
Rawls on the Justice of Corporate Governance

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A COMMENTARY ON Abraham Singer (2015), “There Is No Rawlsian Theory of Corporate Governance,” *Bus Ethics Q* 25(1): 65–92, <http://doi.org/10.1017/beq.2015.1>

ABSTRACT

Abraham Singer argues that Rawlsian theories of justice cannot apply to corporate governance and business ethics. On Singer’s view, Rawls regards business corporations as voluntary associations outside of the basic structure, which is the only site where justice applies. In this comment, we show the importance of Rawlsian theory to central questions of corporate governance. The corporation should be considered part of the basic structure, because it is part of society’s system of productive social cooperation. Rawls’ proposal for a property-owning democracy also raises crucial corporate governance issues concerning the proper owners of the firm, and the separation of ownership and control.

IN A PROVOCATIVE and ambitious article, Abraham Singer (2015) asks whether there can be a Rawlsian theory of corporate governance. The question is an important one, given that scholars in corporate governance and business ethics have turned to Rawls as a leading theorist of the justice of economic institutions (Hsieh 2009). Although Rawls

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did not write extensively on the corporation, Singer examines whether Rawls' framework can be applied to make moral arguments about corporate ownership, control, and objectives. After careful consideration, he concludes that it cannot apply.

Singer (2015: 65) begins with an instructive overview of the main questions in corporate governance and business ethics. This overview is essential to Singer's argument, because he needs to show that Rawls' theory of justice cannot apply to any of these topics. The first question is the purpose of corporate governance. Should the rules or institutions that govern corporations resolve conflicts of interest between owners and managers? Or should it solve conflicts with a broader set of parties, including employees? Second, who is entitled to participate in corporate governance? Should workers have greater democratic control over corporations? Or should shareholders ultimately control corporations without the participation of workers in decision-making? Third, who should own corporations? Should the state redistribute the ownership of shares widely among citizens, or should the owners be the investors who pay for it in the market? Fourth, what are the powers of corporations? Does the firm exercise an authority over its employees that should be regulated? Or is regulation unnecessary as long as employees can exit the firm? Fifth, what are the proper corporate objectives? Are the aims of the firm limited to maximizing profits, or do corporations have larger ethical responsibilities?

Singer (2015: 66) rightly regards these issues of corporate governance as being highly consequential for the justice of societies. But he argues that Rawls' theory cannot apply to corporate governance, because of the "deep-seated distinction between the business firm and state, or between the political and associational, upon which Rawls' theory rests" (Singer 2015: 68). This distinction between the political and associational concerns the subject of principles of justice. In Singer's (2015: 71) view, Rawlsian justice "applies only to the 'basic structure' of society" or the main political and economic institutions. It does not apply to voluntary associations or to individual transactions. Rawls limits the subject of justice in this way because of two reasons. One is respect for freedom of individual choice and association. Citizens should be free to make meaningful decisions in their

lives, and a central sphere of choice is forming voluntary associations with other people.

A second reason why Rawls limits justice to the basic structure is based on toleration. Rawls' theory is a type of political liberalism. It aims to find principles of justice that respect the diversity of citizens' "comprehensive doctrines" (Singer 2015: 71). Comprehensive doctrines are religious and philosophical views that apply to a broad scope of subjects, including ideals of personal character, the best aims to pursue in life, the relationships we should form, and the nature of God (Rawls 2005: 13). Comprehensive doctrines contrast with "political conceptions" that focus more narrowly on questions of government and social cooperation. Political liberalism confines justice to political conceptions that apply to the basic structure, because it seeks to respect the diverse religious and philosophical beliefs of citizens. Extending justice to associations, such as churches or other voluntary groups, would have to be based on a comprehensive doctrine that concerns ideals of individual and associational life. This would intolerantly impose a particular comprehensive doctrine on citizens who do not share it.

The application of Rawlsian justice to the corporation thus turns on whether the corporation belongs to the basic structure or is a voluntary association. As Singer (2015: 78) puts it,

if we want to address the kinds of business ethics and governance questions raised at the outset, we must ask whether the corporation can be considered part of the basic structure.

In Singer's (2015: 78) interpretation, the standard for whether an institution counts as part of the basic structure is that it is coercive. Corporations fall outside the basic structure and are not subject to justice, because they are non-coercive, voluntary associations. Singer (2015: 82) concludes that "Rawls's theory is of no use for the big normative questions of business ethics and corporate governance."

Defending Rawls on Corporate Governance

In contrast to Singer, we argue that Rawls' framework can apply to questions of business ethics and corporate governance. On our view, the corporation is an institution of the basic structure and therefore a subject of justice for Rawls and his interpreters. We also hold that Rawls' ideal of property-owning democracy raises key questions in

corporate governance regarding the proper owners of the firm, and the separation of ownership and control. Far from being mutually irrelevant, Rawlsian theories of justice and research on corporate governance can benefit from informing each other.

Our first point of difference with Singer concerns the subject of justice. Singer (2015: 71) views Rawls as claiming that the exclusive subject of justice is the basic structure. But Rawls (2001: 166) actually writes that the basic structure is the primary, but not the only, subject of justice. Justice also has implications for associations, constraining what they can do. We argue later that corporations are part of the basic structure. But even if corporations were only associations, justice would still have implications for them. As Rawls (2001: 166) puts it, while “the basic structure alone is the primary subject of justice, principles of justice still put essential restrictions on the family and all other associations.” Rawls views justice as constraining associations when he writes: “If the so-called private sphere is a space alleged to be exempt from justice, then there is no such thing” (Rawls 2001: 166).

Even if corporations were voluntary associations, Rawls’ theory would apply to at least two questions of corporate governance. One is the proper objectives of the corporation. Rawls’ theory could be cited by corporate governance scholars to oppose the claim that the only aim of firms should be to maximize profits and the libertarian view that firms can pursue any aim of their owners. By contrast, Rawls requires that all associations respect the equal basic liberties of citizens under the first principle of justice. Associations must also not undermine fair equality of opportunity under the second principle of justice. Stakeholder theorists and corporate social responsibility scholars could draw on Rawls to argue that corporate objectives must include respect for these principles of justice.

Rawls’ theory would also apply to corporate governance questions about the internal organization of the firm, if reforms were needed to protect the equal basic liberties or fair equality of opportunity. Rawls gives an example of reforming associations when he discusses the family. He writes that if women are economically disadvantaged because of their greater childrearing duties in the family, then “steps need to be taken either to equalize their share or to compensate them for it” (Rawls 2001: 167). Similarly, Rawlsian theorists

can support corporate governance reforms on the basis of protecting citizens' equal basic liberties or fair equality of opportunity. Rawls is open to this approach. In *Justice as Fairness*, he raises the possibility that his principles of justice would endorse a system where "a firm's direction and management is elected by, if not directly in the hands of, its own workforce" (Rawls 2001: 138).

However, we go further and argue that corporations should not be seen as associations, but they should be considered part of the basic structure. We disagree with Singer's claim that the standard to qualify as part of the basic structure is whether an institution is coercive. Here we differ not only with Singer, but with his critics who adopt the coercion standard. These critics try to show that Rawls is relevant to corporate governance by pointing to the coercive nature of corporations (Blanc 2016). Unlike Singer and these critics, we argue that Rawls has a different standard for whether an institution belongs to the basic structure. This standard is that the institution is a part of society's system of productive social cooperation (Freeman 2007: 102). In a crucial passage, Rawls states that the "fundamental organizing idea" of his theory of justice is that society is a "system of social cooperation" (Rawls 2005: 9). By social cooperation, Rawls means that economic production is the result of all citizens working together under a shared system of public laws and rules (Rawls 2005: 9).² A theory of justice provides principles to evaluate the fairness of social cooperation and how it distributes the wealth, income, and opportunity that it produces. These principles of justice would be needed to evaluate the fairness of society's system of social cooperation, even if it were not coercively enforced, but voluntarily followed (Freeman 2007, 102). We argue that business corporations are part of the basic structure, because they are institutions for economic production in society's system of social cooperation. This reading of Rawls is supported by his description of the basic structure. He includes "the legally recognized forms of property, and the organization of the economy" (Rawls 2005: 258). Since the corporation is a legally recognized form of productive property and a main institution for economic production, it is part of the basic structure.

² Another aspect of social cooperation for Rawls is that government should be by free and equal citizens in a democracy.

The Rawlsian idea that society is a system of productive social cooperation stands in contrast with the libertarian view, expressed by Michael Jensen, William Meckling, and Frank Easterbrook, that society or the corporation is a nexus of private contracts (Rawls 2005: 264). For libertarians, including Robert Nozick, the economy consists of a series of private agreements that are made between individuals. These agreements, being private, are not subject to justice. Unlike libertarians, Rawls sees the economy as a system of productive social cooperation that is structured by public rules. For example, the corporation only exists because it is a legal entity created under the government's law of incorporation. For the business corporation to come into being, the state must grant a charter that defines the rights, duties, powers, and structure of the business corporation. These state-granted rights include the corporation's internal authority over its employees, its existence in perpetuity, its members' exemption from personal liability, and the shielding of corporate assets from their owners' private creditors (Ciepley 2013: 142–145). Corporate governance theorists may invoke Rawls' conception of society as a system of productive social cooperation to ask whether the powers that public laws and rules grant the corporation are fair or should be regulated.

Singer raises the objection that even if we could apply justice to the corporation, there is no need to do so. In a response to Nien-hê Hsieh, Singer (2015: 69) writes that workers do not have valid claims of justice against their employers, because workers have rights to exit the firm and adequate opportunities in Rawls' property-owning democracy. Property-owning democracy is one of Rawls' preferred set of institutions for realizing his principles of justice. It would widely distribute productive capital to citizens, giving them greater equality of opportunity and financial independence from any particular employer (Rawls 2001: 158–161).

We argue that the idea of property-owning democracy shows the relevance of Rawlsian justice to the corporate governance question of the proper ownership of firms. A property-owning democracy would broadly distribute productive property, and in a modern economy, a main form of ownership in productive property consists of shares in corporations. Rawlsians have proposed that a property-owning democracy should widely distribute ownership of corporate shares among citizens to satisfy the difference principle and fair equality of oppor-

tunity. Rawls' property-owning democracy then has implications for the corporate governance question of who should own the corporation.

We add that theorists of justice can also benefit from research in corporate governance. Corporate governance scholars have written on the principal-agent problem that arises between shareholders, who are the owners, and management, who are their agent. When ownership becomes dispersed among an increased number of shareholders, they will have greater difficulty monitoring managers. We suggest that property-owning democracy may exacerbate this principal-agent problem by dispersing ownership more widely compared to states that do not redistribute share ownership among citizens. To address this issue with property-owning democracy, Rawlsian theorists should closely examine research in corporate governance.

Conclusion

Whether principles of justice can apply to corporate governance is a question with important practical implications. While Singer raises insightful and original objections to scholars who apply justice to corporations, we have argued that Rawlsian theorists can answer them and that principles of justice should apply to business corporations. Writers in business ethics and corporate governance can draw on Rawls' theory in addressing the proper aims, ownership, internal organization, and powers of the firm.

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