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In this paper I intend to draw upon Onora O'Neill's (1996) work, *Towards Justice and Virtue: a constructivist account of Practical Reasoning,* to address a principal issue of corporate governance, the normative responsibilities of a corporation towards its stakeholders. O' Neill in her text underlines a number of important points including: the integration of particularist and universalist accounts of morality; the priority of obligations over rights; the importance of the distinction between imperfect and perfect duties; the relation between the virtues and imperfect duties. It is my argument in this paper that applying O'Neill's analysis of justice and virtue to corporate governance will bring a level of clarity to certain issues that have become the focus of stakeholder theory such as stakeholder rights, the institutionalisation of stakeholder rights, the obligations of the corporation according to the stakeholder model, and the structure of corporate organization.

Toward a General Reconciliation of Virtue Ethics and Universal Principles

O' Neill, in her work, begins with the distinction between universalist and particularist approaches to ethical theory. The universalist approach is one that focuses on certain universal principles that serve as guides to ethical behaviour most perspicuously advanced by Kantian deontologists and utilitarians. The general universalist approach, as is well known, came under criticism from virtue ethicists who hold that moral or virtuous action must be grasped in terms of culturally and socially specific descriptions. O'Neill points out that what is at issue is the abstract character of act descriptions which universalists identify as the proper content of universal principles, and the virtue ethicist's insistence that we cannot guide or judge action by using abstract descriptions or principles that incorporate them. Action, they say, must be grasped in terms of culturally and socially specific descriptions and thereby intelligible and accessible to particular audiences. Robert Solomon, (1993), (see also, Mintz 1996; and Hartman 1998) has probably been the most ambitious in efforts to apply virtue ethics to business practice.

O'Neill accordingly presents, what she calls, a constructivist approach to justice and morality that strives to integrate universalist and particularist accounts to do justice to the insights of both schools of thought. One notes that recent work by Kantian and contractarian business ethicists, whose theories incorporate universal principles, has been receptive to the idea of integrating the universalist and particularistic accounts (Bowie (1999; Donaldson & Dunfee1999). Where O'Neill's work proves to be most interesting is in her endeavour to integrate both the universalist and particularist accounts through an analysis of obligations.

Whereas deontologists, both Kantian (Bowie, 1998, 1999) and contractarian (Donaldson and Dunfee (1994; 1995; 1999) have frequently distinguished themselves from utilitarians by attributing deontic priority to rights, O'Neill gives primacy to obligations. This allows her both to extend the range of moral responsibility and to

draw important distinctions within this range of responsibility by reference to Kant's conception of perfect and imperfect duties. These distinctions then become the key to understanding how virtue and character become operative within a given set of general and special responsibilities.

Obligations and Rights

With respect to normative stakeholder theory one notes that many other business ethicists in their endeavours to give content to principles enjoining certain general responsibilities towards stakeholders have also frequently postulated some set, or list of rights that should command corporate loyalty. For example, Evan and Freeman (1993: 82) in their ground breaking essay promoting the interests of all company stakeholders, argue that the corporation should be managed for the benefit of stakeholders and the 'rights of these groups… assured.' Not only this but the groups must have the right to participate, in some sense, in decisions that substantially affect their welfare. Bowie (1998:47) argues that recognition of stakeholder interests should involve '...getting input from all affected stakeholders.' But some go further than this; McCall (2001) has recently argued that employees as non-owner stakeholders have a moral right to co-determine corporate policy. Some, for example, argue that employees in accordance with stakeholder theory should have the right to purchase the firm in the event of bankruptcy, while others believe there should be a right to secure employment and immunity from employment at will etc. (Milton, 1995).

Given that moral action that would accord with stakeholder theory and greater public responsibilities is often fleshed out by attributing rights to the various stakeholder groups, the worrying aspect is that there is no unanimity concerning these rights. Having said this, one also needs to notice that the rights invested in the important stakeholders are often in the nature of welfare rather than liberty rights. This is to say that that companies are not simply obliged to refrain from harming these groups, that is, violating liberty rights – which should apply regardless of stakeholder theory - but moreover are expected to provide some positive good in accordance with a given welfare right, as for example, Evan and Freeman (1993) who mention better parks and day care facilities in discussing the stakeholder claims of the local community.

O'Neill points out that responsibility for enhancing the welfare of others may well be easily avoided if we give rights rather than obligations deontic primacy. She argues that many welfare rights become vacuous where rights rather than obligations are emphasized – especially where obligations are left unspecified. Familiar welfare rights that we find stated in the UN Universal Declaration of Human Rights, or Donaldson and Dunfee's (1999: 75) right to basic economic opportunity for both genders become vacuous, if there exists no institutional context that identifies those invested with the responsibility to ensure fulfilment of these rights. On this point O'Neill (1996:134) observes that welfare rights are different from liberty rights in that to institutionalise the former is not just to secure the backing of the law and the courts but also to define and allocate obligations to contribute and provide the relevant goods

and services and so to fix the very shape of these rights and obligations. The failure to assign obligations and responsibilities to individuals who would be responsible for ensuring these rights means that the right is virtually undefined and unspecified. In these circumstances the welfare right holder is in effect without a definable right that is capable of being asserted.

With respect to stakeholder rights, the corporation is much like a nation state that has assented to certain welfare rights in that these rights remain meaningless unless the collective entity creates an appropriate organizational mechanism for adjudication and resource management to address these putative rights. This involves the creation of a complex organizational structure that includes the designation of trained individuals to adjudicate issues involving the identity and claims of the right holders as well as others who are responsible for committing and ensuring that resources are applied to meet the varied claims these rights represent.

Conversely, O'Neill points out that obligations without corresponding rights are far from meaningless, and indeed form the basis for the cultivation of the social virtues. O'Neill argues that making obligations primary, entails responsibility for a given situation, even if the institutionalised setting does not obtain. If, on the other hand, one remains content with attributing rights without specifying obligations, there is an unavoidable tendency to feel that moral constraints really only extend to liberty rights that clearly instantiate specific obligations requiring non-interference.

Thus if we regard stakeholder claims as obligations rather than simply rights, firms do not necessarily escape their responsibility to promote the welfare of a given stakeholder group if there exists no institutionalised organization that defines these claims in the language of stakeholder rights and commits resources to satisfy these claims.

Imperfect and Perfect Duties

Given these reasons for promoting obligations, rather than rights, as the primary deontic category, O'Neill (1996:140) observes that obligations, framed in universal principles, provide a moral grounding for the virtues that we ought to cultivate. An account of virtues that are duties provides a framework for an account of certain social virtues, which are duties as well as virtues. Many important virtues like honesty, fairness, beneficence and courage have been held as holding across many roles and activities although lacking counterpart rights. Many important virtues have been construed in this way, she says. Thus, although individuals may, for example, feel obligated to cultivate the virtue of beneficence, no one possesses a counter part right that requires that he/she be treated beneficently. Likewise no one possesses a right that requires that others exercise courage on their behalf, although all are under a duty to act courageously when the occasion arises.

O'Neill's constructivist account of ethics emphasises the importance of distinguishing between i*mperfect* and *perfect duties*, and identifying the social virtues with the former. *Imperfect* duties as we know are generally indeterminate. The person subject to these duties is free to exercise judgement in determining the content of the duty, what exactly is to be done, and free to determine the object or the beneficiary. Additionally, the agent is free to choose the occasions on which to perform the duty.

An appropriate example is the Christian duty of charity, which is extremely open ended. The obligation itself does not indicate what exactly is to be done, the individuals or groups to be benefited or the frequency of performance. In contrast, *perfect* duties indicate unambiguously exactly what is to done, the individual or group owed the duty, and frequency of performance. A good example would be the obligations undertaken under contract as for instance in a hire purchase agreement, or the duties the company owes to its shareholders, according to specific contractual obligation, for example, the duty to hold an AGM with shareholder voting rights.

The characterization of responsibilities to stakeholders as being special imperfect duties allows us to distinguish them conceptually from other duties owed to stakeholders that are not based on stakeholder status. There exist also *universal perfect duties* whose counterpart liberty rights are possessed by all (not just stakeholders) and often protected by law, for example environmental legislation that prohibits the dumping of toxic effluent that is a general danger to health. Similarly regardless of so called stakeholder duties, the company already owes many of the stakeholders *special perfect duties* arising from contractual relationships, for example: the duty to pay wages, or satisfy creditors etc. It is obvious that stakeholder theory goes beyond these commonly recognized obligations to refrain from injury (*universal perfect duties*) and acknowledge contractual constraints *(special perfect duties*), and imposes certain unspecified duties that require the bestowing of some positive benefit not dissimilar to the positive benefits bestowed upon shareholders. Because these duties only involve special groups affected by the operations of the firm, the duty cannot be universal. Moreover, because the duties are largely unspecified and dependent on the judgement and cultural contingencies, these responsibilities closely resemble imperfect duties, which we will define as *special imperfect duties*.

For our purposes, duties owed to non-shareholder stakeholders - all those directly affected by the operations of the firm - would be an example of *special imperfect duties*. These imperfect duties are created through particular relationships in which certain groups are directly affected by the firm's activities. However, although there are no counterpart rights attached to these duties, firms are still obligated to act in the interests of these groups. How would these rights differ from universal imperfect duties, which also require us to promote the interests of the universalized other? Essentially a universal imperfect duty would resemble Locke's famous universal obligation, to preserve the rest of mankind, as much as he can, which is interpreted as a command of God. In contrast, special imperfect duties, for example, arise from a he special relationship as in the case of parenthood. In the latter case, obligations are much stronger and exercise greater moral force and are more specific but don't necessarily invest a set of rights in the infant or child. We are obligated to do the best for the child but this doesn't necessarily mean the child has an enforceable right against the parent to provide a college education. Likewise local stakeholders impose an obligation on the firm to act in their interests but this doesn't mean they have an enforceable right to a public park to be provided by the local firm. Ultimately giving obligations primacy and identifying stakeholder obligations with imperfect duties allows for the exercise of judgement and recognition of the particular context that determines the appropriate response.

Objections to the Deontic Primacy of Obligations over Rights

However, some might favour rights over obligations on the grounds that an individual who lacks a specific right to some form of welfare but remains the recipient of certain related duties has limited choices. Rights give one the option to actively assert or waive the right. In a sense, one without rights is reduced to an object of patronage and paternalism, dependent on the beneficence of the benefactor, rather than an engaged autonomous agent.

There is certainly a degree of truth to this argument, but my position is that giving obligations deontic priority does not obviate the possibility of creating an organizational framework that invests specific rights in stakeholders. Buchanan (1996:33), for example, suggests that competitors might get together to perfect imperfect duties through an arrangement that included the coercive power of contract law to achieve mutual self-binding. This might mean allowing representatives from the local community the right to participate in board meetings especially on issues that affect their welfare. Creating such rights would not deny that obligations had deontic priority. For example, Locke's famous natural rights are derived from a duty to preserve us and to the best of our ability the rest of mankind. (Every one is bound to preserve himself and not to quit his station wilfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind…" *Two Treatises* II: 6)

However, supporters of the rights approach might also argue that emphasis on rights gives us a better opportunity to transform responsibilities to stakeholder into legal obligations. Giving deontic primacy to rights may be a better way to ensure that these moral rights are transformed into legal rights, and so to ensure stakeholder protection in this way. But I argue that to attempt to define and fix these responsibilities by attributing specific rights to the beneficiaries and *perfect* duties to companies, actually undermines the moral character of these responsibilities and moreover may well rebound to the disadvantage of the intended beneficiaries.

Although many would persist and demand the rules to be changed so that firms are legally required to undertake certain explicit policies and actions that promote the interests of these stakeholders, the implementation of these changes in the law may rob widely accepted normative stakeholder theory of its moral aspect. If we become overly legalistic about these responsibilities we may restrict moral choice, which is essential to the attribution of moral value. H.L.A. Hart (1961) in writing on the distinction between law and morality argued that if all morality became identical with the criminal law then the idea of morality might well die out rather than be preserved. In some sense the point of being moral is that you have freedom to choose to be that way, not that you are forced to act that way and have no choice.

Despite assertions about the value of unconstrained decision-making and moral autonomy some may assert an overriding utilitarian advantage. Many might persist and insist upon enforcing duties to stakeholders through the law or structural changes to the corporation on the grounds that overall benefits to a wide range of stakeholders outweigh considerations of freedom, individual autonomy or the value of moral choice. Moreover, insisting on these sorts of changes may defeat the

realization of the intended benefits, and even effect a situation where all parties are made worse off.

The awareness of possible disutilities begins with the recognition that capitalism succeeds where voluntary choice is a reality. Francis Fukuyama has argued that one finds a high correlation between the presence of voluntary associations, and societies that have generated significant economic wealth. With reference to the United States he states: '...most serious social observers have noted in the past that the United States historically has possessed many strong and important communal structures that give its civil society dynamism and resilience.

Additionally, the most important vehicle for the production and distribution of wealth in Western society for almost three hundred years has been the corporation. The modern corporation and its predecessor, the joint stock venture, have historically been organizations whose membership is voluntary.

But if one persists and forces the issue and demands that these stakeholder rights be institutionalised, the result may be far from happy. Essentially, as we said, the corporation is a voluntary association maintained through contractual arrangements. If the law required that investors take on increased liabilities with respect to employees, for example, forgoing employment at-will, or giving the employees the right to buy the business at less than market value, any benefit to employees, might well be short lived (Maitland, 2001). Investors cannot be compelled to supply capital to businesses. Greater risk and lower returns might well move investors to demand a premium. On the other hand, Maitland points out, investors may divert funds to other forms of enterprise or invest in real estate, gold, treasury bonds or foreign corporations such as the Japanese firm. The result might well be that the Western form of the corporation, as an organization for the generation of wealth might well cease to exist, thus negating all the efforts at reforms that were initially intended to adjust inequities.

One might accuse us of having shifted focus from a deontological analysis of stakeholder responsibilities based on the primacy of obligation to one based on a utilitarian concerns However, we might also reject the institutionalisation of stakeholder responsibilities on Kantian grounds that proscribe action based on self-defeating maxims.

Kant's great insight was that morality and rationality possess an intimate affinity such that the moral is what can be generally practiced without contradicting a generalized purpose. The categorical imperative tells us to "Act only on that maxim which you can at the same time will that it should become a universal law." We might do well to restate Bowie's (1999:15) explanation. Bowie quotes Korsgaard, 'A practice has a standard purpose and if its rules are universally violated it ceases to be efficacious for this person, and so ceases to exist.' Bowie (1999: 27) following Korsgaard (1996) calls this a 'pragmatic contradiction'. To avoid a pragmatic contradiction, one should not act on a maxim that, if universalised, would defeat the purpose behind the maxim. In universalising stakeholder responsibilities through legislation we may well create a situation in which people are no longer interested in voluntarily joining a corporation, in so far as universalising the responsibilities in this way may no longer be efficacious for the people who would join. In effect, the

institution itself may cease to exist. In this way we contradict the purposes of responsibilities to stakeholders, i.e., promoting their interests.

. The conclusion reached is that responsibilities to stakeholders are morally required, but the policy of enforcing them through the law may well fail as an ethically sound principle, if following such a principle defeats or contradicts the purpose, i.e., promoting the interests of the stakeholders.

In characterizing the stakeholder duty as being imperfect, we also recognize that the degree of responsibility is variable and dependent on particularities and circumstance. Although all Christians have the responsibility of charity towards the poor, the strength of the obligation is certainly dependent on financial well being. Those who are well endowed financially are under greater obligation to use their resources to alleviate the sufferings of the impoverished, and those with less are less obligated. For example, an individual with barely sufficient means to ensure the well being of his/her family would hardly be expected to contribute significant sums to the Saint Vincent DePaul Society or the Salvation Army.

The same argument applies within the commercial world with respect to stakeholder theory. Business ethicists, in offering generalities about what stakeholder theory entails, seldom seem to acknowledge the diversity we encounter in the agents of commercial enterprise, or its relevance. Some corporate entities are immensely wealthy and successful like Coca Cola or Microsoft, while others may be small struggling corporate organizations with less then a hundred members, not to mention a diversity of smaller partnerships and sole proprietorship firms. In these circumstances we cannot really demand that the struggling firm make significant contributions to the creation of parks and day care centers for the local community, for example.

Also finally, the reification of imperfect stakeholder responsibilities that renders a determinate list of rights and so called perfect duties, that legally expand corporate responsibility, poses a real danger that stakeholder theory may be used to reassign the responsibilities applicable to the private and public sectors. Stakeholder theory, which seeks to impose on business the self-regulatory responsibility for providing positive benefits while constraining profit maximizing, may be used as an excuse for government to abdicate both its supervisory role, and the responsibility for necessary collective goods. Expansion of corporate responsibility may lead governments to constrict and restrict their own activities with respect to both the defence of essential rights, and welfare services (Lea 1998). This can have infelicitous social and economic implications.

Conclusion

We have argued that an appropriate approach to business ethics is one, which integrates both universalist principles and particularist accounts based on virtue ethics, as exemplified in the constructivist ethics of Onora O'Neill (1996). We applied this approach to stakeholder theory and issues of corporate governance, and argued that too often these normative models are fleshed out through a rights based approach. Following O'Neill we argue that liberal philosophy generally and stakeholder theory in particular would be better served through prioritising duties

rather than rights. We argue that rights, especially welfare rights, are vacuous without specifying, identifying and legally institutionalising specific obligations and responsibilities. Prioritising duties, on the other hand, ensures thee is no escape from responsibility. Imperfect duties imply the development of certain virtues because virtues are really obligations for which there are no corresponding rights (O'Neill, 1996: 157). We go on to argue that many responsibilities to stakeholders are of this imperfect nature. Informal imperfect duties are preferred to legalized stakeholder rights on the fallowing grounds. First, legal proscription would rob normative stakeholder theory of its ethical character it would seriously undermine both the moral autonomy and freedom of choice of the agents. Second, the consequence may well be serious disutilities effected by undermining freedom of association and freedom of contract, not to mention the contradictions that arise when we attempt to enforce these moral obligations through the law. The maxim that would universalise these duties through the machinery of the law may well contradict its purposes if the corporation becomes unviable as investors desert the corporate structure to seek other forms of wealth generation. Finally we argued that there is also a danger that institutionalising and legally formalizing stakeholder duties may result in the reassignment of responsibilities belonging to private and public sectors. Ultimately the position argued for is that responsibilities to all stakeholder groups should remain as uniformalised imperfect duties that the firm is free to perfect in ways appropriate to cultural and societal setting, and in accordance with its capacity to do so.

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