
Corporations and Voting: A Response to Kenneth Silver

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A RESPONSE TO Kenneth Silver (2018), “Do I Think Corporations Should Be Able to Vote Now?”, *Bus Ethics J Rev* 6(4): 18–23.

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ABSTRACT

In his thoughtful Commentary on my article, “Should Corporations Have the Right to Vote? A Paradox in the Theory of Corporate Moral Agency,” Kenneth Silver incorrectly asserts that I endorse (i) Robert Dahl’s Principle of Affected Interests and (ii) social contract theory. To the extent that Silver’s criticism of my argument is based on the claim that I appeal to either theory as the ground for my claim that corporate moral agency entails a corporate right to vote, it is misguided. I rely only on the Rawlsian equal participation principle that invests those subject to the law with the right to vote. To the extent Silver’s criticism is directed to that assertion, it is on point.

I AM GRATEFUL that Kenneth Silver thought my article, “Should Corporations Have the Right to Vote? A Paradox in the Theory of Corporate Moral Agency” (Hasnas 2018), to be worthy of further discussion, and I thank him for his thoughtful comments. I pen this brief Response merely to clarify a few points.

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Professor Silver accurately describes the article as arguing for the conditional conclusion that if the argument offered by the leading advocates of corporate moral agency is correct, then, in a liberal democracy, corporations should have the right to vote. The advocates of corporate moral agency contend that to be a moral agent requires one to have the ability to autonomously make and act upon well-informed normative judgments; that is, to possess autonomy, normative judgment, and self-control. They then argue that corporations possess these characteristics.

In my article, I point out that because the essence of liberal democracy is government through the participation of the governed, all those subject to the law are entitled to the right to vote. Here, I am appealing to Rawls' principle of equal participation that holds that "all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply" (Hasnas 2018²: 5, citing Rawls 1971: 221). I then argue that to be subject to the law, one must be an autonomous agent with the judgment necessary to understand the moral imperative embodied in the law and the self-control necessary to conform one's behavior to that imperative; that is, one must possess autonomy, normative judgment, and self-control. I conclude from this that to the extent that the advocates of corporate moral agency have established that corporations possess autonomy, normative judgment, and self-control, they have established that corporations can be subject to the law and to the extent that the law in fact applies to corporations, that corporations should have the right to vote.

Professor Silver is entirely correct to point out that this argument crucially rests on the premise that being subject to the law invests one with the right to vote. To the extent that one believes that the right to vote derives from some other source, he or she will not be convinced by my argument. I recognize that my argument is limited in scope. It asserts only that one cannot subscribe to both the view that corporations are morally responsible agents and the Rawlsian principle of equal participation without also accepting the view that corporations should have the right to vote.

² Page references in the text to Hasnas (2018) are to the online edition posted 21 April 2016 by *Journal of Business Ethics*.

Clarifications

I do have a couple of quibbles with Professor Silver, however. He suggests that I appeal to Robert Dahl's Principle of Affected Interests in making my argument (Silver 2018: 19). In fact, I do not, and for precisely the reason Professor Silver gives as to why this would be a bad idea—the principle is overinclusive. Although I do discuss Dahl's principle for purposes of exegetical completeness, I rely only on the narrower principle that associates the right to vote with being subject to the law, which I view as embodying Rawls' principle of equal participation. (See Hasnas 2018: 6 stating, "I appeal only to a narrower, more modest "all subjected" version of the principle—one that would enfranchise only those who will be bound by the outcome of the democratic process; that is, only those who are subject to the democratically enacted law.") Thus, to the extent that Professor Silver's criticism of my argument relies on the overinclusiveness of Dahl's Principle of Affected Interests—e.g., that my argument would imply that animals should have the right to vote (Silver 2018: 19), it is inapposite.

Later in his Commentary, Professor Silver (2018: 21) suggests that I appeal to social contract theory as a ground for the right to vote. Once again, I do not. In this case, I believe the problem is that Professor Silver has taken one of my assertions out of context. In the last part of my article, I am canvassing potential arguments against my position. One such argument that I examine in detail is advanced by Kendy Hess.

In her argument, Hess (2013: 331) distinguishes four different paradigms of personhood, the third of which is the political philosophy paradigm, which *she defines* as "the paradigm of the rational agent from the social contract tradition." She distinguishes this from a fourth paradigm based on a party's vulnerability to pain and suffering. She then argues that corporations cannot have rights that derive from the fourth paradigm because they do not have such vulnerabilities. In addressing Hess's argument, I point out that under her classification scheme, the right to vote derives from the political philosophy paradigm, not the vulnerability paradigm. In doing so, I am necessarily employing *her definition* of third paradigm.

Professor Silver quotes me as asserting, "In a liberal democracy, the terms of the social contract hold that in return for one's agreement

to be bound by the law, one receives an equal say – a vote – in the process by which it is created.” In context, it should be obvious that this is not a statement of my position, but a statement of what would be the case under Hess’s classification scheme; something that is made clear by the immediately following sentence, which states, “This means that the right to vote clearly derives from Hess’s third paradigm of personhood . . .”

In short, to the extent that Professor Silver’s criticism of my argument is based on the claim that I appeal to either the Principle of Affected Interests or social contract theory as the ground for the right to vote, it is misguided. I rely only on the Rawlsian equal participation principle that invests those subject to the law with the right to vote. To the extent Professor Silver’s criticism is directed to that assertion, it is on point.

At the end of his commentary, Professor Silver notes that if my argument is successful, it carries implications that go beyond the right to vote. I certainly agree with this, although I do not agree that it implies that corporations should have the right to run for office, as he perhaps fancifully suggests. In fact, I have already published an article arguing that it implies that corporations have a First Amendment right to freedom of speech and that *Citizens United* was correctly decided (Hasnas 2017). I plan to write an article arguing that corporate moral agency implies that corporations should do jury duty, and in fact, are Constitutionally required to be in the jury pool when a corporation is a criminal defendant.

Although I may be aging myself by admitting that Professor Silver’s reference to David Foster Wallace is lost on me, I see nothing particularly dystopian about these implications. Rather, they merely constitute the latest chapter in a centuries-long struggle for civil rights. At one time, only property owning white males had the franchise. Gradually, it was recognized that first non-propertied white males, then African-American males, and then women were autonomous moral agents who were entitled to a say in the creation of laws under which they must live. If the advocates of corporate moral agency are correct and corporations are autonomous moral agents with interests and voices of their own, then allowing them a say in the laws that regulate their existence and often tax away their resources is merely the next step on the journey toward social justice.

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REFERENCES

- Dahl, R. A. 1990. *After the Revolution?: Authority in a Good Society*. New Haven: Yale University Press
- Hasnas, J. 2018. “Should Corporations Have the Right to Vote? A Paradox in the Theory of Corporate Moral Agency.” *J Bus Ethics* 150(3): 657–670.
<https://doi.org/10.1007/s10551-016-3172-0>
- Hasnas, J. 2017. “Does Corporate Moral Agency Entail Corporate Freedom of Speech?”. *Soc Theor & Pract*, 43: 589–612.
<https://doi.org/10.5840/soctheorpract20178315>
- Hess, K. 2013. “‘If You Tickle Us...’: How Corporations Can Be Moral Agents Without Being Persons.” *J Value Inq* 47: 319–335.
<https://doi.org/10.1007/s10790-013-9391-z>
- Rawls, J. 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press
- Silver, K. 2018. “Do I Think Corporations Should Be Able to Vote Now?” *Bus Ethics J Rev* 6(4): 18–23.
<https://doi.org/10.12747/bejr2018.06.04>