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ORIGINAL PAPER

A Rawlsian Rule for Corporate Governance

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Abstract
Business ethics can be regarded as a field dealing with corporate *self-regulation* as it relates to the treatment of stakeholders. However, a concern for corporate stakeholders need not take a corporate-centric perspective, as shown by recent efforts (especially Singer in Bus Ethics Q 25(1):65–92, 2015) to situate corporate conduct within Rawls' political theory. Although Rawls was largely mute on the subject himself, his theory has implications for business ethics and corporate governance more specifically. Given an understanding of a "Rawlsian society" as a whole—where corporations as associations are a part—this paper addresses how a Rawlsian perspective would safeguard against corporate harms in society. We argue that a Rawlsian society would primarily regulate corporate conduct through exogenous constraints in the form of legislation. To the extent that business ethics is concerned with endogenous constraints in the form of corporate-centric self-regulation regarding *stakeholders*, to adopt a Rawlsian perspective is to assume instead a society-centric perspective and to impose exogenous constraints on corporate conduct in the form of legislation for the benefit of *citizens*. In the context of Rawls' political liberalism, normative concerns in business are accounted for through legislation and the system of background justice. In a clear departure from Singer (Bus Ethics Q 25(1):65–92, 2015, Bus Ethics J Rev 6(3):11–17, 2018a), we further develop our argument to propose that Rawls' theory can be interpreted as providing a rule for corporate governance. The rule—which is imposed exogenously for the good of society—states: After choosing the corporate constraint mechanism (exogenous vs. endogenous) that best promotes the Liberty Principle, choose the corporate control regime (shareholder vs. stakeholder) that maximizes economic efficiency.

Keywords Rawls · Business ethics · Corporate governance

Introduction

Business ethics as a field has largely progressed through a focus on corporate self-regulation (Norman, 2011). Yet this might come to be seen as unduly narrow. It is in part due to the libertarian underpinnings of the field's most significant theory, stakeholder theory (Freeman, 1984; Phillips, 2003). From this perspective the corporation should care (ethically or instrumentally) about its stakeholders, giving rise to questions such as: Who are the corporation's relevant stakeholders, what duties are owed to them, for what reason, and by whom? The field has answered these questions in many ways, but virtually everyone has taken corporate management (or the corporation itself) to be the primary locus of responsibility for stakeholder concerns.[1] More fundamentally, this perspective also holds that the corporation is merely a nexus of freely agreed upon contracts, starting with the agreements among the incorporating parties. This

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[1] Even alternative approaches to business ethics, such as the market failure approach (Heath, 2006; Martin, 2013; Singer, 2018a, b), focus on the corporation as the primary locus of moral duties.

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leads to a corporate-centric view where corporate control and corporate constraints are self-imposed. Nonetheless, in the real world, all economies involve external regulation of companies. Accordingly, business ethicists may have used only part of the toolbox by underplaying the potential for external constraints on corporate behaviour by government.

A concern for corporate stakeholders need not take a corporate-centric perspective, as shown by recent efforts to situate corporate conduct within a political framework (Heath et al., 2010). In this view, whether a decision is normatively proper depends on the wider business and political context (Martin, 2013).[2] This takes us into the domain of political philosophy and opens the door to more liberal notions of social justice. John Rawls' prominence as the most influential political philosopher of the twentieth century has led to multiple attempts over the years to apply his Theory of Justice to business ethics.

Although Rawls' theory has implications for business ethics, Rawls was largely mute on the subject himself. Numerous authors have (mis)applied aspects of Rawls' theory *directly* to issues of organizational justice, even though his theory is aimed at the basic structure of society, not organizations, and at justice for citizens, not stakeholders. While a direct application of Rawls' political theory to corporations is a categorical mistake, Hsieh (2006, p. 262) has argued that an *indirect* application is entirely possible: "Rather than draw an analogy between states and economic enterprises, an indirect approach asks what justice requires of the social institutions that regulate economic enterprises and what justice requires of the economic enterprises operating within such an institutional context." Consistent with this indirect approach, the aim of this paper is to argue that Rawls' theory of justice does apply to the corporate domain and in so doing has implications for business ethics in terms of corporate governance (control rights) and stakeholder safeguards.

In doing so, we go substantially beyond recent contributions situating business conduct in the context of his Theory of Justice (e.g., Néron, 2015, Norman, 2015; Singer, 2015). These contributions, in particular Singer (2015, 2018a), suggest that Rawls' treatment of the corporation as a black box implies that his theory has nothing to tell us about corporate governance inside the box. By contrast, we maintain that Rawls' theory, which is society-centric, provides a rule for corporate governance. Importantly, it is a rule that is imposed exogenously for the good of society. Although Rawls does not tackle corporate governance head on, we can infer this rule considering the ambition of his theory overall. The rule states: After choosing the corporate constraint mechanism (exogenous vs. endogenous) that best promotes the Liberty Principle, choose the corporate control regime (shareholder vs. stakeholder) that maximizes economic efficiency.

Given an understanding of a "Rawlsian society" as a whole—where corporations as associations are a part—we use an indirect approach to answer how a Rawlsian perspective would safeguard against corporate harms in society. The main thrust of the argument is that a Rawlsian society would primarily regulate corporate conduct through exogenous constraints in the form of legislation. To the extent that business ethics is concerned with endogenous constraints in the form of corporate-centric self-regulation with regard to *stakeholders*, to adopt a Rawlsian perspective is almost to do the opposite. It is to assume a society-centric perspective to impose exogenous constraints on corporate conduct in the form of legislation for the benefit of *citizens*. Accordingly, to adopt a Rawlsian perspective (and perhaps political liberalism more generally) is to move far away from the traditional corporate-centric domain of business ethics.

To show the implications of Rawls' theory on corporate safeguards and corporate governance requires a gradual build-up where several preceding questions need to be addressed. After a brief introduction to Rawls' theory, we thus address the following questions: Would the corporate legal form exist in a Rawlsian society (including whether Rawls endorses public or private ownership of the means of production)? Would it be part of the basic structure? How would the principles of justice be applicable to it? Here the distinction between the corporate legal form and actual corporate organizations plays a central role because we argue that the principles of justice are applicable to the former, but not the latter.

Next, we look at how a Rawlsian society would address safeguards against corporate harms by evaluating the merits of externally imposed protective legislation versus internal corporate stakeholder control as protection. Here we contend that a Rawlsian society would primarily regulate corporate conduct through exogenously imposed legislation, unless it can be shown on instrumental grounds that endogenous safeguards (in the form of stakeholder control rights) are better at protecting citizens' first principle liberty rights.

We then move on to consider issues of corporate governance, primarily in terms of corporate control by shareholders or a wider group of stakeholders, to determine how these might fit in the context of Rawls' overall theory. We argue that economic efficiency, derived from the difference principle, would be the primary arbiter between these corporate governance regimes. This implies that the choice between corporate governance regimes in a Rawlsian society would be to obtain more effective safeguards or to obtain greater economic efficiency, both on instrumental grounds,

[2] What role the corporation ought to have, and thus its responsibilities, in part depends on the role of the state, unless the two overlap (Orts, 2013; Rönnegard, 2015). The social responsibilities of corporations/management will be contingent on the social responsibilities that the state has not already assumed.

which results in our proposed Rawlsian rule for corporate governance.

Justice as Fairness

Rawls' (2001) "Justice as Fairness" theory is a form of political liberalism that assumes as fundamental the fact of reasonable pluralism, which is to say that citizens in any society will have profound and irreconcilable differences in their reasonable comprehensive religious and philosophical conceptions of the world. It is the task of political liberalism, and Justice as Fairness especially, to put forward a view of political justice that the spectrum of reasonable comprehensive conceptions can endorse. For this to be realized, Rawls suggests that we should reason as if we were putting together a social contract.

According to Rawls, the "basic structure" of society is the primary subject that should concern the contracting parties; that is, how the main political and social institutions in society fit together into one system of social cooperation. Importantly, for our purposes, this includes not only the political constitution with an independent judiciary, but also the legally recognized forms of property and the structure of the economy. The most fundamental idea in Justice as Fairness is that society is regarded as a system of social cooperation. It is therefore the goal of the contracting parties to specify the principles of justice that are to govern the basic structure so that they fairly "assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time" (Rawls, 2001, p. 10).[3]

To explicate the reasoning for his principles, Rawls introduces a representation device called the original position. This is a hypothetical and idealized contracting scenario aimed at providing a fair and impartial point of view. Under Rawls, we imagine that citizen representatives come together to contractually agree on the principles of justice. To reach an agreement that would be acceptable to the spectrum of comprehensive views, the parties are placed behind a "veil of ignorance" in order to model impartiality. The veil of ignorance keeps the parties from knowing things that would make them partial in a contracting situation such as their own social status, gender, race, natural assets and their conception of the good. Instead of their own comprehensive conception of the good, the parties are assumed to want as much as possible of social primary goods, which are liberties, opportunities, wealth, income and a social basis for self-respect. These are all-purpose means that, Rawls asserts, anyone would want irrespective of their goals in life. Rawls (2001, p. 42) argues that the contracting parties would reach agreement on the following two principles of justice:

1. Each person has the same indefeasible claim to a fully adequate scheme of liberties, which is compatible with the same scheme of liberties for all (*liberty principle*); and
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity (*equality of opportunity principle*); and second, they are to be to the greatest benefit of the least-advantaged members of society (*difference principle*).

The first principle is prior to the second, and in the second principle "equality of opportunity" is prior to the "difference principle". These priorities signify that each principle is fully realized by the basic structure of society before the next is applied. The application of these principles comes in stages where the "constitutional stage" applies the first principle which is followed by the "legislative stage" which applies the second principle.

In short, Justice as Fairness is an *egalitarian* concept of rights, liberties and distributive shares, where inequalities of income and wealth are only justifiable if they are to the benefit of the least advantaged members of society. With Justice as Fairness briefly summarised, we can now turn to foundational preliminaries situating the corporation in Rawlsian society, posed as a series of questions.

Would the Corporation Exist in a Rawlsian Society?

Public or Private Ownership of the Means of Production?

Rawls articulates clearly (e.g.: 1999a, p. 248; 2001, p. 177) that the principles of justice are realizable both in economic systems that allow private ownership of the means of production (private-property economy) and those that don't (socialism). Even when it comes to the provision of public goods, Rawls explicitly states that the requirements of justice do not in any way necessitate that these goods be provided by public providers as the "government may purchase them from the private sector or from publicly owned firms" (Rawls, 1999a, p. 239). Furthermore, Rawls (1999a, pp. 241–242) recognizes that there is no inherent conflict between socialism and the use of markets: "Whatever the internal nature of the firms, whether they are privately or state owned, or whether they are run by entrepreneurs or by

[3] Rawls introduces a further five core ideas in order to justify his principles of justice: the idea of a well-ordered society; the idea of the basic structure as the primary subject of justice; the idea of an original position; the idea of free and equal citizens; and, the idea of public justification.

managers elected by workers, they take the prices of outputs and inputs as given and draw up their plans accordingly… It is necessary, then, to recognize that market institutions are common to both private-property and socialist regimes." Although Rawls is agnostic regarding public or private ownership of the means of production, he insists on competitive markets because they "allow for more efficient allocation of factors of production" (S. Freeman, 2008a, b, p. 222) and, more importantly, because "markets provide an essential means for ensuring equal liberty and fair equality of opportunity" (Krouse & McPherson, 1988, p. 81).

Accordingly, Rawls' theory is strictly speaking indeterminate between capitalism and socialism. However, he states that "in existing conditions it [private ownership of the means of production] is the most effective way to meet the principles of justice" (2001, p. 177).[4] Furthermore, Rawls himself uses private property as a default assumption to exemplify the implications of his theory (e.g.: Rawls, 1999a, pp. 57, 242). Hence, in a Rawlsian society the means of production can, but need not, be privately owned.

Would the Corporation be Part of the Basic Structure of Society?

While Rawls (2001, p. 12) observes that "the basic structure does not provide a sharp definition, or criterion, from which we can tell what social arrangements, or aspects thereof, belong to it," it does include the legally recognized forms of property. Given that the corporate legal form is a legal vehicle through which the state and citizens can own means of production, this should make it a manifestation of the basic structure and, therefore, it would need to comply with the principles of justice.

Phillips et al., (2003, p. 493) note that "organizations are, to use Rawls's (1993) terms, voluntary associations rather than a part of the basic structure of society." This is correct. Singer (2015) likewise argues that corporations are not part of Rawls' basic structure. Singer (2015, pp. 78–79) points to Rawls' distinction "between a society (which has a basic structure) and an association; most significantly, society has "no final ends and aims", unlike associations, which are formed to achieve particular ends. Because a corporation *does* have particular ends, it would appear not to be part of the basic structure."

Singer's argument, however, misses the distinction between the corporate legal form, on the one hand, and actual commercial associations formed using the corporate legal form on the other hand. It is correct that Rawls treats corporate associations as "black-boxes" (Norman, 2015; Singer, 2015) and thus is largely mute on the internal rules governing such associations. Rawls (2001, p. 11) writes: "One should not assume in advance that principles that are reasonable and just for the basic structure are also reasonable and just for institutions, associations, and social practices generally. While the principles of justice as fairness impose limits on these social arrangements within the basic structure, the basic structure and the associations and social forms within it are each governed by distinct principles in view of their different aims and purposes."

Nevertheless, the corporate legal form as a vehicle for private ownership in the means of production *is* part of the basic structure, simply by virtue of being a permissible from of property. Singer (2018a, pp. 12–13) later acknowledges this distinction by distinguishing corporate law from corporate governance, where corporate governance concerns "the rules and systems of governance that corporations create for their own internal arrangements and corporate law as the law imposed upon them from the outside." In other words, the corporate legal form is subject to the two principles of justice, as well as the laws regulating corporate conduct. On the other hand, actual corporate associations are not social institutions and as such are not part of the basic structure bound by the principles of justice. This means that it is the corporate legal form, which would be created at the "legislative stage", that needs to comply with the principles of justice, not the internal bylaws of actual organizations. It would thus seem, as Singer suggests, that Rawls is mute on issues of corporate governance. But as we shall see later, the corporate black box is not entirely dark.[5]

Is the Corporate Legal Form Consistent with the Principles of Justice?

Could the corporate legal form be endorsed in the Original Position? According to Bishop (2008), this means that the contracting parties would evaluate if the liberty principle, fair opportunity principle, and the difference principle are consistent with incorporation.

The liberty principle is easy to accommodate. Incorporation must be "compatible with the same scheme of liberties for all." All that is needed is that every citizen is at liberty to incorporate using the corporate legal form. A corporate legal form that is open to all does not infringe on other liberties of citizens, and furthermore the freedom to incorporate in order

[4] By "existing conditions" in this context Rawls means capitalism characterized by private ownership in the means of production. Because this is the condition that currently exists, applying the principles of justice to a private ownership system will be more effective than uprooting the system entirely in favor of socialism.

[5] Berkey (2021) goes further, rejecting the view that corporations are bound by the principles of justice only if, and insofar as, they are part of the basic structure. He argues that "corporations [do] have justice-based reasons to directly promote the aims prescribed by the principles of justice" (p. 205).

to engage in commercial enterprise can itself be regarded as a liberty. Note however that the distinction between the corporate legal form (which must comply with the principles of justice) and actual organizations (which need not comply) implies that members need not be afforded equal liberties within organizations.

The equal opportunity principle requires that "offices and positions be open to all under conditions of fair equality of opportunity." This is a general demand for offices and positions in society, and in the corporate context merely implies that positions within corporations must be open to citizens under those conditions. There is nothing about incorporation per se that conflicts with this demand. It only implies that corporations, like other institutions, must comply with legislation ensuring such equal opportunity.

The difference principle requires that "social and economic inequalities are to be to the greatest benefit of the least-advantaged members of society." There is little reason to believe that incorporation per se would have distributional effects. However, allowing for such a legal vehicle in an economy can have (positive) effects on the sum total of wealth produced.

We can't say with certainty that the corporate legal form would exist in a Rawlsian society, but incorporation is consistent with the principles of justice, and if the corporate legal form did exist the principles of justice would apply to it. Nor does Rawls' theory specify the exact attributes of the corporate legal form, but given the proven benefits of this form of productive association there seems little reason to think that a vehicle of this type should not be made available to citizens to engage in commercial enterprise. Rawls (2001) was skeptical about welfare-state capitalism because he feared that it allowed (economic and by extension political) power to be vested with a limited number of citizens, and instead advocated a property-owning democracy that would distribute productive means widely among citizens. In particular, Rawls displayed an affinity for worker-owned and controlled co-ops. This is entirely consistent with incorporation.[6] The corporate legal form is simply a vehicle of ownership and does not specify who the owners should be. In the case of worker co-oops, the workers could simply be equal shareholders and exercise control through their right to vote.[7]

[6] Our focus here is the corporate legal form as it is the dominant legal vehicle for private ownership in the means of production in our current societies. However, our argument here does not exclude the possibility of other legal vehicles such as partnerships or sole proprietorships. Although we will not directly address these, we do think that such vehicles would also be available in a Rawlsian society.

[7] Hsieh (2014) has remarked that in large co-op organizations with many worker-shareholders, each individual share may be too small to exercise the degree of effective control that is required for a property-owning democracy. If correct, it is unclear how Rawls envisaged the governance of larger organizations in a manner that is compatible with his principles of justice.

Corporate Role vs. Corporate Goal

We have noted that there is a difference between the corporate legal form, which is part of the basic structure, and the "associations" (organizations) that citizens create when they engage in commercial enterprise through the corporate legal form. This distinction for Singer is one between corporate law and corporate governance. This might usefully be seen as a distinction between the corporate role and the corporate goal. Formulating the distinction in this way brings into focus the two separate purposes of the corporation. On the one hand, the *role* of the corporate legal form is to serve an instrumental purpose for the benefit of society. It is a vehicle for the private ownership of productive means, to serve the beneficial purposes of production, employment, and taxation. This echoes Singer's (2013, p. 81) view that corporations should be regarded as public rather than private institutions, seen as "either an extension or concession of government used for and constrained by concerns for social welfare". But note, this instrumental role for social welfare applies to the corporate legal form, and not actual corporate associations.

On the other hand, the *goal* of any given corporate association is whatever kind of enterprise within the law that the associating parties want to embark on. Rawls does not speak to who should govern associations or how, but we believe that an overarching goal for corporate associations can be gleaned from the *role* of the corporate legal form.

We now turn to safeguards against corporate harm to stakeholders, examining the merits of exogenous versus endogenous constraints as they would exist within Rawlsian society. Exogenous constraints on the firm take the form of legislation, while endogenous safeguards would operate through corporate governance with internal stakeholder control.

Corporate Safeguards

When corporations interact with stakeholders it is possible that those interactions lead to stakeholders being harmed. For example, employees can be unfairly dismissed, malfunctioning products can injure consumers, and polluting smokestacks can cause acid rain for the general populace. How might the interests of various corporate stakeholders be safeguarded in a Rawlsian society? In essence, this involves the application of the liberty principle to guard against unjust harms towards stakeholders/citizens.

Legislation as Stakeholder Safeguard

Rawls presents a four-stage sequence for how the principles of justice are to be applied to institutions. The first stage is the aforementioned original position that derives the two principles of justice. This is followed by a constitutional stage, where the parties from the original position, subject to the constraints of the two principles, "design a system for the constitutional powers of government and the basic rights of citizens" (Rawls, 1999a, p. 172). The primary concern of the parties to this constitutional convention is the application of the first principle, the liberty principle. The constitution should thus ensure such liberties as liberty of conscience and freedom of thought, liberty of the person, and equal political rights. The parties are tasked with choosing the most just and effective constitution that is to lead to just and effective legislation.

This brings us to the third stage, the legislative stage. The resulting legislation from this stage is of particular interest to us because "the law defines the basic structure within which the pursuit of all other activities takes place" (Rawls, 1999a, p. 207). The government brings about equal opportunity in economic activities and in the free choice of occupation, "by policing the conduct of firms and private associations and by preventing the establishment of monopolistic restrictions and barriers to the more desirable positions" (Rawls, 1999a, p. 243).

A Rawlsian society would endorse exogenous safeguards. As Singer (2015, 78) observes, if the principles of justice don't speak to the internal structure of the firm, "then they can only constrain from without". "[T]*he long-run perverse effect of meso-level institutions like the corporations are to be dealt with through the basic structure and not the meso-level itself*" (Singer, 2015, p. 82, emphasis in the original). For Rawls, it is essential that the safeguards are exogenous to the corporation as his theory regards the basic structure (which includes corporate legislation) as the primary subject of justice.[8]

Once the basic structure is set up, "individuals and associations are then left free to advance their (permissible) ends within the framework of the basic structure, *secure in the knowledge that elsewhere in the social system the regulations necessary to preserve background justice are in force*" (Rawls, 2001, p. 54; emphasis added). This is a critical point for our analysis. It means, for example, a set up with appropriate political institutions (Liberty Principle), a public education system (Equality of Opportunity Principle), as well as income and inheritance taxes (Difference Principle). By following the publicly recognized rules, the basic liberties and the fair distributive shares of citizens are realized.

Accordingly, in a Rawlsian society, corporate behavior would not be unfettered because the corporation is embedded and regulated by the basic structure. Rawls (1999a, p. 63) says that, "Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity." When this is achieved, markets and the actors within them can be left to take care of themselves. The protection of stakeholder/citizen interests would be covered by regulation, such as employment law (e.g., to ensure equal opportunity), market regulation (e.g., to regulate product safety), competition law (e.g., to avoid excessive market power), environmental law (e.g., to regulate externalities), and tax legislation (e.g., to provide redistributive effects). When this system is in effect, corporate activity will result in social cooperation (within corporations) and competition (between corporations) that is just for society as a matter of pure background procedural justice.

Boatright (2002, p. 1849) notes that "the stockholder and stakeholder theories disagree not about whether third parties ought to be protected from unjust harm, but how best to provide this protection." Many concerns that stakeholder theorists wish to address are taken care of by the background institutions in Rawls' theory and primarily through laws protecting the interests of the different stakeholder groups, as suggested above. Such laws, referred to as *exogenous* safeguards by Freeman and Evan (1990, pp. 346–347), "effectively constrain the pursuit of stockholder interests at the expense of other claimants of the firm… they force management to balance the interests of stockholders and themselves on the one hand with the interests of customers, suppliers and other stakeholders on the other."

Exogenous constraints on corporate behavior which are part of the basic structure can also stretch beyond legislation. For example, the state can grant other legal forms, such as the non-profit corporation, that act as vehicles through which citizens can organize to pursue special interests. One such special interest can be the monitoring of corporate behavior, as is currently the case with many nongovernmental organizations (NGOs) (Campbell, 2007). Nevertheless, NGOs cannot be allowed free rein in their activities merely because they do not operate from a profit motive. They must also be subject to exogenous constraints as they suffer from the same legitimacy problems as corporations, not being democratically legitimate representatives of the citizens (Scherer & Palazzo, 2007).

[8] Note that voting rights for the board of directors in a Rawlsian society qualify as an exogenous safeguard because they are part of the corporate legal form that is part of the basic structure. However, voting rights also have the property of operating internally by making directors and managers responsive to the interests of the voting-right holders.

Corporate Governance as Stakeholder Safeguard

Does attention to stakeholder safeguards suggest there could be instrumental arguments in favor of stakeholder control rights? Rawls (2001, p. 178) writes: "Would worker-managed firms be more likely to encourage the democratic political virtues needed for a constitutional regime to endure? If so, could greater democracy within capitalist firms achieve much the same result? I shall not pursue these questions. I have no idea of the answers, but certainly these questions call for careful examination. The long-run prospects of a just constitutional regime may depend on them." Rawls does not pursue or reflect on these questions, but he is clearly open to the idea that there can be instrumental reasons to interfere in the governance of corporations to encourage democratic political virtues (within both capitalism and socialism), although these do not follow from the principles of justice but are rather empirical contingencies.

Should it be the case that stakeholder/citizen interests are difficult to safeguard through legislation, especially interests related to the liberty principle (e.g., a right not to be harmed by corporate products), then conceivably this would favor such rights and trump potential economic efficiency considerations. But is there any reason to believe that stakeholder control rights are significantly better than legislation at protecting stakeholder interests?

Instead of exogenous constraints, Freeman and Evan (1990) propose a theory with endogenous safeguards whereby stakeholders possess control rights. (A simple way to think of the demarcation between endogenous versus exogenous constraints is that the former involves a system of corporate *self-regulation* while the latter involves externally imposed constraints.) Freeman and Evan (1990) object to exogenous constraints primarily on two fronts: (1) that endogenous constraints are more effective in protecting stakeholder interests, and (2) that exogenous constraints externalize contracting costs onto society.

First, Freeman and Evan (1990) wish to grant stakeholder voting membership on the board because it is seen as more effective in protecting stakeholders' interests. In essence, they take the view that safeguards that are created endogenously to the corporation through bilateral contracting between the corporation and stakeholders, together with the more general safeguard of stakeholder board representation, will always be more effective than exogenous stakeholder safeguards imposed by government. This view is maintained because government cannot legislate in a manner that is tailored to the particular circumstances of stakeholders of individual corporations. However, it is not clear that endogenous safeguards are always more effective (or more efficient) for protecting stakeholder interests. Although Freeman and Evan are correct in their view that government cannot tailor its safeguards to every corporation, there will be many circumstances when exogenous safeguards through government regulation are both more effective and more efficient. For example, bilateral agreements may not give effective protection to one party if the other party is in a significantly stronger bargaining position, and this is not circumvented by equal voting membership on the board because any stakeholder group in a system of voting is subject to the risk of minority oppression. Exogenous safeguards can on the other hand give protection to stakeholder groups irrespective of the internal contractual dynamics of the corporation.

Boatright (2002, p. 1842) believes that stakeholder theorists regard the shareholder-management relationship as an ideal for treating all stakeholders, but that "stakeholders usually derive little benefit from the set of rights negotiated by shareholders and generally prefer other safeguards for their interests. Instead of seeking a seat on the board of directors or the benefit of fiduciary duties, consumers, for example, settle for manufacturers' warranties, consumer and product safety laws, and a tort liability system." Furthermore, it can also be argued that exogenous stakeholder protections that are applicable to all corporations can be much more efficient for protecting the interests of stakeholders as it saves the contracting of each of these safeguards for every corporation for every stakeholder group (Child & Marcoux, 1999).

Second, Freeman and Phillips (2002, p. 335) in their libertarian defense of stakeholder theory, think that "Rawls' first principle of justice is a paradigm case of a libertarian principle." The first principle accords with them because it sets out the liberties of individuals and essentially puts forward negative rights of non-interference. However, the second principle would seem to be unacceptable because it affords citizens positive rights which require the use of social resources that would involve a redistribution of wealth. For libertarians, positive rights only arise through individual consent and, moreover, state aid may violate some negative rights (such as the right not to have one's property infringed upon) through the need for taxation (Rönnegard & Smith, 2013a, b). This helps explain Freeman and Evan's (1990, p. 347) second objection to exogenous safeguards, that their costs "are spread over the entire society." The cost of legislating and enforcing government regulation is spread across citizens, usually through taxation. This is objectionable to libertarians because it imposes costs on third parties to corporate contracting (without their consent). In other words, those, and only those, who engage in contracting should bear the full costs that result from their agreements. However, for liberals and Rawls in particular, there is nothing objectionable per se for society to bear third party costs if this results in a fairer basic structure. Furthermore, it would be practicably unworkable and inefficient to internalize all the potential external costs of contracting as every potentially affected third party would need to engage in the contracting and be compensated bi-laterally (Child & Marcoux, 1999).

In a Rawlsian society, the corporate legal form, as part of the basic structure, would be regarded as an instrument to be used by citizens as allowed by the state. On the other hand, Freeman, and libertarians more generally, regard the corporation as a nexus-of-contracts where the corporation is conceptualized as a set of voluntary agreements that should be self-enforcing in order to limit the role of the state (Freeman & Phillips, 2002). This helps explain the different advocacy of exogenous and endogenous controls. With Rawls, the state provides a corporate legal form which is part of the basic structure, where exogenous controls in the form of legislation provide a playing field that procedurally leads to a just outcome when individuals act within the rules. For Freeman, justice results from responsible individuals respecting the fundamental rights of others when contracting freely and through this process of contracting form corporations.

If it could be shown (which is far from certain), that stakeholder control rights are significantly better at protecting the first-principle interests of citizens, then on that basis a Rawlsian society would endorse stakeholder control rights. Stakeholder control rights would thus be extended as an effective instrument for advocating the liberty principle, but not because liberty per se requires a right to participate in the control of the means of production.[9] Yet even if a Rawlsian society were to extend corporate control rights to stakeholders, this is still in a sense an exogenous constraint, as it would be imposed as part of the corporate legal form.

We note, however, that the distinction between exogenous and endogenous constraints might not always be so sharp, nor always a case of either/or.[10] An example of a legislated endogenous constraint can be found in Germany. German corporate law provides employees as stakeholders with board representation for corporations above a certain size (number of employees). Another example are voluntary industry codes of conduct. Such codes are endogenous in the sense that they are voluntarily contracted among affected parties, but subsequently take the form of exogenous constraints, especially if the industry body has a sanctioning mechanism for violations of the code.

We now look more closely at the endogenous safeguards of a corporate governance arrangement consistent with Rawls, including the implications of property rights, rights to self-determination, and of economic efficiency. They enable us to address more fully the question of whether control rights should lie with shareholders or a wider group of stakeholders.

Corporate Governance

What is the Significance of Property Rights for Corporate Governance?

A central issue for corporate governance is how and by whom the corporation should be governed. Currently most jurisdictions have answered this by giving control to shareholders through their sole right to vote for the board of directors at annual general meetings.[11] But this does not have to be the case.

The right to own property, although often referred to in the singular as a "property right", is better understood as a combination of at least two separate rights: the right to control that which is owned, and the right to accrue the fruits from that which is owned. In the context of corporate ownership, this translates into "the right to control the firm and the right to appropriate the firm's profits, or residual earnings" (Hansmann, 2000, p. 11). Thus, we note that the right to property, in particular the means of production, consists of a bundle of (at least) two separate rights. Hansmann (2000, p. 12) points out that "[i]n theory, the rights to control and to residual earnings could be separated and held by different classes of persons. In practice, however, they are generally held jointly." Thus, in a Rawlsian context, the first question before us is whether these rights should be separated, and the second is which stakeholders should possess these rights?

There is a strong economic efficiency argument for keeping the rights of control and residual together so that the

[9] Freeman and Evan argue for stakeholder theory, not merely on instrumental grounds for stakeholder protection, but also on normative grounds that stakeholders have a right to participate in decisions that affect them, in accordance with the categorical imperative never to treat others merely as means (Evan & Freeman, 2003). However, Paas (1996) has pointed out that stakeholder participation rights in decision-making do not follow from Kant's categorical imperative to never treat people "merely as a means to an end". This second formulation of the categorical imperative allows people to treat others as means, but not *merely* as means. This is made clear by the fact that any transaction of a good or service involves using the other party in a transaction as a means to attain the object of the transaction. A carpenter agrees to be a means through which a homeowner gets a new porch, and the homeowner agrees to be a source of income for the carpenter. Therefore, it does not necessarily follow that stakeholders have a right to participate in decisions that affect them because, as is often the case, there is an explicit or implicit agreement that one party will do as requested by the other; i.e. that the carpenter will build the porch and the homeowner will pay. What the categorical imperative forbids is that either party does not fulfill their part of the agreement; that would be to use someone merely as a means. Given the Kantian foundations of Rawls' theory, this would further underscore why there is no basic right for citizens to control the means of production.

[10] We are grateful to an anonymous reviewer for highlighting this nuance to the distinction between exogenous and endogenous constraints.

[11] Shareholders have sole voting rights among corporate stakeholders, but due to the "separation of ownership from control", the control is primarily vested with directors and their managers (Blair & Stout, 2001).

same group of stakeholders holds them.[12] As Hansmann (2000, p. 12) observes, "if those who control have no claim on the firm's residual earnings, they would have little incentive to use their control to maximize those earnings." Furthermore, vesting the right of control with shareholders is seen as beneficial, because as residual claimants they are assumed to be homogenous regarding their primary interest in a residual, which reduces conflicting objectives within the controlling group. However, efficiency does not alone decide the matter because justice is prior to economic efficiency in Justice as Fairness. There might be justice considerations, such as the right to self-determination, that could override such efficiency arguments and, for instance, give control rights to employees and residual rights to shareholders.[13]

On closer examination, however, there is no basis in Justice as Fairness to provide citizens or certain groups of stakeholders with corporate control rights based on justice considerations. "The first principle of justice includes a right to private personal property" (Rawls, 2001, p. 138), which in Rawls' terminology makes it a *basic* right: "One ground for this is to allow a sufficient material basis for personal independence and a sense of self-respect" (Rawls, 2001, p. 114). But the *basic* right to property does not extend to property in the means of production, nor the equal right to participate in the control of the means of production. Ownership and control in the means of production are not basic rights because they are not essential for a social basis for self-respect (but they may still be justified on instrumental grounds). In a Rawlsian society, specifications of property rights beyond the basic right to personal property are made at the later legislative stage. Justice as Fairness "tries to avoid prejudging, at the fundamental level of basic rights, the question of private property in the means of production" (Rawls, 2001, p. 114).

The contractual premise of Rawls' theory makes evident that Rawls is not a natural law theorist. As such, property rights in Justice as Fairness are not founded on any natural abilities (e.g.: Locke, 1967; Nozick, 1974), but are rather the result of contractual agreement-making at the level of the basic structure of society. For Rawls, the concept of property does not carry any naturalistic baggage and is entirely constructed on instrumental grounds. It is up to the branches of government to maintain the efficiency of markets and realize distributive justice through the use of taxation and definition of property rights. Property rights in this context are a social tool.

In essence, then, property rights in the means of production are central to corporate governance as they determine who controls and who receives the residual of the corporation. There is a strong efficiency argument for conferring both of these property rights to the firm's shareholders (although this is dependent on empirical contingencies), and there is seemingly no overriding Rawlsian justice argument for partitioning control to any particular group(s).

What is the Significance of Rights to Self-determination for Corporate Governance?

Many find it counterintuitive that Rawls' egalitarian theory, which is fundamentally concerned with the self-determination of citizens, would not demand corporate control rights for a wide group of stakeholders. We now expand on this point as it is central to Rawls' conception of justice and its application to the corporate context.

Why does Rawls' first principle of liberty not lead to a demand for stakeholder participation in corporate decision-making? The reason is that Justice as Fairness is primarily concerned with the self-determination of *citizens*, not corporate stakeholders as such. We agree with Cohen (2010, p. 565; emphasis in original), where he observes that "Rawls' principles of justice provide normative foundation for the rights of stakeholders as *citizens*". Therefore, Rawls' theory addresses the issue of self-determination at the level of the basic structure for all citizens irrespective of which "stakeholder hat" they might be wearing.

According to Rawls (2001), the principles of justice are realized in a "property-owning democracy" (though they could also be realized in societies that do not have such private ownership). The background institutions would ensure the widespread ownership of productive assets and human capital ex ante (rather than redistributed ex post), so that the distribution that results from the exchanges and agreements of citizens is just as a matter of pure procedural justice. In such a democratic regime, "land and capital are widely though not presumably equally held. Society is not so divided that one fairly small sector controls the preponderance of productive resources" (Rawls, 1999a, p. 247).

In a property-owning democracy, the aim is not just to achieve a minimum level of wealth for the least advantaged but to "realize in the basic institutions the idea of society as a fair system of cooperation between citizens regarded as free and equal. To do this, those institutions must, from the outset, put in the hands of citizens generally, and not only of a few, sufficient productive means for them to be fully

[12] Corporate control is largely separated from ownership (Berle & Means, 1932; Blair & Stout, 2001), but it is not entirely separated. Shareholders retain a modicum of control in terms of their sole voting rights for the board. But such control is very limited and "shareholder voting is properly understood not as a primary component of corporate decision-making structure, but rather as an accountability device of last resort" (Bainbridge, 2006, p. 1750).

[13] Although it is colloquially common to refer to shareholders as "owners", technically shareholders do not own the corporation, they own shares as a separate form of property (Hansmann, 2000; Stout, 2007).

cooperating members of society on a footing of equality" (Rawls, 2001, p. 140).

For those citizens who do not have the opportunity or the entrepreneurial interest in controlling productive means through ownership, other opportunities are available. The equal opportunity and difference principles are meant to deliver legislation that keeps employment opportunities fair as well as access to education institutions that provide the skills for citizens to compete in the labour market. Under such conditions, with an array of employers competing for labour, the opportunity of "exit" would generally be readily available to employees, thus addressing potential criticism of "wage slavery".

Marx criticized capitalism for forcing workers into wage slavery both due to their need to accept wage employment and due to their lack of participation in decision-making. Although Rawls does not regard a right to participate in the control of productive means as a basic right, he favours a property-owning democracy over a capitalist welfare-state precisely because it is meant to overcome the "demeaning features" (2001, p. 177) of division of labour under capitalism. For example, while the state is not entitled to offer different terms to its members because there is no possibility of exit, associations are so entitled. This is permissible for associations because "members are already guaranteed the status of free and equal citizens, and the institutions of background justice in society assure that other alternatives are open to them" (Rawls, 1993, p. 42). Thus, the right to self-determination does not imply a right to control the means of production.

What is the Significance of Economic Efficiency for Corporate Governance?

We have established that in a Rawlsian society there is no basic right for citizens to participate in the control of means of production, and we briefly noted that there is a strong efficiency argument in favor of keeping both control and residual rights with shareholders. This efficiency argument requires further elaboration.

The efficiency argument was based on the assumption that one (or more) stakeholder group(s) is better suited for the possession of the right to corporate control due to their economic incentive for efficient production. In the absence of other justice considerations, we argue that economic efficiency becomes important as the primary determinant in regard to which stakeholder group(s) should possess corporate control rights. Why does economic efficiency assume this significance and how is it applied in a Rawlsian society?

As Norman (2015, p. 56) observes, "it surely cuts across the grain of Rawls's political liberalism to distort the basic structure in order to encourage a kind of firm ownership that is less efficient at producing wealth… just so that workers can be forced to practice their democratic virtues… you don't want to insist on every part of the system exemplifying those virtues [the principles of justice], otherwise the system itself might end up less efficient and less just." Norman (2015, p. 37) further maintains, "one of the things that will affect the level of efficiency in a market is the way it tries to solve governance issues… some governance and ownership regimes are much more effective than others in given market situations." Now, we note, the efficiency of a macroeconomic system is in part given by the efficiency of the microeconomic systems of corporations within it.[14] And the efficiency of corporations is in part influenced by the system of corporate governance that a corporation possesses. While Rawls' theory does not speak directly to stakeholders or their involvement in corporate governance, it is relevant to the distribution of corporate control rights to stakeholders because the distribution of such rights affects the efficiency of the entire economic system. How a Rawlsian society might distribute corporate control rights can be obtained from the difference principle. Rawls (2001, p. 63) says that "a scheme of cooperation is given in large part by how its public rules organize productive activity," and that, other things being equal, the difference principle directs society to aim for a system that is to the greatest benefit of the least advantaged members in society (defined in terms of the primary goods of income and wealth).

The lexical priority of the principles of justice guarantees that the liberty principle and the equality of opportunity principle are fully realized before the difference principle is applied.[15] Rawls (2001, p. 123) states that "a political conception of justice must take into account the requirements of social organizations and economic efficiency." The difference principle is part of a broad conception asserting that a theory of justice must incorporate issues of efficiency. For Rawls (1999a, p. 69) "justice is defined so that it is consistent with efficiency, at least when the two principles of justice are fulfilled." When the basic liberties and equal opportunities are satisfied, a more "efficient system" of cooperation that is to the benefit of the least advantaged is preferable to a less efficient one.

Rawls (1999a, p. 68) says, "the difference principle is, strictly speaking, a maximizing principle." A simple way to understand it is to think of it as a principle of constrained

[14] An economic system is more efficient than another if it can provide more goods and services without using proportionately more resources. This type of economic efficiency is known as "production efficiency".

[15] The lexical priority of the liberty principle and the equal opportunity principle over the difference principle also implies that the primary goods covered by the former cannot be exchanged for primary goods covered by the latter. For example, Justice as Fairness would not endorse a move to a system with constrained liberties of free speech but that benefitted from greater income and wealth.

maximization; i.e. a principle that strives for the most efficient economic system constrained by the liberty principle and the equal opportunity principle, as well as the constraint that departures from equal distribution should be to the greatest benefit of the least advantaged. Rawls defines "least advantaged" as those with the least share of the primary goods of income and wealth, and powers and positions of office, and it is their prospects, in these terms, that is to be maximized. The first two constraints are set forth by basic institutions through rules and resources to guarantee liberties and opportunities, while the last constraint can be implemented through redistribution of income and wealth. These constraints act on the level of society and as such are external to the corporation. These constraints do not directly decide the distribution of control rights for corporate stakeholders. But *with these constraints in place,* the corporation should be governed as efficiently as possible in order that the greater wealth will benefit everyone, especially the least advantaged. Therefore, central to the choice of corporate voting right distribution in a Rawlsian society, is an empirical question: is it more economically efficient to give a broad group of corporate stakeholders a right to vote or to only give this right to shareholders?[16]

It is not our task here to evaluate whether corporations are governed more efficiently by shareholders or stakeholders. Arguments have been put forward on both sides. For example, in favor of control rights residing with shareholders, Hansmann (2000) and Sundaram and Inkpen (2004a, 2004b) have argued that control is best exercised by shareholders because they are residual claimants; Jensen (2002) has argued that economic efficiency requires governance with a single objective function; and Williamson (1984, p. 1215) has argued that public representation on the board "would come at a high cost if the corporation were thereby politicized or deflected from its chief purpose of serving as an economizing instrument."

On the other hand, Freeman has argued that corporate management according to stakeholder theory would be more efficient.[17]Freeman (2008a, 2008b, p. 166) observes that "[i] f a business tries to maximize profits, in fact, profits don't get maximized, at least in the real world." Freeman et al., (2010, pp. 11–12) observe: "We believe that trying to maximize profits is counterproductive because it takes attention away from the fundamental drivers of value – stakeholder relationships. There has been considerable research that shows that profitable firms have a purpose and values beyond profit maximization." The central idea here is that members of an organization will not be inspired or motivated by an explicit goal of profit maximization (alone) and that for the most profitable corporations profit maximization in this regard is incidental.[18]

Until the empirical truth about the relative economic efficiency of shareholder versus stakeholder control is known (or, at least, the conditions under which one is more efficient than the other), should the state mandate how corporate control rights are distributed or should it be left free for individual firms to decide? Rawls (2001, p. 159) says that "if the basic structure can be effectively regulated by relatively simple and clear public principles of justice so as to maintain background justice over time, then perhaps most things can be left to citizens and associations themselves, provided they are put in a position to take charge of their own affairs and are able to make fair agreements with one another under social conditions ensuring a suitable degree of equality." Presumably, firms in a competitive market environment would at least attempt to develop the most economically efficient form of corporate governance structure if left to their own devices. But should this not arise on its own accord, there is no reason why the government cannot legislate the distribution of control rights into the corporate legal form, justified on the basis of economic efficiency. So, given the overarching *role* of the corporate legal form as an instrument for social welfare (through production and wealth creation), it seems reasonable that the *goal* of actual corporate associations should be economic efficiency to contribute to the overarching *role*.

A Rawlsian Rule for Corporate Governance

The preceding discussion now brings us to a Rawlsian rule for corporate governance by primarily considering the implications of the Liberty Principle and the Difference Principle.

[16] We acknowledge the many practical obstacles for extending voting rights beyond shareholders, but extending such voting rights to other stakeholders is the natural counterpart to sole corporate control by shareholders.

[17] The instrumental interpretation of Freeman's stakeholder theory allows but does not require devolving corporate control rights to a broader group of stakeholders. It only requires that management take into account the interests of stakeholders while formal control rights can still reside with shareholders. However, from a normative perspective Freeman has suggested that stakeholder control rights are desirable (Freeman & Evan, 1990).

[18] But unlike shareholder theory, maximizing profits is not the main point of stakeholder theory. Donaldson and Preston (1995, pp. 79–81) maintain that success for stakeholder theory lies "in satisfying multiple stakeholder interests—rather than in meeting conventional economic and financial criteria… No theorist, including Rawls, has ever maintained that bargains reached on the basis of the "veil of ignorance" would maximize efficiency." Similarly, Collins (1997) maintains that irrespective of the efficiency of "participatory management" in corporations, the primary reason for adopting such a system of governance rests on its supposed ethical superiority.

Liberty Principle Control of the means of production is not according to Rawls a basic liberty and the liberty principle does not therefore (per se) confer corporate control rights to stakeholders. Instead, the main implication of the liberty principle for corporations has to do with the mitigation of corporate harms, which can on instrumental grounds have implications for corporate governance. Whether exogenous constraints (legislation) or endogenous constraints (stakeholder control) are more effective and efficient at mitigating corporate harms is an empirical matter.

Difference Principle With the system of background justice in place, such that the liberty principle and equal opportunity principle are satisfied, then social arrangements should be structured so they are to the benefit of the least advantaged members of society. For the present case this implies economic efficiency as greater resources will benefit the least advantaged.

A Rawlsian Rule for Corporate Governance After choosing the corporate constraint mechanism (exogenous vs. endogenous) that best promotes the liberty principle, choose the corporate control regime (shareholder vs. stakeholder) that maximizes economic efficiency.

Note that this rule, which involves two steps, also might involve two different agents doing the choosing for each step. In the first step of choosing the constraint mechanism it is the state that does the choosing as it involves promoting the liberty principle at the legislative stage for the corporate legal form. If endogenous constraints are chosen in the first step this implies stakeholder control in the second step. However, if exogenous constraints are chosen, then this opens the door to choosing between shareholder or stakeholder control in the second step, in line with the difference principle. Although the state could make the choice in the second step too, it is not clear that the state is best suited at making this choice. The state could grant this choice to corporations. The most economically efficient distribution of control rights might vary for corporations which are likely to be best suited to make that evaluation themselves contingent on industry and market factors.

This means that corporate control by stakeholders could be endorsed by the liberty principle on instrumental grounds, but we deem that the arguments for harm mitigation effectiveness often favour legislation rather than stakeholder control. It also means that the difference principle could endorse stakeholder control on grounds of economic efficiency, but our inclination is that economic efficiency often favours control by shareholders with a profit motive. Nevertheless, these conclusions are empirically contingent.

Conclusion

We have argued that the corporate legal form as a vehicle for private ownership in the means of production could be endorsed by a Rawlsian society. Such a legal vehicle would be part of the basic structure simply by virtue of being a permissible form of property, and we have argued that the principles of justice are consistent with incorporation. However, it is only the corporate legal form that need comply with the principles of justice and not the internal governance of corporate associations.

Rawls is largely mute on issues of corporate governance, as he regards the firm as a black box, but we have argued that how corporate control rights should be distributed among stakeholders can be gleaned from his theory as a whole. If the corporate legal form is endorsed it would serve as an instrument for social welfare (through production and wealth creation), which is its *role*. Rawls is explicit about there being no basic right to participate in the control of the means of production, therefore the distribution of control rights is determined on instrumental grounds. Once the liberty principle and equal opportunity principle are fulfilled, the difference principle directs society to aim for a system that is more efficient so that it may benefit the least advantaged. Given the corporate role as an instrument of wealth creation, we argue that the corporate *goal* should be economic efficiency. As a consequence, corporate control rights should be held by the group(s) that best enable the corporation to be economically efficient. We believe that there are strong arguments for vesting such control with shareholders as their incentive for economic efficiency is likely to be greatest, but whether this is correct is an empirical matter.

With regard to safeguards against corporate harms towards stakeholders, we argued that a Rawlsian society would primarily impose safeguards in the form of exogenously imposed legislation, as Rawls' theory concerns the basic structure as the primary subject of justice. Corporate associations would be free to pursue their ends within the constraints of legislation, secure in the knowledge that the system of background justice is in force. Should it turn out that endogenous safeguards in the form of stakeholder control rights prove to be more effective at safeguarding against (certain) corporate harms, then such control may be granted on instrumental grounds. So, a Rawlsian society would arbitrate between corporate governance regimes to obtain more effective safeguards or based on economic efficiency, both on instrumental grounds which are empirically contingent.

This analysis has led us to infer the following Rawlsian rule for corporate governance: After choosing the corporate constraint mechanism (exogenous vs. endogenous) that best promotes the Liberty Principle, choose the corporate control

regime (shareholder vs. stakeholder) that maximizes economic efficiency.

Business ethics has principally proceeded as a field of applied ethics dealing with corporate self-regulation. It has done so with relatively limited attention to the wider business and political context where businesses operate. This might be due to the prominence of stakeholder theory with its implicit libertarian underpinning, which implies a minimal role for the state, thus situating normative stakeholder concerns with the corporation. This has led to a *corporate-centric* focus on endogenous *self-regulation* with regard to *stakeholders*. To adopt a Rawlsian perspective is almost to do the opposite, as it takes a *society-centric* perspective to impose exogenous constraints on corporate conduct in the form of *legislation* for the benefit of *citizens*. Notwithstanding our inevitably idealized treatment of Rawlsian theory in application to the field, this speaks to a potential broadening of the field of business ethics. Besides a fundamental shift in perspective from self-regulation to legislation, the shift opens up the field from a focus on ethics to the inclusion of political philosophy.[19]

In the context of Rawls' political liberalism, normative concerns in business are accounted for through legislation and the system of background justice. This is the general site of Rawls in Business Ethics. More specifically with regard to corporate governance, a Rawlsian society would favour regimes of corporate control that are most economically efficient, once the Liberty Principle is satisfied.

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Declarations

Conflict of interest The authors declare that they have no conflict of interest.

[19] It is interesting to note that the significance of legislation to the field of business ethics has not been ignored with regard to *empirical* research. For example, Matten and Moon (2008) coined the terms explicit and implicit CSR in order to signify differences between countries (America vs. Europe) where corporate norms are primarily self-imposed (explicit) vs. externally imposed (implicit). By extension, it seems entirely reasonable that *theoretical* normative research in business ethics should be broadened from ethics to include political philosophy that considers the acceptable norms that govern business enterprise in our society. (The implicit/explicit distinction might however lose its meaning, as there is nothing implicit about considering corporate norms from a societal perspective.).

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