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The Foundations of Business Ethical Reflection

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When one looks at the role the private sector has been assigned to play in society, one finds definitions like: to supply goods and services that people want and/or need. Or to generate employment opportunities and, thereby, sustainable livelihoods within an economy. Or to be a source of innovation and a center providing creative solutions to existing challenges.

This list could go on for much longer, but, where is the argument that defines the role of business in society as an instrument to maximize the monetary return on investment for businesses' financiers – whether they are shareholders or other forms of ownership? When one looks at the reality of many businesses, though, it seems that this is exactly what businesses are doing: they try to 'make money' rather than 'make goods and services,' thus turning the underlying rationality about the role of business in society on its head.

It is not a case of a business serving the interest of society and, consequently, those people who chip in their money must get a decent return to reward them for the risks they have taken. Instead, most businesses strive to maximize the return for their financiers and they therefore need to offer goods and services for which they can generate demand.

All the same, one might think, as the two are interdependent. The difficulty with this reversed rationality is, however, that different ends lead to different means.

A business that tries to maximize the returns of those who invested in it will not be overly bothered whether the needs it serves are genuine, as long as it finds a way to generate profitable demand. Neither will a profit-maximizing organization be able to exercise self-restraint when, for example, pursuing a growth opportunity means turning a blind eye to ethical or environmental concerns. Nor can a purely profit maximizing business 'afford' to accept and act upon legitimate claims from weaker stakeholders if the result might be reduced earnings.

Therefore, it clearly *does* make a difference whether the role of a business is to maximize the return on investment for its financiers, or create value to benefit society. This paper aims to examine the responsibilities of businesses towards society as a whole. This does, of course, include responsibilities towards their financiers, but also includes responsibilities towards a wider range of stakeholders.

In this paper I take a look at conceptualizing corporate responsibilities and introduce normative stakeholder dialogue as a means to assume responsibility before sketching out the main tenets of an emancipated corporation, a corporation that has freed itself from the normative heightening of profit maximization as the sole objective function of the firm.

1. Conceptualizing corporate responsibility

To establish a foundation to reflect on corporate responsibilities, I take two steps: deriving responsibility from the need for legitimacy and legitimacy from the reciprocity of moral rights. I will first outline the imperative of accepting that all human activities, including those undertaken in a business context, must be based on the universal acceptance of unconditional and equal respect for the moral rights of others. Secondly, an overview of the main streams in the organizational legitimacy debate will lead to a procedural understanding of moral legitimacy and a discursive understanding of responsibility.

Moral reciprocity, the golden rule, and the corporation as a collective of individuals

Moral reciprocity is most widely expressed by the *golden rule*, which has a long tradition in philosophic thought, ranging from ancient Greece (Pittacus, 6th century BC) to Chinese Confucianism (Confucius 5th century BC) (Enderle, 1987, pp. 132-133) to Immanuel Kant's categorical imperative[1] in the age of enlightenment (Kant, Grundlegung zur Metaphysik der Sitten, 1996, p. 51) to contemporary scholars – not only in ethics and philosophy, but also in psychology, sociology, and theology among other disciplines. Most religious and spiritual groups around the world accept it as a, if

[1] The categorical imperative needs to be regarded as more than the golden rule. The golden rule may provide practical guidance in concrete questions, whereas the categorical imperative is conceived as a foundational principle from which other moral principles can be derived. They are, however, not in conflict and express the same universalist spirit.

not *the* universal norm for human interaction. This is best shown in the '*Declaration Toward a Global Ethic'* by the Parliament of the World's Religions that was signed by representatives of 143 different faith traditions and spiritual communities and states that:

> "There is a principle which is found and has persisted in many religious and ethical traditions of humankind for thousands of years: What you do not wish done to yourself, do not do to others. Or in positive terms: What you wish done to yourself, do to others!" (Council for a Parliament of the World's Religions, 1993, p. 7)

Even neuroscience is investigating the golden rule, as research on neurobiology suggests it may be hardwired into our brain. Donald Pfaff found that humans have neural mechanisms that make us, literally, feel another person's pain in our brains (Pfaff, 2007), which reinforces the human capacity of imaginative role-taking.

On an interpersonal level, moral reciprocity is based on the assumption that humans are universally aware of their own (mental and physical) vulnerability and are universally capable of imaginative role-taking[2] with both of these aspects forming part of the conditio humana[3]. Together they mean that, firstly, we as humans know that our vulnerability can be exploited and, secondly, we know when someone else's vulnerability is exploited. Since we experience such exploitation as deeply degrading, we demand others avoid causing us such experiences under all circumstances, or, in positive terms, we expect others to unconditionally respect our personal dignity. Consequently, morally reciprocal behavior is more than the mere strategically motivated individual behavior that calculates utility gains from reciprocal (trans)actions under social interdependence (Bruni, 2008, p. 56); it demands unconditional adherence, for one can only expect unconditional respect for one's own moral rights if one is willing to respect everyone else's unconditionally as well.[4] Morally reciprocal behavior is based on a universal moral point of view[5], in which a person's moral right for respect of his or her vulnerable persona supersedes any calculus regarding potentially resulting future benefits or sanctions.

Establishing the universal nature of reciprocity in moral rights for human interaction only furthers its relevance for business organizations. If one looks at the

[2] Or, for that matter, would even go beyond the purely imaginative if physical pain is felt.

[3] For more on the conditio humana, see: (Plessner, 1976)

[4] For details see, The Capacity for Imaginative Role-taking (Ulrich, Integrative Economic Ethics, 2008, pp. 33-34). Also, for unconditional reciprocity see (Bruni, 2008, pp. 46-58)

[5] See Peter Ulrich (2008) for details on the universal moral point of view

corporation as a collective of individuals, mutually granting the same moral rights to everyone in all interpersonal relationships must prevail – also in business relationships (Ulrich & Maak, 2000, p. 20). Owing to the universal nature of reciprocating moral rights, one has to accept these rights as a foundational norm for human interaction, regardless of the role any individual assumes. This means that a person must act in ways that do not harm the moral rights of others when he or she is takes managerial decisions, just as much as when he or she acts as a father or mother, in a random encounter, as a friend, or in any other given context.

> "…the moral responsibility of the economic agents remains fundamental; their actions must always be self-critically examined in regard to their legitimacy in the light of the moral rights of all concerned and their (argumentative) acceptability for others." (Ulrich, 2008, p. 218)

This quote demonstrates the foundational character of moral rights and, at the same time, introduces the terms legitimacy and responsibility, which will be explored in the following pages.

Legitimacy as a normative precondition for profit-oriented business aims

In a broad definition, legitimacy can be regarded as "…a general perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Suchman, 1995, p. 574). This definition leaves much room for interpretation. When mapping the organizational legitimacy debate, one finds three main concepts: pragmatic, cognitive, and moral legitimacy (e.g., Palazzo & Scherer, 2006; Long & Driscoll, 2008; Suchman, 1995).

In management studies, the debate on organizational legitimacy seems firmly grounded in an instrumental understanding of legitimacy[6] (Gond, Palazzo, & Basu, 2009). Furthermore, Long and Driscoll found that with regard to managerial practice, business organizations predominantly hold instrumental views on legitimacy, which is contrary to partially normative rhetoric. Pragmatic legitimacy is bestowed by self-interested, calculating stakeholders (Suchman, 1995, p. 578) who legitimize an

[6] Sundaram and Inkpen, for example, state that because it is *not possible* to manage the interest of multiple stakeholders and because it would be *more difficult to measure* if it were possible, one should not even try: "In summary, it is not possible to manage on behalf of multiple constituencies when their goals are in conflict. Even if it were possible to do so, it may not be socially desirable to allow managers the unfettered freedom to do so. Shareholder value, on the other hand, is a single valued metric that is also observable and measurable." (Sundaram & Inkpen, 2004)

organization on the basis of their perception of receiving some kind of utility gains.[7] For the organization, this understanding translates into a desire to (only) be regarded as legitimate by key stakeholders, since social exchange processes depend on trust[8] and trust will only arise when an organization is perceived as legitimate. Consequently, when we talk about pragmatic views on the legitimacy of a business organization, we are really talking about the 'business case for legitimacy' encouraging organizations to manage legitimacy by providing certain stakeholders with tangible rewards.[9]

> "In this respect, legitimacy itself is a resource to be extracted from society according to a utilitarian calculus of whether the costs and benefits of legitimacy are necessary to achieve the ends of continued organizational activity." (Long & Driscoll, 2008, p. 176)

If legitimacy is viewed as a normative *pre*condition for profit-oriented aims, the theoretical limitations of this instrumental or pragmatic view of legitimacy become evident. This limitation stems from the fact that a precondition to a process (that of seeking profits) cannot be a utility dependent instrument within that process; an expectation-dependent means within a process cannot be pre-conditional to its end. In other words, if legitimacy is a *pre*condition for seeking profits, then a business organization must never seek profits without legitimacy. If, however, legitimacy is an instrument to increase long-term profitability, seeking legitimacy turns into a dependent of the expectation that it will actually contribute to higher profits. And, following economic rationality, where such expectations are not met, a business should not invest in legitimizing its activities-making legitimization optional and thus undermining the *pre*-conditional character assigned to it.

Cognitive legitimacy is based on the notion that some organizations or institutions are seen as inevitable or necessary, and their existence is taken for granted (Palazzo & Scherer, 2006, p. 72). It emerges where any other option seems unthinkable (Suchman, 1995, p. 583), so that cognitive legitimacy is bestowed on the basis of pre-constructed beliefs and the empirically accepted. Consequently, cognitive

[7] Such utility gains can be direct payments received by suppliers or employees, or products purchased by customers, but they can also be based on more general assumptions, such as that a corporation is 'good for the economy' by providing employment, contributing to state finances, etc.

[8] See Walker & Ostrom (2003) for the importance of trust in social exchange.

[9] An instrumental view of legitimacy would lead to a view that legitimization is a means to the end to be commercially successful; the reversed argument would be that in a situation in which a lack of legitimacy has no impact on the commercial outcome, the need to legitimize corporate activities would become obsolete, which is, of course, in sharp contradiction to the unconditional respect for moral rights – as introduced earlier – since the outcome would be a condition for seeking or not seeking legitimacy.

legitimacy is established when the very existence of an organization or structure has been removed from the perceived sphere of influence of actors, even if the same actors originally created it (Zucker, 1983, p. 2).

This form of legitimacy is very powerful, because if one cannot envisage an alternative, the status quo becomes virtually unchallengeable. In gaining a conceptual framework for corporate responsibility, cognitive legitimacy will not provide much valuable insight, though, as it simply does not apply to business organizations. Market economies[10] are an example, as they have some degree of cognitive legitimacy since, for the most part, we cannot see a viable alternative and can, generally, regard them as empirically accepted. This, however, by no means leads to a view that every business organization within a market economy is also regarded as a legitimate participant. Under most circumstances, being taken for granted, or seen as inevitable, is simply out of reach for a single business organization (Suchman, 1995, p. 583).

The third form, moral legitimacy, arises when a normative evaluation of an organization and its activities results in the perception that an organization is 'doing the right thing.' This sharply differentiates moral legitimacy from pragmatic views on legitimacy, as it is based on values and reason rather than the mere self-interest of beneficiaries (Suchman, 1995, p. 579). Thereby, this provides a – theoretically – more robust but also a – practically – more reliable and more broad-based source of legitimacy in society. It also does not depend on the business organization being taken for granted, or seen as inevitable or necessary, which a business organization can rarely achieve. Moral legitimacy is therefore the only form of legitimacy suitable to provide a basis for business ethical reflection and is, as Palazzo and Scherer put it, corporations' decisive source of societal acceptance (Palazzo & Scherer, 2006, p. 74).

As Steffek points out "…arguments that create legitimacy are normative in nature. They give reasons why a certain norm should be regarded as binding." (Steffek, 2003, p. 264) A reverse argument could be that moral legitimacy cannot be gained if reasons for justifying a certain behavior cannot be established. This leads back to the respect for the moral rights of others as the foundation for what can be justified by reason.

Moral legitimacy may be granted either consequentially or procedurally. The former refers to legitimacy gained from pursuing goals that conform with socially

[10] We can see and indeed observe many variations of markets but it seems hard to imagine a society without some degree of market activity.

constructed values, while the latter refers to legitimacy arising from the way in which goals are pursued (Long & Driscoll, 2008, p. 174). Either form, if followed sincerely, forces a business organization to continuously assess its conduct, to rationalize its behavior and compare it to expectations and the desirability of the impact[11] on all those affected, thus underlining its normative character.

Given the complexity and diversity in the context of business in the age of globality (Dierksmeier, et al. 2011), I argue in favor of a procedural understanding of gaining legitimacy. If legitimacy seeking of businesses needs to cater for variations in values around the globe, those are best accounted for by establishing procedures that allow for varied outcomes rather than aiming to establish desired outcomes that may or may not be in line with specific societal values

As Max Weber pointed out, seeking legitimacy helps determine the choice of means for an exercise (Weber, Roth, Wittich, & Fischoff, 1978, p. 214). Based on the universality of the reciprocity of moral rights, we can therefore conclude that any procedures claiming moral legitimacy need to demonstrate that they equally respect the rights of all those affected. As the works quoted in this passage show, there is consensus in the literature that a business organization needs legitimacy. Where these works fall short, is in clearly defining that this can only be moral legitimacy and, too often, they maintain instrumentalist views that cannot be aligned with a meaningful view of corporate responsibility.

Responsibility as the ability and willingness to respond

The reason for describing responsibility as the ability and willingness to respond is not (only) an etymological[12] one. As shown above, responsible business conduct depends on seeking moral legitimacy, and moral legitimacy depends on procedures that respect the universal character of the reciprocity of moral rights. As such, responsibility is a forward-looking conception. As opposed to ex-post determination of responsibility in the form of assigning praise or blame for existing outcomes in a liability-based responsibility model, a forward looking conception of

[11] It needs to be pointed out that this does not represent a consequential view, as the impact may be process driven as well.

[12] It is, however, striking how many languages have the term “answer” within the word for responsibility. Some examples are English, RESPONSibility; German, verANTWORTung; Spanish, RESPONSibilidad; Portugese, RESPONSibilidade; and French RESPONsabilité.

responsibility is centered on the notion of joining others in a discourse (Young, 2004, p. 380). This discourse is held in an attempt to reach a reasoned consensus between all those affected *before* outcomes are generated, which in turn demands that a business organization is *willing* to enter such a discourse as well as being *able* to respond by giving and criticizing reason.

This leads to the question of what constitutes a discourse and how it should be led, making a brief introduction to discourse ethics essential at this point. Discourse ethics continues the Kantian deontological tradition of ethical universalism and is based on communicative discourse rationality. It is "...resting on a postmetaphysical, dialogical revisitation of Kant's view on moral validity as generalizability." (Ferrara, 2002, p. 119) Its key assumptions are that reason and freedom are universally shared by humanity[13] and that universal norms cannot be individually justified in a single person's mind but depend on an interpersonal argumentative process.[14] This process can be understood as a dialogical extension of the Kantian categorical imperative, which allows for norms of action to be tested for their worthiness (Rehg, 2002, p. 137). The Habermasian version thus reads: A norm is just only if all can will that it be obeyed by everyone in comparable situations (Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy, 1996, p. 159).

For universal norms to emerge by giving and criticizing reasons for holding or rejecting particular claims, Habermas has developed a set of *necessary conditions*, *principles*, and *rules* for a discourse that form the *ideal speech situation*, to be understood only as a regulative idea.

Freedom has been mentioned as a universally shared characteristic in humanity and it is also the first necessary condition for the emergence of universal norms. This means that in a discourse in which a community seeks to establish a norm or procedure, acceptance of the proposed norms and procedures must be rationally motivated, i.e. freely and uncoerced (Habermas, 1990, p. 231). The second necessary condition, *equality*, ascertains that all participants have an equal voice in a discussion on proposed norms and procedures. Furthermore, such norms can only claim universal

[13] Thus making it independent of any cultural, religious, or other diversity in human life. Reason or, at least, the potential for reason is universally shared by humanity regardless of one's traditions, religious background, or any other cultural divergence. Here, freedom should be understood as autonomy and can be characterized as the capacity of humanity to give itself its own laws.

[14] This is one point where discourse ethics diverge from a Rawlsian conception that allows for the monological determination of what admits of universal approval (Habermas, 1990, p. 232)

validity if reached in *consensus* or under the uncoerced agreement of all who are affected by a proposed norm or procedure. (Habermas, 1990, pp. 43 - 45)

On the grounds of these necessary conditions, Habermas derives three principles of discourse ethics:

- Universal validity. The principle of universalization states that all affected can accept the consequences and side-effects anticipated from the general observance of a proposed norm, while those consequences are preferred to those of known possibilities for regulation. This principle fosters impartial judgments as it "constrains all affected to adopt the perspectives of all others in the balancing of interests" (Habermas, 1990, p. 65)
- Approval of all affected. The conditions for the practical discourse aimed at producing valid norms include the participation and acceptance of all who are affected. “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.” (Habermas, 1990, p. 66)
- Free participation. We can only expect the consent of all participants if all affected can freely accept the consequences and the side-effects that the general observance of a controversial norm may have for the satisfactions of each individual’s needs (Habermas, 1990, p. 93).

These principles are then translated into what is termed discourse rules of the ideal speech situation, which provides a practical set of rules on a logical, procedural, and rhetorical level (Habermas, 1990, pp. 87 - 89).

Logical level

- No Speaker may contradict himself / herself
- Every speaker who applies predicate F to object A must be prepared to apply F to all other objects resembling A in all relevant aspects.
- Different speakers may not use the same expression with different meanings

Procedural level

- Every speaker may only assert what she / he really believes
- A person who disputes a proposition or norm not under discussion must provide a reason for wanting to do so.

Rhetorical level

- Every subject with the competence to speak and act is allowed to take part in a discourse.
  a) Everyone is allowed to question any assertion whatever
  b) Everyone is allowed to introduce any assertion whatever into the discourse
  c) Everyone is allowed to express his / her attitudes, desires, and needs.
- No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in 3.1 and 3.2.

This short summary clarifies that discourse ethics provides guidance on how we can achieve universally valid moral norms[15]. It does not, however, tell us what these norms may be – discourse ethics only shows us a path we can follow in order to reach them: a discourse in which freedom and equality are maintained allows us to assess the validity of the claims of all of those affected, so that the unforced force of the better argument can prevail.

However, the creation of an ideal speech situation is often problematic in real situations (Unerman & Bennett, 2004, p. 691). Where it is possible, responsible businesses lead a discourse following the introduced rules; where it is not possible, responsible businesses lead this discourse on behalf of all of those who are unable to participate while working towards a situation in which a real discourse can be led. Peter Ulrich concludes that in situations where (a) an approximation to a free discourse situation is possible, responsible action demands seeking to establish that discourse. Where (b) principle reasons obstruct reciprocity, responsible action demands that, in an unaccompanied reflection, a discourse be held on behalf of the affected to weigh up their legitimate claims against own interest. Where (c) pragmatic difficulties obstruct a discourse, responsible action demands that a discourse be simultaneously led on behalf of unheard legitimate claims and that there should be worked towards creating a situation in which a free discourse can take place (Ulrich, 2008, p. 74).

[15] Discourse ethics has much more to offer than this rather technical depiction. In the context of this study one may, for instance, examine the products and services produced by TNCs in developing countries to assess in what way they address genuine human needs, conducive to developmental aims, rather than the degree to which a TNC is able to generate demand for them. The aim here is, however, to provide an ideal, a regulative idea for how we may envision a discourse to provide a reminder for how one should try to lead a discourse, even if the ideal may never be achievable.

Thus, assuming corporate responsibility can be defined as the seeking of moral legitimacy for corporate activities by engaging in a real discourse or leading a discourse on behalf of those who cannot be heard while working towards establishing a real discourse.

As introduced here, a discursive responsibility conception is a deeply dialogical one as opposed to a monological one, where actors take responsible decisions *on behalf of others* – responsibility is here understood as meaning taking decisions *together with others* (Ulrich, 1993, pp. 320-322). Following the procedural understanding of legitimization, responsibility refers to the way in which actors establish and behave in a discourse regarding their business conduct. Consequently, responsibility requires offering to subject any corporate activity that impacts others to a Kantian (self-enforced) test of publicity, while the means to undertake this test is the stakeholder dialogue.

2. Assuming corporate responsibility through stakeholder dialogue

The previous section of this paper presented an understanding of assuming corporate responsibility as an engagement in real discourses based on a procedural notion of moral legitimacy, which in turn is dependent on accepting the logic of interpersonally reciprocating moral rights as universally and, thereby, unconditionally valid. As business organizations are collectives of individuals, the same logic must also apply in business environments, thus implicitly exposing the myth of the business organization as some sort of values-free or ethics-free zone (Sharp Paine, 2009, p. 205). Having built an argument that favors a free and uncoerced discourse between equals as the moral point of view from which responsibility can be assumed by business organizations, I now turn to translating those theoretical arguments into the more practical questions of how to give all that are affected an equal and uncoerced voice. The central instrument in doing so is the stakeholder dialogue based on normative stakeholder management theory. I first introduce stakeholder theory and focus on its normative variant aligned with Habermasian critical theory. Subsequently, I suggest more practical dimensions that are relevant for engaging in stakeholder dialogues based on an open and uncoerced discourse.

The corporation vis-à-vis its stakeholders

Like organizational legitimacy, stakeholder management theory can be divided into three streams: the descriptive, the instrumental, and the normative view of stakeholder theory.

Descriptive stakeholder theory presents the corporation as a "constellation of cooperative and competitive interests possessing intrinsic value." (Donaldson & Preston, 1995, p. 66) It is based on empirical evidence that the majority of business organizations practice stakeholder management even if they do not explicitly refer to it as such (Donaldson & Preston, 1995, pp. 75 - 77). Furthermore, this evidence shows that concepts embedded in stakeholder theory correspond with reality (Donaldson & Preston, 1995, p. 74). In this descriptive model, stakeholders are defined as parties that are (evidently) directly affected by the corporation (Reed, 1999, p. 467). In its quest to establish stakeholder dialogues as the primary means to achieve corporate moral legitimacy, descriptive stakeholder theory does not provide valuable insights, as it does not have any normative power. As Reed points out, descriptive stakeholder models fail to account for the normative force the term stake carries (Reed, 1999, p. 467).

The instrumental variant of stakeholder theory defines the stakeholder as a party who needs to be taken into account in order to achieve corporate objectives. It links the stakeholder approach to the achievement of corporate objectives on the general presupposition that maximizing profits is the prime corporate objective function (Jensen, 2002, pp. 71 - 72). Consequently, managing stakeholders becomes a means to advance corporate profitability (Donaldson & Preston, 1995, p. 71). Therefore, from an instrumental view of stakeholder theory, managers should (only) pay attention to those constituencies who can affect the value of the firm (Jensen, 2002, p. 73)[16.] The difficulty with applying instrumental stakeholder theory to ethical reflection is that the theory is in stark conflict with reciprocating moral rights, since it treats stakeholders

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[16] "Hills and Jones (1992: 132, 134) are responsible for the most ambitious attempt to integrate the stakeholder concept with agency theory (see also, Sharplin & Phelps, 1989). These authors enlarged the standard principal agent paradigm of financial economics, which emphasizes the relationship between shareowners and managers, to create "stakeholder-agency theory," which constitutes, in their view, "a generalized theory of agency." According to this conception, managers "can be seen as the agents of [all] other stakeholders." (Donaldson & Preston, 1995, p. 78)

(who are humans) as a means rather than an end in themselves. Consequently, one has to conclude that instrumental stakeholder theory either falsely assigns a normative character to the profit principle[17],or it accepts that the factual power of the claimant rather than the argumentative power of the claim determines the level of corporate engagement with a stakeholder.

As briefly introduced, descriptive stakeholder theory argues that it accurately reflects what can be observed, while instrumental stakeholder theory suggests that it provides input to further corporate objectives. Normative stakeholder theory differs fundamentally from both these views, as it argues that taking stakeholder interests into account is the ‘right thing to do.’ this action is justified by its power to satisfy the moral rights of individuals – meaning that all stakeholder claims have intrinsic value (Donaldson & Preston, 1995, p. 81). Or, in Kantian terms, a stakeholder must always be treated as an end in him / herself, never as a means to an end.[18] Therefore, in a normative approach, stakeholders can be defined as anyone who can advance a valid normative claim on the corporation (Reed, 2002, p. 467). As Waxenberger and Spence (2003, p. 243) point out, this definition leads to an understanding of stakeholders as *claimholders*, thus positioning the stakeholder debate firmly in the realm of legitimacy rather than strategy as the descriptive and instrumental views would suggest.[19]

The implications of positioning normative stakeholder theory as rooted in seeking corporate legitimacy are substantial, since this means that a) not the factual power carried by a claimant, but the argumentative power of the claim is decisive. b) Not static stakeholder listings are required, but principled openness towards all valid claims. And, c) not the stakeholders but the stakeholder dialogues ought to be managed by the corporation. In the following, I expand these three points in order to obtain an understanding of stakeholder theory fit for an ethical reflection of corporate conduct.

- Based on the logic of reciprocating moral rights, any meaningful normative construct of stakeholders cannot omit making explicit that the factual power

[17] For an extensive argument on rejecting the normative heightening of the profit principle, see Ulrich, Integrative Economic Ethics (2008), pp. 381-395

[18] This is, of course, adopted from Kant’s ‘Groundwork of the metaphysics of morals’: "But a man is not a thing, that is to say, something which can be used merely as means, but must in all his actions be always considered as an end in himself.” (Kant, Grundlegung zur Metaphysik der Sitten, 1996, p. 61)

[19] It is also worth noting the striking similarities in the lines of arguments between the proponents of instrumental legitimacy and instrumental stakeholder thinking, as both are based on assigning normative value to the profit principle.

of a claimant must submit to the argumentative power of the claim. Any claim and, thereby, any claimant have the right to equal consideration and equal opportunity to bring forward a claim. This is the only way to ensure that all stakeholders are treated as an end and that all valid claims are regarded as having intrinsic value.

- Stakeholder theory often offers lists and models containing static views on who stakeholders are (e.g., Fassin, 2009), which as often originate from Freeman's stakeholder model (Freeman, 1984). The difficulty with such lists is that, regardless of how extensive they may be, they draw attention to the claimant rather than the claim and, at least implicitly, exclude anyone who has not made it on that list. In the light of the definition of a stakeholder as anyone who can advance a normative claim on the corporation, attempts to generate comprehensive lists of stakeholders seems futile for they are either not able to account for the breadth of potential stakeholders, or they must be kept so generic that they lose their relevance. Simply put, only an open stakeholder definition can account for the dynamic character of potential claimants.
- Managing someone is generally output oriented; it presupposes that the manager influences the managed in order to achieve an objective. Attempting to manage stakeholder, therefore risks taking an instrumental stance on stakeholder theory, which – as we have seen – is not compatible with a normative stakeholder theory as presented here. If rigorously applied, regarding each stakeholder as an end in him / herself means the corporation ought to manage the dialogue by enabling free and uncoerced participation by anyone wanting to make a claim – thus aiming to draw close to an ideal speech situation. It is crucial to see the managerial task in the procedural dimension of initiating and maintaining a dialogue with claimants rather than managing the claimant him / herself.

As established in the previous section, being responsible is being able and willing to respond. Corporate social responsibility is, therefore, a company's ability to respond to social issues surrounding its activities, or its responsiveness towards society. Corporate structures, however, are generally geared towards being highly responsive to powerful stakeholders, such as shareholders or the company's owners as well as, for instance, government agencies with regulatory authority based on an instrumental stakeholder model. But corporate structures are less responsive to questions raised by weaker stakeholders, especially those from civil society like communities or non-governmental organizations. This makes the often prevailing reason for paying much attention to one stakeholder while disregarding another, the factual power that this stakeholder has. What sets socially responsible businesses apart from those that pay less attention to making a positive impact on society is that they proactively engage in an open stakeholder dialogue and take all stakeholders claims seriously if they are based on reason and on the power of their arguments rather than on the factual power of the claimant.

Stakeholder dialogue in practice

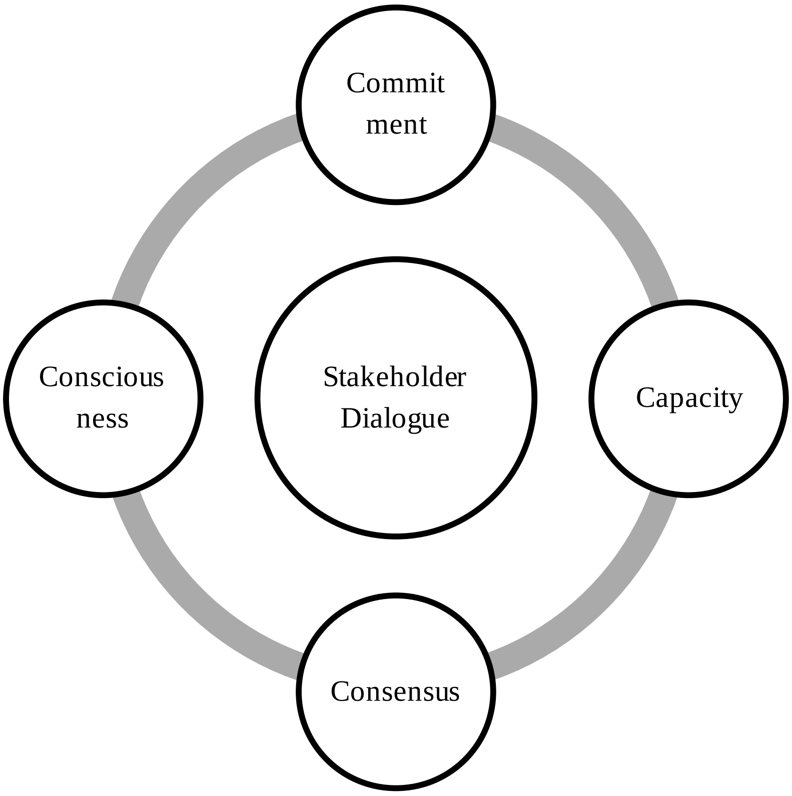
A normative view of stakeholder theory that is grounded in moral legitimacy rather than strategic considerations of the firm needs to establish stakeholder dialogue bearing in mind the regulative idea of the ideal speech situation suggested in discourse theory. This is not an easy endeavor given the prevailing dominance of the normative heightening of profit maximization and the consequential difficulties with giving all stakeholders an equal voice regardless of their ability to impact, either positively or negatively, the profit maximizing objective function of the firm.

To provide impetus to the ways corporations can engage in a stakeholder dialogue aligned to a normative stakeholder construct, I explore some suggestions of a more practical nature. This is done in three parts, which each determine some preconditions for a meaningful stakeholder dialogue by looking at the role of codes of conduct, reporting on the triple bottom line performance, and orienting the actual dialogue.

Stakeholder dialogues are no substitute for companies' need to take responsible decisions. Nor do they imply that all stakeholder claims need to be acted upon, or that stakeholders always want to legitimately impact corporate decisions. What they do have, however, is the moral right to find open communication channels to voice their concerns and receive a genuine and reasoned response, which then may or may not lead to further involvement, dialogue, and concrete outcomes.

Pedersen (2006, p. 153) finds four preconditions "that are likely to determine the fate of stakeholder dialogue - consciousness, capacity, commitment, and consensus".

Figure 1: The four preconditions for normative stakeholder dialogue; Adapted from (Pedersen 2006)



Consciousness is centered on knowledge and awareness. Managerial perceptions of corporate responsibilities impact the way corporations respond to stakeholder claims, as managers' personal perceptions of the world around them is inseparable from their decision making as executives (Quazi, 2003, p. 828). The level to which they are attuned to and aware of what is going on in society, and the more knowledge they have of pressing issues, the better they will be able to respond to claims brought forward. Without knowledge and awareness, stakeholder dialogue risks becoming "unstructured and accidental" (Pedersen, 2006, p. 154) and, perhaps even more importantly, this is likely to make them isolated events not embedded in the daily operations of the firm. This is not only true for management personnel, but for all employees, since they are often the ones who translate any dialogue outcomes into concrete actions. This translation is more likely to produce desired outcomes when employees' awareness and knowledge of the responsibilities of their firm are aligned to the tasks that result from stakeholder dialogue. In addition, consciousness supports the constant evolution of the way a corporation assumes responsibilities because only when internal stakeholders reflect on their conduct can they pinpoint potential 'blind spots' – self-refection demands self-awareness.

The second determinant is *capacity*. This addresses the need for material and immaterial resources to carry out dialogues. Although this discussion is grounded in an instrumental rationalization of corporate responsibility expenditure (Waddock & Graves, 1997), it remains true that stakeholder dialogue needs some investment in building capacities to initiate meaningful stakeholder interaction as well as to establish an ongoing dialogue. This is, however, of little concern in the context of this study, since the necessary investments are negligible to a large TNC.

Of much greater concern is the following feature, commitment, or sincere willingness to engage in a stakeholder dialogue. This willingness is grounded in a discursive understanding of a stakeholder dialogue. "Without commitment from the key persons involved in the planning and implementation, practically all initiatives are likely to fail." (Pedersen, 2006, p. 155) The difficulty here lies in the implications of the discursive understanding. These implications require management to refrain from exercising control granted through hierarchical structures, which often obstruct the approximation to an ideal speech situation (Pedersen, 2006, p. 156). Management may be highly committed to leading a stakeholder dialogue based on an instrumental understanding of it, but which could lead to a) a selection of stakeholder issues based on their potential impact on the company's financial performance, i.e. the prevalence of factual stakeholder power over argumentative power and, b) management risks turning a stakeholder dialogue into stakeholder debate.[20]

Table 1 summarizes the commitments necessary for a discursive understanding of stakeholder dialogue and contrasts the latter with stakeholder debate.

Consensus is the fourth dimension of these features and should be understood as the required consensus on the procedures of a dialogue, as well as the desirable consensus on its outcomes. This is based on regarding stakeholders as ends in themselves rather than the means, as it is unlikely that stakeholders will consent to procedures or outcomes which do not respect that their claim, and, indeed, their persona could have intrinsic value. Given the often diverging and, at times, incompatible interests of different stakeholders, only "fairness, openness (transparency), and honest engagement in dialogical processes" can assure that "mutual interests are considered, even when not everyone's needs or interests can in fact be met." (Waddock & Smith, 2000, p. 50)

[20] Debate refers to a situation in which the parties involved want to win by exercising influence; dialogue refers to a situation in which the parties involved strive to convince one another through mutual learning by giving and criticizing reasons. See Kaptein and Van Tulder (2003) for details on stakeholder debate vs. stakeholder dialogue.

In addition to the four preconditions, stakeholders need an informational basis that empowers them to bring forward claims and build arguments in support of those claims. Openly accessible codes of conduct and reporting on a triple bottom line performance play an important role in providing stakeholder dialogue with this general informational basis. Codes and reports function as the first items that should be consulted (by both internal and external stakeholders) when de facto corporate actions need to be evaluated against self-imposed guidelines for firm conduct. A code of conduct offers a business organization the opportunity to write down what it sees as its responsibilities vis-à-vis its stakeholders, as well as the norms and values to which it maintains it adheres unconditionally.

"One way of maintaining integrity might seem to work within an agreed code of conduct." (Henriques, 2009, p. 331) Since such codes of conduct can have a disciplining effect on the firm by being a constant reminder – an anchor as it were– for employees and, therefore, the company as a whole to act properly.

For employees to regard codes as legitimate and, thus, increase their observance, such codes should be developed by those to whom they apply, i.e. the employees. In addition, they should not be regarded as set in stone once conceived, but need to evolve in order to stimulate an ongoing discussion among employees on the dilemmas they face and concrete situations they experience without finding guidance in *their* code of conduct (Kaptein & Van Tulder, 2003, p. 205).

At the same time, it is pivotal that codes of conduct not only exist, but are publicly available. In the context of stakeholder dialogue, codes can, of course, only have a function if they are accessible to all stakeholders. Given that under the open stakeholder definition used here, a company cannot know a priori who its stakeholders are, a code needs to be freely available to everyone. The stakeholders can then assess if the self-proclaimed norms and values of the relevant firm do correspond to their norms and values, but the stakeholders cannot yet assess, unless through possible firsthand experience, to what degree the firm actually adheres to their code. This is where reporting comes in. While codes gain legitimacy by being conceived from within the firm, the opposite is true of social and environmental reports - they need to be the result of a third party audit.

In combination with codes of conduct, third-party-audited social and environmental reports can therefore be understood "as the explicit manifestation of the commitments taken on by the company to each of its stakeholders, together with the basic values that orientate its activity." (García-Marza, 2005, p. 210) It is this manifestation that allows all stakeholders to gain an understanding of what a company claims to do (and not do) and how well its actual business conduct is aligned or in conflict, thereby creating the basis for engagement in an informed stakeholder dialogue.

This dialogue can be held in respect of specific projects or general issues in a variety of forms ranging from roundtable discussions with civil society organizations to Internet forums; it can be held via the exchange of e-mail or physical mail, by providing a 'talk to us button' prominently on the firm's website, or via publications that collectively respond to stakeholder claims. It is important to recognize, though, that regardless of the form of engagement, it is not always possible to satisfy all the interests of all the stakeholders. The very fact that stakeholder dialogues are a good idea is based on the notion that stakeholder interests are, at times, in conflict. It is, however, possible to ensure that all stakeholders feel confident that they have opportunity to bring forward their claim and to treat all stakeholders equally, based on respect for the intrinsic value of their claim, which is inherent to normative stakeholder theory. This does indeed confirm the call for a procedural understanding of stakeholder dialogues and, thus, establishing the means that allow the firm to draw close to, although perhaps never fully reaching, an ideal speech situation. Under those presuppositions, one can assume "that ongoing, iterative dialogue and communication with stakeholders will result in mutual exposure of interests and intentions, and will, over time, result in conditions that approximate" an open and uncoerced dialogue (Reynolds & Yuthas, 2008, p. 61).

The practical side of establishing a meaningful stakeholder dialogue therefore builds on a) the business organization fulfilling a set of preconditions, b) providing stakeholders with the information necessary for gaining an understanding of self-imposed codes and the degree to which they are followed, and c) initiating and engaging in the actual dialogue, which must be oriented towards an ideal speech situation. Consequently, the result of following these suggestions is a dialogue rather than a debate, as outlined in Table 1 below.

Table 1: Stakeholder debate vs. stakeholder dialogue

	Stakeholder debate	Stakeholder dialogue	Ethical reflection basis
1.	Competition with a winner / loser outcome	Cooperation aiming to create consensus on the basis of procedures that are mutually accepted as fair	Derived from protection of individual vulnerability and reciprocity in moral rights
2.	Egocentric where the other party is a means to other ends	Empathetic where the other party is representing interests of intrinsic value	Derived from the intrinsic value of all valid stakeholder claims
3.	Cultivating a desirable image	Being yourself	Derived from the prerequisite of openenss in a discourse
4.	Talking *at* others	Talking *with* and listening *to* others	Derived from the prerequisite of equality and uncoersiveness in a discourse
5.	Influencing	Convincing	Derived from giving and critizising reason as the basis of dialogue
6.	Confrontational, exploiting weaknesses of others who are perceived as a threat	Constructive, mutually accepting weaknesses and finding common ground from which to elaborate conflicting interests	Derived from procedural fairness
7.	Closed and defensive attitude safeguarding the 'one truth'	Open and vulnerable attitude admitting to the validity of conflicting claims	Derived from the prerequisite of openenss in a discourse
8.	Winner takes it all mentality	Sharing mentality	Derived from a qualitative view on freedom and reciprocity of moral rights
9.	Separate/isolated responsibilities	Shared responsibilities	Derived from the dialogical conception of respoinsibility i.e. Responsibility with, not for others

Source: Adopted from Kaptein & Van Tulder (2003), p. 210 enhanced by the third column

3. The emancipated corporation

For corporations to assume responsibilities as outlined in this paper, corporations need to accept that the limitations to entrepreneurial freedom come from within the very freedom to be in business. In other words, in addition to legality, legitimacy is what counts. Moreover, the primacy of economic rationality must be replaced with the primacy of ethical rationality.

The emancipated corporation, as I will call it, serves as a regulative idea, a hypothetical role model, as it were, for a corporation that follows the normative ideas presented in this paper. The emancipated corporation is based on an interdependent two-dimensional liberation from what can be perceived as major obstacles to responsible corporate conduct, especially, but not exclusively, in larger business organizations.

- The first dimension is that of gaining freedom from the normative heightening of profit maximization, which leads to a one-dimensional goal set.
- The second dimension is gaining freedom from a (purely) instrumental understanding of responsible corporate conduct, which leads to legitimatory deficits.

In combination, these two dimensions enable a business organization to become a life-conducive economic actor pursuing an objective function that creates societal value and only engaging in activities that are worthy of gaining and retaining a public license to operate.

Gaining freedom from a one-dimensional goal set

Some signals from within large corporations must be worrisome for executives. The Hay Group (2001), for example, found that 43% of American employees are either neutral or negative towards their workplace. Moreover, according to a Gallup study, 71% of American employees are either not engaged or actively disengaged in their job, showing an alarming inner withdrawal rate (Gallup, 2006).

Both studies agree that employees who believe their jobs are meaningful will be more motivated, cooperative and innovative "capturing the hearts and minds of good, reliable employees … who are significantly more productive when engaged" (Hay Group, 2001). The question is: how much meaning can employees find in the objective function of maximizing shareholder value? The figures above suggest not a whole lot.

The challenges also extend to external stakeholders. The World Economic Forum (2006) has found that public trust in business organizations has decreased dramatically[21] as a result of incongruent values between stakeholders and, specifically,

[21] This was also attributed to the increased number of corporate scandals prior to 2006, making it unlikely that TNCs have gained trust during the recent crisis.

large, shareholder-value-maximizing corporations. The public regard the one-dimensional goal set of profit maximization as inherently opportunistic (Pirson & Malhotra, 2006), providing neither meaning nor societal value.

Further support for challenging the objective function of profit maximization comes from an unexpected source. Jack Welch, the former CEO of General Electric, who is himself credited with launching the shareholder value movement among top management teams[22], recently said in an interview with the Financial Times: "On the face of it, shareholder value is the dumbest idea in the world, shareholder value is a result, not a strategy … Your main constituencies are your employees, your customers and your products." (Financial Times, 2009) While his views might still deviate substantially from a normative stakeholder model, it seems that shareholder value maximization is increasingly losing its foothold.

Basically, he is saying that, in the long run, companies can not successfully satisfy the quarterly expectations of financial markets analysts, but do so through innovative products and services, satisfied customers, and engaged employees. Consequently, they provide value to society, which will then translate into financial returns for shareholders – a consequential outcome of the prior but not the target.

> "Where value takes more than acceptance of value maximization as the organizational objective. As a statement of corporate purpose or vision, value maximization is not likely to tap into the energy and enthusiasm of employees and managers to create value." (Jensen, 2002, p. 65)

Nevertheless, the strict application of economic rationality to provide the foundation for shareholder value or, more generally, the profit-maximizing objective function of the firm is not only counterproductive for sustained business success, but also wrong on normative grounds. "Economic rationality is power-based while ethical reason is justice-based. At best, 'efficient' market exchange reproduces the 'given' power relations." (Ulrich, 2009, p. 145)

As such, economic rationality and its translation into the profit-maximizing firm creates a situation in which might makes right. This assessment is grounded in the quantitative notion of freedom, which is inherent to neoclassical economics and the neoliberal conception of freedom. When freedom is strictly understood as the expansion of one's room to maneuver, only finding its limitations through the desire to

[22] In his 1981 inaugural speech as General Electric CEO, he was the first to use the term shareholder value.

avoid conflict with others (Dierksmeier, 2007, p. 109), then limitations to one's freedom are only expected to the extent that others can create such conflict.[23] Consequently, equality in the personal freedoms enjoyed becomes dependent on individual capabilities' symmetry regarding creating conflict.

It is clear that expecting to find this symmetry is a rather unrealistic assumption in the context of large business organizations vis-à-vis many of their stakeholders. Under this presupposition, it becomes self-evident that the profit-maximizing objective function inevitably leads to situations in which asymmetric power relations result in the disrespect of the moral rights of weaker stakeholders. This is in turn completely at odds with the unconditional imperative of the mutual granting of the same moral rights in interpersonal relationships, including, as I have argued before, those relationships taking place in a business context.

The emancipated corporation comprehends both the critique of translating economic rationality into the crypto-normative justification[24] of the profit-maximization principle and its negative consequences for long-term business success. The latter prepares the ground for a sustained, also financial, firm performance while the former allows managers to remove the blinders that restrain their vision to a single dimension and allows moral (human) rationality to prevail over market rationality.

"But when 'the earning of more and more money … is thought of so purely as an end in itself'[25] and becomes an ingrained habit of thought and a normal attitude, the personality of an individual is in the long run almost inevitably deformed" (Ulrich, 2008, p. 143)

Managers of the emancipated corporation are freed from the risk of such deformation, employees are freed from working in a firm whose primary aim they do not share, and the wide swath of stakeholders are freed from a corporate citizen who, ultimately, follows a logic in which might makes right.

[23] Or is, of course, dependent on the voluntary self-restraint of the 'stronger' party, which in itself is a departure from regarding limitations to personal freedom as grounded in avoidance of conflict.

[24] For a critique of the crypto-normative logic of market rationality, see Ulrich (2008), p. 183

[25] Weber, Protestant Ethic, p. 53 as quoted by Ulrich (2008), p. 143

Gaining freedom from legitimatory deficits

What alternative objective function can there be? The three best-known alternatives are the triple bottom line (Elkington, 1998), happiness (Frey & Stutzer, 2000), and stakeholder value (Freeman, 1984). All three alternatives are widely tested for their relation with the three main variants of organizational legitimacy, although few arguments are presented that pinpoint moral legitimacy *as* an alternative objective function. Normative stakeholder theory presents moral legitimacy as a precondition for profit-oriented goals – the emancipated corporation thus makes the normative legitimacy of all its activities its prime objective. As such, it is enabled to share responsibility with its stakeholders. Furthermore, balancing conflicts within the triple bottom line is transferred from a (monological) executive decision to the (dialogical) moral site[26] of the stakeholder dialogue.

A business organization needs to gain legitimacy; consequently, the underlying argument – *because* it is good for long-term profitability – makes the quest for legitimacy a means to achieve financial ends (Suchman, 1995).[27] In addition, it is true that the loss of legitimacy can be very costly and can even threaten the existence of a business organization altogether.

The commercial risks for business organizations of losing legitimacy are very clearly unearthed in the current global economic crisis. Many financial services institutions are no longer regarded as legitimate. They are no longer trusted to fulfill their constituents' expectations, which is primarily to safeguard the money with which they have been entrusted. Consequently, vast amounts of capital have been shifted from those banks that have lost legitimacy to those remaining institutions that are still trusted to fulfill expectations. The result is a record number of financial institution bankruptcies and many of those that survive do so only due to the helping hand of governmental intervention (Spitzeck, Pirson & Dierksmeier 2011).

However, similar to the critique of economic rationality, the real reason for seeking moral legitimacy is not the commercial risks inherent in losing it i.e. the business case, but its normative foundation. The resulting commercial benefits are then

[26] For a comprehensive argument on the stakeholder dialogue as a site of business morality, see Ulrich (2008) pp. 421 – 432.

[27] See Sundaram and Inkpen, for example,: "The stock market convulsions and corporate scandals of 2001 and 2002 have reignited debate on the purposes of the corporation and, in particular, the goal of shareholder value maximization. We revisit the debate, re-examine the traditional rationales, and develop a set of new arguments for why the preferred objective function for the corporation must unambiguously continue to be the one that says 'maximize shareholder value'." (Sundaram & Inkpen, 2004)

a bonus for having done what is the right thing to do. A corporation needs to seek legitimacy to ensure it does not act against the moral rights of others. Gaining legitimacy is therefore a *pre*condition (Ulrich, 2009, pp. 145-147), not a reason for any corporate activities, thus making it an end in itself rather than a means.

Based on the Habermasian notion that legality represents the ex-ante acceptance of rules, while legitimacy represents the outcome of evaluations (Habermas, 1975, p. 108), business organizations need to earn (rather than strategically manage) legitimacy (Thielemann & Wettstein, pp. 39-41) by means of positive outcomes of stakeholder evaluations.

Immanuel Kant's principle of publicity, which declares that an action affecting the rights of other human beings is wrong if its maxim cannot be declared publicly (Deligiorgi, 2001, p. 151), provides the ground rule for principled openness to discursive engagement with all stakeholders. This way the corporation obtains its public license to operate and, if it understands stakeholder dialogue as an ongoing form of legitimizing corporate conduct firmly embedded in the culture of the firm, it renews its public license to operate – free from constant pressures to manage reputational risks and strategically influence public perceptions.

In response, internal as well as external stakeholders can derive meaning and see purpose in a business's activities creating value for society, making them loyal customers, engaged employees, long-term-oriented investors, and also, more forgiving if things do occasionally go wrong. Simultaneously, managers are enabled to maintain their personal and the organization's integrity.

The emancipated corporation has thus freed itself from the constant fear of losing its public license to operate and the need to manage reputational risks, as it has made moral legitimacy the unconditional platform from which it launches any further activities within the market environment. It has made moral legitimacy the yardstick for measuring the right or wrong of its conduct. Adherence to the rules, i.e. the legality of its conduct, is simply a taken-for-granted platform, but it is powerless in a moral argument when legitimate claims are presented.

Kant's definition of enlightenment as "man's leaving his self-caused immaturity" (Kant, 1784) serves well to describe the emancipation from a singular focus on profit maximization and an instrumental view of legitimacy. In Kant's definition of enlightenment, immaturity is the incapacity to use one's intelligence without the guidance of another. Translated to the corporation, ‘another’ is economic rationality as the source of indisputable guidance without which managers lack the capacity to use their intelligence. Managerial enlightenment is therefore emancipation from submitting human rationality to economic rationality.

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