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GOVERNANCE AND CORPORATE CITIZENSHIP

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GOVERNANCE AND CORPORATE CITIZENSHIP – HOW TO INTEGRATE CORPORATE CITIZENSHIP BEHAVIOR IN THE POLITICAL ORDER?

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SUMMARY

Recent discussions on Corporate Citizenship (CC) highlight the new socio-political role of corporations in society by arguing that corporations increasingly act as quasi-governmental actors and take on what hitherto had originally been governmental tasks. By examining political and sociological citizenship theories, we show that such a corporate engagement can be explained by a changing (self-) conception of corporate citizens from corporate bourgeois to corporate citizen. Whereas the corporate bourgeois is acting mainly for private business purposes, the corporate citizen engages in society by performing his civil and political rights and duties. As an intermediate actor in society, the corporate citizen therefore assumes co-responsibilities for social and civic affairs and actively collaborates with his fellow-citizens beyond governmental regulation. In order to clarify the mode of such a corporate citizenship contribution to society, we introduce the tenet of subsidiarity as a governing principle which allows for specifying corporations' tasks as intermediate actors in society.

KEY WORDS: *Bourgeois, Citizen, Corporate Citizenship, Corporate Responsibility, Subsidiarity*

1 Introduction

Over the last decade, the terms “corporate social responsibility” (CSR) and “corporate citizenship” (CC) have become key topics in international business ethics discussion. Although there are some differences in the accentuation of what should be the core elements of these conceptions (e. g. Buchholtz & Carroll, 2009; Leisinger, 2007; 2009; Habisch et al. 2008), and although different national political traditions have led to different interpretations of these terms (cf. Carroll, 2004; Matten & Moon 2008; Aßländer 2011) – ideas on CSR and CC have started to change the discussion of corporations' role in society among academics as well as among practitioners.

Nevertheless, despite an increasing number of publications on these topics, a commonly accepted definition of CSR or CC is not at hand. Both concepts often are used interchangeably (Montiel, 2006) or are seen as interlocking concepts with either corporate citizenship or corporate social responsibility being defined as the broader term including elements of the other one (Buchholtz & Carroll 2009, p. 33; Leisinger 2007, 2009). Furthermore, both concepts can be described from two different perspectives. On the one hand, from a technical perspective, CSR and CC are merely seen as strategic tools to ensure that corporate policy and management decisions adhere to minimal ethical standards. On the other hand, from a political perspective, CSR and CC describe (discretionary) corporate engagement for societal and environmental issues by providing services and goods for some sort of community that go beyond their regular economic activities (Aßländer 2011).

To overcome these difficulties, Crane, Matten and Moon have recently argued for an extended theoretical conceptualization of corporate citizenship which would allow a differentiation between CC and CSR: Based on the observation that corporations have started to voluntarily administer civic rights in cases where nation governments fail or are unable to do so, they see corporations as quasi-governmental actors and assign to them the status as members of a “surrogate citizenry” (Matten & Crane, 2005; Moon et al., 2005). But this new definition by Crane, Matten and Moon still remains rather vague since it deals with two very different citizenship-understandings: On the one hand, corporations become citizens because they are bestowed with specific citizenship rights by national law. On the other hand, they are seen as citizens because they themselves are the guarantor of citizenship rights to others. Furthermore, if

corporations act as quasi-governmental actors and provide civic rights in communities, it remains unclear whether such engagement should be seen as a voluntary discretionary engagement, terminable at any time for any reason, or whether such engagement must be seen as an obligation resulting from corporate citizenry. Especially in those cases where companies primarily see such engagement as a kind of strategic investment in the above-mentioned manner, this difficulty becomes obvious. In any case, the division of labor between the corporate private sector and public sector activities has to be clarified. In addition to the problem of lacking democratic legitimacy of any corporate citizenship activities, the question arises whether corporations have to *substitute*, to *supplement* or to *compensate* governmental efforts, whether and in which fields corporations must, should, or can contribute to society, and whether governments can secure that corporations will compensate for a lack in governmental services in all relevant areas on a sustained basis.

In order to solve these problems, at least two fundamental questions have to be answered: The first concerns the definition of corporate citizenship and how such corporate citizenry has to be conceived in a globalizing economy. The second question concerns the responsibilities of such corporate citizens and the quest for a governance principle that would allow for a clear regulation of governmental-corporate task-sharing. Hereby, based on the distinction of the bourgeois and the citizen as two types of citizenry, bestowed with different rights and duties, we will argue that corporations' role in society is changing and that corporations are, so to speak, on their way from corporate bourgeois to corporate citizen. Thus, as we will show, corporate duties shift from basic economically oriented contributions to the material wealth of society by providing useful goods and services to an adoption of a subsidiary co-responsibility as intermediate actors in society.

In order to answer the first question and to clarify the status of corporate citizenship we will start our argument with some historical sketches of the different conceptions of citizens as bourgeois and citizen and with looking at the key principles to be found in citizenship research (chapter 2). In the following section, we will shed some light on the understanding of corporations as citizens by discussing these ideas in the corporate context (chapter 3). Based on our historical considerations, we will argue that the understanding of corporations as citizens refers to two different corporate roles: as bourgeois and citizen. While the former focuses on the way how business is conducted and concentrates predominantly on the business case, the latter focuses on the political rights and duties of corporations which derive from a socio-political status as corporate citizens. Hence, a proper conception of corporations as citizens has to refer to both corporate roles as bourgeois as well as citizen.

In order to answer the second question, in the subsequent chapter we will discuss the duties that derive from a new understanding of corporate citizens as corporate citizen (chapter 4). Hereby, we will introduce the tenet of subsidiarity as a governance principle which would allow for clarifying the social (co)responsibilities of the corporate citizen in the context of governmental-corporate task-sharing (chapter 5) and discuss this in the light of globalizing economies (chapter 6). Based on the tenet of subsidiarity as a governance principle, which allows for assigning civic rights and duties in society, we will argue that corporations today and in the context of globalization may well be seen as intermediate actors bearing specific subsidiary co-responsibilities as citizen.

2 Bourgeois or Citizen – the Status of the Citizen

Although the idea of citizenship in the sense of belonging to a specific polity or empire reaches back to the Greek Polis and the Roman Empire, the modern "idea" of citizenship derived from philosophical enlightenment. On the one hand it is based on the concept of the nation state that possesses sovereignty and has the power to regulate the affairs of its citizens (Kant, 2006, §§ 43-61; Hegel, 1999, §§ 260-340; see also Hirst & Thompson 1995; Hirst et al. 2009, pp. 220-225). On the other hand it is based on the assumption of social contract theory, imagining that "society" is constituted by a voluntary contract among its members (e.g. Hobbes, 2003; Locke, 1952; Rousseau 1998). By consenting to a hypothetical contract, people establish political government, acknowledge its supremacy, establish legal security by subordinating under the same rules and thus constitute the sphere of the civil law making them equal members in the society, i.e. citizens (Fichte, 2009, II,3 § 1). In this conception the state, in analogy to private associations, was perceived as a distinct corporate body, being a moral person itself and held responsible for his action (Pufendorf, 2009, pp. 39-42). According to what was later on called the "dual

contract doctrine" (Höffe, 2007, p. 29), states – similar to private associations – are constituted by two different contracts: one among the individuals concerning the establishment of the association and its constitution, and one between the associates and their "government" regulating the respective responsibilities and the conduct of the public affairs (Pufendorf 2003: pp. 195-196; see also Carmichael, 2002, pp. 147-150).

Contemporary writers like Adam Smith already doubted that such a hypothetical contract could guarantee governmental authority because it neither binds future generations nor allows any citizen to withdraw his agreement (Smith, 1982, pp. 402-404). But still, over time, the idea of a social contract among (hypothetically) equal associates as foundation of society has increasingly replaced the medieval imagination of people as subjects of a prince by Grace of God. From this new perspective, society has been seen as a voluntary association which is regulated by a contract among its members, constituting their citizenry and describing their rights and duties as citizens.

In the republican tradition – and especially for Jean-Jacques Rousseau – the act of association of all individuals and their subordination under a general will (*volonté général*) forms a moral and collective body in which the individual is sovereign and subject at the same time (1998, pp. 14-16). Based on this idea Rousseau in his famous "Social Contract" defines two types of citizens: bourgeois and citizen. While the bourgeois (bourgeois) is defined by his settlement (town) and remains the subject of an outside authority, the citizen (citoyen) is member of a political community forming the state (city, polis) by participating in the political decision-making process (Rousseau, 1998, p. 15 FN). This definition of the citizen being sovereign and subject at the same time has become a cornerstone for political thinking in enlightened philosophy. In his "Principles of Political Right", Immanuel Kant (1891, p. 35) draws on this idea when arguing that the civil state is constituted by three "rational principles" which are: The liberty of every member of the society as a *man*, the equality of every member of the society with every other, as a *subject* (bourgeois), and the self-dependency of every member of the commonwealth, as a *citizen* (citoyen). It should be noticed at this point that for Rousseau as well as for Kant the definition of the citizen as bourgeois or citizen was not seen as a contradiction or a question of either or. Rather this distinction mirrored the double nature of citizenship reflecting two political aspects of the citizenry.

With the early writings of Karl Marx, this primarily political perspective of the citizen as bourgeois and citizen has been re-interpreted. Karl Marx adopts the terms of bourgeois and citizen, but re-defines them for differentiating the spheres of private (economic) and political life (Cohen & Arato 1993, pp. 304-305). While the bourgeois lives an egoistic private life, solely interested in his own affairs and regarding other men just as a means for his own purposes, the citizen is defined as a member of the political community considering himself a communal being (Marx, 1975, p. 154). Based on this differentiation and in his later writings, Marx uses the term "bourgeois" mainly as an "economic" term reflecting the distinction of two different classes in society – bourgeoisie and proletariat – characterized by their respectively access to the means of production. This characterization of the bourgeois as "economic citizen" has been commonly accepted not only by Marxists. Latest with the writings of Werner Sombart, one of the most influential German economists of the fin de siècle, the bourgeois was by definition perceived as a member of a specific class, the commercial society, solely defined by his "commercial spirit" (Sombart, 1987). For Marx and his successors the differentiation between bourgeois and citizen no longer reflects two political aspects of citizenship but signifies two separate spheres of citizen's life: as bourgeois he is individual and interested primarily in his private (economic) affairs; as citizen he is part of the community and interested in the public affairs and political participation.

These changes in the philosophical understanding of citizenship are also reflected in political theory and mirror historical development. In the aftermath of the French revolution and with the rise of the nation state, citizenship has become the privileged status of equal individuals who belong to the same "societal community" which in turn is confined to a national territory and governed by the rule of national law. From this point of view, the nation state is defined as a self-sufficient entity, solely dependent on the recognition of its sovereignty by the other nation states (Hirst & Thompson, 1995, 410). At the same time, the nation state becomes the sole grantor of civic rights and the concomitant privileges. Thus, the social status as citizen allows individuals to enjoy a set of unalienable rights on the one hand, but consists also of some obligations on the other. In return for the protection of the privileges of its citizens, the state expects its citizens to obey their country's law, to pledge allegiance to the state and to respect the citizenship rights of their fellow citizens (Bobbio, 1987).

But today admittedly, it is exactly this idea of a closed and homogenous societal community of fellow citizens within a national territory which is challenged by the increasing globalization of markets, the weakening of national governments' authority (de-nationalization), significant cross-border migration flows and new transnational forms of civil society and solidarity (Keck & Sikkink, 1998; Canovan 2009). As a result of globalization, societies have lost their commonly shared culture as a basis of national identity and have become pluralized with regard to lifestyles, religious beliefs and ethnic groups. Additionally, the nation state is exposed to different trans-, sub- and supranational forces like markets and civil society and has lost its function to be the genuine locus of democratic collective action (Warren 2009).

In order to clarify what citizenship could mean in the corporate context, it is thus fruitful to have a closer look at the very analytical core of citizenship against the background of globalization and the accompanying radical processes of social change.

According to Cohen, one of the prominent thinkers in contemporary citizenship theory, the "citizenship principle" (Cohen, 1999) consists of three components defining the full citizenship status in modern societies: citizenship as *juridical status of legal personhood*, citizenship as a *political principle of democracy*, citizenship as a *form of membership*. All three of these analytical components bear implications for the idea of a corporate citizenry and will be discussed in the following.

Citizenship as legal personhood is built on a juridical perception of citizenship that goes back to Roman law. It emphasizes that, as a legal person, every citizen has freedom and rights protected by law and "can sue in court and invoke a law that grants him rights" (Cohen, 1999, p. 249). Since this component of citizenship is not necessarily associated with a particular collective identity or the membership status in a "political demos", it is universalistic and can quite easily be transferred from a bounded national territory to a transnational or global level. According to this understanding of civic rights the same rules of (natural) law are applied to all people but are monitored by nation state governments (Höffe, 2007, p. 167). As Cohen points out, the global positivisation of human rights after 1948 reflects this very universal and inclusive character of such a juridical model of citizenship (Cohen, 1999, p. 249).

In contrast, *Citizenship as a political principle of democracy* is a model that is rooted in the political tradition of Aristotle and the idea of the Greek polis and ensues from republican tradition in which citizenship is defined as an "activity that involves participation in ruling and being ruled by equals who have uniform political status" (Cohen, 1999, p. 248; see Aristotle, 2009, p. 117 [1283b]). According to the republican conception of society, the citizen himself is both author of the laws and bound by his rules and thus sovereign and subject at the same time. As a member of the demos, the citizen has the right *and* the duty to actively engage in deliberation in the public sphere as well as to participate in the political decision-making process whereas he is expected to consider "the common good as well as particular interests" (Cohen, 1999, p. 248; see also Stokes, 2009, 31-34).

In addition to these legal and political aspects, Cohen describes *citizenship also as a form of membership*. In this view, membership is seen as the key prerequisite for the enjoyment of any social status and a "pole of identification that can itself become a rather thick and important identity able to generate solidarity, civic virtue and engagement" (Cohen, 1999, p. 248). Hence, this aspect of citizenship refers to a collective identity and solidarity between those enjoying citizenship status – as opposed to non-citizens. In this sense citizenship is by definition exclusive and implies "social closure", i.e. the exclusion of those that do not belong to the respective social community of citizens (Brubaker, 1992; Canovan 2009, pp. 156-158). To widen the scope of citizenship and to develop a "postmodern, disaggregated paradigm of citizenship" (Cohen, 1999, p. 262), Cohen creates the picture of a citizen that goes beyond the idea of nation state membership defined by territory (*ius solis*) or shared culture (*ius sanguinis*) as justification and membership criterion for citizenship. From this point of view, citizenry seems no longer to be bound exclusively to a "national identity" or homogenous social community, which may prove promising to develop membership criteria for a future corporate citizenship status.

By and large, these analytical dimensions of citizenship correspond with the above mentioned role models of the bourgeois and the citizen. Whereas as bourgeois the citizen follows the universalistic idea of private life protected by the (international) law guaranteed by external authorities, the citizen is member of a social and political community and undertakes responsibilities as citizen. For him, active socio-political participation is inextricably tied to his membership in a societal community and is part of his understanding of democracy, and this understanding of solidarity, membership and political engagement

may as well go beyond the limits of national boundaries.

3 The Corporation as Citizen – Corporate Bourgeois and Corporate Citoyen

Transferred to the idea of corporate citizenship we now can delineate two types of corporate citizens: As it originated in the 19th century, the modern type of corporation is a child of the bourgeois society and is invested with a specific “identity” and a “legal personhood”. As a legal person by its own a company is distinct from its owners, managers and employees, it is able to possess private properties, it is capable to sue and being sued in court, and it receives legal protection (Lower, 2010, pp. 74-75). Corporations are designed to be economic citizens whose main purpose is to succeed in the marketplace and to generate profits on behalf of the companies’ owners, thus corporations are granted legal personhood status as *bourgeois*. As corporate bourgeois, the corporation is a full member of the economic sphere and the private sector, and therefore enjoys the freedom to follow its own self-serving economic interests within legal boundaries. “Any reference to ‘social good’ was at best symbolic and derivative in that the economic function provided the social good” (Banerjee, 2007, p. 10). Like the individual bourgeois, the corporate bourgeois is subject of a sovereign which is external to his own economic scopes and provides and warrants the rules of law and grants the status of citizenship by national legislation. Since the corporate bourgeois is solely interested in economic success, also all his activities aiming at the betterment of societal welfare will ultimately be instrumental and solely serve in his (legitimate) economic interest. Thus, for him every additional engagement for society is seen as an indirect way to safeguard his own interests “...by enhancing the institutional contexts within which they operate and by creating intangible assets” (Gardberg & Fombrun, 2006, p. 330). For the corporate bourgeois, CSR and CC become “strategic investments comparable to R&D and advertising” (ibid.) and are estimated to be an appropriate management toolbox that serves as safety net and opportunity platform (Fombrun et al., 2000). Bakan, criticizing the purely strategic profit orientation of that kind, describes such corporate bourgeois as a psychopath who follows a pathological pursuit of profit and power (Bakan, 2005).

While there is some empirical evidence that several companies use CSR and CC as a kind of strategic investment also examples can be found where companies engage in society not following pure “selfish” interests but seeing such engagement as a kind of civic responsibility. As mentioned above we interpret this as a shift in the self-conception of corporations, moving from the role and status of corporate bourgeois to corporate citoyen. However, transferring the component of political participation, characterizing the citoyen, to corporate citizenship would entail that corporations should by status have a voice in creating and shaping the rules and the legal framework of the society within they operate (Scherer et al., 2006; Scherer & Palazzo, 2007). In addition to their bourgeois personhood, corporations are hence ascribed a role as political citoyens who have a right and responsibility to participate in public discourse, civil society and political rule-making. The idea of corporations’ political participation has become increasingly popular due to the political changes initiated by societal and economic globalization and the concomitant new political challenges which transcend national boundaries and defy any neat division of labor between public (state) authorities and private corporate actors (Haufler, 2001; Marsdon, 2000). In this context, it is especially multinational corporate actors which are not strictly bound to national territories and thus operate without clearly regulated scope for private economic activities, have started to play a new role in the political arena. The increasing engagement of corporate actors in initiatives like the Responsible Care Program of the chemical industry or the Caux Round Table, aiming at defining “soft law” standards of responsible business behavior, shows the changing self-conception of corporations and exemplifies how the corporate citoyen becomes both “legislator” and “subject” of his own rules. As Zadek (2001, p. 99) points out: “Corporations have of course always influenced public policy. What is new is that this influence is increasingly becoming formalized and legitimized through their involvement in partnerships with governments, international institutions and civil society organizations.” Underpinning this new quality of political participation, Zadek touches on the crucial distinction between the corporate bourgeois and citoyen: Whereas the corporate bourgeois sees his citizenship engagement first and foremost as an instrument used for private (business) interests the activities of the corporate citoyen are inspired by his will to contribute to the common good as member of the community.

Nonetheless, bestowing corporations with a political corporate citizenship status is not without problems: One first problem concerns the democratic legitimacy of corporate activities. Apart from the question

whether corporations have the competencies and capabilities to address global political problems, such corporate activities are in fact neither legitimated nor controlled by any democratically constituted political demos. Although Matten and Crane (2005, p. 175) state that in cases of governmental failures “society can only be happy if corporations fill this gap”, this conclusion misses the point. Even if laudable, corporate citizenship engagement remains dependent on a public consent. Accordingly, Scherer et al. assert that if corporations “assume responsibility for state function and generate global rules, then it becomes obvious that it is necessary to control corporations just as the democratic state needs to be controlled by its citizens” (Scherer et al., 2006, p. 516). Though it can be assumed that corporate activities that assist people in accessing civic rights are likely to be legitimized by public consent in large parts of the world, this will not solve the problem of democratic control, and this in general is true for every kind of societal engagement, irrespective of which kind of organization. Although nobody would allege that corporations agitate against democratic society in general, corporate engagement will to a certain extent be influenced by specific interests. Even Matten and Crane see this problem: If corporate citizenship engagement is driven primarily by “self-interest”, the corresponding social services are designed for companies’ purposes and not for civil society, and they are provided as long as they are considered to be useful for increasing corporations’ financial performance (Matten et al., 2003, p. 118). Criticizing such strategic societal engagement of corporations, Bakan points out, too, that “the belief these can be a substitute for government regulation, rather than a necessary complement to it, is dangerously mistaken” (Bakan, 2005, p. 151). Thus, if corporations start with providing civic rights and social services for other citizens, political regulation is needed to ensure that those services are in line with society’s expectations and thus will be democratically legitimized.

A second problem concerns the question of how to define the community that the corporate citizen belongs to and with which he should identify and develop ties of solidarity. Notably multinational corporations are cosmopolitans, not strictly attached to a single national territory and its legal rules. But without a suitable definition of membership the civic duties of a corporate citizen remain unspecified. Either the responsibilities of the corporate citizen threaten to remain limited to the bourgeois’ discretionary strategic engagement or the scope of corporate responsibilities might be stretched unlimitedly to any social and political issue in “world society in general”. Referring to Post’s corporate citizenship model, we argue that the membership component of each corporate citizen differs along two dimensions (Post, 2000, pp. 33-39): Each corporate citizen can define its membership in the societal community based on the *geographic scope* of its business activities (equivalent to the territorial principle of citizenship) as well as by its *industry orientation*, i.e. its membership in a specific industry with its very specific environmental, social and political challenges (equivalent to the cultural principle of citizenship). Hence we see the cosmopolitan corporate citizen as corporate citizen who assumes additional political and social responsibilities within his specific territorial and industrial community, tackling the corresponding political, social and environmental issues. There is empirical evidence that neither this double-nature of the citizen nor the self-definition of membership specifying his belonging is purely theoretical assumption. Multinational corporations have started to bind ties of solidarity with various local communities where they operate, engaging – for example – for AIDS orphans in South Africa, initiating educational programs in South-America and engaging in cultural activities in their home country at the same time. Furthermore, companies have started to develop “soft law” standards for their industries like the Responsible Care Program of the chemical industry, the Equator Principles for financing international projects or the various stewardship initiatives in different industries, like e.g. the Forest Stewardship Council of the woods and paper industry. Nevertheless, the factual citizenship engagement and the self-definition of belonging do not hide the fact that also in these cases the question of governmental-corporate task-sharing remains open. If corporations can be seen as cosmopolitan corporate citizens contributing to society beyond their economic activities, a governance-principle is needed that would allow for assigning the concrete co-responsibilities of the corporate citizen.

4 The Corporate Citizen and his Duties

While the discussion of the political rights and responsibilities of the individual citizen has a long tradition in sociology and political philosophy, the rights and duties of the corporate citizen remain unspecified, especially from the political perspective. On the one hand, nowadays governments and society expect an additional contribution of companies to solve environmental and societal problems. On the other hand,

even in most theoretical contributions, it seems to remain up to the companies whether, in which field and to what extent they want to contribute to the common good. But, if citizenship engagement of corporations is seen solely as a voluntary contribution, this would mean that social and environmental problems should be solved either by national governments, by voluntary corporate engagement or by collaboration of public and private actors. Thus, it remains unclear how the tasks should be shared. Theoretically, there are at least three modes of corporate contributions, depending on whether the engagement aims at substituting, supplementing or compensating nation state activities (Aßländer, 2011).

If *corporate engagement substitutes for governmental activities*, this would imply that corporations provide services that allow a choice between governmental or private offers. Such services are alternatives to governmental offers in specific sectors. Thus, for example, corporations may support private business schools, offer additional health care programs or establish ancillary retirement programs for their workers. All these activities are provided in addition to governmental services. For regulatory purposes governments may specify standards, e.g. for educational programs or health-care services, but accept corporate engagement in these areas if it meets the predefined standards.

If *governmental activities are supplemented with corporate activities*, this would mean either that existing governmental services are enlarged by additional opportunities financed by corporations or that new services are provided in form of public-private partnerships that would not have been possible for governmental actors alone due to restricted financial opportunities or limited management skills in that field. Thus, an endowed chair or research projects financed by companies may extend the educational and research opportunities of state universities. Nevertheless, if such services are not provided this would not jeopardize the regular tasks of universities. Supplemental corporate services widen the scope of governmental offers but do not endanger the basic supply of public goods in cases where corporations withdraw from their engagement.

If corporations *compensate for a lack in government services* this means that national governments cut down their engagement and withdraw from classic fields of social and environmental politics either due to financial restrictions or because of political considerations. Former governmental or community services are now provided solely by the private sector, namely corporate donors. Examples are the privatization of former state-owned railways which in most countries led to a limitation of services and a reduction of railway infrastructure especially in structurally weak regions. But, if former governmental offers are compensated by corporate activities, it is obvious that purely voluntary engagement of corporations will not guarantee that a reduced offer of services by nation-states will be compensated in all relevant areas on a sustained basis.

While corporate engagement aiming at offering additional services for the public seems to be less problematic – since reduced corporate offers will not affect the basic supply of public goods – the case of compensation seems to be more difficult. Without clear governance principles that regulating corporate-governmental task-sharing, the provision of public goods and the question of to whom they are offered become dependent on managerial preferences and the discretionary engagement of corporations and are thus no longer under democratic control. Therefore, based on our considerations concerning the new role of corporations as corporate citizen, we argue that corporations have to be seen as intermediate actors in society bearing a subsidiary co-responsibility. Referring to the tenet of subsidiarity, we will show that corporate citizens, like the individual citizen, have a duty to accomplish social activities that can be accomplished by them more efficiently or with greater competencies. It is worth noting at this point that such a claim does not only refer to the provision of public goods but also includes the overcoming of legislative deficits of nation-states, for example by implementing environmental or social standards that are more restrictive or well-informed than governmental regulations.

5 Subsidiarity and Corporate Co-Responsibilities

The tenet of subsidiarity states that in the political or social context nothing should be assigned to a higher level of social organization and regulation that can be accomplished by a lesser and subordinate entity. Whereas in the political context the principle of subsidiarity is commonly used to characterize the relationship between political entities of higher and lower order, e.g. between the European Community and its member states (Consolidated Version of the Treaty Establishing the European Community, Article

5), especially in the context of the Catholic social encyclicals it is rather a norm for task-sharing among governmental and private actors within civil society (Pius XI, 1931, § 79). Although subsidiarity is as well rooted in the Aristotelian tradition of political thinking and has been discussed by medieval scholars and in Lutheran theology, too, most scholars tend to see the tenet of subsidiarity as a “catholic” principle (Höffe 1997).

In order to clarify the responsibilities of corporate citizens, there are especially three aspects of subsidiarity that become relevant: (1) The principle of subsidiarity outlines a clear task-sharing; issues of lesser importance should be handled by lower instances if they are able to do so. (2) In such cases the accomplishment of lower-order instances is not seen as voluntary but as an essential duty. (3) Governmental interventions are necessary in areas of higher importance for society or in cases where subordinates are unable to take care for themselves. Thus, as a coordinating principle for the collaboration of the various levels of society, subsidiarity works in two ways: On the one hand, it defends the subordinate entities from illegitimate overregulation of higher societal or political instances if they can regulate their affairs themselves, and, on the other, it constitutes a right of assistance of higher-order instances if solving their problems is out of reach for the subordinate entities (Nell-Breuning 1964; 1968). Furthermore, as Gosepath (2005) points out, the assignment of responsibilities according to the principle of subsidiarity also defends the higher instances in society – namely the government – from being overburdened by solving societal or regulatory problems which could be solved on a lower societal level as well. Thus, in general, the tenet of subsidiarity is based on the idea of “helping others to help themselves” (Gosepath, 2005, 162).

As a steering principle, subsidiarity has been discussed already in early German political theories. In his book “Allgemeine Staatslehre” (General Theory of the State) Jellinek describes the subsidiary relation between individuals and community shaped by natural law. In his opinion, government should take on responsibilities only and insofar as things could not be accomplished by the citizens or sub-state associations. In these cases, for assisting lower instances, the state can either create the conditions to foster private engagement or accomplish the respective tasks on its own (Jellinek, 1914, pp. 259-260).

As a governance principle, subsidiarity thus constitutes a priority rule which gives smaller entities precedence over centralized, higher instances. This idea follows liberal thinking and is justified by the principles of individual autonomy and self-determination of all citizens. It is based on the precept of personal responsibility which obliges individuals to bear the consequences of their autonomous actions and will not allow for shifting the burdens of their individual decision to others or to the community. Only in cases where the person in need lacks the means or capabilities to escape from her misery the community has a general moral obligation to assist (Gosepath, 2005, pp. 163-164). Following this line of thought, community is not primarily defined by a government or nation-state, but is described as different layers in society which embed the single individual and also includes all sub-state institutions on the intermediate level. Within this context, intermediate instances are either defined as a result of the factual social development of societies – e.g. social institutions like family or religious communities – or introduced on the basis of contract theory assuming that the neediness of the individuals leads to associations which would allow the associates to solve their problems beyond nation-state regulations on a neighborhood or communal level (Gosepath, 2005, pp. 165-166; Lower 2010, p. 85).

To sum up, the tenet of subsidiarity allows for shaping responsibilities and interrelations among political, civil, economic and individual actors in various contexts. For example, Kelly (2004) discusses subsidiarity as principle for regulating business and political relations among nation-states in a global society and widens the scope of subsidiarity by integrating supranational institutions in his concept. Other scholars transfer the principle of subsidiarity to the organizational context. Thus, for example, Domenec Melé (2005) argues that organizations that apply the principle of subsidiarity in their organizational structures guarantee a higher degree of freedom and initiative to workers which would be more appropriate to human dignity and autonomy, and therefore are ethically preferable to organizations in which workers are seen solely as executors of their superiors’ orders. In this sense, subsidiarity is seen as a principle respecting personal dignity and freedom and thus can function as an ethical norm shaping organizational structures and corresponding responsibilities.

Although originally derived from the Catholic Social Teaching, the principle of subsidiarity has also become a core principle in the German model of the so called Social Market Economy. Here subsidiarity

is seen as a basic principle for coordinating the collaboration and interaction of various societal groups and organizations in society. Based on the idea that social peace and social justice in a society can only be achieved by social alignment of market economy, the conception tries to balance the principles of private initiative in economic and social concerns with the compensation of the weak and deprived guaranteed by governmental regulations and social programs. For this purpose an “economic constitution” should ensure that economic activities will not work contrary to fundamental social principles and endanger the ethical and social targets of the society, like social justice or protection of the weak. Additionally, state regulation should aim at stabilization of the economic system, protect from monopolies and foster social welfare (Barry, 1989, p. 115).

However, the German social market economy was not only seen as an economic model but in the broader sense conceived as a societal conception regulating social as well as economic affairs. In this broader view, market economy was not perceived as an end in itself but as means to reach non-economic targets in society and to prepare the ground for stable social development. Whilst market mechanisms and economic freedom were considered the best way to solve the problem of scarcity the conception was based on a primacy of state policy in social concerns. The basic underlying assumption is that the economy should be the servant of humanity helping to realize, social, ethical, cultural and human values (Barry, 1989, p. 108).

To reach these trans-economic values, all groups in society should collaborate in solidarity and by subsidiary task-sharing. Inspired by the encyclical *Quadragesimo Anno*, the pioneers of social market economy estimated subsidiarity and solidarity as central elements for coordinating social life (e.g. Eucken, 1990, p. 248; Müller-Armack, 1981, pp. 564-568; Röpke, 1979a, p. 179). Following the idea of the encyclical Röpke (1979b) and others distinguished three groups of actors in society – (1) governmental actors and communities; (2) economic, clerical and social associations; and (3) individuals and families – which should collaborate in a subsidiary manner. In the following, especially the intermediate layers of society have become main pillars in the German social understanding and bestowed with the rank of constitutional protected institutions (Constitution of the Federal Republic of Germany, Art 1-24). Although in this conception of German Social Market Economy corporations have not been addressed directly as “corporate citizens” bearing tasks beyond running their business properly, we would argue that corporations taking on social responsibilities and acting as corporate citizen could be seen as intermediate actors.

When perceiving corporations as intermediate actors in society, they “could be among the non-state actors helping states to exercise public powers” (Lower, 2010, p. 187). Similarly Fort (1996) describes corporations as “mediating institutions” liable to contribute to society beyond pure business activities. Referring to the American tradition of such subsidiary public-private task sharing, reaching back to the Jacksonian era, he points out that the adoption of social responsibilities by corporations (controlled by governmental oversight) was based on the belief that by taking on such subsidiary co-responsibilities corporations would both pursue their own interests and benefit the common good.

This leads back to the discussion about the responsibilities of corporations as corporate citizens. Based on the tenet of subsidiarity, corporate citizens can be understood as intermediate actors participating in the process of generating social accomplishment. This means that the scope of corporate social responsibilities has to be widened by a third kind of responsibilities. First, corporations – like every individual citizen – are responsible for their (business) activities and have to ensure that they are in line with minimal legal and ethical requirements. Second, in the sense of an imperfect duty, corporations can contribute to society on a voluntary base by providing additional services. Third, corporations as intermediate actors in society have a duty to make social and political contributions that can be accomplished by them more efficiently or with greater competencies than by other actors.

Thus, as corporate citizens in a system of subsidiary societal task-sharing, corporations bear civil duties to foster civic rights. Such responsibilities do not derive from the factual engagement of corporations but, according to the principle of subsidiarity, result from political and moral obligations of each group in society to contribute to the common good within their possibilities. According to their competencies, corporations as citizens – like other intermediate actors in society – have the duty to engage in fields where societal problems can be solved more efficiently by lower level instances in society (Dunfee & Hess, 2000; examples for such successful engagement can be found at Hess et al., 2002). Although it is

debatable how far such corporate subsidiary co-responsibility will reach and in which areas corporate contributions can be expected, corporate engagement in this field is not voluntary but an essential (moral) obligation.

Nevertheless, in its original meaning the idea of subsidiarity is strictly bind to the conception of the nation state and the regulatory aut

hority of national government. In the context of globalizing economies and against the background of transnational corporations, the principle of subsidiarity seems to be outdated. However, it should be noted that the principle of subsidiarity points in two directions. On the one hand it describes the assignment of societal responsibilities to lower levels of society by a central government; but on the other it is also seen as an organizing principle which regulates the assignment of responsibilities from the bottom-up. If associations of the lowest level are not able to accomplish societal tasks in a more efficient manner it is a precept of rationality to shift such tasks to the next higher level. This is true, especially in cases where centralized institutions can reduce costs because of economics of scale or where exceeding externalities overcharge the capacities of lower-level instances (Ederveen et al. 2008). In other words, the tenet of subsidiarity also works as a legitimizing principle which justifies the activities of the next higher instances in society in cases in which civil or social rights can not be secured on the lower level (Höffe, 1997).

Based on the idea of the corporate citizen as intermediate actor in society, we will discuss this double challenge of subsidiarity against the background of globalizing economies in the following chapter.

6 Subsidiarity as Governance-Principle in the Age of Globalization

During the last two decades, globalization has become “a fashionable concept in the social sciences (...) and a catch-phrase for journalists and politicians of every stripe. It is widely asserted that we live in an era in which the greater part of social life is determined by global processes, in which national cultures, national economies, national borders and national territories are dissolving” (Hirst et al., 2009, p. 2). In the “borderless world” (Ohmae, 1999) of globalization, transnational companies seem to be able to escape from nation-state regulations and shift production to countries with less elaborate governmental regulations, e.g. concerning workers’ rights or environmental standards. Due to new information technologies capital and investment are not longer bound to national territories and can be moved quickly from one place on the earth to another. Kenichi Ohmae, one of the most prominent visionary of globalization, paints the picture of the “homeless company” no longer based in a national community and liable solely to the international capital market and its global consumers (Ohmae, 2005, see also Brunkhorst, 2005, p. 132). In a globalizing economy, traditional ties of (national) solidarity become questionable (Habermas, 1998, pp. 74-75) and domestic policy is increasingly incapable of regulating (international) markets and solving (global) societal and economic problems because the national level is permeated by and transformed by the transnational (Hirst & Thompson 1992). As a consequence, the power of nation-states has increasingly shifted to intergovernmental bodies like the World Trade Organization or the European Parliament on one side, but also to non-political actors like critical non governmental organizations (NGOs) on the other (Beck, 1998; Giddens, 1998). Using new information technologies, sharing their information worldwide and acting globally, critical NGOs have become the new counterpart of the transnational enterprises which have appeared as new important players at the global stage. Thus, as some scholars argue, the power of controlling and sanctioning corporate (mis)conduct has shifted from nation governments to NGOs which are not bound to a national territory and able to create worldwide publicity and to organize shaming campaigns, stakeholder protests and boycotts on a transnational level (Crane & Matten, 2007; Matten & Crane, 2005; also Palazzo & Scherer, 2006; Scherer & Palazzo, 2007; 2009).

Nevertheless, this does not mean that the global economy is without regulation or that nation-states have lost their role in globalizing societies. As Giddens explains, globalization points in two directions and creates a strong impetus both to the downward devolution of power and to upward devolution. On the one hand, this “double movement” leads to the weakening of the authority of nation-states in their own territories, but, on the other, it strengthens their authority in the field of international regulations and makes the state more responsive to the influences that otherwise outflank it (Giddens, 1998, p. 72). As Hirst and Thompson point out “The nation-states, however powerful, cannot act alone, whilst nothing can

be accomplished without their active support, legitimation and funding” (Hirst & Thompson, 2002, p. 252). In other words, nation-states are not outdated, though they have to redefine their political authority. For Hirst and Thompson, this task of “distributing power” – upwards to the international level, and downwards to sub-national agencies – remains one of the main issues of national policy “that will hold the system of governance together” (Hirst & Thompson, 1995, p. 423).

Corporate activities show a new dimension in globalizing economies, too. In contrary to the pessimistic view outlined above, transnational companies’ actions are not solely oriented towards profit maximization and pitting nation-states against each other in order to get tax reduction, exemptions from social or environmental regulations or to gain other business advantages. Quite the opposite, beyond profit orientation corporations have started to engage for the protection of human rights, to enforce social and environmental standards in countries with weak employment and environmental regulations and to provide services for local communities in their host countries.

This leads back to the discussion of the responsibilities of the corporate citizen and the question which role the cosmopolitan corporate citizen should play in globalizing economies. Given the fact that corporations increasingly engage for civic rights as quasi governmental actors taking on what hitherto had been governmental tasks, the question arises how such interplay between governmental and corporate activities should be structured in the international context. As shown above, without clear regulations for corporate-governmental task-sharing, corporate engagement will supplant original governmental activities but this will not guarantee that such corporate activities will compensate for a lack in governmental services in all relevant areas on a sustained basis. Hereby, as Kline points out: “The danger lies less in immediate TNC [Transnational Corporations] involvement to promote specific goals than in the failure of governments to recognize and to set guidelines for such private political action” (Kline, 2005, p. 30). To overcome this difficulty, Kline proposes a model defining transnational corporations’ political responsibilities – e.g. for the protection of human rights in their host countries – by their degree of engagement and conspiracy. Hereby, Kline construes a “connection continuum” reaching from the directly involved “causal actor” at the one side to the “disconnected actor” as the other extreme. Referring to the principle of subsidiarity, he argues that in cases where the directly involved transnational corporations are unable to solve the problem, the task shifts to the next level, i.e. the less involved corporations on that continuum (Kline 2005).

However, although presenting an interesting rule under which circumstances corporations have to take on political responsibilities in their host countries, the model of Kline does not solve the main problem at stake: The question remains how governmental-corporate task-sharing should be organized at the international level.

To provide an analytical frame which might help to answer this question we have to return to our definition of the corporate citizen. As we have outlined above, the self-conception of the citizen is that of a political actor who is part of a specific community, plays an active role in shaping the political and social order and takes on responsibilities for others and for the common good. His sense of belonging is defined either by the geographic scope of his activities or by his industrial orientation. Although “cosmopolitan” the corporate citizen can not act independently from national regulation. Operating in the boundaries of national territories, corporations remain dependent on the formal structures of national law. Only the nation state is able to guarantee the corporation’s status as a legal person and to provide a legal frame where contracts can be concluded, private property is protected, or debts can be sued (Brunkhorst, 2005, pp. 133-134). In addition, the corporate citizen is bound to specific regulations and industry standards by his industrial orientation. Though he is able to initiate and to refine the soft-law standards of his industry, he remains subordinate to the adopted governmental regulations. And even if voluntary codes of conduct “emerged principally as ‘soft law’ alternatives to the continued inability of governments to achieve sufficient consensus of binding international law standards” (Kline, 2005, p. 32), these cannot and do not replace national law.

From a governmental perspective the corporate citizen acts on an intermediate level. He may define industry standard, introduce social or environmental programs below or beyond the nation state or collaborate with other community members to contribute to the common good. If something can be accomplished on this lower level with higher efficiency or could be done with greater competencies, the corporation as lower level layer in society has an obligation to contribute according to the tenet of

subsidiarity. Furthermore, as long as the issues at stake are of lesser importance or the capabilities to solve the problems at the lower level are sufficient, state regulation is neither necessary nor permitted.

An example illustrating such interplay between industry and governmental regulations could be taken from Germany. In the mid-19th century, industry representatives established independent monitoring agencies to control steam engines and to secure technical safety standards aimed at avoiding hazards. The work of these technical control associations has been very successful, so that since 1871 the membership in such a control association replaced state inspection. Today, the German technical Control Board (Technischer Überwachungsverein, TÜV) is a registered association specialized in independently controlling the safety standards of technical equipment and vehicles, as well as in providing product certification for technical or electronic products. Although working independently, the TÜV-certification is required by government law for operating technical facilities or for running cars or motorcycles. The example shows that in this case self-regulation on industry-level has turned out to be effective and used the greater competencies of industry in the field of assessing product safety. This, in turn, has been acknowledged by national government. Nevertheless, this does not mean that self-regulation has replaced governmental law in general. If industry regulations would be estimated to be insufficient, governments should regulate these issues by national law. But, as far as the self-regulation is assessed to be adequate, state regulation is not required.

We suggest that corporate-governmental task sharing could work in a similar way at an international level. Defined by its industrial belonging, the corporate citizens may collaborate in developing industry-wide social or environmental standards, establish monitoring agencies which control production safety or agree upon other common business practices below national law. If the standards will not violate national law and the control mechanisms are efficient, there is no reason why states should not accept the industry standard as part of its national regulations, especially in cases where the competencies lay at the industry level or where such standards can be enforced by companies themselves more efficiently, like in cases of production standards.

To accept such self regulation of intermediate levels of society would also provide advantages for the corporate bourgeois. On the one hand this would allow for harmonizing legal requirements among the various countries in which transnational companies operate and thus create legal certainty. On the other hand the risk of national overregulation is limited as long as the intermediate standards and their supervision remain on a high level. Thus the principle of subsidiarity and the engagement of the corporate citizen as an intermediate actor in society will not replace “governance by government” by “governance without government” but shows a way how “governance with government” could be organized.

7 From Corporate Bourgeois to Corporate Citizen: Towards a new Picture of CC

In the preceding chapters, we have analyzed two important aspects of corporate citizenship, discussing the *status* of citizenship and clarifying the *mode* of corporate citizens' contribution to society. We believe that our conceptual framework allows a better understanding of what constitutes corporate citizenship from a political point of view. To explain what the term corporate citizenship should mean, we have differentiated two spheres of citizenship that could be addressed, the corporate bourgeois and the corporate citizen. The status of the corporate bourgeois is defined by external governmental authority and reduced to private business purposes. The corporate bourgeois operates under rules defined by (national) governments which guarantee legal certainty and freedom for their subjects' private economic activities. As good corporate bourgeois, the company adheres to national and international law, respects commonly accepted international standards of behavior and implements procedures that ensure the observation of these regulations in the company's business practices. Societal engagement extending beyond the core business is seen under the aspect of enlightened self-interest of the bourgeois and ultimately bound to the financial interests of the bourgeois.

In contrast, the corporate citizen is part of a specific socio-political community, defined by his national, multilocal or industrial belonging. He plays an active role in shaping the political and social order and takes on responsibilities for others and for the common good. The self-conception of the citizen is that of a political actor who is sovereign and subject of the established order at the same time. As “sovereign” he endeavors to establish commonly acceptable rules, not only by influencing national governments but also

by engaging in the development of business standards and industrial norms which are beneficial for all community members. As an intermediate actor in society he accepts his subsidiary co-responsibilities and accomplishes respective tasks in those areas in which he has specific competencies and in which the accomplishment can be done on this level more efficiently or with greater effects for the community. Philanthropic engagement for him is not a strategic tool but an instrument to participate in civil society (civic philanthropy) and aims at the wellbeing of the community and assisting other citizens to enjoy their social, civic and political citizenship rights.

By differentiating two dimensions of citizenship – bourgeois and citizen – we have offered an analytical framework that helps to clarify the new political role of corporations in society. In our opinion, the factual engagement of corporations as providers of citizenship rights should not be seen as a new role of corporations as quasi-governmental actors, but as an evolving self-conception of the corporate citizen from bourgeois to citizen. As political actor, the citizen has a duty to contribute to the well-being of the community and bears specific subsidiary (political) co-responsibilities as an intermediate actor in society. Being sovereign and subject at the same time, the corporate citizen is able to define regulations and soft-law standards below nation-state regulations or on a global level.

Even though we believe that our conceptual framework may contribute to a more encompassing understanding of the nature of the surrogate citizenry of corporations, this new perspective also has implications for future research. If the idea of corporate citizenship is to be taken serious, corporations in the global realm today become intermediate actors between the economic, political and civil sphere. Therefore, they increasingly enjoy political rights of participation, but also bear additional subsidiary co-responsibilities to contribute to the common good beyond their bourgeois self-interest. Future research has to develop the territorial and industry-based criteria for the membership of corporate citizens in the societal community in order to enhance solidarity, legitimacy and accountability.

As outlined in our contribution, we argue that corporations are on their way to become corporate citizen and increasingly take on political responsibilities. But although this new perspective in the discussion on corporate citizenship allows for explaining the factual citizenship engagement of corporations, it provides only an analytical frame without normative implications. If corporations are bestowed not only with legal personhood but also with a kind of political autonomy as citizens, future research is required to clarify the legal and political consequences of such a new understanding. Therefore, a normative basis has to be developed that would allow for justifying the role of corporations as corporate citizen. This will also lead to a new discussion about the rights, duties and limits of political participation of corporate citizens.

Last but not least, if the corporate citizen is defined as a political actor who bears subsidiary co-responsibilities in society, he is also responsible for defining his own standards of behavior. Hence, the question arises how such soft law standards have to be embedded in the system of national jurisdiction. Although we have outlined an example how industry standards and national government regulations can be combined fruitfully, more scholarly work has to be done to clarify the status of industry regulations from a governmental perspective and to develop procedures of how to organize such “governance with government”.

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