

---

## Rawls Well That Ends Well: A Response to Welch and Ly

Abraham Singer<sup>1</sup>

A RESPONSE TO Theodora Welch and Minh Ly (2017), “Rawls on the Justice of Corporate Governance,” *Bus Ethics J Rev* 5(2): 7–14, <http://doi.org/10.12747/bejr2017.05.02>

### ABSTRACT

Welch and Ly register three objections to my argument that the Rawlsian paradigm offers no resources for formulating a normative theory of corporate governance. In this brief response, I note that while I agree with the first of these objection, I don't think it poses any serious trouble to my argument; the other two objections, on the other hand, I am less convinced by. I then offer two alternative strategies for bringing Rawls to bear on business ethics, which don't involve trying to apply his principles of justice to the corporation. Finally, I conclude with a reflection on why people are so insistent on talking about Rawls in the first place.

**IT TURNS OUT** that writing a piece urging business ethicists to stop writing about Rawls is, predictably, something of a mug's game. My *Business Ethics Quarterly* article (Singer 2015) argued that Rawls did not, and Rawlsians cannot, conceive of the corporation as a part of the “basic structure” of society, without betraying or undermining Rawls's political conception of justice. I therefore argued that we business ethicists, who put such institutions at the forefront of our analyses, would do well to put away our copies of *Theory of Justice*. This has

---

<sup>1</sup> Loyola University Chicago. Email: [asinger2@luc.edu](mailto:asinger2@luc.edu)

attracted many very smart responses standing up for the Rawlsian position in business ethics against my attacks. Welch and Ly's Commentary is a welcome and thoughtful addition to this debate, and I thank them for forcing me to revisit my thoughts on the matter.

Welch and Ly register three objections to my argument. First, they contend that even if I were right that the corporation is not part of the basic structure, it does not imply that Rawls's principles of justice have nothing to say about the corporation. Second, they argue that we should see the corporation as part of the basic structure by virtue of its role in our "system of social cooperation." Third, they contend that Rawls's advocacy for property-owning democracy helps us see how his theory bears on questions of corporate governance. In what follows, I first respond to their claims: I agree with their first point, and I don't think that it poses a serious problem for my original argument; on their second and third points, I am less convinced. I then offer two alternative strategies for bringing Rawls to bear on business ethics, which don't involve trying to apply his principles of justice to the corporation. Finally, I conclude with the meta-level suggestion that this interest in searching for a Rawlsian approach to the corporation turns on certain pathologies in business ethics and political philosophy, which we would do well to guard against.

### **Rawlsian Justice Goes Beyond the Basic Structure**

Welch and Ly's first point is that even if I am right, even if the corporation is not part of the basic structure, it does not preclude a Rawlsian engagement. This is because, as they correctly note, while for Rawls the "basic structure" is the primary subject of justice, it is not the only subject of justice; the normative dictates of justice trickle down, as it were, onto even non-basic areas. This is surely right: justice and the basic structure affect even voluntary associations from without, which would mean a corporation is no sanctuary from the demands of justice. Corporations have no legitimate claim to violate basic rights of others, for instance, and their aims must comport with such considerations.

This is right, but no real challenge to my position, though this may not have been so clear because in my original contribution I did not sufficiently stress certain distinctions. I distinguish corporate governance from corporate law, where I think of the former as the

rules and systems of governance that corporations create for their own internal arrangements and corporate law as the law imposed upon them from outside. Here, I find Eric Orts' (2013) language helpful: in terms of corporate governance, corporations are "jurisgenetic," creating certain law-like rules for themselves; in terms of corporate law, corporations are "jurispathic," subject to the law of the land. Where the basic structure are those legal and coercive institutions, it is a perfectly consistent position to say that: corporations must abide by and obey the coercive institutions that govern the economy, but also have a domain of free exercise to establish rules for their own affairs. My argument is that while there are weapons in the Rawlsian arsenal to say something about the former (though, frankly, it's not obvious we need the Rawlsian artifice to say "corporations ought to obey the law"), corporate governance falls outside the scope because it is not part of the basic structure; put in Rawlsian terms, such elements are part of the "internal life" of associations. However, to say something more about corporate governance (e.g., that corporations ought to be governed by one stakeholder group instead of another, or that principal-agent problems ought to be mediated in some particular way or according to some pre-ordained principle) by virtue of a corporation's corporateness, requires that we see a corporation as part of the basic structure.

### **Corporations Are Part of the Basic Structure**

This brings us to Welch and Ly's second claim, which is that I am wrong to conceive of the basic structure narrowly in terms of legal and coercive institutions. Instead, they argue that we should understand the basic structure in terms of a "system of social cooperation," a system of which the corporation would be a part. Certainly corporations are important for facilitating and structuring how we effect social cooperation. Note, however, that "a system of social cooperation" is how Rawls conceives of "society," which is distinct from the concept of the basic structure. Understanding society as a system of cooperation is important for Rawls, so that he can establish the idea that orders of cooperation are not fixed naturally or decreed from on high, but are socially established through mutually accepted and recognized rules and procedures.

The "basic structure," on the other hand, is not synonymous with "society" so understood; it is a specific set and configuration of insti-

tutions that structure this system of social cooperation. Rawls offers a conception of the basic structure to establish the moral significance of *institutions* for such cooperation and, relatedly, to establish justice as something grounded in our political, not metaphysical, beliefs. Differently put, establishing a conception of the basic structure is necessary because it narrows the claims of justice to particular, and particularly important, subsets of social interactions. Consequently, the fact that society is a system of social cooperation, and the fact that the corporation is part of how we cooperate, does not imply that the corporation is part of the basic structure. Indeed, Welch and Ly (2017: 11, emphasis mine) seem to concede the point when they argue that “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.” Note that it’s the *legal recognition* doing the heavy lifting here; this moves us back toward understanding the basic structure more narrowly in terms of legal and statutory coercion. As the above distinction between corporate governance and corporate law helps clarify, this does not mean that the rules created by corporations for their internal governance are therefore part of the basic structure and subject to Rawlsian justice.

### **Property Owning Democracy**

Welch and Ly also take issue with another claim: that Rawlsian principles cannot generate obligations regarding corporate governance because Rawlsian principles would render such obligations superfluous. Through an engagement with the work of Hsieh, I contended that attaining Rawlsian justice would effect fair distributions of wealth and opportunity, such that workers could exit the firm and thereby escape workplace domination. Welch and Ly’s argument is that Rawls’s discussion of “property owning democracy” seems to suggest that the achievement of his well-ordered society would not be purely distributive, but would include altering the ways enterprises are owned and run, as his discussion of worker-ownership intimates.

This may be right. However, I admit to generally finding Rawls’s claims about the firm’s relationship to property-owning democracy underwhelming. Considering how vague and suggestive he is on this score, it’s not at all clear what weight we ought to accord them. Are his concerns regarding the firm integral to and coherent with his theory? Given all of his prior writing and theory which would suggest

that corporations are not part of the basic structure, and his silence on the issue in the rest of his corpus, such writings look less like the confident conclusion of a principled argument, and more like the *dicta* of a spent egalitarian who realized, to his dismay, that he had painted himself into a corner.

### **Different Ways of Connecting Rawls to Business Ethics**

While the above will likely not fully satisfy Welch and Ly, I hope it at least helps to clarify my initial argument, and to better illuminate the nature of our disagreement. I would like, however, to take the opportunity to suggest two different strategies for applying Rawlsian theory to business ethics, which don't involve locating the corporation within the basic structure.

First, we can use Rawls's philosophy less in terms of its function as a prescriptive theory, and more in its function as a *reconstructive* theory, telling us about the norms implicit in the social practices we already engage in (Bercuson 2014). We should not ignore the political or ideological background against which business takes place when theorizing about business ethics, which for many societies will be some variant of liberalism. Rawlsian theory is a helpful tool of rendering explicit that normative background and shining a light on commitments that we already seem to endorse.

Secondly, Rawlsian theory has some insights into human moral development that could have implications for our understanding of business ethics. In the oft-avoided third section of *Theory of Justice*, Rawls offers an account of how our sense of justice is developed, emphasizing how associations function as places where we learn how to interact with others and cultivate our powers of reasonableness. This associational and corporate realm, then, is important not as an institution governed by principles of justice, but as a site where our moral faculties are cultivated or stunted. It seems that business ethics would be enriched by taking such dynamics seriously, and thinking about how modern business corporations help or hinder the cause of justice in terms of how they contribute to the development or perversion of this sense of justice. Note that this is not a question about how Rawls's principles apply to such associations; instead, the question switches to whether corporations are good or bad for cultivating

the sorts of moral and political subjects that a just society is predicated upon.

### **But Seriously, Enough with the Rawls...**

In this Response I have tried to defend the particular claims I made in my original piece against the very smart and able objections of Welch and Ly. In the process, I have made certain concessions, even suggesting ways that Rawls might influence our thinking about corporations. By way of concluding I would like to re-assert myself and defend the spirit in which that piece was written.

There is a reflex amongst business ethicists to look to authorities or pre-established theoretical traditions as off-the-shelf ethical theories, moral salves simply to be applied to the corporate patient. These come in various flavors: Catholic, Kantian, Aristotelian, etc. In such approaches, the project of business ethics is simply a matter of picking the right theory and applying it correctly to the business situation under study. As political philosophers have become more interested in business ethics, this tendency has melded with a predisposition that Anglophone political philosophers brought with them: an over-reliance on Rawls. My interest in writing the Rawls piece – as well as a critique of Habermasian approaches to business ethics (Sabadoz and Singer 2017) – was to try and push business ethicists and political philosophers away from these tendencies.

The great thinkers and ideas will influence our thinking, as well they should. But we should fight, and cultivate a skeptical attitude as a guard, against our reflex to see these ideas as ready-to-deploy, or think safe

ing that our favored thinkers already have the answers to business ethics questions, if only we squint hard enough. Doing this overestimates the mobility of political theories and underestimates the complexity of the problems that modern commerce presents. Let's start with the latter.

*Received 1 February 2018 / Posted 16 February 2018*

#### **REFERENCES**

Bercuson, Jeffrey. 2014. *John Rawls and the History of Political Thought: The Rousseauvian and Hegelian Heritage of Justice as Fairness*. New York: Routledge.

- Orts, Eric. 2013. *Business Persons: A Legal Theory of the Firm*. Oxford: Oxford University Press.
- Sabadoz, Cameron and Abraham Singer. 2017. "Talk Ain't Cheap: Political CSR and the Challenges of Corporate Deliberation." *Bus Ethics Q* 27(2): 183–211, <https://doi.org/10.1017/beq.2016.73>
- Singer, Abraham. 2015. "There Is No Rawlsian Theory of Corporate Governance." *Bus Ethics Q* 25(1): 65–92, <http://doi.org/10.1017/beq.2015.1>
- Welch, Theodora and Minh Ly. 2017. "Rawls on the Justice of Corporate Governance," *Bus Ethics J Rev* 5(2): 7–14, <http://doi.org/10.12747/bejr2017.05.02>