



**Why issues of societal concern  
morally oblige business corporations to  
be political**

Master's Thesis in Applied Ethics  
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*“Conservative rightists are legitimately concerned about personal freedom and private property, which they, however, wrongly express by providing legal protection for the private corporate firm. In turn, leftists are legitimately concerned about the negative side-effects of a marketplace dominated by big corporations, which they, however, wrongly express by seeking refuge in state intervention”.*

*Piet-Hein van Eeghen<sup>1</sup>*

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<sup>1</sup> Eeghen, P. H. van (2005). The corporation at issue, part I: The clash of classical liberal values and the negative consequences for capitalist practices. *Journal of Libertarian Studies*, 19(3), 68-69.



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Ik vond het heel bijzonder om al dit soort vragen te mogen stellen. En om daar samen met andere studenten en leraren over te praten. Je bent verbaast hoeveel antwoorden er zijn! Maar na zoveel weekenden weg van huis is er eigenlijk maar één vraag die nu nog door mijn hoofd speelt: “gaan jullie mee naar JUMPIN’ Noordwijk”?





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## Introduction

Today, many consider business corporations to be part of the private sphere. Where private individuals establish a business for their own personal reasons and to pursue their own ends. This remains if individuals seek to establish a social enterprise with social benefits like micro-finance for the poor<sup>2</sup>, or a more traditional commercial initiative which aims to disrupt an existing and rather dull industry like the mattress business.<sup>3</sup> The same view holds for stock-listed business corporations. Generally speaking, people will associate the stock-listed business corporation with profit maximisation as its purpose is generally believed to be making as much profit as possible for its shareholder-owners as. Smaller companies with a limited group of shareholders may agree to pursue alternative goals, sharing corporate profits in excess of a certain threshold with its employees or clients. On average, large corporations with numerous shareholders facing difficulty to align all shareholder interests, are thought to adhere to the “the lowest common denominator of their (shareholder’) wishes (that) can be attended to, which is to maximize return on investment—the wish which the greatest number of shareholders have in common”.<sup>4</sup>

In this thesis, I will centre my argument around the business corporation. The public corporation such as the university, or the church, is not in scope of this work. Nor is the single-person company or partnership-company owned by several partners. The main focus here is the stock-listed business corporation with its market specific characteristics.

I accept the market as a given; stock-listed companies must compete with other stock-listed companies creating market-relative attractive returns on investment, or face either take-over or bankruptcy. Furthermore, I accept that markets are imperfect. A well-known obstacle to prevent markets from being perfect, are so called externalities. These are negative spill-over effects of business conduct between two parties A and B on a third party C who is not engaged in the transaction and who did not provide his or her consent to bear the spill-over effects. Given that business corporations operate in a competitive market, their capacity to absorb externalities – without government regulation - is limited. At the same time, it must be acknowledged that some externalities may have far reaching consequences for people. Consequences which ought to be addressed. In my thesis I provide an example thereof referring to the Thai fisheries sector.

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<sup>2</sup> The National Business Review, Bangladesh social entrepreneur says microfinance could solve NZ problems, 10 April 2017, website visited 1 May 2017, <https://www.nbr.co.nz/article/bangladesh-social-entrepreneur-says-microfinance-could-solve-nz-problems-fr-201764>.

<sup>3</sup> TechCrunch, Purple, a Utah mattress startup you’ve probably never heard of, is on track to unicorndom, 13 April 2017, website visited 1 May 2017, <https://techcrunch.com/2017/04/13/purple-a-utah-mattress-startup-youve-probably-never-heard-of-is-on-track-to-unicornedom/>.

<sup>4</sup> Van Eeghen, The corporation at issue part I, 64.

If an externality entails a moral wrong, and I will argue it may when its negative spill-over effects violate basic human interests, whom ought to bear the responsibility to principally constrain his or her act to address this moral wrong? Some argue that business corporations are to take responsibility. Why should they? On what moral ground are business corporations required to act?

My main research question is; in cases where there is no economic ground for stock-listed business corporations to tackle externalities violating basic human interests, is there nonetheless a moral ground?

According to liberal principle, private actors including business corporations may focus their efforts on their economic interests as it is “only state institutions that have a direct concern for the public good”.<sup>5</sup> Nevertheless, I will argue that business corporations are morally required to address externalities which violate basic human interests, based on a derivative responsibility of government. In order to come to this conclusion I will argue that business corporations are to be considered artificial entities created by, and therefore accountable to government. Although it could be argued that this may create an opportunity for governments to impose various degrees of state control over business corporations this aspect will not be focused on. Instead, I will focus on an alternative means to internalize externalities. Being the moral obligation of business corporations to be political and to support the public interest, based on the moral norm of reciprocity.

Firstly, I will discuss the character traits of the stock-listed business corporation, the economic market in which the business corporation operates and the existence of externalities in that market. Some of these externalities violate basic human interest as can be seen in the Thai fisheries sector. This then creating a moral obligation to act.

Secondly, I will describe three different roles of the corporation. The role where the corporation holds accountability to its shareholders, to itself and to government. I will demonstrate that the first two categories will fail vesting a moral obligation to internalize externalities in the corporation. The last category, resembling the so called artificial view, does vest an obligation in the corporation based on a derivative responsibility of government and the moral norm of reciprocity.

Let me start by describing the specific character traits of the stock-listed business corporation and the economic market it operates in.

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<sup>5</sup> Scherer, A. G., Palazzo, G., & Matten, D. (2014). The business firm as a political actor: A new theory of the firm for a globalized world. *Business & Society*, 53(2), 147.

## 1.0 Why welfare economics fails to achieve welfare in full

Business corporations operate in the marketplace. According to the first welfare economic theorem,<sup>6</sup> business corporations create social beneficial outcomes as their focus on profit maximisation triggers the most efficient allocation of societies' scarce resources. In reality, this so called Pareto-optimum is not achieved. One of the reasons for markets to fail in their capacity to create the Pareto-optimum are externalities; positive or negative spill-over effects of business conduct on a third party not engaged in the transaction and who did not provide his or her consent to bear these effects.<sup>7</sup> Business corporations may address and internalize those externalities in cases where doing so provides short term business opportunity, long term economic benefit to the corporation, or safeguards the corporate's licence to operate. I will call this category of externalities "business-receptive externalities" as business corporations understand the urgency to respond. Corporations are unlikely to sufficiently address externalities either lacking a sense of urgency or being too costly to address within the reality of the market system.

In this chapter I will describe how different stakeholder groups with various, often conflicting, interests seek to influence business corporation's management board. These stakeholder group seek to influence board's sense of urgency regarding their specific interests, some of which refer to externalities. I will argue that within the reality of the market, a shareholders primacy approach need not to conflict with the broader concept of stakeholder theory. The reason being that both the shareholder primacy approach and the stakeholder theory concept, find themselves confined by the reality of the market. As such, stakeholder interests must be ancillary to, or may at best coincide with shareholder interest, limiting the capacity of stakeholder theory to address and internalize externalities. At the same time, I acknowledge that stakeholder theory has made an important contribution to the public debate granting moral considerability to all affected by the business corporation. Following the rationale of Kenneth Goodpaster regarding considerability, stakeholder theory enabled stakeholders with both moral status meaning an obligation to be considered by others, as well as equal-to-all moral significance meaning equal "weight"<sup>8</sup> granted to their interests in case of conflict.<sup>9</sup>

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<sup>6</sup> The second welfare economic theorem creates the ability for redistribution of welfare. Redistribution is not discussed in my thesis.

<sup>7</sup> Claassen, R. (2016). Externalities as a basis for regulation: a philosophical view. *Journal of Institutional Economics*, 12(03), 543.

<sup>8</sup> Goodpaster, K. E. (1978). On being morally considerable. *The Journal of Philosophy*, 75(6), 311.

<sup>9</sup> Under stakeholder theory, I take it that the management board of the business corporation is responsible for "governing comparative judgements of moral "weight" in cases of conflict" (Goodpaster 1978, 311) between the various stakeholders. Jensen considers equal significance for all affected a flaw within stakeholder theory as there is no "conceptual specification of how to make the trade-offs among stakeholders that must be made. This makes the theory damaging to firms and to social welfare, and it also reveals a reason for its popularity" (Jensen 2001, 305).

Building the argument in more detail, let me start defining the business corporation and the welfare economic model. After which I will discuss market failure and externalities.

### 1.1 The business corporation defined

In this section, I will discuss five characteristics of the stock-listed business corporation, namely legal personhood, perpetuity, strong entity shielding, limited liability and tradability of shares. The unique combination of these character traits, but strong entity shielding mainly so, differentiate the business corporation from ordinary private enterprise such as companies owned in partnership. The latter is being managed and owned by its partners, who are entitled to the proceeds of- and liable for debts of the partnership. Different from partnerships, business corporations hold legal personhood of themselves. They can own property, make contracts, sue and be sued and are privileged with perpetual life. The single and most important characteristic of the business corporations is what Henry Hansmann et al coined “strong entity shielding”.<sup>10</sup> Entity shielding entails that personal creditors of an investor in the corporation, may not put claim on the assets of the corporation.<sup>11</sup> Liquidation protection adds to this characteristic, prohibiting investors in the corporation to force the corporation paying-out their share of the corporate assets. The combination of both entity shielding and liquidation protection creates so called strong entity shielding, meaning that once a (private) investment has been made, the investment gets shielded, creating corporate assets from private investments. Clearly, the fact that private assets become corporate when invested in a corporation, endangers the position of any personal creditor of the investor, as his claim on the investor becomes subordinated to the corporation.<sup>12</sup> It would be hard if not impossible to obtain this situation deviating from the normal rules of property, based on contract alone.<sup>13</sup>

Another characteristic shared by many business corporations is owner shielding. This is process by which investors in business corporations limit their liability for debt linked to the firm’s activity, to the assets they invested in the firm. As such, a creditor of the firm may not lay claim on the personal

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<sup>10</sup> Hansmann, H., Kraakman, R., & Squire, R. (2006). Law and the Rise of the Firm. *Harvard Law Review*, 1336, 1338.

<sup>11</sup> Entity shielding provides great benefits to the corporation. As personal creditors of investors may not lay claim on corporate assets, the need for- and accompanying cost of screening an additional investor in the company reduces. This is an advantage to additional investors themselves too. Their costs for screening the existing owners reduces as well, as their investment is shielded from the personal affairs of the existing owners. Creating the opportunity to investment in multiple firms at reduced costs, diversifying investor risk.

<sup>12</sup> Hansmann, Law, 1340, 1342.

<sup>13</sup> In order to create an independent corporate asset pool by contract, each and every single shareholder would have to draw up a separate contract to prevent its creditors from “laying claim to firm assets in the case of his personal insolvency” (Ciepley citing Hansmann, *Beyond public and private*, 145). Given that this is not feasible with large groups of investors and the fact that contractual agreements might be challenged in court threatening the corporate asset pool nevertheless, strong entity shielding requires the government to act and impair “the rights of personal creditors without their contractual consent (and often without their notice)” as well as the rights of the owner’s heirs to deny withdrawal rights (Hansmann, Law, 1340) and thus to deviate from the normal rules of property, contract and liability. Something private individuals could not establish themselves by contract alone. As such, only governments can create strong entity shielding.

assets of the investor-owner. Over the years, limited liability became the default rule by law for stock-listed companies.<sup>14</sup> However in principle, it could be obtained by contractual agreement too.

The last key functionality of the business corporation I discuss refers to tradability of shares. In the sixteenth and seventeenth century, as European fleets set sail to take advantage of global trade opportunities, the need for capital pools increased dramatically.<sup>15</sup> In resemblance with the Italian city-states and universities, the Dutch Estates General granted the Dutch East India Company perpetual existence to increase efficiency and stability of its operations in 1623. Its investor-owners would no longer be able to withdraw their assets from the company as they used to do at the end of a specific voyage, when goods got sold and the investor-owners regained their investments including profits made. Instead, the investor-owners became investor-shareholders in a commercial joint-stock company. They obtained the right to sell their “share” to any other investor, a sell that did not require the consent of the other owners.<sup>16</sup> Doing so, the Dutch East India Company created an organisational structure enabling many to invest in the company. Combined with its other four characteristics, tradability of shares enables corporations to acquire incredible amounts of capital in a separate asset pool owned by the corporation. Creating an asset rich and highly powerful entity.

Modern stock-listed business corporations hold all of the above mentioned characteristics; legal personhood, perpetuity, strong entity shielding, limited liability and tradability of shares. The fact that the business corporation owns its (vast) asset pool, enables the firm to fully deploy its assets for its business operations, purchasing specific production equipment (specialized capital) and training employees with specific skills (specialized labour). Ultimately this increases the productivity of the firm<sup>17</sup> beyond the level of what one man, or several men in partnership could ever achieve.

## 1.2. Welfare economic theory

Welfare economic theory combines the liberal concept of the private in which private individuals are free to pursue their own interests, with a welfare consequentialist notion of (indirect) social beneficial outcomes for all. In his book *The Wealth of Nations* published in 1776, Adam Smith described how the pursuit of personal self-interest within the context of the market economy, either directly or indirectly, “led by an invisible hand”,<sup>18</sup> promotes the public good. Smith’s economic theory

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<sup>14</sup> Hansmann, Law, 1341.

<sup>15</sup> Hansmann citing Barry, Law, 1376.

<sup>16</sup> Hansmann citing Coornaert, Law, 1377.

<sup>17</sup> Ciepley, D. (2013). Beyond public and private: Toward a political theory of the corporation. *American Political Science Review*, 107(01), 143-145.

<sup>18</sup> Smith, A., & Recktenwald, H. C. (1986). *An Inquiry into the Nature and Causes of the Wealth of Nations* (p. 397557). Verlag Wirtschaft und Finanzen, Book IV.II, 274.

remains powerful to date.<sup>19</sup> In fact, it is the very same principle defined by Smith providing the basis of today's welfare economic theorem in which it is said that "(under certain conditions) when consumers act so as to maximize utility and firms so as to maximize profits, resources are allocated to producers and products distributed to consumers, in an efficient way".<sup>20</sup>

Smith considered the underlying drivers for efficient allocation to be the division of labour. When people would pursue their own interests, this would lead to *specialization of labour*, higher productivity and thus the social beneficial outcome of "more efficient use of resources".<sup>21</sup> Building on the concept of self-interest, Friedrich Hayek later argued that it was the market's ability to establish *correct pricing* for capital and labour, that was to create efficient allocation of resources rather than Smith's assumed co-operation in employment. As correct pricing provides the proper incentives to inform producers about "relative scarcity of goods".<sup>22</sup> The functioning of correct pricing supporting profit maximisation, leading to the most efficient allocation of resources and thus an efficient social outcome is well explained by Michael Jensen:

"Consider now the social welfare effects of a firm's decision to take resources out of the economy in the form of labour hours, capital, or materials purchased voluntarily from their owners in single-price markets. The firm uses these inputs to produce outputs of goods or services that are then sold to consumers through voluntary transactions in single-price markets. In this simple situation a firm taking inputs out of the economy and putting its output of goods and services back into the economy increases aggregate welfare if the prices at which it sells the goods more than cover the costs it incurs in purchasing the inputs. Clearly the firm should expand its output as long as an additional dollar of resources taken out of the economy is valued by the consumers of the incremental product at more than a dollar. Note that the difference between these revenues and costs is profits. This is the reason (under the assumption there are no externalities or monopolies) that profit maximisation leads to an efficient social outcome".<sup>23</sup>

Efficient use of resources benefits both society at large providing efficient social outcome, as well as shareholders, as increased company profits increase return on investment. As such, shareholders

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<sup>19</sup> Friedman applauded Smith's notion of an invisible hand creating social beneficial outcomes as he wrote: "Adam Smith's flash of genius was his recognition that the prices that emerged from voluntary transactions between buyers and sellers - for short, in a free market - could coordinate the activity of millions of people, each seeking his own interest, in such a way as to make everyone better off. Friedman cited in Macleod, A. M. (2007). Invisible hand arguments: Milton Friedman and Adam Smith. *Journal of Scottish Philosophy*, 5(2), 107.

<sup>20</sup> McMahon, C. (1981). Morality and the invisible hand. *Philosophy & Public Affairs*, 252.

<sup>21</sup> Heath, J. (2014). *Morality, competition, and the firm: The market failures approach to business ethics*. Oxford University Press, 208.

<sup>22</sup> Heath, Morality, 220-224.

<sup>23</sup> Jensen referring to George Baker in Jensen, M. (2001). Value maximisation, stakeholder theory, and the corporate objective function. *European financial management*, 7(3), 303.



pushing profit maximisation in order to increase their return on their investment, push for the most efficient allocation of scarce resources simultaneously. Within the welfare economic model, one should therefore not regard profit as a Lockean property right, but merely as a means to an end. The means being its support to the price system creating a Pareto-optimum in which “it will be impossible to improve anyone’s conditions without worsening someone else’s”.<sup>24</sup> The end being the beneficial societal outcome of the Pareto-optimum in which “resources will have been put to their best use, by flowing to the individuals who derive the most relative satisfaction from their consumption”.<sup>25</sup> In reality, the Pareto-optimum is not achieved though as markets and governments fail to internalize externalities.

### 1.3 Market failure & business-receptive externalities

The consequentialist notion within welfare economic theory, linking the pursuit of self-interest in the economy to beneficial social outcomes obtained as a consequence, resembles the utilitarian calculus in which an act is considered moral if it creates utility as a consequence defined to be the greatest subjective preference for the greatest number. I take it that the welfare economic model is correct insofar that it anticipates that the pursuit of self-interest leads to efficiency gains and social beneficial outcomes, improving the lives of many. The model anticipates the existence of potential obstacles as well, like monopolies or externalities causing market failure.<sup>26</sup> Obstacles that need to be addressed if not to run the risk of the model falling short of maximising beneficial social outcomes.<sup>27</sup> In this section I will discuss a specific category of externalities, so called business-receptive externalities, likely to be addressed and internalized by business corporations.

In order to internalize externalities, Edward Freeman stated that management boards of business corporations ought not to consider shareholder interests only, but should instead consider the interests of all “who benefit from or are harmed by”<sup>28</sup> corporate actions. As “each of these stakeholder groups has a right not to be treated as a means to some end”.<sup>29</sup> Building the notion that corporate power with its organisational, technological and financial resources could be directed towards wider social goals.<sup>30</sup>

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<sup>24</sup> Barr cited in Heath, J. (2006). Business ethics without stakeholders. *Business Ethics Quarterly*, 16(04), 542.

<sup>25</sup> Heath, Business ethics, 541.

<sup>26</sup> Various assumptions for market failure have been made, including amongst others monopolies, time-inconsistent preferences and information asymmetries. Within the scope of my thesis I will focus on externalities only.

<sup>27</sup> Jensen, Value maximisation, 303.

<sup>28</sup> Freeman, R. E. (2001). A stakeholder theory of the modern corporation. *Perspectives in Business Ethics* 3, 41.

<sup>29</sup> Freeman, Stakeholder theory, 39.

<sup>30</sup> Levy, D., & Kaplan, R. (2008). CSR and theories of global governance: strategic contestation in global issue arenas. *The Oxford handbook of CSR*, 434.

Freeman's stakeholder approach spurred various stakeholder based concepts seeking to internalize externalities, ranging from generic concepts like Corporate Citizenship, Corporate Social Responsibility and Sustainability,<sup>31</sup> to mere practical concepts like Cradle to Cradle, Blue Economy, and – most recently - Circular Economy.<sup>32</sup> There are limitations to the categories of externalities that these concepts are likely to address. In so far as addressing externalities coincides with short- or long term economic benefit or political-institutional benefit to the corporation,<sup>33</sup> business corporations might be willing to follow-up. I will call the combination of these three categories “business-receptive externalities” as they are likely to become internalized. An example of short term economic benefit gained from tackling an externality is energy efficiency measures taken, reducing both carbon dioxide emissions as well as reducing electricity costs. The carbon dioxide emissions being the externality as they spill into the air affecting all not engaged in the transaction and not having provided their consent. The negative spill-over effects of these emissions increase the general levels of carbon dioxide in the atmosphere, creating anthropogenic climate change. The economic benefit being the incentive for business to internalize this (previously) specific externality. Some measures tackling externalities may only provide financial return and profit over a longer period of time. If so, according to Michael Jensen, these could be regarded beneficial to the corporation too and:

“the firm must lead the market to understand the full value implications of its policies, then wait for the market to catch up and recognize the real value of its decisions as they become evidenced in the market share. Employee loyalty, and finally cash flows and risks. [...] It is our job as directors, managers, and employees to resist the temptation to conform to the pressures of equity and debt markets when those markets do not have the private competitive information that we possess”.<sup>34</sup>

One could reply, that markets are reluctant to consider information the board is not willing to share or not capable of explaining convincingly. Why should they? Much depends on the locus of authority to be discussed later in this thesis when I touch upon the role of the corporation and to whom it holds accountability.

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<sup>31</sup> The main point I want to bring across is that Corporate Citizenship and like-minded strategies are generally based on self-interest as described by Windsor et al: “fuelled by issues of self-interest – including the insight that a stable social, environmental and political environment ensures profitable business.”

Windsor, Wood and Logsdon cited in Crane, A., Matten, D., & Moon, J. (2008). The emergence of corporate citizenship: Historical development and alternative perspectives. *Handbook of research on global corporate citizenship*, 28.

<sup>32</sup> I tend to illustrate economic concepts which are to benefit both society at large (reducing emissions, or addressing the issue of resource scarcity) as well as to provide an economic benefit to the corporation.

<sup>33</sup> Levy, CSR, 436.

<sup>34</sup> Jensen, Value maximisation, 309.

Next to short and long term economic benefit, the third incentive for business to internalize externalities is political-institutional benefit, referring to situations in which corporations will be motivated to engage with civil society to “allow business to not only deflect or dilute certain pressures but also be in the driving seat to ensure that change takes place on terms favorable to business”.<sup>35</sup> Voluntary standards like the Forest Stewardship Council for logging, or the Equator Principles setting social and environmental standards in project finance, address externalities such as excessive logging and poor labour standards in infrastructural projects financed, up to the level that the corporate’s social license to operate has been safeguarded.<sup>36</sup>

Given the reality of the competitive market, there is little benefit for business corporations in stretching their efforts beyond the pursuit of short term business opportunity, long term economic benefit to the corporation or safeguarding its license to operate. David Levy therefor concludes that a Corporate Social Responsibility approach “does not compromise the fundamentals of the market system; indeed, it proclaims the harmony of financial and social interests”.<sup>37</sup> I agree and I take it that the same conclusion holds for all stakeholder based initiatives seeking to internalize externalities. Freeman must be recognized for the contribution he has made to changing the public mindset including that of management boards of business corporations and granting moral considerability to various stakeholder groups. His theory, balancing all interests including that of the shareholder, by and large remains loyal to Milton Friedman’s shareholder primacy approach. Management grasping short term business opportunity, seeking long term economic benefit to the corporation, or safeguarding the corporation’s licence to operate while addressing societal issues, may consider the interests of the various stakeholders doing so but would remain to ensure abidance with market reality and thus the interest of the shareholder, at all times.

At the same time, Friedman’s shareholder primacy and profit maximisation approach is often criticized by stakeholder adapts which by and large supports the stakeholder view. According to Friedman,

“In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while

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<sup>35</sup> Utting cited in Levy, CSR, 437.

<sup>36</sup> I acknowledge that these standards may provide an economic benefit to the corporation as well, opening new markets for sustainably sourced wood or reducing financial risk encountered in project finance. Both examples hold strong reputational value too, safeguarding the licence to operate of those companies engaged in logging, wood processing and sales as well as in project management and project finance.

<sup>37</sup> Levy, CSR, 453.

conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom.”<sup>38</sup>

Money making sustainability initiatives, available in abundance these days, nicely align with Friedman’s concept of profit maximisation. Also safeguarding a corporation’s licence to operate, given that a firm according to Friedman should abide by “the rules of society [...] embodied in ethical custom”.<sup>39</sup> I therefore conclude that both Friedman’s and Freeman’s theories support the incorporation of business-receptive externalities aligned with shareholder- and wider stakeholder interests. Freeman adding moral considerability to the debate as a means to define ethical custom considered by Friedman.

One could reply that stakeholder approach alone spurred the voluntary adoption of health and safety standards for workers, the adoption of certification mechanisms to ensure sustainable business practices in product value chains, and even inspired people to produce carbon neutral electric vehicles.<sup>40</sup> I agree that stakeholder theory enables the management of business corporations to recognise and consider various stakeholder interests. As the previously mentioned examples benefit both stakeholders as well as shareholders providing the latter with either improved (future) corporate performance and profitability, or safeguarding the corporation’s licence to operate in accordance with ethical custom, I take it that the driving mechanism for these improvements remains to be the shareholder primacy approach mainly.

#### 1.4 market-failure & non-business-receptive (pure) externalities

In contrast to the category of externalities discussed in the previous section, there are and remain to be externalities unlikely to be addressed by business corporations as they neither benefit the corporation economically, nor will they safeguard its licence to operate. There simply is no market for these externalities. I will call this category “non-business-receptive” or pure externalities. In this paragraph I will show that a failure to address a pure externality may not only be considered an economic and social wrong as it frustrates the Pareto-optimum, but might entail a moral wrong as well. As its effects should not only be judged from an utilitarian point of view with its focus on the greatest subjective preference for the greatest number, but also from the point of view of the person affected.

<sup>38</sup> Friedman, M. (2007). The social responsibility of business is to increase its profits. In *Corporate ethics and corporate governance*, Springer Berlin Heidelberg, 173-178.

<sup>39</sup> Friedman, The social responsibility of business, 173-178.

<sup>40</sup> CNBC, Billionaire Ron Baron expects mind-boggling returns from Elon Musk-led Tesla, 15 February 2017, website visited 4 June 2017, <http://www.cnbc.com/2017/02/15/ron-baron-expects-mindboggling-returns-from-elon-musk-led-tesla.html>

Earlier, I defined externalities as negative spill-over effects of business conduct between A and B on a third party C not engaged in the transaction and who did not provide his or her consent to bear these effects. Could this effect entail a moral wrong? Is there thus a responsibility to principally constrain one's act to prevent this moral wrong? Rutger Claassen argues the externality itself "cannot tell us who should be held responsible for that effect"<sup>41</sup> as assigning responsibility depends on moral considerations made in defining the value of the externality effect.

"In most economic reasoning, there is a moral theory to identify externalities: utilitarianism. Utility in turn is normally understood as the satisfaction of subjective preferences".<sup>42</sup>

Government, responsible for the public good, may choose to ignore externality effects perceived by some if and when a transaction contributes to higher subjective preferences for a greater number. An example being the noise produced by trains affecting some living in the vicinity of the railway outweighed by the subjective preferences of public transport enjoyed by thousands.

Claassen convincingly argues how, in specific cases, utilitarianism can be morally problematic when considering externality effects. Let me discuss one of three categories mentioned in his paper; pecuniary externalities. Pecuniary externalities are the financial consequences of a transaction between A and B on C. An obvious example being a new supplier A entering the market place with a more competitive offer, capturing market share at the expense of existing supplier C. Transactions between the new supplier A and its consumers B affect supplier C financially. In economic terms this would be a beneficial development as it increases efficient allocation of resources. Claassen describes how:

"in a general equilibrium analyses, the costs to the losers are more than offset by the benefits to the winners of the competition and to the consumers who benefit from the enhanced performance of a competitive market. It is best overall to have the competition".<sup>43</sup>

Generally competition is considered moral as it will benefit the greatest number. Party A need not to support C or the former employees of C in coping with the effects of its competition. Generally speaking there will be no market for this non-business-receptive externality. Government is likely to limit the externality effects that fall on C though, providing social security to its former employees. The rationale for doing so may well be an utilitarian notion that the general public would be appalled knowing that former employees of C are to live in dire circumstances after unemployment.

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<sup>41</sup> Claassen, Externalities, 545.

<sup>42</sup> Claassen, Externalities, 547.

<sup>43</sup> Claassen, Externalities, 549.

Something that could well happen to any employee of any company operating in the market place. The thought of this potential threat could lower subjective preferences for the greatest number; all workers. Providing government with the utilitarian argument to grant social security to former employees of C.

Nevertheless, the concept of utilitarianism is problematic as it regards humans as means in a calculus rather than ends in themselves. In the previous paragraph, government responded taking into consideration the subjective preference of the greatest number. What if people would feel very secure about their employability? What if, on average, people would always be able to find new opportunities within 4 weeks after unemployment? What if society shared the opinion that those who did not manage to get a new job, had to bear the consequences themselves as it was considered their own fault? If so, under utilitarian theory, the government would not have to respond as its support for the few unemployed would not benefit the subjective preference of the greatest number. The effects of unemployment on these few former workers would not be different though. They would still have to live in dire circumstances. This example shows that government ought not always to consider the greatest preference of the greatest number. Instead, government needs to take a deontological normative position and ought to consider each and every human being as an end in himself, protecting his or her basic human interests. A failure to do so would entail a moral wrong. Examples of human interests theories are human rights, social primary goods, or basic capabilities theory.<sup>44</sup>

In the following sections I will narrow my conception of pure externalities to those that violate basic human interests. First, I will provide a more detailed example of a violation of basic human interests.

### 1.5 Externalities in the Thai fisheries sector

In this section I will describe a real-life case in the Thai fisheries sector to showcase that a failure to address externalities hampering the basic interests of human beings, entails a moral wrong. In Thailand, global demand for prawn combined with an abundance of labour force capacity from surrounding countries like Cambodia and poor governmental governance on labour rights, triggers the exploitation of workers. A practice clearly immoral under basic human interest theory.

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<sup>44</sup> "All of these theories either present (or pre-suppose the presentation of) a list of basic human goods or interests. Citizens are to have rights to the goods and the state (or whatever form the political community takes) is to protect these rights for its citizens against violations from others."  
Claassen, Externalities, 552.

Nevertheless, the market fails to address the issue. There is no economic market for solving the issue of forced labour (C) as a result of the transaction between producers A and global consumers B.

In 1998, when discussing the appalling working conditions in so called sweat shops in countries like Bangladesh, Paul Krugman followed a welfare consequentialist rationale explaining how employers in the garment sector pursuing their own interest and paying their workers as little as possible, would eventually improve the lives of many as “a growing industry must offer somewhat higher wage than workers could get elsewhere in order to get them to move (...)”. As such, “improvements (...) are the indirect and unintended result of the actions of soulless multinationals and rapacious local entrepreneurs”.<sup>45</sup> One could reply to Krugman that the benefits remain limited, in fact too limited. As Alistair Macleod would probably do as he opposes to Friedman’s defence of the welfare economic theorem stating:

“it is not clear that the payoff Friedman's argument promises is particularly impressive. For one thing, it only means that each of the members of a free market society is "better off" than he or she was prior to participation in the ongoing economic life of the society: (...) it is a matter of indifference whether transaction generated benefits are distributed fairly or unfairly”<sup>46</sup>

My main concern is not with unfair distribution though. This needs to be discussed elsewhere. Within the boundaries of my thesis, my concern is with the fact that utilitarian calculus ignores potential harmful consequences of an act, when its aggregated consequences increase total subjective preference for the greatest number. Under utilitarianism, sweatshop wages providing minor increases in the subjective preferences of the workers, are considered moral. One could reply that sweatshop wages, though arguably better than the alternatives available in the local market, are not moral as they are and remain to be well below levels of subsistence. A criticizer would refute this argument, stating that the employees clearly prefer sweatshop wages over its even poorer alternatives. One must wonder though if, in circumstances of deprivation, workers are at all able to make free and deliberative choices. Or, in the words of Claassen:

“The losers [in the economy] may be severally harmed in their existence, sometimes to the point of starvation. The reply that they have consented to playing the game does not help, since this is a case of forced consent. Not playing the market game for most people is simply not an option”.<sup>47</sup>

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<sup>45</sup> Krugman, P. (1997). In praise of cheap labor. *Slate*, March, 21, 1997.

<sup>46</sup> Macleod, A. M. (2007). Invisible hand arguments: Milton Friedman and Adam Smith. *Journal of Scottish Philosophy*, 5(2), 111.

<sup>47</sup> Hausman quoted by Claassen, Externalities, 549.

I therefore take it that improvements that are unable to lift people up to the level of subsistence, cannot be regarded moral. As basic human interests have not been met still. Even more so in circumstances of suppression<sup>48</sup> and gross violations of human interests<sup>48</sup> as described in the Thai fisheries sector.

In 2009, the United Nations published a case study report regarding the exploitation of Cambodian men at sea. The report describes “inhumane working conditions (...) including beatings, deprivation of food, inhumane work hours, (...) threats of death” and a proportion as high as 59% of victims to report having witnessed “a murder by the boat captain”.<sup>49</sup> Many of these Cambodian men live and work on Thai fishing boats. When on board, the Thai boats undertake long voyages well beyond the 12 nautical miles boundary of its territorial waters, often 100 miles or more off shore. At sea, so called “mother ships” supply the fishing boats with barrels of ice, fuel and water and take the cached fish to shore. As such, the workers remain at sea for periods of up to 2 years, increasing their vulnerability and limiting their possibilities to escape.<sup>50</sup> Cached fish is sold to the Thai domestic and international markets. Trash fish, not suitable for retail consumption, is milled into fishmeal used in animal feed for prawn and pig farming by companies like CP Foods and Thai Union. Large multinationals delivering their products (prawns) to companies like Nestlé and supermarkets such as Carrefour and the Co-operative Food in Europe.

The practices of slave-like labour<sup>51</sup> in the Thai fisheries sector have been well documented and are known throughout the supply chain to all parties involved, including the Thai government, Thai based prawn production and trade companies<sup>52</sup>, food processing companies like Nestlé<sup>53</sup> (headquartered in Switzerland) and supermarkets selling the slave-like labour produced fish products to retail consumers in Europe.<sup>54</sup> In the Thai fisheries case described above, knowledge of the facts did not lead to extinction of the practice. The UN report describing these practices dates from 2009. Media started writing about the issue in 2014. It did not create the change needed from within the sector. A study conducted by the University of Sheffield issued January 2016, indicates that little is to be expected from the sector itself. In fact the study describes how “the Thai shrimp business in British

<sup>48</sup> I will not further specify an absolute baseline of human existence, but food, water and bodily integrity are certainly amongst them.

<sup>49</sup> United Nations Inter-Agency Project on Human Trafficking; SIREN Case analyses, Exploitation of Cambodian men at sea, Phnom Penh, 22 April 2009, website visited 27 May 2017, [http://un-act.org/wp-content/uploads/2015/07/SIREN\\_CB-3.pdf](http://un-act.org/wp-content/uploads/2015/07/SIREN_CB-3.pdf).

<sup>50</sup> Fishing and Aquaculture, Verité Fair Labour Worldwide, Amherst, 2014, website visited 27 May 2017, <http://www.verite.org/sites/default/files/images/Fishing%20and%20Aquaculture%20Overview.pdf>.

<sup>51</sup> According to the ILO, some 20,9 million people are held in forced labour, meaning “trapped in jobs into which they were coerced or deceived and which they cannot leave”. Examples are debt or credit bondage and human trafficking.

ILO Global Estimate of Forced Labour, Results and methodology, 2012, website visited 27 May 2017, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf).

<sup>52</sup> The Guardian, Trafficked into slavery on Thai trawlers to catch food for prawns, 10 June 2014, website visited 27 May 2017, <http://www.theguardian.com/global-development/2014/jun/10/sp-migrant-workers-new-life-enslaved-thai-fishing>.

<sup>53</sup> The Guardian, Nestlé admits to forced labour in its seafood supply chain in Thailand, 24 November 2015, Website visited 27 May 2017, <http://www.theguardian.com/global-development/2015/nov/24/nestle-admits-forced-labour-in-seafood-supply-chain>.

<sup>54</sup> The Guardian, Trafficked into slavery, 2014



supermarkets had been ethically certified by Non-Governmental Organisations (...) to adopt safe and sustainable practices”.<sup>55</sup> The ethical audits performed in its supply chain seem to work for the sector mainly, as they fail “workers and the planet”.

Apparently, there is no short term or long term financial gain to be obtained in addressing the Thai fisheries case, nor a need to do so in order to safeguard the political-institutional interest of business corporations involved in the prawn production value chain. Corporate actions so far have been limited to a toothless certification scheme. Given that there is no market rationale to persuade business corporations to effectively address the issue, I consider the Thai fisheries case to represent a pure externality.

According to Jensen “revolving externality [...] problems is the legitimate domain of the government in its rule-setting function”.<sup>56</sup> What if Thai government fails to adhere to its duty? Could we build the argument for corporate responsibility.

### 1.6 Finding the argument to the way out

In the first chapter of my thesis I defined the business corporation based on five character traits. Character traits enabling the firm to increase its productivity beyond the level of what one man, or several men in partnership could ever achieve.

Business corporations operate in the market place. According to the first welfare economic theorem, actors in the market place, each pursuing their own interests, contribute to social beneficial outcomes. Welfare economic theorem anticipates the existence of potential obstacles causing markets to fail in reaching their social beneficial outcomes. I described one category of obstacles being externalities and split the category into two-subcategories being business-receptive externalities and non-business-receptive externalities. The first is likely to be internalized by business corporations. The latter likely to be ignored by business corporations.

In liberal theory, business corporations are said to operate in the private sphere. Meaning that they need not to take on duties belonging to the public sphere related to the common good. Pure externalities ought to be dealt with by the government. Jensen argues along the same lines, when he states that:

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<sup>55</sup> Ethical Audits and the Supply Chains of Global Corporations, Sheffield Political Economy Research Institute, Brief No. 1, 2016, page 1.

<sup>56</sup> Jensen, Value maximisation, 309.

“those who care about resolving [...] externality issues will not succeed if they look to firms to resolve these issues voluntarily. Firms that try to do so either will be eliminated by competitors who choose not to be so civic minded, or will survive only by consuming their economic rents in this manner”.<sup>57</sup>

If business corporations need not to tackle externalities and states fail to take up their responsibility, the externality continues to exist. I argued that, in those circumstances where a pure externality violates a basic human interests, the externality entails a moral wrong. A moral wrong calling on those responsible to constrain their pursuit of self-interest based on the principle<sup>58</sup> of basic human interest theory. Bringing me to the next step in my argument as I know seek to understand who is to be regarded responsible.

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<sup>57</sup> Jensen, Value maximisation, 309.

<sup>58</sup> Heath, Business ethics, 541 (referring to Gauthier).

## 2.0 The role of corporations, part I

Following the argument made by Nancy Fraser, learning about the harsh circumstances of the Cambodian fishermen creates a "grammar"<sup>59</sup> we cannot ignore, influencing the way we think about the issue. It seems unfair that Cambodians, catching the fish we eat, are forced to labour in slave-like circumstances. According to Steve Trent of the Environmental Justice Foundation, business corporations in the value chain like supermarkets have a role to play.

"The supermarkets know this is happening [...] They are actively supporting slavery by not acting and, conversely, they could be actively working to get rid of it if they really had the desire".<sup>60</sup>

Let's assume that we are able to ignore market reality and all of its constraints earlier described. Let's assume that businesses are technically capable to efficiently address a pure externality as described in the case of the Thai fisheries sector. Let us therefore assume that supermarkets in the UK would be technically capable to effectively solve the issue, implementing a highly expensive and effective monitoring and control mechanism. What would be the moral ground for the alleged obligation of UK supermarkets to act?

Earlier I identified the moral principle based on which slave-like labour issues in the Thai fisheries sector ought to be addressed, being basic human interest theory. I have not been able to identify who is to be held responsible yet. Much depends on how we are to define the role of the corporation in society; to whom does it hold accountability? The latter is important because he to whom the corporation holds accountability, is at power to steer its activities. And therefore ultimately responsible for its actions. In the following two chapters I will therefor discuss three different views on the role of the corporation.

## 2.1 Changing perspectives

Avi-Yonah identifies three views of the role of the corporation being the aggregated view, the real-entity view and the artificial view. The first considers the corporation to be "an aggregate of its members or shareholders". This view resembles the shareholder primacy approach granting superior standing to the investor-owner. According to the second, the corporation is "a separate entity controlled by its managers". Avi-Yonah argues that, since the corporation is regarded an independent person under the real-entity view, its management board is to be regarded independent from

<sup>59</sup> Fraser, N. (2009). *Scales of justice: Reimagining political space in a globalizing world*. Columbia University Press, 24.

<sup>60</sup> The Guardian, *Trafficked into slavery*, 2014.

stakeholders other than the corporation itself, as well. As such, the real-entity view provides full managerial freedom to act. The third view regards the corporation to be a “creature of the State”. In this so called artificial view, corporations are said to exist by government privilege, thus being “of government” for which they (ultimately) ought to support government’s single and only interest; the common good.

In his article, *The Cyclical Transformations of the Corporate Firm*, Avi-Yonah convincingly shows that in times of societal change, all three corporate views are tabled and discussed. When referring to several US court cases, Avi-Yones shows how the courts tried to “strike the balance between the rights of the corporations, which can best be protected under either the aggregated or real-entity view, and the regulatory power of the state, which is best reflected in the artificial view.”<sup>61</sup> In the second half of the 1900s, the emergence of large publicly traded companies “necessitated a re-examination of the corporate form, and again all three theories of the corporation appeared”.<sup>62</sup>

As such, in 1886, the Supreme Court took an aggregated view considering that:

“the courts will always look through the name [of the corporation] to see and protect those whom the name represents [being the investor-owners]”.<sup>63</sup>

In 1888, a the New York Court of Appeals ruled in favour of the artificial view as it stated that:

“Corporations are great engines for the promotion of the public convenience, and for the development of public wealth, and, so long as they are conducted for the purposes for which organized, they are a public benefit: but if allowed to engage without supervision, in subjects of enterprise foreign to their charters, or if permitted unrestrainedly to control and monopolize the avenues to that industry in which they are engaged, they become a public menace, against which public policy and statutes design protection”.<sup>64</sup>

And some years after in 1905, a court took the real-entity view writing:

“it is [the board’s] judgement, and not that of its stockholders outside of the board of directors... that shape [a corporation’s] policies or decide upon its corporate acts”.<sup>65</sup>

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<sup>61</sup> Avi-Yonah, R. S. (2005). *The cyclical transformations of the corporate form: a historical perspective on corporate social responsibility*. *Del. J. Corp. L.*, 30, 797.

<sup>62</sup> Avi-Yonah, *The cyclical transformations*, 793.

<sup>63</sup> Santa Clara case as described in Avi-Yonah, *The cyclical transformations*, 794.

<sup>64</sup> Leslie, 110 NY at 531-33 cited in Avi-Yonah, *The cyclical transformations*, 801.

<sup>65</sup> *Siegman v. Elec. Vehicle Co.* case as described in Avi-Yonah, *The cyclical transformations*, 800.

The above court rulings show that neither of these views can be judged lightly. Each holds strong arguments against the other as will be further explicated below. Each view allocates accountability and thus authority and responsibility in different hands, being either the shareholder, the corporation or the state. In the following sections of this chapter, I will describe the aggregated and the real-entity view in more detail. Given that these first two views locate authority in the hands of private persons, I will argue that these views will not be able to provide a moral ground for internalizing pure externalities under liberalism. As, under liberalism, private acts are regarded to belong to the personal sphere in which private parties are at liberty to pursue their own interests and need not to consider the public sphere and the common good.

## 2.2 Aggregated view

Under the aggregated view, the management board of the stock-listed business corporation is accountable to the investor-owner. The aggregated view suits the liberal notion of the private, respecting the concept of private property rights. Taking the corporation to be an expression of private activity in the personal sphere. As such, Friedman stated:

“In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers”.<sup>66</sup>

The aggregated view resembles the stakeholder primacy approach discussed earlier. As such, the main argument in favour of the aggregated view is similar to that of the shareholder primacy approach. Referring to Smith, Hayek and Friedman and the first welfare economic theorem, the aggregated view and its focus on shareholder interests triggers profit maximisation, which in turn generates efficient resource allocation creating social beneficial outcomes. These social beneficial outcomes are used in argument. One could state that business corporations have a duty to pursue profit maximisation as it is said to generate social beneficial outcomes. If so, a member of the management board of a corporation would be morally required to put the interest of the shareholder first, creating profit maximisation “on the grounds of aggregated welfare and economic efficiency”.<sup>67</sup>

Waheed Hussain rejects this view. According to Hussain:

“people who participate in corporations might reasonably respond by saying that the corporation is a private association that they form in the personal sphere of their lives.

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<sup>66</sup> Friedman, The social responsibility of business, 173-178.

<sup>67</sup> Hussain, W. (2012). Corporations, profit maximization and the personal sphere. *Economics and Philosophy*, 28(03), 330.

Therefore it is up to them to decide whether they will help the market to reach a wealth-maximizing outcome or not”.<sup>68</sup>

I take this to be true for private enterprises of one person, and partnerships of several persons.<sup>69</sup> Not for business corporations per se. The firm is not to be regarded a private association of board members or employees. Therefore the management board of the firm is and remains to be accountable to a third party. Under the aggregated view, that third party is the group of investor-owners. Investor-owners who on average will seek to maximize their return on investment and will thus seek to increase corporate profits. As such, managers of the board are not at liberty “to decide whether they will help the market to reach wealth-maximizing outcome or not”.<sup>70</sup> Under the aggregated view, they must pursue the interest of the shareholder and will contribute to wealth maximizing outcomes<sup>71</sup> doing so.

The same holds for tackling externalities. Given that the firm is accountable to its shareholders, there is no moral ground for the firm to respond to externalities without the explicit order to do so from its shareholders.

I take it to be unlikely that shareholders would issue a joint calls on the management boards of stock-listed business corporations to internalize pure externalities violating basic human interests. Even more so since, according to Lynn Stout and David Ciepley, the timeframe in which shareholders hold their equity and seek to profit from it, has shortened considerably over the years. Currently, investors hold their equity for some 4 months.<sup>72</sup> As management boards under an aggregated view are required to live up to shareholder-expectations, increasing profits by the time they publish their next quarterly results, they will be challenged to unlock corporate assets for short term shareholder benefit rather than to pursue non-economic grand projects like the internalization of pure externalities.

If we want management boards to take on other interests or even to pursue grand projects that do not make economic sense per se like the internalisation of the Thai fisheries externality, the members of the management board must be regarded as the “trustees or stewards of great

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<sup>68</sup> Hussain, Corporations, 330.

<sup>69</sup> I take this to be true for mid-sized companies as well as these companies will typically hold close ties to their investor-owners enabling them to come to a joint agreement on strategy and profit targets with their investor-owners. The position of mid-sized corporations is not discussed in this thesis.

<sup>70</sup> Hussain, Corporations, 330.

<sup>71</sup> Hussain (2012) refers to the so called Efficiency Argument for Profit Maximization (EAPM); a normative requirement according to which firms ought to pursue profit maximisation in order to bring about “wealth maximising outcomes”. I will not describe EAPM in further detail as it resembles the concept of the welfare economic theorem.

<sup>72</sup> Ciepley, Beyond Public and Private, 148.

economic institutions that had important public functions”.<sup>73</sup> The shareholders of the company should thus be kept at some distance. Granting them the position of investor-shareholders with an equity stake in the company which is to be regarded some sort of contract and entitlement to financial benefit, rather than an entitled to steer the company through a fully accountable management board.<sup>74</sup> Preventing shareholders to put disproportionate pressure on the board to unlock corporate assets for their own private (shareholder) benefit.

We must, in other words, consider a model in which the board is no longer solely accountable to the shareholder. Leading us to the real-entity view to be discussed in the next section.

### 2.3 Real-entity view

In difference to the aggregated view in which it is said that shareholders are the “residual claimants” of corporate revenue, Stout argues that corporate revenues belong to the corporation: “the true claimant, and are then to be allocated at the discretion of management, which rarely directs more than a fraction to dividends”.<sup>75</sup> If so, the management board is no longer accountable to the shareholder, protecting shareholder assets. Instead, under the real-entity view, management is considered accountable to the corporation protecting corporate assets. According to Avi-Yonah, the real-entity view “represents the most congenial view to corporate management, because it shields them from undue interference from both shareholders and the state”.<sup>76</sup> An independent board will be best positioned to prevent a too powerful state, too powerful shareholders, or for that matter too powerful unions or any other stakeholder group “to unlock the corporate assets for their own benefit”.<sup>77</sup>

An independent management board, it is argued under the real-entity view, may be better positioned to consider the wider interests of the corporation and its perpetual success. It is for this reason that Avi-Yonah argues that a Corporate Social Responsibility [or stakeholder-] approach seeking to take societal concerns into consideration, will be most effective under a real-entity view.

Let’s assume that a truly independent board would indeed be able to resist pressure from the equity markets to a large extent. Taking into account wider interests, and even capable of addressing one or

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<sup>73</sup> Davis cited in Stout, L. A. (2014). The Corporation as a Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form. *Seattle UL Rev.*, 38, 711.

<sup>74</sup> Ciepley argues that a shareholder is not an owner of corporate assets as she merely owns “a piece of stock, representing her financial interest in the corporation”. [...] It also means, however, that *no* natural person or group of persons owns assets of the corporation. The corporation owns corporate assets [...].

Ciepley, *Beyond Public and Private*, 146.

<sup>75</sup> Ciepley, *Beyond Public and Private*, 146.

<sup>76</sup> Avi-Yonah, *The cyclical transformations*, 812.

<sup>77</sup> Stout, *The Corporation*, 712.

two pure externalities,<sup>78</sup> preferably those that violate basic human interests. And let us assume that management boards would be willing to do so. If so, they behave as “trustees or stewards of great economic institutions that had important public functions”.<sup>79</sup> Institutions with public functions as their decisions made impact the public domain. If they do so, ought their public function not to be embedded in the public sphere? The public sphere in which the board would have to consider public interests and the common good.

According to Hussain,

“any social activity that affects the common good of the community should be subject to deliberative governance.”<sup>80</sup>

As such, we should incorporate deliberative governance structures in the decision making process of the independent board. If so, the firm would indeed become more democratic. A full democratic entity, subject to deliberative governance in the community, would be obliged to taking into account the interests of all affected. It would grant the various stakeholder groups equal-to-all moral significance in deliberation. Being equally accountable to all its stakeholders, its stakeholders would jointly be responsible for the decisions made by the board. Ending the independent character of the board. In the next sections I will first explore the rationale and means for democratising corporations in more detail. As it will build the bridge to embracing yet a different role for corporations.

### 2.3.1 Building democratic corporations

Business corporations operate in the public domain, when they are “providing public goods (e.g. education, public health, and infrastructure)”.<sup>81</sup> There seems to be no wrong in corporations providing public goods like railway services efficiently. Business corporations may well *act* in the public or so called political sphere. May they also *be* political, making or influencing political decisions? Setting standards as they do through the Forest Stewardship Council rather than following standards. Enforcing rules as the Equator Principle banks enforce IFC Performance Standards on their lending clients, rather than having government to enforce rules. Business corporations *being* political

<sup>78</sup> The reality of the market, being a highly competitive environment, would constrain the firm’s economic ability to internalize each and every pure externality. Let’s assume the firm would be capable to internalize one or two pure externalities. Shareholders would likely oppose as the extra costs would reduce profitability and their return on investment. It would not cause the firm to go bankrupt.

<sup>79</sup> Davis cited in Stout, *The Corporation*, 711.

<sup>80</sup> Cohen cited in Hussain, W., & Moriarty, J. (2016). Accountable to whom? Rethinking the role of corporations in political CSR. *Journal of Business Ethics*, 3.

<sup>81</sup> Scherer, *The Business Firm*, 148.



may be problematic as, according to Hussain, any activity affecting the common good of the community ought to be governed by deliberative governance.

Hussain describes how, in a deliberative democracy, issues of public concern are discussed in a public forum providing the process to come to a resolution in law. This process ensures that “society will be governed by the free, unforced, rational deliberation of its members”.<sup>82</sup> In this process it is key that administrative officials in the democratic system are both answerable & accountable to the citizens, meaning that officials can be removed by citizens through impeachment and are held accountable through elections.<sup>83</sup> Business corporations are not equipped to perform political tasks of deliberation. They simply “lack the apparatus, governance mechanisms, and indeed the skills for governing citizenship”. Management boards are not answerable and accountable to citizens. It is safe to say that corporate capacity to provide answerability, and accountability (through transparency) to citizens, is underdeveloped compared to government institutions.<sup>84</sup>

Both Hussain and Andreas Georg Scherer et al<sup>85</sup>, argue that, given that business corporations started drafting and enforcing global rules but lack the apparatus to allow for deliberation amongst-, and answerability and accountability to citizens, corporations fall short of fulfilling the principles of a deliberative democracy. Furthermore, a corporation shaping policy, “threatens to degrade or undermine citizens’ will and ability to shape them”.<sup>86</sup> As policy setting ought to be a function of the public domain based on democratic deliberation. This so called democratic deficit in business corporations sparks the debate whether or not corporations “should be subject to greater democratic control”.<sup>87</sup>

Both thinkers and their co-writers therefore suggest building democratic capacity of and incorporating government-like control mechanisms into the business corporations governance structure to ensure alignment with citizens interest, “just as the democratic state”.<sup>88</sup> It is beyond the scope of my thesis to describe their respective models in further detail. For now it is enough to consider their intent to democratise business corporations. I hold two objections regarding this model though. The first refers to their suggestion to democratise corporations through the representative bodies of the various stakeholders. My second objection refers to the status of the

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<sup>82</sup> Hussain, *Accountable to Whom*, 3.

<sup>83</sup> Hussain, *Accountable to Whom*, 4.

<sup>84</sup> Crane, A., Matten, D., & Moon, J. (2008). The emergence of corporate citizenship: Historical development and alternative perspectives. *Handbook of research on global corporate citizenship*, 38.

<sup>85</sup> Scherer, *The Business Firm*, 148.

<sup>86</sup> Hussain, W., & Moriarty, J. (2014). Corporations, the democratic deficit, and voting. *Geo. J. & Pub. Pol'y*, 12, 438.

<sup>87</sup> Hussain, *Accountability to Whom*, 1.

<sup>88</sup> Scherer cited in Hussain, *Accountable to Whom*, 5.

independent management board under the real entity view, which I no longer regard to be independent when democratised.

First, in the models described by the aforementioned scholars, citizens interests are represented through interest groups like NGOs, unions, employer associations, and the like called Political Representative Organisations (PRO) by Hussain. Taking the point of view of the citizen, I oppose to this model as “deliberation by representation”, alienates citizens from the issue at stake. It was Jean Jacques Rousseau stating that “Sovereignty cannot be represented”.<sup>89</sup> When represented, citizens need no longer to understand the issues discussed, the solutions proposed or the potential consequences thereof. Instead, they trust their representatives to act on their behalf. Without knowing the issue at all, or in very general terms only. Under these conditions, citizens are unable to influence the “professional” point of view Political Representative Organisations defend on their behalf. Last but not least, we must consider whether or not PROs can live up to the standards of democratic deliberation. A concern not further discussed within the boundaries of this thesis.

Taking the point of view of the corporation we seek to democratised, PROs fail to inform the board fully as they fail to represent the interests of all affected. In his 2006 article, when referring to stakeholder theory, Heath describes how:

“the relationship between the manager and different “groups” within society, (...) tends to privilege the interests of those who are well-organized over those who are poorly organized, simply because it is the former who are able to present themselves as a coherent body with a common set of interests”.<sup>90</sup>

Those citizens that are unable to group their interests, or lack the resources to table their interests within each and every single business corporation, remain invisible.<sup>91</sup> Their voices remain unheard.

My second objection refers to the status of the management board when democratising its decision making processes. Hussain convincingly argues how some dilemma’s may not be resolved through deliberation. If so, voting is required.<sup>92</sup> A relevant and fair voting system is complex and costly. It is not the costs of the system to which I oppose. I oppose to the fact that Hussain’s model requires the independent board under the real-entity view to adhere to the outcomes of a majority vote, and to “constrain its actions within”<sup>93</sup> the public sphere regarding some specific issues flagged in the “social

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<sup>89</sup> Rousseau, J. J. (1946). *Rousseau: The Social Contract*. Edwards Brothers, Incorporated, III, 15, 5.

<sup>90</sup> Heath, Business ethics, 545.

<sup>91</sup> Hussain, Accountable to Whom, 14.

<sup>92</sup> Hussain, Corporations, the democratic deficit, and voting, 443-447.

<sup>93</sup> Hussain, Corporations, the democratic deficit, and voting, 446.

deliberation that precedes voting”.<sup>94</sup> When adherence to a majority vote is required, this represents a restriction of the free choice of the board between the various options proposed to it. A restriction which contradicts with its independent status under the real entity view.

Contrary to what one might think given my prior critical remarks made, I do agree that boards need to be democratised in order to consider internalisation of pure externalities. It cannot be done under a real entity view. As the interests of the board under the real entity view align with the interests of the corporation. And given that the interests of the corporation are considered private, the corporation is not required to pursue the common good in the public sphere. As such, we may seek to democratise independent board decisions. These efforts would either fail when democratic deliberation and voting is ignored by independent boards, or end the independent status of the board under the real-entity view when democratic decisions are to be executed automatically.

Rather than solving the issue of democratic deficit at hindsight, and seeking to incorporate deliberative governance structures to either influence independent board decisions or enforce decisions on them contradicting their independent status under the real entity view, it is to be preferred to organise deliberative governance at the level of government and its institutions. As they are answerable and accountable to citizens and thus able to define areas of public interest democratically. One could build the argument for state control, aligning public interest and corporate conduct of business corporations by charter, law and other means of state coercion. Instead of doing so, I will argue in the next chapter that governments may use another distinctive mechanism.

Given that business corporations owe their existence to government, the moral norm of reciprocity demands it from business corporations that they repay their benefits obtained from government, to government. In order to build that argument, I will first change the perspective on the role of the business corporation. Changing its role from the aggregated and the real-entity view previously discussed, to the artificial view to be discussed below.

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<sup>94</sup> Hussain, Corporations, the democratic deficit, and voting, 444.

### 3.0 The role of corporations, part II

According to liberal principle, private actors including business corporations may focus their efforts on their economic interests as it is “only state institutions that have a direct concern for the public good”.<sup>95</sup> The negative spill-over effects of private pursuit are to be dealt with by government creating corrective laws and regulations. In the previous chapter, I showed that under liberal theory and when considering an aggregated view or real-entity view, business corporations as entities cannot be held responsible for the effects of pure externalities themselves, as their respective roles do not provide the moral ground based on which they ought to respond to these externalities. Both views consider the business corporation to be accountable to either the shareholders of the corporation or the interests of the corporation itself. The corporation is thus accountable to either a natural person (the shareholder) or a legal person (the corporation) both regarded to be free to pursue their private interest in the personal sphere. A sphere in which they need not to consider the public interest. For which reasons the business corporation therefor need not to consider the public interest either. As such, neither the aggregated view, nor the real-entity view morally obliges the firm to have a direct concern for the public good.

In this chapter I argue that the corporation *is* morally obliged to have a direct concern for the public good nevertheless. The reason being their role under the artificial view. As the artificial view creates both a derivative responsibility for business corporations through government, as well as an obligation to repay corporate privileges obtained which will benefit the public sphere doing so.

### 3.1 The artificial view & derivative responsibility

Under welfare economic theorem, business corporations may serve the private interests of the shareholders of the corporation or the corporate assets as such. Externalities are expected to be internalized by the rule of law of government. Governments may indeed, and in fact ought to consider drafting corrective legislation when negative spill-over effects of externalities violate basic human interests. This form of state coercion will equally effect corporations under an aggregated, real-entity or artificial view. What is different under the artificial view though, is that the artificial view allows government two extra argument to actively steer business conduct to obtain social beneficial outcomes.

Under the artificial view, corporations are artificial entities created by government. As the business corporation obtained its privileged character traits from government, it is considered accountable to

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<sup>95</sup> Scherer, *The Business Firm*, 147.

government. Creating an opportunity for government to influence the corporation and to safeguard its interests. Therefore, as governments are deemed responsible for protecting the basic human interests of their citizens,<sup>96</sup> corporations under the artificial view hold a derivative responsibility of government to internalize externalities violating basic human interests. Indeed, government may choose to align business conduct with the public interest using its various degrees of state control. According to Heath though, one should be careful not to impose “multiple objectives” on the firm, combining both private and public interests, as this would make it impossible to manage the firm efficiently.<sup>97</sup>

Van Eeghen takes a different route altogether building a strict liberal principled argument to prohibit incorporation for private pursuit. Given that government holds responsibility to govern the public interest in the public sphere, it also holds that government bears responsibility for her activities affecting the public sphere. Under liberal theory, government furthermore bears responsibility to respect the liberty of its individual citizens. As such, Quentin Skinner states that governments ought to ensure that its:

“Citizens do not suffer any unjust or unnecessary interference in the pursuit of their chosen goals”.<sup>98</sup>

As such, governmental actions constraining private pursuit require justification. Incorporation constrains private pursuit and therefore requires justification. Incorporations creates private ownership rights for impersonal corporations and decouples the freedom of making private decisions from the responsibility to bear the consequences of private decisions.<sup>99</sup> Indeed, it creates limited liability interfering in the private pursuit of creditors. It is for these reasons that Van Eeghen argues that business corporations driven by the profit motive, conflict with liberal theory in principle. Therefore, incorporation can only be justified and may only be allowed when “the public interest is served within the public domain”.<sup>100</sup> Prohibiting corporate status to companies that do not serve the public interest. As a consequence of van Eeghen’s strict liberal view, many business corporations as we know them today would have to hand in their corporate privileges.

I do not seek to further discuss different perspectives on various levels of preferred state control or limitations to the concept of incorporation. They are important background concepts as I seek to argue that the sheer notion of its artificial existence, is to create a responsibility for the business corporation under the moral norm of reciprocity based on which business corporations somehow

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<sup>96</sup> I take it that basic human interest theories morally require governments to protect basic human interest.

<sup>97</sup> Heath, *Business ethics*, 543.

<sup>98</sup> Skinner, Q. (2012). *Liberty before liberalism*. Cambridge University Press, 119.

<sup>99</sup> Van Eeghen, *The Corporation at issue part I*, 57.

<sup>100</sup> Van Eeghen, *The Corporation at issue part I*, 54.

ought to align their conduct with government interest. Bringing me to the next step in my argument as the artificial view is able to start the mechanism of the moral norm of reciprocity.

### 3.2 The artificial view & the moral norm of reciprocity

Under the artificial view, government is regarded to have created the corporation; an artificial institution. When creating the corporation, government granted state-like privileges like entity shielding en perpetuity, benefitting the firm with capacities for increased productivity. Under the moral norm of reciprocity as described by Alvin Gouldner, this historic act “evokes obligations” on the corporation to repay government.<sup>101</sup> A repayment that will benefit the public interest as government represents the common good.

In the next section I will take a historical perspective on the creation of corporations. Not so much for historical purposes as such, but merely to proof that business corporations depend on government for their existence and owe government for benefits obtained from it. Staring a mechanism of moral reciprocity and an obligation for business corporations to repay government.

#### 3.2.1. The history of corporations

Earlier I discussed that business corporations typically hold five key characteristics; legal personhood, perpetuity, strong entity shielding, limited liability and free tradability of shares. The concept of limited liability dates back as far as the Roman era. Hansmann et al describe how a master could provide assets to his slave conducting business on his behalf in a so called peculium. Profits made by the peculium arrangement were owned by the master. Liability of the master-owner to peculium debt was limited and “capped at the value of the peculium though, so long as he had not participated in its management”.<sup>102</sup> Although the peculium structure protected the owner against creditors of the firm, its structure did not protect the peculium against creditors of the owner. The owner’s personal creditors would be allowed to lay claim on the peculium and all of its assets, as these would be considered the ownership of the master.

Another key characteristic of today’s firms – and in fact its most important characteristic - is “strong entity shielding”, meaning that once an investment has been made, the investment gets shielded and protected creating corporate assets from personal assets. As early as the third century B.C., Roman government granted strong entity shielding to the *societas publicanorum*; a commercial organisation

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<sup>101</sup> Gouldner, Alvin W. "The norm of reciprocity: A preliminary statement." *American sociological review* (1960): 170.

<sup>102</sup> Kirschenbaum cited in Hansmann, Law, 1358.

providing services to the Roman state. The *societas publicanorum* enabled multiple investors joining forces to “bid on state contracts for projects such as the construction of public works”.<sup>103</sup> It resembled the modern business corporation as it provided strong entity shielding capacity, limited liability (for those investment partners lacking managerial control), as well as characteristics closely linked to what we would consider to be legal personality and perpetuity today; the capacity to own corporate property and to transact in the name of the *societas publicanorum*, even after its members would pass away.<sup>104</sup>

As discussed, strong entity shielding requires the government to impair “the rights of personal creditors without their contractual consent (and often without their notice)” as well as the rights of the owner’s heirs to deny withdrawal rights<sup>105</sup> and thus to deviate of the normal rules of property, contract and liability. Something private individuals could not establish themselves by contract alone. Only governments can create strong entity shielding. And it is up to government to grant this legal privilege to a corporation.

Years after, in the 1600, the Dutch and the English governments granted their East India Companies the privilege of strong entity shielding for the very same reasons the Romans did; to create well-capitalized entities capable of providing clear public benefits. In fact, the East India Companies enjoyed many more government-granted and government-like privileges to facilitate their success. The English East India Company enjoyed the right to wage war, mint coin and the right to pass law for the corporation as well as to administer justice to it and thus to “dismiss, fine, physically chastise, or imprison those who violated” these laws.<sup>106</sup> Under the influence of liberalism and its aim to reduce the influence of the state on the private sphere, corporations lost government granted monopoly positions and sovereign powers.<sup>107</sup> Instead they were regarded private institutions going forward, regulated under private law. They could no longer wage war. Business corporations maintained their legal privileges regarding strong entity shielding, limited liability and tradability of shares, leaving them “less well armed, but legally better protected” under private law.<sup>108</sup>

Even under private law, the business corporation remained to be an attractive organisational structure. With its clear distinction created between personal and corporate assets, it remained to have all of the aforementioned economic benefits enabling the corporation to boost its productivity

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<sup>103</sup> Badian cited in Hansmann, Law, 1360.

<sup>104</sup> Hansmann notes that “a *societas publicanorum* survived the death of any of its members except that of the lead investor whose name appeared on the contract with the state.”  
Hansmann, Law, 1362.

<sup>105</sup> Hansmann, Law, 1340.

<sup>106</sup> Elizabeth and Robins cited in Ciepley, Beyond public and private, 142.

<sup>107</sup> Ciepley, Beyond public and private, 139.

<sup>108</sup> Ciepley, Beyond public and private, 139.

beyond what one man or more in partnership could ever achieve.<sup>109</sup> Given opportunities provided, various general commercial initiatives opted for the organisational structure of the corporation in the early nineteenth century. English Kings and Parliament refused to grant the privileges of the corporation to just any commercial entity without specific public benefit provided. Its reluctance to do so, which it maintained well into the nineteenth century, may have been grounded in its role protecting the public interest as “debts of a corporation (...) totally extinguished by its dissolution” due to its limited liability status.<sup>110</sup> Protecting non-controlling shareholders from potential company management opportunism as well. Opportunism “that could not be disciplined through shareholder withdrawal threats” as the firm’s assets would be shielded from its investors.<sup>111</sup>

In the 1840s, change came from the United States, as various states started to issue corporate charters by means of administrative act. From now on, all companies could opt for privileged charters “on payment of a fee, without permission by the state legislature”.<sup>112</sup> Without any obligations towards the public sphere, leaving corporate charters empty and allowing business corporations to focus on their economic interests only. A shift in approach that would show to have massive implications in the years after as it created highly capitalised multinationals using public powers for private pursuit in the private sphere. Creating corporations without any obligation whatsoever to support “the maintenance and regulation of some particular object of public policy”,<sup>113</sup> decapitating the “body politic” of its political head and replacing it with a private head instead. Regardless this fact, it cannot be ignored that the “body private” cannot exist without government privileges. As such we can conclude that all business corporations active today, have been created by government some day in history. The moral implications of this fact are to be discussed in the next section.

### 3.2.2. The moral norm of reciprocity

With these historical background ideas in place, I do not mean to defend that idea history itself provides the argument to start loading corporate charters with common good-supporting requirements. It does build upon the notion that government created business corporations to perform duties it was not able or willing to perform itself. Building infrastructure that would benefit all for example. More important so for my argument though, is the fact that the historical

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<sup>109</sup> Ciepley, Beyond public and private, 143-145.

<sup>110</sup> Avi-Yonah, The cyclical transformations, 784.

<sup>111</sup> Hansmann, Law, 1378.

<sup>112</sup> Avi-Yonah, The cyclical transformations, 792.

<sup>113</sup> Kyd cited in Greenwood, D. J. (2005). The semi-sovereign corporation, 279.



perspective builds the notion that business corporations active today, have been created by government and owe their existence and privileged position to government.

Reciprocity between the state and its citizens demands that government, being responsible for governing society “solely in terms of [...] common interest”,<sup>114</sup> will not infringe the position of some of its citizens without any counter benefit provided to them. The state is to “harmonize the interests of otherwise competitive parties”.<sup>115</sup> The state may do so by refraining from granting the privileges of incorporation other than in cases of clear and direct public interest served. A position defended by van Eeghen. The state may choose to control corporate conduct, seeking to internalize pure externalities drafting laws and regulations. There is a third option embedded in the role of the corporation under the artificial view. As the corporation owes its existence to government, the moral norm of reciprocity obliges corporations to repay that benefit to government.

According to Gouldner, reciprocity resembles complementarity, but differs in so far that the first “connotes that *each* party has rights *and* duties” rather than either one party holding either a right or an obligation.<sup>116</sup> In cases of reciprocity, each party is obliged to give benefits and is entitled to receive benefits in return. Gouldner argues that reciprocity does not only describe a pattern of exchange, but entails a moral norm as well, as it defines “certain actions and *obligations* as repayments for benefits received”.<sup>117</sup> It is the moral norm that evokes the obligation towards others.<sup>118</sup>

Obligations are created in prior actions, starting a mechanism of exchange. In our case, the privileges granted by the state to the corporation create an obligation of the corporation to the state. The corporation owes the state so to say. Starting the mechanism of exchange under which the corporation is morally obliged to repay its benefits obtained to the state.

The repayment to the state need not be “concretely alike” and to entail the same action as the benefit obtained. It may also be “equal in value”. This notion should incentivise the state to increase the perceived value of its action. Value according to Gouldner relates to four characteristics being the recipient’s need for the action, the resources available to the donor and thus its relative pain experienced when providing the action, the motives of the donor seeking to gain from the action or not, and the nature of the action being at free will or not. Handing out corporate charters for free at no restriction decreases value and thus the value of repayment. The state should therefore build

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<sup>114</sup> Rousseau, *The Social Contract*, 57.

<sup>115</sup> Levi, M. (1998). *A state of trust. Trust and governance*, 1, 87.

<sup>116</sup> Gouldner, *The norm of reciprocity*, 169.

<sup>117</sup> Gouldner, *The norm of reciprocity*, 170.

<sup>118</sup> Gouldner, *The norm of reciprocity*, 170.

awareness that incorporation entails privileges that come at a cost to society. Costs to be returned to society by the corporation.

One could reply that corporations pay their fair share, paying taxes and creating social beneficial outcomes under the first welfare economic theorem. I would respond that, given that the corporation ought to repay “equal in value”, the form of repayment is left open under the norm. The state may well indicate her preferred mode of the repayment; the internalization of pure externalities violating basic human interests for example.

A criticaster could reply that this point of view would be highly naïve. From an utilitarian perspective, the corporation would seek to pursue its private aims and thus to increase its subjective preferences. Doing so, the corporation would seek to over-benefit from the actions of government. And thus seek to reduce its obligations, rather than increasing them. Even from an equity perspective by which people “are assumed to be concerned with “fairness” in interactions, a repayment would never out-balance an obligating act.<sup>119</sup> Yet, with Gouldner, I reply that under the moral norm of reciprocity corporations ought to repay as the norm of reciprocity “is a concrete and special mechanism involved in the maintenance of any stable social system”.<sup>120</sup> A moral norm that is. A moral norm based on which people may well choose to under-benefit<sup>121</sup> providing more-than-equal repayment, rather than over-benefiting putting the stable social system at risk. I therefore conclude that government should build awareness for the artificial view, and to re-value incorporation. If so, business corporation ought to repay their privileges obtained from government based on the moral norm of reciprocity. Starting a mechanism of exchange. And enabling the government, based on democratic deliberation, to express preferences for repayment. Preferences benefitting the public interest. Such as internalizing pure externalities that violate basic human interests. Bringing my argument to a conclusion as basic human interest theory and the moral norm of reciprocity, morally oblige the business corporation under the artificial view to be political and to tackle issues of societal concern.

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<sup>119</sup> Uehara, E. S. (1995). Reciprocity reconsidered: Gouldner's moral norm of reciprocity and social support. *Journal of Social and Personal Relationships*, 12(4), 486.

<sup>120</sup> Gouldner, The norm of reciprocity, 174.

<sup>121</sup> Uehara, Reciprocity reconsidered, 497.

## Conclusion

Today, many would regard the following to be correct. They would agree that business corporations may, or may not internalize externalities in cases where doing so provides short term business opportunity, long term economic benefit to the corporation, or safeguards the corporate's licence to operate.

What about non-business-receptive or so called pure externalities? The welfare economic theorem anticipates pure externalities. Jensen and others argue that government and government alone is responsible to internalize pure externalities for which there is no economic market. Yet, others argue that business corporations ought to take responsibility to internalize pure externalities. Why should they? On what moral ground are business corporations required to do so?

In my thesis my main interest was therefore to see if I could build the argument for a moral ground for business corporations to tackle externalities violating basic human interests, in cases where there is no economic ground to do so. Describing the role of the corporation, its character traits and to whom it holds accountability, I came to the conclusion that business corporations do hold moral obligations beyond what economic realities subscribes. A moral obligation as a derivative of governmental responsibility to which business corporations owe their privileged character traits.

My main argument though related to the moral norm of reciprocity embedded in historic acts based on which a mechanism of mutual rights and obligations between two parties starts. Taking a historic perspective of the corporation, showing that business corporations owe their creation and privileged position to government, I built the argument that incorporation starts the mechanism of exchange under which the corporation is morally obliged to repay its benefits obtained from the state.

As such, basic human interest theory and the moral norm of reciprocity, morally oblige the business corporation under the artificial view to be political and to tackle issues of societal concern.



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*“Our society confronts a variety of serious problems likely to be solved only by investing massive amounts of resources over long periods of time: disappearing ecosystems, increasing demands for energy, chronic diseases like diabetes and hypertension, rising carbon levels in our atmosphere and our oceans. Corporations in general, and particularly public business corporations with asset lock-in, are especially well suited to solving such long-term problems.”*

*Lynn Stout<sup>122</sup>*

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<sup>122</sup> Stout, L. A. (2014). The Corporation as a Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form. *Seattle UL Rev.*, 38, 722-723.



