (2001, p. 10).

Climate Coalition (GCC), a group of mainly US businesses from the oil, coal, and car industries that have used aggressive lobbying and public relations efforts to discredit climate scientists, oppose policies to reduce greenhouse gas emissions and fight the Kyoto Protocol. Business firms also impoverish the public discourse by routinely “spinning” the news media with negative ads almost devoid of content (Alzola 2013; Dworkin 2002). Finally, they may attempt to mislead citizens by supporting “Astroturf organizations,” which are front groups for corporate interests but claim to represent “grassroots” citizens’ groups (Silver 2014). Once these patterns of corporate behaviors are highlighted, we are in better position to undermine the *epistemic* version of the Madisonian argument.

Intense corporate political involvement also raises concerns for popular sovereignty. If a specific reading of the power version of the Madisonian argument pushes in favor of the moral permissibility of CPAs, difficulties arise when “active and diverse participation” is jeopardized and “one or few select [corporate] groups” can actually “dominate the system,” to recall Madison’s quotation mentioned above. Those fears were powerfully expressed decades ago in Charles Lindblom’s famous account of the *privileged position* of business elites in democratic politics in the United States, in which he states that “the large private corporation fits oddly into democratic theory and vision. Indeed, it doesn’t fit” (Lindblom 1977, p. 356).<sup>14</sup> Indeed, one way to articulate this claim is to focus on the problematic relations between intensive corporate political involvement and popular sovereignty, which demands that the people should be in charge. If major corporations come to dominate the political sphere, then the people cannot be viewed as being ultimately in charge of its own political affairs (Gilen and Page 2014). The large contemporary corporation, with its political involvement, is to a large extent incompatible with democracy because it represents a threat to popular sovereignty (Gilen and Page 2014).

Another way to shed light on these fears is to focus on the risks of corruption if corporations are able to undertake all the CPAs mentioned above (Lessig 2010, 2011). Such an argument is made by Justice Stevens in his dissenting opinion in *Citizens United*, when he recalls that “Thomas Jefferson famously fretted that corporations would subvert

the Republic” (p. 37) and reaffirms the need to regulate corporate participation in candidate elections to preserve the integrity of the electoral process, prevent corruption, and also preserve citizens’ confidence in the government (Christensen 2010, pp. 55–56).

Egalitarians, however, have been preoccupied with the role corporations (and the wealthy in general) play in democratic politics for other reasons. When Dworkin declares that “[US] politics are a disgrace, and money is the root of the problem,” he refers to an ideal of a democratic community as a strongly egalitarian one, or what he calls a “partnership of equals” (Dworkin 2002). In his analysis of *Austin v. Michigan Chamber of Commerce*, in which the court upheld a statute prohibiting corporations from using their general assets to support or oppose political candidates, he tries to systematize the problematic relation between active corporate political involvement and the ideal of a community of equal citizens (Dworkin 2002; Ansolabehere 1990). It is *citizen equality*, according to Dworkin, that is jeopardized when the wealthy and corporate actors are the main players in the political contest (Dworkin 2002; Alzola 2013).

From such an egalitarian perspective, political donations, when made by corporations, but also executives or members of the corporate elite, are not simple forms of expression or “ideological consumption” (Ansolabehere et al. 2003). They are more aptly described as investments in return of expected political benefits and unequal attempts to influence legislation; and therefore raise concerns not only about an improper exchange of policy for dollars (Lessig 2011; Gordon et al. 2007; Gilen and Page 2014), but also about a failure to achieve citizens equality.<sup>15</sup>

Rawls labeled those unfair disparities in political influence as failures to achieve the “fair value” of equal political liberties. The requirement of “fair value” applied to equal political liberties “means that the worth of the political liberties to all citizens, whatever their social or economic position, must be approximately equal, or at least sufficiently equal, in the sense that everyone has a fair opportunity to hold political office and to influence the outcome of the elections” (Rawls 2001, p. 149). Such requirement of fair value of political liberties is significant for the democratic process in two ways. First, it is intrinsically important

<sup>14</sup> See Gilen and Page (2014) for a recent account of the influence of business organizations and economic elites on the U.S. government, in which they claim to have shown that “economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while mass-based interest groups and average citizens have little or no independent influence.” They conclude their impressive empirical study by suggesting that “if policymaking is dominated by powerful business organizations and a small number of affluent Americans, then America’s claims to being a democratic society are seriously threatened.”

<sup>15</sup> For more empirical literature on the role of money in politics, see Ansolabehere et al. (2003) and their provocative paper “Why is there so little money in US politics?” They suggest that the view that individuals (and executives) give political contributions to influence legislation, hoping for political “returns” in their investment (the investment view), is incorrect and argue that political donations are just a form of “consumption” associated with an expressive benefit. This is important, since if the “consumption” view is correct, the egalitarian worries appear to be partly misguided. For a critique and an attempt to provide empirical support of the investment view, see Gordon et al. (2007). See also Bonica et al. (2013).

as a matter of procedural fairness. Second, it is instrumentally important because, without it, the political process is susceptible to be hijacked by dominant forces such as powerful corporations, thereby undermining the basis of citizen equality (Dworkin 2002; Alzola 2013).

Dworkin's contribution is to show how this requirement of citizen equality becomes important in revealing the philosophical underpinnings of *Austin*. We might see corporate political involvement as jeopardizing popular sovereignty or healthy public deliberation by corrupting the democratic political process. This is a familiar claim. But Dworkin and others have done a good job in suggesting that the philosophical spirit of *Austin* lies elsewhere (Dworkin 2002). As Dworkin notes, the Court statute refers to "corruption" in an unfamiliar sense. The Court does not refer to classical "money-for-favor" or *quid pro quo* forms of corruption, but to a "different kind of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth." According to Dworkin, the Court worries here about the "corrosive" impact of corporate spending on citizen equality.<sup>16</sup>

I will not attempt to further develop the egalitarian account here. However, it is relevant to note that the egalitarian perspective, and its various dimensions, seems to be the strongest one and the most widespread among critics of active corporate political engagement. For instance, a commitment to egalitarianism is partly what motivates Reich's (radical) skepticism, but it also appears to motivate, as noted previously, Justice Stevens's dissenting opinion in *Citizens United* (Christensen 2010).

### *The "Corporate Citizenship" Strategy*

A second theoretical avenue is suggested by recent works on the very idea of "corporate citizenship." Theorists of corporate citizenship such as Crane, Matten, and Moon argue that corporate citizenship should be used as a "metaphor" to illuminate and evaluate the roles corporations play in the political process in contemporary societies (Crane et al. 2008). From this point of view, corporate "citizenship" refers not specifically to a legal *status* or to community belonging but acts as a metaphor for "good" corporate participation in the political realm. After all, every conception of *individual* citizenship includes a normative component about how citizens should conduct themselves in the political process, and is at least partly concerned with the criteria and conditions for *good* political involvement (Kymlicka and Norman 1994). For instance, despite their anti-perfectionist stance, liberal conceptions of citizenship

are not incompatible with a set of "civic virtues" that help identify desirable forms of conduct by citizens in the political arena. And republican conceptions of citizenship impose higher standards of strong and active participation, while a communitarian conception focuses on the relation between citizenry activities and community belonging (Kymlicka and Norman 1994; Néron and Norman 2008).

The corporate citizenship theory offers us one plausible reading of the general idea that society gives corporations "a license to operate" (which the egalitarian perspective does not). From this point of view, corporations are not "natural" entities that come from nowhere; they are members (and also creatures) of the communities in which they operate, and such membership comes with an extended set of civic responsibilities (Wood and Logsdon 2001). Given the changing context of corporate legitimacy, the argument goes, businesses ought to act in a civic-minded way if they wish to retain and justify their license to operate (Palazzo and Scherer 2006).

Although it does not lead in the same direction as egalitarian arguments, the citizenship perspective offers us another way of critically evaluating corporate behaviors in the political arena. The language (or the rhetoric) of citizenship is a powerful one in expressing a commitment to the "public good" (Scherer et al. 2013). Thus, from the perspective of corporate citizenship, the problem with active corporate lobbying is not that it undermines democratic procedures or represents a threat to (real, individual) citizen equality, but that it could represent a departure from good citizen-like behaviors by corporations (Crane et al. 2008).

The introduction of the language of citizenship is noteworthy. It furthers what I refer to as the *normative presumption* in favor of corporate political involvement, while attempting to impose strong normative restrictions on the way firms ought to act in the political sphere. From this perspective, then, the first step is to recognize the legitimacy of CPAs in democratic societies. The second step is to recognize that zealous corporate lobbying for the sake of financial interests can also potentially undermine the structures of a good democratic polity. The third step is therefore to recognize the need for something like an "ethics of citizenship" for corporations.

With these remarks in mind, it should not come as a surprise that the "ethics of citizenship" appears to dominate, whether explicitly or implicitly, discussions about the ethical issues raised by corporate political activities. It systematizes the idea that every actor involved in the political process should act with an eye to the "common good" and be able to put the "public interest" above his, her or its own "private interest," a requirement that has always been the hallmark of good citizenship (Néron and Norman 2008, p. 18). This is what Weber advocates when he stresses the importance of limiting corporate lobbying to a "careful influence" and

<sup>16</sup> Following Alzola, the anti-corruption arguments are consequentialist, while the citizens equality argument is deontological and more explicitly based on considerations of justice (Alzola 2013).

argues that firms “must acknowledge, that there is a public good that they are responsible for promoting, a common good that is not equated with their private interests and that, at least sometimes, supersedes their private interests” (Weber 1996, p. 258).

Corporate citizenship theory appears to accept the Madisonian argument but aims to limit the scope of the extensionist one. Indeed, to judge from the recent literature on corporate citizenship and political CSR, these works could justify a *much broader* set of political responsibilities for corporations. However, they do so by stressing the importance of constraining corporate political behaviors. For instance, corporate citizenship theory simultaneously recognizes that the legitimacy of CPAs is grounded in stakeholder interests while refusing the idea that corporations must zealously promote their interests, mimicking the way they should act in the market (Scherer et al. 2013).

It is less clear how this helps us in thinking about the associationist argument. On one hand, as Crane, Matten, and Moon relentlessly argue, the recognition of the political nature of corporations, through the citizenship metaphor, seems to undermine the idea that they ought to be considered as *private* associations of citizens.<sup>17</sup> On the other hand, given the application of the citizenship lens to corporations, it could lead us to the idea that corporate “citizens” have a protected right to freedom of speech, as suggested by the Supreme Court in *Citizens United*.<sup>18</sup>

What is significant here is that the language of citizenship does not serve only as a basis for justifying ethical constraints on the way firms conduct themselves when trying to secure political influence. It also draws our attention to the *goals* or *ends* for which firms try to acquire and secure such influence. It poses the question of the desirability of such lobbying goals. While egalitarian arguments focus on the negative effects that strong corporate involvement and contributions have on *democratic procedures* and *norms of equality*, the invocation of citizenship ideals recommends an investigation of corporate actors’ goals and purposes in being politically engaged. The egalitarian reading of *Austin* is concerned with the effects of corporate spending on political equality. And fears expressed by so many political commentators about corporate political contributions and activities are very often expressed in these terms. However, the appeal to the metaphor of “good corporate citizenship” implies an evaluation of the *goals* of such activities.

<sup>17</sup> Precisely, in Crane *et al.*’s account, corporate citizenship does not mean that corporations are individual “private” citizens. On the contrary, it means that corporations are political entities.

<sup>18</sup> See Sepinwall (2012) for an illuminating critical analysis of corporate citizenship combined with a critique of the idea that corporations should enjoy the same robust-free speech rights that individuals enjoy.

The call for corporate political engagement oriented toward the “common good” is appealing, but faces three important difficulties. First, it remains unclear exactly how firms, with their unfettered and behind-closed-doors access to policymakers, are expected to promote this “common good” ahead of their private interests. In response to this question, it could be said that corporate citizenship theory helps justify *laws* constraining CPAs, although most corporate citizenship theorists seem to focus on “beyond-compliance” behaviors of business firms. Second, corporate citizenship theory could also lead us to enthusiastically embrace extensive political roles for corporations, thus giving credit to fears that corporations might come to dominate the political system. It also threatens egalitarian intuitions by suggesting that corporate “citizens” are equal in status to individual citizens. As Sepinwall rightly argues, these are precisely the reasons to *resist* using the corporate citizenship lens (Sepinwall 2012). Thirdly, corporate citizenship theory does not seriously consider the blurry nature of this common good. In pluralist societies, controversies and debates about the common good can be viewed as the expected results of democratic deliberation. Fourthly, and consequently, uncertainty remains as to the nature of the *goals* good corporate citizens pursue in their attempt to influence politics. I argue that another, third approach can solve this problem and provide us better tools to think normatively about CPAs.

### The Market Failures Approach

In this section, my aim is to suggest an alternative way to look normatively and critically at corporate political activities, drawing on the “market failures approach” to the normative analysis of business practices and institutions developed by Joseph Heath in recent works (Heath 2006, 2007, 2013, 2014). Market failures represent situations in which competitive markets fail to achieve Pareto-efficient outcomes, or to use Heath’s own formulation, fail *egregiously* to achieve such outcomes. The standard market failures—including negative externalities such as pollution, information asymmetries, and excessive market power—make it possible for some competitors to gain at the expense of a net loss for society. Of course, the main institutional response to deal with market failures has been government regulation.<sup>19</sup> The state can ensure that all competing firms in a sector respect, for example, the same pollution controls, or meet the same product-safety standards, thereby ensuring that no firm can gain the upper hand simply by externalizing some of its costs. The problem is that, for several different reasons, it is impossible to

<sup>19</sup> As Heath notes, another institutional response is the creation of a firm (2013).

regulate and remove all market failures and all unhealthy competitive strategies. It is also not possible for the state to ensure compliance with all regulations at all times. For Heath, and for Norman as well, these two features are the *raison d'être* for business ethics (Norman 2011). As Heath argues, the “market failures approach takes its guidance from the policy objectives that underlie the regulatory environment in which firms compete, and more generally, from the conditions that must be satisfied in order for the market economy as a whole to achieve efficiency in the production and allocation of goods and services” (Heath 2006, p. 551).

In some sense, the market failures approach offers an account of what Christopher McMahon (1981, 2012) called the *implicit morality of the market*, a set of normative requirements that are embedded in the key conditions that a market economy must satisfy to achieve efficiency in the allocation of resources. For example, economic theory suggests that if markets are to be efficient, there must be perfect information between the participants in transactions with respect to the quality and nature of the product, which is reflected in its price. This assumption about perfect information, if taken seriously, seems to entail various normative requirements, such as the importance of disseminating information and prohibiting false advertising (McMahon 1981). The same thing could be said about monopoly power. The efficiency imperative implies that markets ought to be competitive and that resources might be misallocated where monopolies exist. Hence, another component of the implicit morality of the market requires that market actors refrain from monopolistic practices, because such practices undermine the very conditions that ought to be realized in order to achieve the potential for economic efficiency associated with a market economy.

From the point of view of the market failures approach, the main component of the implicit morality of the market is the moral requirement *not* to profit from market failures (Heath 2006). Or, as Heath puts it in a recent response to critics, the main normative claim is “that the point of marketplace competition is to promote Pareto-efficiency, and in cases where the explicit rules governing the competition are insufficient to secure the class of favoured outcomes, economic actors should respect the spirit of these rules and refrain from pursuing strategies that run contrary to the point of the competition” (Heath 2013). What is therefore morally troubling with some corporate conduct is not that it could be associated with greed, the profit motive in itself or the pursuit of self-interest, but instead that it represents an attempt to profit from market failures.

Focusing on the public policy goals of promoting Pareto-efficiency and eliminating (or correcting) market failures, Heath suggests that it could be useful to think about responsible corporate behavior as respecting something

analogous to the norms of “good *sportsmanship*” (Heath 2007). The primary purpose of government regulations and voluntary ethical constraints (of the sort typically urged in literature on business ethics, corporate citizenship, corporate social responsibility, etc.) is to close as many of these loopholes as possible—thus ensuring that fair competition for the players will lead to net benefits for the rest of us. In brief, when the regulatory environment fails, market actors should “take the high road” and observe both the letter and the spirit of the rules (Norman 2011).

This is important. Because participants in an adversarial setting are motivated by a desire to win (essentially a desire *not* to cooperate) rather than by the general social objectives of the institution, healthy forms of competition can easily become unhealthy ones. Consider the olive-oil industry as an illustration of the sorts of problematic behaviors that loopholes, regulatory shortcomings, and competitive settings may generate. Since the authenticity of pure olive oil is extremely hard to verify, except by connoisseurs and people with access to expensive scientific equipment, it is one of the most adulterated products in the world (in 2006–2007, one-third of the European olive oil sold in Canada was adulterated<sup>20</sup>). The industry generates immense profits for manufacturers that are selling oil doctored with soybean or hazelnut oil, forcing the European Union’s anti-fraud office to establish an olive-oil task force—one investigator told the *New Yorker’s* reporter, Tom Mueller, that “the profits were comparable to cocaine trafficking, with none of the risks” (Mueller 2007). Thus, we are dealing here with a good example of an unethical behavior based on an exploitation of informational asymmetries (extended to the point of fraud), as the oil is sold as pure (a claim the consumer is in a difficult position to verify), even though the producers know it is not.

The market failure approach therefore starts with an account of the peculiar nature of competition as a moral category, in terms of its importance, but also its morally problematic nature.<sup>21</sup> Adversarial settings appear to be morally tricky because they put agents in a position where they have to harm each other (Martin 2013), but also because we do not primarily value the competitive activity as such, nor the intentions of its participants. What we value are (1) the creation of value for the voluntary parties to the transaction (where each party feels it benefits from the transaction), and (2) the positive external effects on

<sup>20</sup> In March 2008, more than 90 people were arrested in Italy because they were involved in passing off low-quality oil for the finest Italian product (Mueller 2007).

<sup>21</sup> Heath suggests that the market failures approach represents a form of “adversarial ethic”.



agents who are not involved in this activity (Norman 2011). As Heath puts it:

The problem is that the beneficial consequences of a competition arise necessarily as a by-product of the competitive activity, while the objectives that the participants themselves seek often seem morally objectionable *prima facie*. The virtues of the competition, such as they are, are associated with the institutional structure (i.e. the set of rules) that constrains the participants' behavior, and not necessarily the intentions of the participants. Indeed, insofar as a competition does produce beneficial consequences, it is almost as though the participants were guided, by an invisible hand, to promote an end which was no part of their intention (Heath 2007, p. 363).

More precisely, we can extend Heath's argument a little further by distinguishing the following features of an institution that, like the market, aims to channel competitive behaviors in order to produce a social good:

*Purposes/ends* We need to identify the very purpose of the competitive activity. From the point of view of the market failures approach, the purpose of the market institution is to aim to achieve Pareto-efficiency;

*Institutional structure* Adversarial schemes also have a set of rules and norms that constrain what participants are or are not permitted to do;

*Goals* The goal of participants in a competitive interaction is to achieve better results than others. To put it crudely, the goal is to *win*;

*Motivations* Participants' goals in an adversarial scheme ought to be distinguished from their *motivations*. The attempt to win a competition might be motivated by a desire to accumulate wealth, power, and prestige, by status-seeking, and so on;

*Strategies* A competitive structure aims to favor a specific set of strategies that the participants can use. For market actors, these strategies can be various, like lowering prices or providing higher-quality services and products, but their main feature is that *they ought to be non-cooperative strategies*.

These distinctions in mind, we now have a better idea of what makes competition such a tricky moral category. This is because, while the *purposes* of the competitive *institutional structure* might be perfectly legitimate and morally praiseworthy, the *goals*, *motivations*, *objectives*, and *strategies* of the actors involved in a competitive interaction appear to be at least *prima facie* morally objectionable or problematic—at least by the standards of most traditional approaches to individual or interpersonal morality.

We can also have a better understanding of the difference between healthy and unhealthy forms of competition,

or what Heath refers to as *socially preferred strategies* to profit-seeking, such as offering better-quality products, and *non-preferred strategies*, such as externalizing costs like pollution or concealing information about your product (Heath 2007; Norman 2011). To take the rather radical example mentioned above, the adulteration of olive oil is a clear-cut example of a socially non-preferred strategy within an unhealthy competition. But the morally objectionable dimension of this practice of adulterating the product is not that these manufacturers are attempting to make profits *per se*. It is that, in order to do so, they are using a competitive strategy—exploiting information asymmetry—that undermines the conditions for efficiency, which is the end that the market aims to achieve.

At this point, we can see how another key feature of the market failures approach is that it provides us with a specific reading, different from that of the corporate citizenship approach, of the idea of “a license to operate,” one close to what Dominic Martin labels as the “contained rivalry requirement” (Martin 2013). This means that the market institution gives its actors a significantly limited license to act in an adversarial way in a structured and limited framework of rivalry. This license is first *conditional*, because it is outcome oriented. The market aims to produce efficient results, and this is why participants in the market are allowed to act in ways that depart from our general morality oriented to cooperation, solidarity, and altruism. But such a departure is justified only if the institution tends to effectively realize this purpose. Second, this moral license is also limited because it is *highly contextualized* or “contained.” The market does not simply confer a moral license allowing agents to act in an adversarial way in every “sphere” or every “game.” It provides a moral license to act in an adversarial way in a specific context, or a specific game. Third, because participants receive a moral license to act in a non-cooperative way, in an adversarial institution they are legitimately motivated by a desire to “win” or to promote their interests over those of others. And because such attempts to channel adversarial behaviors can easily lead to unhealthy competition, thereby undermining the purpose of this institution, the “adversaries” need to be regulated and monitored. This is why the moral license that the invisible hand confers to adversarial practices is also *rules-based*.

What does all this say about lobbying efforts by firms, and the goals they are pursuing when they try to secure political influence? The short answer is that it helps us think about the tricky nature of many corporate political activities. If one of the main normative components of the implicit morality of the market is the requirement to refrain from exploiting market failures, then another component should be that of refraining from creating market failures by influencing the shaping and reshaping of regulatory

environments. This requirement is indeed probably the most important because, as Norman remarks, by affecting the whole industry, a firm's effect on regulatory changes can have a significantly greater impact than the irresponsible practices of a single "renegade" firm (Norman 2011). Consequently, the market failures approach sheds some theoretical light on one of the most morally problematic aspects of the conduct of corporations, namely the entrenchment of market failures by political oppositions to their correction by the state (Néron 2010a, b, p. 344; Norman 2011, pp. 53–54).<sup>22</sup> The market failures approach also informs us in a refreshing way about the permissibility, not only of market behaviors, but also of non-market-place ones.<sup>23</sup>

The example of the Global Climate Coalition and the aggressive lobbying of its members is illuminating here. From the point of view of the approach I am developing, the political behaviors of GCC members can be seen as wrong because they undermine both the quality of democratic deliberation and citizen equality, but *also* because they aim at perpetuating market failures through political influence. Inversely, the approach advocated here would encourage corporations to politically support legislative initiatives aimed at dealing with climate change by reducing greenhouse gas emissions.

My suggestion, therefore, is that zealous lobbying and corporate political donations aimed at perpetuating market failures are also morally objectionable from the point of view of the "implicit morality of the market," which the market failures approach helps us unveil. This is because there is a difference between the kind of adversarial strategies allowed under contained rivalry and the kind of strategies (adversarial or not) permitted in the shaping and reshaping of the rules of this rivalry scheme.

This point was intuitively expressed by Daniel Finn in his account of the "moral ecology" of markets, when he asks:

Suppose all the universities in the northern part of the United States decided to press the National Collegiate Athletic Association (the NCAA) to alter the rules for ice hockey. The proposal rule change would require that all hockey practices take place outdoors on natural ice. All official games could take place indoors, but teams would have to train outside. Obviously, if such a rule were implemented, universities in the

north could regain the superiority they enjoyed before the invention of the artificial ice rink, which led to the rise of hockey "powerhouses" in regions where the climate does not allow for natural ice for more than a very brief period during the winter. We don't know, of course, whether these northern universities would have enough votes within the NCAA to bring about this rule change, but the question here is whether they would be morally justified in trying to do so. The answer is clearly "No."<sup>24</sup>

Here, Finn stresses the importance of drawing a normative distinction between trying to win within the rules of game and trying to win by modifying the rules of the game (and this why, for example, the reshaping of electoral rules for political contests must be executed with extreme caution). This is what the market failures approach also does by pointing out the differences between the set of adversarial strategies sanctioned by the market and the set of permissible strategies or activities allowed in the political shaping and reshaping of the rules of the market.

The market failures perspective helps us articulating this claim in a more sophisticated manner. It suggests that competitive strategies that aim to redesign the *institutional structure* of markets to promote the financial interests of firms, by creating or exacerbating market failures, cannot be viewed as socially preferred strategies. They represent only forms of rent-seeking activities.<sup>25</sup> The only socially preferred corporate political strategies are the ones compatible with the goal of creating and preserving an institutional environment that helps us achieve outcomes close to Pareto-efficiency.<sup>26</sup>

We can now see more clearly why it is possible to rule out the simple extension of the market-sanctioned adversarial stance to the political process, which is the basic mistake made by proponents of the extensionist argument. Even Hamilton and Hoch's stakeholder version of this argument assumes that firms ought to take an adversarial stance and compete in the political process in order to win, as they should in the market. However, this line of argument fails to take into account the highly contextualized

<sup>22</sup> Néron (2010a, b) made the remark about the (radical) implications of the MF approach for the ethics of CPA, but he did not develop it in a sophisticated way. This paper represents an attempt to articulate the argument in a more lengthy way. Heath mentions that the argument is suggested by Baumol (1992).

<sup>23</sup> This is something that Heath (2013) recognizes. In fact, in his response to critics, he admits that his approach could have the kind of implications on the ethics of CPAs that I am exposing here.

<sup>24</sup> Finn (2006, p. 150).

<sup>25</sup> There are debates concerning the unethical nature of rent-seeking strategies. While Heath identifies rent seeking as being a classical form of unethical behavior, Jaworski (2014) sees no problem with it.

<sup>26</sup> Here it should be noted that the market failures approach seems to share some similitudes with the institutional conception of corruption proposed by Lessig (2011). A market system in which corporate actors are able to undermine the conditions for realizing the very purpose of the system seems to be aptly described as a form of institutional corruption in Lessig's approach. Further attempts to introduce a dialog between the market failures approach and the institutional conception of corruption might be a fruitful avenue for future research.

and conditional nature of the moral license that the market allows vis-à-vis non-cooperative, adversarial behaviors.

At this point, it is worth remarking that the market failures approach to CPAs helps us articulate and extend an argument that is suggested in Justice Stevens's dissenting opinion in *Citizens United*, when he associates many CPAs as potential forms of rent-seeking behaviors. Indeed, Stevens argues that "corporations, that is, are uniquely equipped to seek laws that favor their owners, not simply because they have a lot of money but because of their legal and organizational structure. Remove all restrictions on their electioneering, and the door may be opened to a type of rent-seeking that is 'far more destructive' than what non-corporations are capable of" (Christensen 2010, p. 82). As Hasen suggests, Stevens opens the door here to a relatively neglected rationale in favor of corporate spending limits, an argument which holds that some patterns of CPAs represent a source of inefficiencies for the economic system as whole (Hasen 2011, p. 250).<sup>27</sup> This is precisely the kind of argument on which the market failures approach is able to shed some light.

## Implications

After having exposed the main ideas of the market failures approach to CPAs, in this section, I would like to make five comments about some of the implications of this approach.

First, it is worth noting that my argument echoes Robert Reich's *apolitical thesis*, i.e., that it shares Reich's skeptical stance and provides tools for criticizing *many* current patterns of corporate political behavior (Reich 1998, 2008). True, if we agree that strategies aiming to create market failures by changing the rules and influencing the rule-makers should be excluded from the set of permissible political activities, this would represent a sea change given the traditional ideological opposition of the business world to government regulations.<sup>28</sup> Also, another implication of the approach to CPAs I am proposing is that most corporate speech should be viewed as being *commercial* and not political (which limits the scope of the associationist argument), because the public policy goal of creating the conditions for pareto-efficiency requires corporate speech to be governed by higher standards of truth and transparency than political speech.<sup>29</sup>

<sup>27</sup> My argument is quite similar to Hasen's one. I owe a lot to his excellent 2011 paper on lobbying and rent-seeking.

<sup>28</sup> Heath refers to an "organized culture of resistance to regulation in all its forms" (2014, p. 201).

<sup>29</sup> See the debates surrounding *Kasky v. Nike* (*Nike v. Kasky* at the US Supreme Court), which involved Nike's appeal of an April 2002 California Supreme Court ruling, rejecting the claims made by Nike's lawyers that the First Amendment immunized the company from

Second, the adoption of such a critical stance does not, however, lead to an exclusion of all CPAs from the sphere of legitimacy. In fact, one important corollary of adopting the market failures approach is that corporations have an *obligation* to participate, at least in a consulting role and as experts and providers of information, to the shaping of regulations designed to *correct* market failures within their own industry. For instance, quality of information is a prerequisite for good regulations and a crucial implication of a commitment to efficiency as a goal for public policy. For this obvious epistemic reason, it would be ludicrous for governments to try to develop such regulations without extensive input from the organizations required to comply. Simply put, some proposals by the hockey teams in Finn's example could actually improve the rules and regulations of NCAA hockey in such a way that benefits the institution of NCAA hockey. Similarly, in the olive-oil case mentioned above, political efforts by the key actors of the industry to improve the monitoring and labeling of olive oil, and reduce the exploitation of informational asymmetries, should be labeled as socially responsible.

This capacity of making sense of a range of permissible and obligatory CPAs represents one important advantage of the approach developed here compared to Reich's apolitical thesis. The market failures approach is able to theorize some of Reich's intuitions but does not go so far as he does. It sheds some light on a range of permissible and obligatory political activities for corporations, while remaining skeptical about their active political involvement.

Third, another related advantage of the approach I am proposing, compared to the egalitarian and corporate citizenship perspectives, is that it identifies clearer goals for corporate political behaviors. As mentioned earlier, the corporate citizenship theorists' call for a civic-minded or public good-oriented corporate political engagement remains vague. The market failures approach to CPAs is more precise. Negatively, it suggests that corporations should not aim to create and perpetuate market failures by using their political influence in the reshaping of their institutional environment. Positively, it suggests that corporations have an obligation to politically promote an institutional environment that preserves the conditions for Pareto-efficiency.

Four, it should be recognized that some CPAs (and their permissibility or problematic nature) might not be particularly well theorized by the market failures approach to

Footnote 29 continued

being sued for an allegedly deceptive public relations campaign. See on this issue Mayor (2007) and Stoll (2005). From the point of view of the market failures approach to CPA, Nike's false statements in their CSR report cannot be labeled as corporate political speech. It should be viewed as commercial and therefore as deceptive and false advertising.

CPAs (and it points into the direction of some of its limitations). Take the example of corporations financing pro-gay marriage initiatives (such as Apple's and Google's financial support of groups opposed to Proposition 8, a 2008 Californian anti-gay marriage ballot proposal).<sup>30</sup> Such progressive corporate implication might be appealing, especially for gay activists, but it is unclear what the market failures approach to CPAs has to say about it.<sup>31</sup> The political support of gay marriage does not aim to advance legislation that would help correct a market failure, nor does it aim to politically oppose it, and represents a straightforward form of corporate political speech. My proposition is that the market failure approach to CPAs would not view such an intervention as being *obligatory*, contrary to support for legislation that would improve the institutional structure of competitive markets. However, it can be viewed as a *permissible* form of CPA, with that caveat that the market failures approach does not necessarily provide the best grounds for it.

Five, I am aware that the approach defended here is rather demanding and would lead to radical changes in the patterns of corporate political behaviors. Critics of my reading of the market failures approach, such as Jaworski, for instance, would certainly see it as being *too* demanding for corporate managers when thinking about their organizations' political activities (Jaworski 2013, 2014).<sup>32</sup> As Heath mentions, from the standpoint of current business practices, the implications of this approach are almost utopian (2014, p. 203). However, it is important to keep in mind that the market failures approach to CPAs is not designed to apply to direct managerial decision-making, but to clarify the normative implications of a public policy commitment to Pareto-efficiency (2013, p. 51). Furthermore, and perhaps most importantly, such an approach informs us not only on beyond-compliance behaviors, but also on the justifications and design of plausible legislation and regulations constraining corporate lobbying, electoral financing, and political speech.

## Conclusion: A Smithian Perspective

In this paper, I have tried to provide answers to the following question: How can we succeed in *criticizing* and *objecting to* active corporate political engagement? I exposed two classical answers to this question and attempted to articulate a third, more neglected one, based on the market failures approach to business ethics. This account has shown, I hope, that such an approach offers us a specific reading of the common idea that corporations have a "license to operate" and how under this specific reading, the idea that corporations have a license to operate considerably limits their right to engage in political activities.

I would conclude by suggesting that in some ways, this critical approach toward the typical patterns of the political behaviors of the business world could be described as Smithian in spirit.<sup>33</sup> Indeed, the invisible hand argument could be understood as Adam Smith's own way to describe the way the market gives a license to adversarial, non-cooperative self-interest behaviors. But clearly, such license to operate in an adversarial way is not unlimited. Also, given Smith's constant criticism of the merchant class of his time and the way in which they promoted their own special interests through political influence (Fleischacker 2004), it is also a *contextualized* or *contained* license. In fact, many parts of *The Wealth of Nations* represent a vigorous and inspired charge against the class of merchants and the various ways they use their political influence to secure monopolies. Smith celebrated the invisible hand turning private vices into public good, but also complained relentlessly about the way merchants used political mechanisms to secure their private vices and desires for monopolistic power. This is why one could read *The Wealth of Nations* and conclude that one of the main moral lessons to be learned is that, according to Smith, the most ethically worrying feature of the way businesses conduct themselves is the political creation and entrenchment of market failures.

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<sup>30</sup> More precisely, "Prop 8" was a state constitutional amendment passed in the November 2008 California state elections, and has been now ruled unconstitutional by a federal court.

<sup>31</sup> Here, egalitarians might also find themselves in a strange position, because although they might like the marriage equality initiative, they might oppose to corporations politically promoting it because of the inequalities it creates between individual and corporations.

<sup>32</sup> Here it should be noted that Jarowski is critical of Heath but does not reject the market failures approach entirely. He tries to correct it by drawing attention to what he refers to as "governmental failure." In some sense, my paper represents a defense of Heath's account against Jarowski's.

<sup>33</sup> See Fleischacker (2004).

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