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Business Ethics and (or *as*) Political Philosophy

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A political philosopher and a business ethicist walk into a bar… What do they talk about? Imagine they meet up there with an actual businessperson, a union leader, a government regulator, and an activist. In principle, this conversation should be loud and long. But in recent decades, what should amount to an overlapping set of topics and intellectual interests has not generated a particularly voluminous literature in either political philosophy or business ethics. This is surprising, since business ethicists routinely deal with issues that have very broad economic and political significance, especially given the controversies that continue to rage over the appropriate role that the market should play in a democratic society, the power exercised by corporations within the public sphere, and the way that the vicissitudes of the labor market affect the life chances of individuals. Robert Solomon (1990) has argued that business ethics has a micro level (dealing with individuals), a meso level (concerned with the corporation), and a macro level (dealing with capitalism in general). At the macro level, the issues dealt with by business ethicists are indistinguishable from those that have preoccupied political philosophers.

Solomon's analysis has led one recent commentator to suggest that business ethicists should stick to their knitting and ignore these sorts of macro questions. Their inability to do so has created a situation in which "business ethics as an object of university teaching and research has been captured by or is in the thrall of another academic discipline, normative political philosophy" (Marcoux, 2009). By contrast, our inclination is to think that political philosophy has not yet come to exercise sufficient influence in the field of business ethics. While many business ethicists have no doubt strayed into the territory of political philosophers, by asking questions about the moral justifiability of the capitalist system, or the system of property rights, or the distribution of income, this is not the same thing as adopting a "political philosophy" approach to these questions. This is because political philosophers have developed, over the course of the 20th century, a set of tools and concepts for addressing these questions that are in many ways quite distinctive. Business ethics, on the other hand, remains primarily a field of applied ethics, and so most practitioners adopt methods that are quite closely wedded to the way that moral philosophers conceptualize these issues. As we shall see, the two approaches are not the same.

From our perspective, it therefore makes sense to ask:

- What might business ethicists be able to learn by paying closer attention to recent work in political philosophy?
- What might political philosophers learn by paying closer attention (or *any* attention!) to recent work in business ethics? And perhaps most interestingly,
- What might both groups learn by working collaboratively on neglected topics that should be seen as falling within the intersection of both domains?

Our principal mandate leads us to focus mainly on the first question, but we will survey proffered answers, and offer our own suggestions, to all three. In practice these questions can be difficult to distinguish, not least because the (slightly) overlapping membership of these two communities of scholars. In the case of issues that are already widely discussed in the business-ethics literature, we will point rather quickly to some leading sources. We will explore at greater length a number of topics that have been largely neglected by either or both of these scholarly communities.

1. Breaking through disciplinary solitudes

Judging from the range of issues covered in journals like *Business Ethics Quarterly* and the *Journal of Business Ethics*, it is not an exaggeration to characterize "business ethics" as concerned with the evaluation, justification, or critique of all of the following: market systems; the regulation of markets and firms; the self-regulation of firms; and the activities of businesses or the individuals working for, or interacting with, businesses. (This is, if you will, the domain of *normative* business ethics. These journals also welcome empirical studies – which stand to business ethics as political science stands to political philosophy – that investigate how firms, organizations, and individuals in the world of commerce *actually do* function or behave.) The somewhat unfortunate term "business *ethics*" denotes for many lay people a narrow focus on *individual* virtues, values, and behavior. But the academic field looks well beyond this focus, in part because it is often difficult to judge what an individual in a business situation ought to do unless we know more about the basis for their contractual relations with a business (say, their employer), and with the rules of governance, along with the laws and regulations, that dictate rights and duties within and for this business.

A comprehensive approach to business ethics, therefore, must piece together a "unified" normative theory of:

(a) markets and the regulation of domestic and international markets,
(b) corporate law and governance, and
(c) the "beyond-compliance" norms, and principles of self-regulation, that businesses and those interacting with businesses ought to adopt.

By "unified" we mean that there should be a fair degree of consistency or compatibility among the kinds of normative concepts and principles used to justify rights, duties, and institutions in each of these realms. A theory would fail to be unified, say, if it grounded certain rules of governance in corporate law for (b), but then for (c) supported beyond-compliance obligations for managers to act in ways that would systematically violate these rules. Now as a matter of "academic anthropology," these three realms of issues have generally been tended by different communities of scholars: with (a) attracting attention mostly from economists and political scientists, (b) being the focus primarily of legal scholars and management theorists, and (c) remaining the bread-and-butter starting place for theorists of business ethics or corporate social responsibility who are most concerned with obligations *over and above* what is required by law. Over the past two decades, business ethicists have frequently looked at the connection between issues in (b) and (c), especially about the justification or critique of so-called stockholder and stakeholder theories of governance and management. And more recently, business ethicists have begun trying to link justificatory principles for beyond-compliance obligations in (c) with the best rationale for market regulations in (a) (Heath, 2006, 2007a; Stark, 1993; Vogel, 2005).

But while business ethicists have been moving *backwards*, in a manner or speaking, to more abstract and general questions of institutional design and justification; political philosophers have not yet shown much interest in extending their abstract normative theories *forward* to questions of institutional design for private-sector institutions like markets and firms, let alone to questions of the rights or obligations of individuals working within these institutions (such as members of the standard stakeholder groups). It is worth noting that this is *not* because of any principled objection to dealing with questions of institutional design and the implications for individual agents. Political philosophers generally have no hesitation moving from abstract theories of justice, say, to much more specific "applied" normative questions when dealing with the classic institutions of government and the state. Over the last two decades, many books by political philosophers on theories of democracy, for example, have demonstrated a renewed willingness to move from abstract conceptions of freedom, equality, and respect for diversity, to general principles of democracy and fairness, and on to very specific proposals for electoral systems, deliberative forums, and the virtues of citizenship that should be practiced by individuals (e.g., Beitz, 1989; Dworkin, 2000; Goodin, 2003; Williams, 1994). We see something similar in political theories of minority or multicultural rights, which move from abstract starting points to specific institutional recommendations for parliaments, courts, health care, and schools; incorporating along the way support for individual virtues of tolerance (Kymlicka, 1995). But with very few exceptions, the question of the design and justification of *private-sector* institutions and regulations – and the implications for individuals within these institutions – has not attracted the attention of political philosophers (see, e.g., McMahon, 1994). (One major exception is the topic of justice and health care, broadly conceived; especially in the United States, where it is more of an open political question which health-care services should be handled by private markets, and how these markets should be regulated.) It goes without saying that political philosophers *used to be* very much preoccupied by questions in category (a), above; especially concerning private property rights, collective labor rights, and the great clash between capitalist and socialist visions for the ownership of the means of production (and of course these topics do remain *alive*, if not mainstream). But for the most part political philosophers seem to be comfortable handing off questions under the heading of (a), not to mention (b) and (c), to experts in other domains (including business ethics).

A central theme of this article is that this relative neglect of markets, firms, and their stakeholders in contemporary political philosophy is regrettable, but addressable. The publication of John Rawls's *A Theory of Justice* in 1971 is a convenient point to mark the rebirth of contemporary political philosophy in the English-speaking world. Over the four decades since then political philosophers have developed increasingly sophisticated theories and methods for addressing issues of justice, obligation, democratic governance, and citizenship in institutional design. We will begin our survey in section 2, below, by looking at how these insights might be applied to the designs of markets and firms: taking into account the often-brief suggestions by political philosophers themselves, as well as attempts by business ethicists to draw on these theories.

But another central aim in this article is to encourage the community of business ethicists to take more seriously the need for "unified" normative theorizing across the three realms outlined above. This will require taking up the task of developing a more systematic political philosophy for private-sector institutions like markets and firms. And like the best work in political philosophy on *public-sector* institutions such as electoral or education systems, it will involve more than merely applying abstract principles of justice. We will also need to take into account the best interdisciplinary work from the lawyers, economists, political scientists and others who currently furnish most of the justifications or critiques of market designs and regulations (domestically and internationally), and of corporate governance.

2. At the intersection of business ethics and political philosophy

As a new (or rejuvenated) sub-discipline coming of age in the wake of debates over *A Theory of Justice* in the 1970s and 1980s, business ethics has, of course, always had an eye on political philosophy. Many of the early leaders in the field, and the founders of its principal societies and journals, arrived on the scene with established reputations in moral and political philosophy, including Tom Beauchamp, John Boatright, Norman Bowie, George Brenkert, Richard DeGeorge, Tom Donaldson, and Patricia Werhane. So there is certainly a history of attempts by business ethicists, from the earliest articles in the field to the present, to draw on recent work in political philosophy.

2.1 John Rawls: business ethicist?

There is no question that the towering figure in political philosophy over the past four decades has been John Rawls. He articulated much of the agenda for the field, and most subsequent work on justice either supports and amends his theories, or has to refute them in order to justify a different theory. It is worth distinguishing three aspects of Rawls's approach. First, he offers a number of *normative principles* for evaluating institutions, including, most famously, his two principles of justice. Second, he shook up the field by reviving a contractarian *method* for justifying these principles of justice, which is summarized most memorably in the thought experiment of parties in the "original position" selecting fundamental principles from behind the "veil of ignorance." And thirdly, he sketched a very elaborate architecture and sequence for applying different kinds of principles in different ways to different kinds of political, institutional, and ethical issues.

It is fair to say that the aspect of Rawls's work that has attracted the most attention from business ethicists is the question of how or whether to apply his substantive normative principles of justice in a business context. Initially, this may seem surprising, since at the beginning of *A Theory of Justice* Rawls cautions that he is not presenting an account of "the justice of institutions and social practices generally," (Rawls, 1999, p. 7) but is developing a set of principles specifically tailored to what he calls "the basic structure" of society. "These principles may not work for the rules and practice of private associations or less comprehensive social groups" (Rawls, 1999, p. 7). He mentions churches and universities as examples of associations that would not fall directly under the scope of his principles. Later, he explicitly distinguishes "the basic structure of society" from the "rules of corporate associations" (Rawls, 1999, p. 126).

From this, it might seem obvious that most of the issues that are of concern to business ethicists fall outside the scope of Rawls's principles of justice, or are related to them only indirectly. One of the major functions of the basic structure is to establish the conditions of what Rawls calls "background justice" in a society, which in turn creates a generalized presumption that private contracts, voluntarily entered into, are just. This would appear to lend support to what is (confusingly) called the "contractual" view of the firm, which regards the firm as a nexus of contracts among its constituency groups, the justice of which is to be evaluated primarily by the freedom and voluntariness of these contracts (Easterbrook & Fischel, 1996, p. 36-37). Thus the only thing that Rawls's analysis would add to the standard account on the limits of freedom of contract (e.g., Trebilcock, 1997), would be the stipulation that, in cases where conditions of background justice are not satisfied, the state may freely intervene to modify the substantive terms of these contracts (just as it does when it redistributes property in order to prevent the emergence of unjust inequalities (Rawls, 1993, p. 267).

There are, however, many theorists who resist this apparent consequence of Rawls's view. There are two obvious strategies for doing so. The first is to challenge the exclusion of corporations from the basic structure. The second is more radical, consisting of an attempt to purge the "institutionalism" from Rawls's view entirely, so that the principles of justice apply uniformly to all interactions.

As far as the first strategy is concerned, there was always a degree of vagueness in the way that Rawls characterized the basic structure. His most precise and final formulation was as follows:

> The basic structure of a society is the way in which the main political and social institutions of a society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time. The political constitution within an independent judiciary, the legally recognized forms of property, and the structure of the economy (for example, as a system of competitive markets with private property in the means of production), as well as the family in some form, all belong to the basic structure. The basic structure is the background social framework within which the activities of associations and individuals take place (Rawls, 2001, p. 10).

Given the centrality of corporations in securing "social cooperation over time," as well as the language that Rawls uses about the "structure of the economy," it is not a tremendous leap to think that, at very least, publicly traded corporations should be considered a part of the basic structure (Taylor, 2004). If this were so, then Rawls's two principles of justice would apply directly to the structure of the firm. These principles are, one may recall, that:

> 1. Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.
> 2. Social and economic inequalities are to be arranged so that they are both:
>   (a) to the greatest benefit of the least advantaged…, and

> (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (Rawls, 1971, p. 302)

The first principle, along with 2(b) would seem to entail, minimally, that firms should not discriminate against applicants or employees on the basis of race, sex, or other standard categories of wrongful discrimination.

Writers have spent more time recently identifying the subtler implications of Rawls's theory for commerce. O'Neill (2008) and Hsieh (2005) find in Rawls support for worker participation in managerial decision-making. Hsieh (2004) appeals to Rawlsian justice to ground a duty for transnational corporations to assist the needy in the host countries in which they operate. And Moriarty (2009) draws on a development in Rawls's account of self-respect – the "social bases" of which constitute one of the "primary goods" that figure in the assessment of how advantaged or disadvantaged one is – to argue that Rawls should support giving citizens a robust opportunity for meaningful work. In his own justification of the "difference principle" (which is the name given to principle 2[a]) Rawls explicitly permits the use of incentives to allow some "talented" (or entrepreneurial) individuals to receive a disproportionate share of goods if so doing will raise the amount available for the least well off. "Trickle-down" arguments of this sort have long been used to justify, or at least sell, capitalism (e.g. Friedman, 1962, 1970), and more specifically to justify outsized compensation packages for senior executives (Boatright, 2010). But most "true" Rawlsians, not to mention other more strict egalitarians, seriously doubt that the current levels of inequality can legitimately be shown to be in the interest of the least well off. (We will return to issues of justice and compensation below.)

All of these arguments presuppose that the two principles of justice should govern relations within the firm because of the important role that corporations play in distributing the benefits and burdens of cooperation. There is also some inclination to think that justice is justice, regardless of the particular institutional context, e.g. that racial discrimination is unjust, regardless of whether it is done by the state, a corporation, a church, or even a neighborhood club. This intuition in what underlies the second strategy for applying to Rawlsian model to a business context, which is to reject (or ignore) the institutionalism of Rawls's view. In political philosophy, there has been an extensive, ongoing debate about the "site" of distributive justice – whether it should be institutions, or rather individual actions. On Rawls's view, *individuals* need not aim, e.g., to maximize the position of the worst-off group in society. Rather, society's institutions should be designed so that individuals' actions have the effect of accomplishing this, even if their aims are self-interested. In a much-discussed critique, Cohen (2008) argues that the principles of justice apply to individuals' actions as well (cf. Julius, 2003; Williams, 1998).

Much of the interest in this view comes from the literature on international distributive justice. In *The Law of Peoples*, Rawls argued that the (strongly redistributive) principles of justice that applied domestically did *not* apply in the international context, but that there was a much more limited obligation to alleviate the condition of "burdened" societies (Rawls, 1999, p. 106). His reasons for this were complex, but one important aspect involved the absence of a "basic structure," or a unified system of cooperation, at the global level (Heath, 2007b). Many critics, who had been expecting a global application of the original position, reacted with dismay (e.g. Pogge 2002, p. 113-15), and therefore sought to jettison the aspect of Rawls's system most obviously responsible for this position. In many cases this was the institutionalism.

The outcome of this argument is an expanded version of Rawls's "original position." Individuals are asked to think about global justice by imagining principles that they would favor, not knowing where in the world they would be born, or in what circumstances. There is a flip-side to this, however. Just as it extends the scope of Rawls's principle outward, beyond the borders of the nation-state, it also moves it inward, being applied systematically to all social institutions within the confines of the society. It is here that the implications for business ethics become obvious.

2.2 Reasonable Pluralism

If the difference principle has had perhaps too much influence on the thinking of business ethicists – given that it is not obviously applicable within the firm – another aspect of Rawls's view has arguably had too little influence. This concerns that what Rawls called "the fact of reasonable pluralism." This is based on the observation that the exercise of human reason, under conditions of freedom and equality, seems to generate more, not less, disagreement about the ultimate ends of life. Thus a liberal society is likely to be characterized by persistent disagreement about nature of the good life, disagreement that can *not* be expected to go away simply through persuasion, better education, or improved deliberative conditions. In the 17th century, responding to the problem of religious strife in Europe, early liberals decided that it was inadvisable to have the state take sides on religious questions. Contemporary liberals have generalized the lesson, arguing that in modern societies, especially ones marked by significant ethnic and linguistic pluralism, the state should try to remain neutral with respect to all "big-picture" views, be they religious, metaphysical, or philosophical, and any "system of values" that purports to describe, once and for all, the purpose of existence, the nature of human flourishing, or any other so-called perfectionist conception of the good (Kymlicka, 2002, p. 220-21).

From this perspective, a large part of the success of the market, electoral democracy and rights-based legal regimes is that they are all institutional arrangements that are neutral with respect to individual goals, and thereby permit concerted collective action despite an underlying heterogeneity of preference. Political philosophers have invested considerable time and energy debating the normative principles underlying these institutions, in an attempt to articulate principles that might reasonably claim to be *neutral* in the requisite sense. The principles of efficiency, equality and liberty have emerged from these debates as particularly privileged, because each is thought to allow for a persuasive ranking of aggregate outcomes without anyone having to judge the value of the particular projects that individuals are pursing. (Thus a more efficient outcome is one in which everyone does better, by his or her own lights. A more egalitarian outcome is one in which there is less of a difference between persons, in terms of each one's ability to carry out his or her own projects. And an enhancement of liberty occurs when each individual has greater freedom to carry out his or her projects, whatever those projects may be.)

The upshot of these debates has been the widespread conviction that it is possible to formulate robust normative principles while at the same time remaining neutral with respect to controversial questions of value. It also shows that behind the seemingly profound disagreements of welfarists, egalitarians and libertarians is an underlying agreement about the importance of neutrality. This is why contemporary political philosophers debate the relative importance of efficiency, equality and liberty, as opposed to the merits of the active versus the contemplative life. The latter was an enormously important philosophical question from Ancient Greece until the Reformation, but in part because of this, our institutions have been reformed in such a way as to ensure that major public policy decisions no longer depend upon the answer to such questions.

One of the major differences between business ethics and political philosophy is that the former remains strongly embedded in a "personal values" framework, as a result of which neutrality does not serve as an important constraint on normative theorizing. Standard business ethics textbooks (e.g. Boatright, 2009; Beauchamp, Bowie, & Arnold, 2009) still start out with a survey of normative ethical theories: utilitarianism, Kantism and virtue theory, then consider the question of how these should be applied. The fact that these theories are all mutually incompatible and the subject of intractable disagreement amongst philosophers is seldom explicitly thematized, much less addressed as a problem. And yet the aspiring management student might reasonable ask how an organization is supposed to encourage "ethical" behavior if different people have completely different values and moral theory is powerless to resolve any of their disputes.

The central insight of contemporary liberal political philosophy is that, *despite* such fundamental disagreements, there is still a lot that can be said about what sort of normative principles should govern our institutions. However, the first step in discovering the merits of such principles lies in recognizing that one must move *beyond* one's "personal" moral commitments, in recognition of the fact the other people have different, incompatible commitments. Yet seldom do business ethicists take this step. This is puzzling. Virtue theory has been almost unanimously rejected as a suitable basis for running a modern state. And yet it is still seriously proposed as a basis for managing a modern, publicly traded, multinational corporation (e.g. Dobson, 1997; Koehn, 1995; Moore, 2008, 2005). What could possibly justify the difference?

There are some arguments to be made here. Although there are different accounts of neutrality in the literature, and why it should count as an important constraint in the political realm, the most common view is that membership in the state is mandatory, and so intuitively it seems unfair (or inadvisable) to privilege one group's conception of the good over another's. If it were a private association, people could just quit and join some other group whose values more closely reflected their own. But because it is the state, they don't have a feasible option in this regard. The assumption here is that perfectionism – the view that some conceptions of the good are clearly superior to others – is fine for private associations. Churches are obviously allowed to have a narrow conception of the good, and are free to violate norms of equality in ways that would be unconstitutional if undertaken by the state (e.g. the refusal of the Catholic church to ordain women). Corporations, however, present a more complicated case. On one level, the corporation is clearly a voluntary association. Employees can quit their jobs, shareholders can sell their shares, and so on. This suggests that managers should be able to adopt a "love it or leave it" attitude toward whatever values they seek to promote within the organization. Yet there are several features of the corporation that militate in favor of greater neutrality. These include:

(a) Corporations are created through enabling legislation. Since there are a variety of benefits that are conferred through incorporation, the state may reasonably demand some sort of *quid pro quo*, in the form of responsibility to the public interest.
(b) Many public corporations are very widely traded and owned, by pension funds and other institutional investors. These are not like "clubs" that can pursue the particular projects of their owners or founders. In many cases, the diversity of the society is fully reflected in the ownership group of the firm.
(c) In the post-Lochner era, the associative character of the corporation has been subject to enumerable legal constraints, from labor and civil rights law to health and safety and

consumer-protection regulations. Thus the law does not treat the firm as a purely private concern.
(d) Many firms exercise quasi-monopolies (as the only employer in town, or the only shopping mall, etc.). Some have significant market power, creating real costs for those who want to dissociate from them. Thus a greater measure of neutrality is warranted.
(e) Many firms are large enough that their employees come to fully reflect the pluralism of the surrounding society. Thus showing partiality for a particular set of traditions or values is simply unrealistic, given the composition of the workforce. (Wal*Mart's communal corporate culture worked best when they could hire from a large pool of rural Christian employees in the US south and mid-west; but it met with resistance and push-back when the company expanded to other regions and countries.)
(f) It is not always as easy or costless to leave one's job as it is to leave a club or church. There may be no comparable work available. An employee may have invested a significant amount of time developing firm-specific skills that are not transferable. Facing voluntary unemployment can cause great hardship for both the employee and his or her family; in the US this may even entail losing health insurance. For all of these reasons, among others, there is a significant body of legal rights in most advanced economies to protect employees against various forms of discrimination, harassment, and unfair dismissal.

Some business ethicists may come to the conclusion that the corporation is similar enough to the state that a shift toward neutral principles should be adopted. In other cases, they may decide that the level of value-pluralism is sufficiently great that it already characterizes the situation of most firms, and so neutral principles provide the only set of feasible options for management. In that case, they may want to look to political philosophy for inspiration, or suggestions on how to respond to the fact of pluralism. Even if one doesn't accept Rawls's institutionalism, there are serious questions about whether business ethicists should be appealing to "thick" values and moral intuitions when they make substantive recommendations or critiques; or whether the discipline should instead focus on principles that are broadly accepted in the public political realm. Consider, for example, attempts to apply the norm of efficiency in McMahon (1981) and Buchanan (1996). Part of the attraction of this norm, in McMahon's view, is that it articulates "the implicit morality of the market," not the private moral commitments of any particular group of participants.

2.3 Non-Rawlsian theories of justice

Of course, Rawls is not the only source of political philosophizing with potential relevance for business ethics. In fact, theorists in other traditions have often been more willing than Rawls to draw out some of the implications of their theories for business and commerce. Libertarians on the right (e.g. the young Nozick [1974], and Narveson [2001, 2008], and others inspired by Gauthier [1988]) have quite typically and explicitly used their theories to ground relatively unfettered markets and the free contracting of individuals with firms (whether as providers of capital, labor, goods and services; or as consumers). Maitland (1989), for example, appeals to Nozick's libertarianism to argue that enforcing minimum standards for work quality "interferes with workers' rights to freely choose their terms of employment" (p. 951). A society committed to individual liberty, he implies, would refrain from enforcing such standards (cf. Schwartz, 1982).

Left libertarians also take the design and justification of markets as one of the principal purposes for their theories of justice, as is evident from the title of Van Parijs' classic 1995 left-libertarian text, *Real Freedom for All: What (if anything) Could Justify Capitalism?*; although they carve out a much greater role for governments to regulate commerce and redistribute the wealth it generates. The German political philosopher Jürgen Habermas has also been drawn upon by a broad spectrum of business ethicists, from Europeans developing theories of corporate citizenship and responsibility (Scherer & Palazzo, 2007) to an American (Stansbury, 2009), developing a normative framework for solving conflicts that arise in pluralistic business environments (see also Gilbert & Behnam, 2009; Gilbert & Rasche, 2007).

Communitarian (e.g. MacIntyre [1984], Walzer [1983], and Sandel [1998]) and feminist (e.g. Young [1990], and Nussbaum [2000]) theorists have also seen direct implications of their conceptions of justice and the common good for the design and governance of individual firms. Young (1990), for example, objects to hierarchical divisions of labor on the grounds that they involve "domination and oppression" (p. 215). A society that recognizes the equal moral worth of all persons, she says, "requires democracy in the workplace and an undermining of the division between task definition and task execution" (p. 222). Detailed models of organizations based on feminist ethics and communitarian ideals have been provided, respectively, by Liedtka (1996) and Moore (2005, 2008).

Corporate governance issues have been addressed extensively by theorists of democracy. Some have taken the radical view that firms should be seen as "mini-states," so that the governance structures appropriate for states should be adopted by firms (see, e.g., Dahl, 1985 and Walzer, 1983). A variety of writers reject these arguments because of what they see as morally relevant differences between states and firms. The most commonly cited difference, again, is voluntariness: both the decision to join and to leave is more voluntary for the firm than for the state (Arneson, 1993; Mayer, 2000). Also relevant here are worries about the inefficiency of economic democracy, and the fact that workers themselves will generally prefer a contractually guaranteed wage as employees to a share of residual earning as co-owners (see Hansmann, 1996; Boatright 2006).

While many of these arguments for workplace democracy treat the firm as though it were a society writ small, we can also think of the firm as an actor within the larger society in which it operates. In the 1990s there was a noticeably shift in political philosophy away from a nearly exclusive focus on grand theories of justice for social institutions and toward a greater emphasis on the status and virtues of individual citizenship (see Kymlicka & Norman, 1994, 2000 for a chronicle of this shift). Long-standing (if not calcified) debates between the liberals, socialists, conservatives, republicans, feminists, and communitarians were reconfigured as debates over different conceptions of citizenship – e.g., with liberals and feminists arguing for expanded social rights of citizenship, conservatives and communitarians playing up citizenship responsibilities, and republicans emphasizing citizenship duties of political participation. In the first decade of the new millennium, this literature was seized upon by business ethicists developing theories of *corporate* citizenship. The hope was that ideals and theories of citizenship might provide more solid normative foundations than were typically on display in the theories of corporate social responsibility that were in vogue by the early 2000s (see, e.g., Andriof & McIntosh, 2001; Carrol, 1998; Logsdon & Wood, 2002; Matten, Crane, & Chapple, 2003).

In response to this, a number of business ethicists have pointing out that many of the connotations, rights, and duties of *individual* citizenship are potentially misleading or even dangerous if used directly as guides for good *corporate* citizenship (Crane, Matten, & Moon, 2008; Crane & Matten, 2008; De George, 2008; Néron & Norman, 2008a, 2008b; Oosterhout, 2005, 2008). Almost nobody, for example, wants to encourage corporations to be *more* active in politics (although the US Supreme Court's *Citizens United* decision in 2010 opens the door to new forms of corporate involvement in electoral politics); indeed, most would expect good corporate citizens to stay right out of politics. But even those skeptical of the prospects of grounding beyond-compliance duties for corporations by borrowing directly from the political philosophy of citizenship nevertheless welcome a renewed focus on the ethics of corporate political involvement and business-government relations more generally (Stark, 2009). As David Vogel observes, "the most critical dimension of corporate responsibility may well be a company's impact on public policy…. Yet relatively few of the demands raised by [CSR] activists or social investors have addressed business-government relations." (Vogel, 2005, p. 171) While it is unlikely that we will develop a robust theory of how an ethical corporation should interact with politicians and regulators by studying theories of how citizens ought to participate in deliberative-democratic town hall meetings, this is nevertheless a central question for an interdisciplinary political theory of commerce.

2.4 Organizational justice

Despite its widespread use and apparent usefulness, some theorists urge caution in applying political theory to business. In an influential article, Phillips and Margolis (1999) criticize what they see as business ethicists' overreliance on political theory, and encourage the development of a freestanding *organizational ethics*. They do not claim that business ethics should be conducted without the use of basic political concepts, e.g., rights, justice, and contracts. Rather, they object to the unqualified use of specialized tools developed for the state context, such as Rawls's original position, in the business context (cf. Freeman & Evan, 1990; Hartman, 1996). Writers sympathetic to the use of political philosophy in business ethics, such as Hartman (2001) and Moriarty (2005), typically acknowledge some differences between states and firms, but downplay their significance.

In applying theories of political justice to organizations, philosophers should find it worthwhile to follow the paths blazed by social scientists. Over the past decade, an extensive literature has emerged from empirical inquiries into people's *perceptions* of the justice or fairness of organizational events (Cropanzano & Stein, 2009; Folger & Cropanzano, 1998; Greenberg & Colquitt, 2005). Theorists typically distinguish three kinds of justice: (a) distributive, which concerns the justice of outcomes (e.g., who is promoted); (b) procedural, which concerns the justice of the procedures used to arrive at outcomes (e.g., how it is decided who will be promoted), and (c) interactional, which concerns interactions, especially those between authorities and subordinates (e.g., how authorities treat subordinates in the process of deciding who will be promoted, and how that decision is communicated to the affected parties) (Colquitt & Greenberg, 2003). Many outcomes, procedures, and interactions in businesses can be assessed as just or unjust. Researchers have considered people's perceptions of the justice of staffing decisions, relocations, compensation practices, dispute resolutions, and performance evaluations (Colquitt & Greenberg, 2003). People's perceptions of justice have been found to be correlated with their job satisfaction and motivation (Colquitt & Greenberg, 2003).

Of course, it is one thing to know what, within organizations, people *perceive to be* just, and another to know what *really is* just. The latter is an area in which business ethicists, informed by political philosophy, can make important contributions.

This is not to say that business ethicists have paid *no* attention to questions of (what might be called) normative organizational justice. The justice of staffing decisions receives coverage in Werhane and Radin's (2004) treatment of employment ethics. The ongoing debates about employee participation (Arneson, 1993; Dahl, 1985; Hsieh, 2005; Mayer, 2000; Walzer, 1983) is, in effect, a debate about the justice of decision-making procedures within organizations. However, normative work on organizational justice has not kept up in size or scope with empirical work on this subject. Nowhere is this more obvious than in the case of justice in compensation.

Compensation has been the focus of sustained study by social scientists – both by organizational justice theorists and by those interested more generally in why firms pay their employees what they do, and the extent to which pay matters (Gerhart & Rynes, 2003). It has also, of course, long been a topic for economists in various subfields from industrial relations and corporate governance to macroeconomics. But with the exception of a few articles on sensational topics such as the very high compensation of CEOs (Boatright, 2010; McCall, 2004), and the very low compensation of workers in overseas factories (Arnold & Bowie, 2003; Maitland, 1997), normative theorists have said virtually nothing about compensation (cf. Bloom, 2004; Sternberg, 2000). This is surprising because, out of all of the aspects of work, compensation is surely one of the most important to employees.

Business ethicists' lack of attention to the normative aspects of compensation may be the result of their acceptance of the view that firms have little choice about what to pay their employees (Werhane & Radin, 2004). In the neoclassical model of the labor market, firms are "wage-takers." They *must* pay the prevailing wage as determined by the aggregate forces of supply and demand, or risk going out of business in the long run. But philosophers should not accept this view, because it is belied by the facts: different firms *do* pay different wages for similar jobs, even in the long run (Gerhart & Rynes, 2003). Since firms do seem to have a choice about what to pay their employees, there is no reason to suppose that firms cannot take ethical considerations into account.

Perhaps business ethicists think that there is, or can be, no disagreement about what justice in compensation consists in. In particular, it might be claimed the central tenets of free market capitalism entail that the just price for any good or service, including labor, is *whatever* price the buyer and seller agree to without force or fraud (Boatright, 2010). But while this view is popular among libertarians (Machan & Chesher, 2002), there is no reason to suppose that it should be accepted by non-libertarians. Libertarians usually argue that *all* aspects of a person's employment, such as the level of safety, privacy, and security she enjoys, should be up for negotiation between the employee and her employer. Non-libertarians, by contrast, often support – for a variety of familiar moral reasons – minimum standards for safety, privacy, and security in the workplace. These reasons may be appealed to in order to justify minimum standards for compensation.

2.5 International justice and human rights

Another recent trend in political philosophy has been its bursting out of the confines of the nation-state that had largely defined its own frontiers since Hobbes. Over the past two decades, there has been a proliferation of both abstract philosophical theories of international distributive justice, on the one hand, and interdisciplinary normative theories for global justice that pay attention to actual international law, global governance institutions, NGOs, and multinational corporations, on the other.

Some philosophers have sought to extend theories of justice originally designed for the nation-state to the globe (Pogge, 1994; Tan, 2004). These "cosmopolitans" downplay the significance of national boundaries, and claim that the proper object of our concern is persons, in whatever nations they reside. "Partialists" such as Blake (2001) and Miller (2007) affirm the importance of national boundaries, and argue that principles of global justice must be different than principles of nation-state justice. In conjunction with the rise of interest of international justice, there has been a resurgence of interest in human rights (Beitz, 2009; Griffin, 2009; Nickel, 2007; Pogge, 2002). Since theories of justice are concerned, often centrally, with people's rights, this work contributes to our understanding of what justice requires, domestically and internationally.

Both international law and theories of global justice have traditionally made governments, and in some cases individuals, the primary bearers of obligations to bring about just outcomes (or to refrain from injustice). Increasingly, however, philosophers are thinking more expansively about who can and should be an "agent of justice" (Kuper, 2005). Several writers have identified multinational corporations as agents of justice (Hsieh, 2004; O'Neill, 2001). Corporations appear to have both the knowledge and the capability to "do justice" in the developing world: they can benefit the deprived through direct assistance or through codes of conduct for their overseas suppliers. Interestingly, many firms have come to see themselves as agents of justice. Currently, 7700 businesses in 130 countries have agreed to participate in the United Nations' Global Compact, which requires observation of the UN's Ten Principles for ethical business conduct (http://www.unglobalcompact.org/).

The central question, of course, is whether multinational corporations *should be* seen, or should see themselves, as agents of justice, and if so, what their obligations are. To be fair, business ethicists have addressed these issues in the past (DeGeorge, 1993; Donaldson, 1989; Maitland, 1997), and there are signs they are becoming a focus of research attention again (Hsieh, 2004; Scherer, Palazzo, & Baumann, 2006). This coincides with an evolution in international law and in the operations of global governance institutions that is shifting more of the primary responsibilities for protection of human rights onto corporations (see, e.g. the April 22, 2009 report by Harvard's John Ruggie, the Special Representative to the Secretary-General of the United Nations, "on the issue of human rights and transnational corporations and other business enterprises," entitled "Towards Operationalizing the 'Protect, Respect and Remedy' Framework," available at www.un.org.)

3. In search of a "unified theory"

Let us recap. Everybody expects business ethicists to be able to say something intelligent in response to questions about what individuals in the world of commerce – be they entrepreneurs, CEOs, directors, middle managers, frontline employees, consumers, investors, bankers, community leaders, and so on – ought to do in specific situations or types of situations. But we typically cannot answer this kind of question without knowing what explicit or implicit arrangements (or contracts) these individuals have with the organizations or firms involved in the situation. We also need to know what laws and regulations might apply to situations of this type: from corporate law and corporate charters dictating governance relations and chains of command, to regulatory and criminal law designed to protect various internal and external stakeholders of the firm, to the likely standards of fault and harm in tort law. And if we are unhappy with the way such laws direct or fail to direct people's behavior, we will want to know how they are grounded and how they *ought to be* grounded; and also how these laws and regulations ought to be reformed. This in turn raises questions about the ultimate purposes or objectives of firms and of the markets they operate within. Once we begin posing these latter kinds of questions, we are firmly in the territory of political philosophy, albeit a quadrant infrequently visited by academic political philosophers in recent decades.

As we work our way back and forth – from our answers to these abstract, macro-level questions about justice in market design to our answers to concrete, micro-level questions about what individuals ought to do – we would ideally like some consistency in the kinds of language, principles, and concepts we use. But as noted, for the most part this consistency is absent because these questions at different levels of abstraction have tended to be addressed by different disciplines. Yet they obviously relate to one another. For example, it is impossible to interpret corporate law without some account – implicit or explicit – of what the *point* of corporate law is. Some argue that the statutes are just boilerplate, designed to save individuals the trouble of drawing up extensive contracts (Easterbrook & Fischel, 1996, p. 34). As such, with a few limited exceptions, corporate law cannot impose any obligations that individuals themselves would not have voluntarily accepted. Others claim that the purpose is ultimately social-welfare maximization, and so corporate law can, in principle, force parties to do all sorts of things that they might not privately agree to. Reinier Kraakman and Henry Hansmann, for example, proclaim the following at the outset of their book *The Anatomy of Corporate Law* (2004):

> As a normative matter, the overall objective of corporate law – as of any branch of law – is presumably to serve the *interests of society as a whole*. More particularly, the appropriate goal of corporate law is to advance the *aggregate welfare* of a firm's shareholders, employees, suppliers, and customers without undue sacrifice – and, if possible, with benefit – to third parties such as local communities and the beneficiaries of the natural environment. This is what economists would characterize as the pursuit of *overall social efficiency*. (p. 18, our italics)

These views – corporate law as boilerplate voluntary agreement, and corporate law as a tool for social efficiency – are mutually inconsistent, and lead to radically different interpretations of certain features of that law, such as the nature of the fiduciary duties imposed upon senior managers of the firm. But the choice between these views clearly has important implications for business ethics. For example, many business ethicists think that understanding fiduciary duties is important for understanding the moral obligations of managers (Marcoux, 2003). Yet the "boilerplate" view essentially trivializes them, by arguing that agreeing to a set of fiduciary duties is merely a way of minimizing contracting costs in cases where drawing up a complete contract is difficult. "Fiduciary duties are not special duties; they have no moral footing; they are the same sort of obligations, derived and enforced in the same way, as other contractual undertakings" (Easterbrook and Fischel 1993, p. 427). Other legal theorists have disputed this, pointing out that courts prohibit the parties from "contracting around" these duties, and that they use highly moralized language when deciding such cases (Clark, 1985). This is much more consistent with the welfare-maximization interpretation of corporate law.

The higher-order normative theory one adopts when interpreting corporate law should be the same as the normative theory one uses when looking at the "beyond compliance" issues that have been the traditional domain of business ethicists. Indeed, one might be tempted to think that the interpretive issues surrounding corporate law *settle* the question of what sort of normative ethical framework should be used when assessing ethical issues. At very least, one should strive for consistency. Yet this is seldom done. Proponents of "Kantian" approaches to business ethics (Evan and Freeman, 1988), for instance, have not sought to bolster their case by providing "Kantian" interpretations of corporate law. (This is a rather striking omission, since there are well-established Kantian interpretations of the criminal law, public law, and the law of tort [Ripstein, 2009].) There has also been very little uptake, among business ethicists, of the ideas coming out of the "progressive corporate law" movement (see Mitchell, 1995; Greenfield, 2006).

There does, however, exist *one* coherent, comprehensive example of what we are calling a "unified normative theory of markets, firms and business practices." And it does not really come from either mainstream academic political philosophers or business ethicists. It is the so-called Chicago School approach. The implications of these ideas for business ethics, particularly the "beyond compliance" issue, are most familiar from Milton Friedman's short and often-anthologized *New York Times Magazine* article from 1970, which has served as a foil for a strikingly large proportion of theorizing in business ethics. Friedman's article was famously and polemically titled, "The Social Responsibility of Business is to Increase Profits." Most writers in business ethics have taken this to be obviously false.

Of course, Friedman's view is not adequately summarized by the title of this one article. For one thing, it is not a view about the responsibility of business per se, but of the leaders or senior managers of businesses. As such, it is precisely a claim about the ethical duties of particular kinds of individuals; the micro-level of business ethics. And fleshed out, it is a mostly unobjectionable account of a manager's core ethical obligations. Managers have duty to do the job that they promised to do when they were hired, and to obey all laws and "moral customs" (e.g. to avoid deceit and fraud, to honor informal agreements, and such). Friedman himself emphasizes that this duty will not necessarily require that senior managers attempt to maximize or increase profits. For they may have been hired by what we now call a social enterprise, with a charter that spelled out to initial investors a mission to accomplish other objectives than growth and profit.

Few people will object to a basic duty for employees to perform the tasks they contractually agreed to perform as long as this does not require breaking the law or cheating. But most business ethicists, it seems, believe that *businesses themselves* have obligations or responsibilities that go beyond compliance, and that it is in part the manager's duty to oversee these social responsibilities. So they must jump to the meso-level and ask whether or not firms, or the owners of firms, have a right to demand that their employees (including the CEO) act with the overriding objective of increasing profitability. To answer this question we need a theory of the firm and of corporate governance.

The Chicago School approach, of course, has such a theory, and it is one that supports the general principle of shareholder primacy. The right of shareholders to demand lawful profit-maximization, and to threaten (via the Board) dismissal of a CEO who does not appear to be fulfilling this demand, is typically based on a theory of properties rights, and of obligations arising from voluntary agreements – particularly the agreements that lead to the formation of the corporation. According to the standard view, individuals create firms in order to achieve lower transaction costs, in cases where market transactions would be unreasonably costly (e.g. robust competition cannot be sustained, asset-specific investments are required, information asymmetries promote opportunism, etc.) The "hierarchy" of the firm is nothing but a set of embedded agency relations. The purpose of this hierarchy is to correct market failure, which is to say, to resolve collective action problems. Although the term "hierarchy" might appear to conflict with the image of the firm as a "nexus of contracts," the idea is ultimately the same. Corporate law is organized around the objective of allowing individuals to create such institutional structures in a way that minimizes agency costs, or contracting costs more generally. Why does shareholder primacy minimize agency costs? In part because shareholders are the only major stakeholder group in the nexus of contracts that does not have a contractually defined return on their investment: they have contracted for the right to residual earnings. Other stakeholders can do well as long as the business is solvent, but shareholders have a special incentive to make sure managers work harder, do what is best for the corporation rather than for themselves, and strive for greater efficiency and innovation. As John Boatright has argued in a number of contexts in recent years, on this view *all* stakeholders, and society as a whole, should benefit if shareholders can insist that the firm be managed in their interest.

So this particular theory of the firm and corporate governance (which in turn gets encoded into corporate law) is one part of the story for how Chicago School theorists will ground a manager's fundamental ethical duty to serve the interests of shareholders. But that duty also demands that managers and business obey all laws. So the "unified theory" needs to say something about the basis for laws, especially, in the case of business, regulatory laws and tort law. By and large, Chicago School theorists believe that the fear of being sued when your business causes unjust harm, along with "reputational risk," serves as an appropriate incentive for responsible businesses. But they are also open to the possibility of some regulatory law, and on the very same grounds for which they are in favor of free markets generally. They place a strong value on individual freedom, and they believe that social welfare will increase for "invisible hand" reasons when individuals are able to pursue their own interest in the marketplace. The first fundamental theorem of welfare economics shows that a perfectly competitive market will achieve perfectly efficient outcomes. In cases where the conditions of perfect competition cannot be achieved (and that holds for most markets in advanced contemporary economies), governments may impose regulations that seek to constrain the set of competitive strategies, so that real-world markets come closer to achieving the outcomes that ideal markets would produce. Chicago School theorists are therefore willing to countenance regulatory interventions in the case of market defects that dampen competition (e.g. collusion, price-fixing, monopoly), or that impose costs on uninvolved third parties who are unable, for one reason or another, to press their own demands for compensation (e.g. extremely diffuse pollution).

It is also worth noting that this view is consistent with a role for democratic governments in carrying out various social welfare projects; although, of course, Chicago School theorists tend to think that for various practical reasons many such projects will be inefficient or cause more harm than good. But one of Friedman's arguments for why managers should not be concerned with spending shareholders' money on projects aiming to enhance social welfare is because this is more appropriately the job of elected officials. And Friedman was also one of the highest-profile supports of minimal income guarantees, in the form of a negative income tax.

In sum: one can see from this how the idea of a fiduciary responsibility to shareholders – as the centerpiece of a conception of business ethics – fits into a comprehensive normative theory that accounts for the structure of corporate law, the dynamics of the welfare state, including the growth of regulation, as well as the rationale for the private enterprise system as a whole. This "unified theory" has enormous force, and is widely embraced throughout the academic disciplines that fill out most business schools; even among academics who would hesitate to identify with the Chicago School. So while students may be encourage to contemplate non-profit-maximizing, multifiduciary stakeholder theory in their ethics course, when they venture out into the world of finance or law, they will quickly encounter what Hansmann and Kraakman have referred to as "the end of history for corporate law," organized around the "widespread normative consensus that corporate managers should act exclusively in the economic interests of shareholders." (Hansmann & Kraakman, 2000).

What is striking, however, is the degree to which this Chicago School “unified theory” seems to differ from the language and principles of the kind of post-Rawlian mainstream political philosophy we have discussed throughout this article. Most obviously, it does not appear to be working out some version of egalitarianism, apart from the equal right to freedom from coercion and an equal right to own and dispose of property. It seems at times to embrace what philosophers would call a perfectionist value for individual freedom (i.e. where the life of the free individual is superior to other collectivist forms of life). Its appeal to social efficiency can look suspiciously like a kind of utilitarianism that has been out of vogue among political philosophers for four decades. And it does not explicitly seek to justify its principles or institutional recommendations in terms of neutrality or reasonable pluralism. (Though one can, interestingly enough, find passages in early works by Milton Friedman that can be read now as anticipating these concepts.[1])

As we move from the overarching political principles to theories of governance and regulations, we also find several points of potential disagreement for critics of the Chicago School. It makes sense to justify regulations where there are market failures that prevent actual markets from producing or appropriately distributing social efficiency gains. But the Chicago School seems to focus on a narrow set of market failures (notably market power and negative externalities) and even then is extremely reluctant to recommend government interventions for fear of even worse unintended consequences. A more progressive “unified theory” would worry more about correcting for both of these market failures (e.g. being much more strict about pollution) but it would also worry more about other market failures like information asymmetries (e.g. where workers or consumers may lack the information, which the firm possesses, to make fully informed choices with respect to the risks inherent in their workplace or in the products they purchase). It might also take more seriously the problem of missing markets – where a particular good doesn’t exist, because no one is willing to sell or buy it – not just defective ones – where the good exists, but the price or quantity traded is suboptimal.

Finally, a progressive post-Chicago “unified theory” might say more about whether the same grounding for regulations and for a duty to comply with regulations might also ground duties to act above and beyond compliance when the appropriate regulations are not in place. Friedman usefully likens social and economic activity to a game or sport. The role of

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[1] Without the fine-tuned philosopher’s distinctions between the “right” and the “good”, Friedman seems nevertheless to be favoring neutrality with respect to the former, and reasonable pluralism about the later when he describes his political philosophy as not being “an all-embracing ethic.” Its major aim “is to leave the ethical problem for the individual to wrestle with. The ‘really’ important ethical problems are those that face an individual in a free society – what to do with his freedom. There are thus two sets of values a liberal will emphasize – the values that are relevant to relations among people, which is the context in which he assigns first priority to freedom; and the values that are relevant to the individual in the exercise of his freedom, which is the realm of individual ethics and philosophy.” (Friedman 1962, p. 12)

government, sensibly, is “to provide a means whereby we can modify the rules, to mediate differences among us on the meaning of the rules, and to enforce compliance with the rules on the part of those few who would otherwise not play the game” (Friedman, 1962, p. 25). But of course, as in sports, the set of rules will never be perfect. For various reasons, we will not be able to formulate rules precisely enough in grey zones where it is difficult to judge the difference between acceptable and unacceptable winning strategies (e.g. that zone where bluffing or puffery shade into lying); it may be too cumbersome to observe and enforce some kinds of violations (as, e.g. when video replay in sports slows down the game, or when calling too many fouls in basketball or soccer breaks the flow of the game); clumsily worded rules can be “gamed;” there may be political reasons why the best set of rules cannot be enacted or enforced; and so on. In sports some of these deficiencies in rules and refereeing are made up for with norms of sportsmanship that are observed on both sides, the violation of which (i.e. “gamesmanship”) can be “punished” by fans, opposing players, and even teammates in various ways. Now some of these norms of sportsmanship in business may fall under Friedman’s explicit call for a duty to respect the law *and moral customs*. But others are surely more like what his critics are calling “social responsibilities” of business – e.g., to pay overseas workers a wage above what is required by either the market or the law; or to limit toxic emissions below the mandatory levels. A unified normative theory of business cannot dismiss the possibility of beyond-compliance ethical obligations precisely because they are grounded in the same logic that justifies laws and regulations.

Our aim in this section has not been to defend a Chicago School approach, but rather to point toward it as a model for what we are calling a unified normative theory of markets, firms, and business practices. It would take some work to connect some of its fundamental principles with mainstream discussion in contemporary political philosophy. And it is full of specific theorems and standard applications that are contestable as a matter of, say, economic theory or public policy. But it is a powerful framework that goes further than many theories developed specifically by business ethics scholars to show how our answers to ethical questions for individuals in business are justified by paying more attention to plausible ways of designing and grounding of institutions like firms and markets.

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