

Milton Friedman and Social Responsibility

An Ethical Defense of the Stockholder Theory

by

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Master Thesis in Philosophy (FIL4090)
Department of Philosophy, Classics, History of Arts
and Ideas

The University of Oslo

15.11. 2013

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2013

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Print: CopyCat, Nydalen

Summary

The subject-matter of this thesis is business ethics. The purpose of this thesis is an attempted revival of the stockholder theory, to show that it is a viable position, but in need of augmentation. The thesis defends the stockholder theory as envisioned by Milton Friedman, that the only social responsibility of corporations is to increase its profits, while staying within "the rules of the game" which are a set of side-constraints on profit-maximization. Friedman offers two broad set of arguments in favor of his position. The first is a set of deontological arguments in favor of fiduciary duties and against Corporate Social Responsibility (CSR). The second line of argumentation is a utilitarian or broadly consequentialist argument against corporations taking on CSR. Using a framework from Nicholas Capaldi of rival business ethical paradigms, I argue that the opponents who attack the stockholder position do so from a set of radically different assumptions and that their arguments do not dislodge the internal consistency of the stockholder theory, nor do they effectively challenge its ethical base. Further, I show what would be required for an argument to be successful against the deontological argument for fiduciary duties and illustrate that the most common arguments for corporations to take on a wider set of social responsibilities and obligations than the stockholder theory allows for fail in their present form. The arguments for the dismissal of the fiduciary duties rest on assumptions that are counter-intuitive and are not properly grounded. This makes the arguments too weak to oust the stockholder theory. The stockholder theory does have a number of serious weaknesses that need to be remedied if the position is to function as a viable and fully functioning normative business ethics. The stockholder theory provides the goal of business as profit-maximization, but provides little in regards to the specifics of how executives are to maintain the interests of the stockholders. A further, weakness is the side-constraints that are ambiguous and that could dilute and undermine the stockholder position. It also makes it susceptible to cultural and ethical relativism. I argue that the side-constraints need to be replaced. I then proceed to briefly indicate a possible neo-Aristotelian solution that would augment the stockholder theory.

Forword

This thesis could be viewed as an act of justice towards Friedman. It has grown out of my malcontent with how business ethics is presently taught and how easily Friedman is dismissed on the flimsiest of grounds.

It has been a long journey getting here. Thanks to all who have been supportive. Patience is a virtue. First and foremost, I would like to thank my supervisor, Ole Martin Moen, for generous use of his time and his many succinct comments.

I would also like to thank my parents, Gunnhild Ekornes Mertens and Karl-Heinz Mertens for their aid and encouragement, and my brother Torbjørn Ekornes Mertens, who has been solid as a rock.

I would also like to thank my good friend Harald Waage for many discussions throughout the years.

May the Deii Lucrii smile upon you all and make your ventures profitable

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1 Introduction

Imagine that you are the corporate manager of a company. You have been hired by the board of directors to make the company more profitable. Across your desk is a proposal from a local charity urging you to donate \$ 800 of the company's money to help the local soup kitchen that provides food for the homeless and there is another letter from an environmental activist group that wants a donation of \$500 to help clean up a local river. There is no direct benefit for the company in this and the company statutes stipulates against such giving. Should you divert funds from the company to help either of these groups? If so, why? Haven't we all heard the mantra: that the strong must look after the weak! That the responsible thing to do is to take care of the planet and make it sustainable.

The stockholder theory's answer to this is an explicit *no!* You are contractually bound by your employment contract that you voluntarily have entered into to not divert company funds in this manner. This would be tantamount to theft. It would be a breach of your fiduciary duties as an executive. Charity you can do on your own free time with your own money. The stockholder theory holds that you are primarily responsible to the stockholders who have entrusted you with *their* money for the explicit purpose of increasing profits and not to engage in charity with other people's money.

There has long been a debate in business ethics between the stockholder theory and different schools that advocate Corporate Social Responsibility (CSR) about what the social responsibilities of corporations and companies are. The stockholder theory whose leading spokesman was Milton Friedman argued that the only social responsibility of business is to increase its profit; and if an executive was to take on social responsibilities he would be in breach of his fiduciary duties. Those who oppose the stockholder theory and advocate for CSR argue that business has a broader set of duties to a wider group than just the stockholders.

Now, imagine that you are the corporate manager of a company and that you can hide company debt thru "creative financial reporting" to keep the price of stocks up and get more people to invest in your company. Should you maximize profits this way, after all it is your duty towards the company to increase profits? This was the case of Enron, one of the biggest business-scandals in recent years. When the scandal was uncovered the stocks fell from 90

dollars to 4 cents. The stockholder theory holds as a side-constraint that deception and fraud is prohibited in the pursuit of profit. Behaving as Enron did, a company that before the scandal was much heralded for its environmentally friendly agenda and its CSR profile, is unacceptable in the pursuit of profit according to the stockholder theory.

The stockholder theory holds that the social responsibility of a company is to earn profits for its stockholders and argues that this is actually an important social responsibility with vast consequences. The stockholders of many public companies include many ordinary income people who expect to earn more money by investing in stocks than by putting the money in a bank. Many ordinary working people lost their retirement funds and were severely affected by the fall of Enron and many employees lost their jobs, which again had enormous social impact. This goes to show, according to the stockholder theory, that increasing profits for the stockholders is an important “social responsibility” not to be taken lightly.¹

Now, imagine, a different setting, that you are an executive in a corporation located in India pumping up water to make soft-drinks, where your explicit corporate purpose is to maximize profits. Pumping up the water in large quantities in order to earn more profits has the effect that local villagers are being deprived of their much needed water as well as having negative health-consequences. What do you as a corporate manager do? Do you continue to increase profits by depriving the villagers of their water? How do you as a corporate executive deal with the issue of negatively affected third parties? Do you as an executive of a corporation have any social responsibility to the affected parties? This was the case of Coca-Cola in Kerala province, India, and they decided to continue pumping up the water.² This is against another side-constraint of the stockholder theory; that a person or company should avoid exposing others to negative externalities and also abide by the law. Western countries would not accept such behavior, but what then if the place of business is in a country that would like a big corporation to come in and provide jobs and tax-money, and would be willing to look away from adverse consequences to a part of its poor population. Does it morally alter anything, since the action seems to be sanctioned by the government?

¹ Christopher Cosans, "Does Milton Friedman Support a Vigorous Business Ethics?," *Journal of business ethics* 87, no. 3 (2009): 397.

² Nick Mathiason, "Coke 'Drinks India Dry'," *The Guardian*, <http://www.theguardian.com/money/2006/mar/19/business.india1>. (Accessed: 9.11.2013)

Let's say that you are an executive in the oil business and that in order to get a lucrative oil contract you have to pay a bribe to local officials, bureaucrats and politicians.³ This is the social norm and the industry norm and it is practiced by everyone.⁴ The consequences of not paying the bribe is that somebody else, who is willing to pay the bribe will get the contract, corruption will continue and you will be forced to reduce the number of employees at your company, which again will have negative effects for the families involved, some of which will not be able to pay of the mortgages on their houses. What should you do?

These are examples of moral conundrums that need to be answered. Any normative theory of business ethics worthy of its name would need to provide answers to such questions. In this regard; "Friedman's analysis of corporate social responsibility represents one of the most controversial ideas in modern business ethics."⁵ Friedman and the stockholder position is quite often misinterpreted and held to be that businesses should do whatever improves their financial position, no matter the consequences to others. This is blatantly incorrect and it will be shown that this is not the case. The focus of this thesis is on the stockholder theory of Friedman and endeavors to show how this theory, that has lost much of its former popularity, is still a viable theory, although in need of augmentation to deal with the complexity of a more globalized world.

This thesis will defend the stockholder position as envisioned by Milton Friedman that the only social responsibility for corporations is to increase its profits, while staying within "the rules of the game." Friedman gives two broad set of arguments for his case, one deontological argument for fiduciary duties and a set of consequentialist or broadly utilitarian arguments against corporations taking on social responsibilities (chapter 2). I use the framework of Capaldi of two different "narratives": a Lockean and a Rousseauan, to cognize the underlying assumptions of different business ethics paradigms and how this frames the debate and argumentation (Chapter 3).⁶ I argue that the opponents fail in their attempts to dislodge the arguments of Friedman in favor of a broader set of duties to an increased group of stakeholders, and that they quite often overlook the "side-constraints" and often attack a straw man (chapter 3). Furthermore, I show that the attacks on Friedman's ethical base are not

³ "Statoil Fined over Iranian Bribes," BBC News, <http://news.bbc.co.uk/2/hi/business/3849147.stm>. (Accessed: 9.11.2013)

⁴ Espen Bjerke, "Statoil Ga En Milliard Til Diktatorer," *Dagens Næringsliv*, <http://www.dn.no/energi/article1284671.ece>. (Accessed: 9.11.2013)

⁵ Harvey S James Jr and Farhad Rassekh, "Smith, Friedman, and Self-Interest in Ethical Society," *Business Ethics Quarterly* 10, no. 3 (2000): 660.

⁶ Nicholas Capaldi, "Rival Paradigms in Business Ethics," *Reason Papers* 31, no. 2 (2009).

sufficiently strong and can be dispelled. I then proceed to show what would be required for an argument to be successful against the deontological argument for fiduciary duties and then show that the arguments in favor of a broadening of social responsibilities rests on unwarranted assumptions and ultimately fail as critiques (in their present form) of the stockholder position (Chapter 4). The stockholder theory is a strong theory in regard to defending the goal of business as profit-maximization and in countering arguments for CSR, but it does have a number of serious weaknesses that need to be remedied if the position is to be a viable alternative to the more popular stakeholder-theory, CSR-type of theories and social contract theories that are currently in vogue, and function fully as a normative business ethics (Chapter 5).⁷ The stockholder theory states the goal of business as profit-maximization, but provides little by way of answers to the specifics of how executives are to maintain the interests of stockholders. The stockholder theory thus provides a goal, but says insufficiently little about the “means” and nothing about handling incommensurability and making trade-offs between quantitative and qualitative aspects when it comes to deliberation and decision making. A further problem are the side-constraints that are ambiguous and not firmly grounded and could lead to an undermining of the stockholder position and also makes it susceptible to cultural and ethical relativism. I argue that the side-constraints need to be replaced and firmly grounded. This can probably be done on many different foundations, but it needs to be done and it needs to be shown how it can be done. I then proceed to indicate one possible solution, a neo-Aristotelian foundation of practical deliberation and non-relative virtues along with individual rights. This could if fully integrated and thoroughly worked out beyond my simple indications replace the side-constraints and provide the stockholder theory with the required augmentation to make it a fully viable normative business ethics.

⁷ R. Edward Freeman, *Strategic Management - a Stakeholder Approach* (Cambridge: Cambridge University Press, 1984 (2010)); R. Edward. Freeman et al., *Stakeholder Theory - the State of the Art* (Cambridge: Cambridge University Press, 2010); R Edward Freeman and Robert A Phillips, "Stakeholder Theory: A Libertarian Defense," *Business ethics quarterly* 12, no. 3 (2002); R. Edward Freeman, "The Politics of Stakeholder Theory: Some Future Directions," *Business Ethics Quarterly* 4, no. 4 (1994); Archie B Carroll, "The Four Faces of Corporate Citizenship," *Business and society review* 100, no. 1 (1998); Archie B Carroll and Kareem M Shabana, "The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice," *International Journal of Management Reviews* 12, no. 1 (2010); Mark S Schwartz and Archie B Carroll, "Corporate Social Responsibility: A Three-Domain Approach," *Business Ethics Quarterly* 13, no. 4 (2003); Thomas Donaldson and Thomas W Dunfee, "Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory," *Academy of management review* 19, no. 2 (1994); *Ties That Bind: A Social Contracts Approach to Business Ethics* (Cambridge, MA: Harvard Business Press, 1999); Thomas W Dunfee and Thomas Donaldson, "Social Contract Approaches to Business Ethics: Bridging the “Is-Ought” Gap," in *A Companion to Business Ethics*, ed. Robert E. Frederick (Oxford: Blackwell, 1999). These books and articles are among the more central when it comes to other rival normative business ethics theories.

2 Friedman and the Stockholder theory

This chapter first expounds on what the stockholder theory is, and then proceeds to show Friedman's two broad sets of arguments; the deontological and the consequentialist (or utilitarian). This is then followed up with important framing issues to better understand the stockholder theory. The first of this is how, Friedman uses and understand self-interest and the place it has in his system. Next, is the role of the side-constraints and how they operate. The chapter ends with a brief discussion of how minimalist the stockholder position is, its characterization and the level of obligation posited.

2.1 Friedman's position

The stockholder theory is a normative business ethics theory concerning the issue of "how businesses and business people should behave."⁸ The stockholder theory is a theory about the corporation and its moral purpose and responsibilities. The main proponent of this theory is Milton Friedman. The theory holds that "...businesses are merely arrangements by which one group of people, the stockholders, advance capital to another group, the managers, to be used to realize specified ends and for which the stockholders receive an ownership interest in the venture."⁹ There are two parts to the relationship: executives and stockholders. Both of which have voluntarily entered into a contractual agreement. The agreement stipulates the responsibilities and obligations of the contractual partners. Executives are to act as *agents* for the stockholders. They have been empowered to manage the money advanced by the stockholders, and are obligated to do so in accordance with the set purposes delineated by their stockholder *principals*. The purpose of the business doesn't necessarily have to have profit as its goal, other goals are possible, but the stockholder theory is mainly concerned with that subset of corporations and businesses whose purpose is profit-maximization. The main point is that the fiduciary relationship binds executives in such a way that they cannot expend business resources in ways that have not been authorized by the stockholders regardless of any societal benefits that could be accrued by doing so. Managers, executives, and employees are bound by their work contract to advance the interest of their employer, stockholder or

⁸ John Hasnas, "The Normative Theories of Business Ethics: A Guide for the Perplexed," *Business Ethics Quarterly* 8, no. 1 (1998): 36.

⁹ *Ibid.*, 21.

business-owner and the purpose set forth in that agreement. Executives are free to spend their *own personal funds* anyway they see fit on any charitable or socially beneficial project they wish in their role as a private citizen, but when functioning in their capacity as executives they are an *agent* of the stockholders and are duty-bound not to divert business resources away from the purposes expressly authorized by the stockholders.

Rival normative business ethics theories of note are the *stakeholder theory* whose main proponent is R. Edward Freeman and different social contract theories, where the *integrative social contract theory* of Thomas Donaldson and Thomas Dunfee is one of the more famous. Stakeholder theory challenges the stockholder theory by arguing that there are more “stakeholders” with an interest in a corporation than just the stockholders and these other “stakeholders” need to be taken account of and given a say in the running of the corporation. Other stakeholders comprise employees, customers, suppliers, communities, the environment, competitors, local and national government, political groups and trade unions. Social contract theory in business ethics is heavily influenced by political social contract theory and is concerned with a hypothetical contract between “society” and “business” that grounds norms and responsibilities. There is also *social permission theory*, which states that business functions by the permission of society and that business is merely a trustee of society’s resources; and that this permission can be withdrawn if a corporation is not fulfilling its proper social role and its obligations. Corporate Social Responsibility (CSR) comprises many different views and different theories and there is no well agreed upon definition of what CSR is.¹⁰ The focus of this thesis is on the stockholder theory and these other theories and views will only enter into the discussion, as a foil, when debating the stockholder theory. CSR will in this thesis be viewed as an extended view of social responsibilities that goes beyond the “social responsibilities” that Friedman envisions - on that there is no controversy.

So what is the social responsibility of business according to the stockholder theory? Friedman states his position about the moral foundation of business and social responsibilities in the following manner in *Capitalism and Freedom* “...there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase

¹⁰Elisabet Garriga and Domènec Melé, "Corporate Social Responsibility Theories: Mapping the Territory," *Journal of Business Ethics* 53, no. 1/2 (2004). Alexander Dahlsrud, "How Corporate Social Responsibility Is Defined: An Analysis of 37 Definitions," *Corporate social responsibility and environmental management* 15, no. 1 (2008).

its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.”¹¹

When it comes down to the social responsibility of business Friedman is quite adamant: There is only one social responsibility of business and that is to increase the profit of the shareholders. Using the terminology of the CSR crowd, Friedman states that profit-maximization is not just a fiduciary responsibility, but also a “social responsibility”; and in fact the only responsibility.¹² Counter to the claims of the adherents of CSR: There are no duties to any other stakeholders. That does not, however, imply that it is deuces wild. There are side-constraints that may not be side-stepped. Friedman in this passage alludes to the rules of the game, but those are not the only restrictions. He has an expanded and more elaborate view on restrictions in his later 1970s article and in his other writings that also need to be taken into account. These other restrictions on the limitations on profit-maximization are set by social norms, ethical customs, and the law in the society that the business functions within. Furthermore, negative externalities are to be avoided and if incurred compensation is mandated.

The social norms and ethical customs are implicitly those of a Western liberal democracy. Friedman wrote in a time where the economy was not globalized to the same extent that it is today and dealing with radically different ethical and social norms was not as contentious an issue. Friedman also holds that one should abide by the law even if one does not agree with it, and this also holds for profit-maximization. When it comes to negative externalities, the meaning here is that one should seek to earn a profit, but not at the expense of someone else and their property rights at least not without adequate compensation and within the confines of the legal system.

The relevant literature, where Friedman argues for the stockholder position is first and foremost his article “The Social Responsibility of Business is to Increase its Profits” where he makes his argument in full and a shorter version that he wrote previously in 1962 in his book *Capitalism and Freedom*. There is also a *Business and Society Review* interview where he explicates on his meaning and intentions and a debate between him and John Mackey and T.J.

¹¹ Milton Friedman, *Capitalism and Freedom*, Fortieth Anniversary Edition ed. (Chicago: The University of Chicago Press, (1962) 2002), 133.

¹² Later on we shall see that the efficient use of resources gives a net benefit at the aggregate social level, so Friedman doesn’t just appropriate the term of his opponents by using the term “social” in a different manner, there truly is a social dimension to it.

Rodgers in *Reason Magazine* where he elaborates on his views. For Milton Friedman's more general philosophy and general libertarian (or classical liberal) outlook which gives the germane interpretive framework: the relevant works are *Capitalism and Freedom* and *Free to Choose*.¹³ I will in the next section reconstruct and give a summary of Friedman's case for profit-maximization as being the only social responsibility. Furthermore, I will supplement the main argument for the Stockholder position given in *Capitalism and Freedom* and in his 1970s article with other pertinent material found elsewhere in his writings to give a more complete view of and exposition of Friedman's position.

On an interpretative note, the arguments Friedman gives join together to form a cohesive whole of inter-related parts building on each other and strengthening each other, where the deontological and consequentialist argument complement and reinforce each other. I have opted to try and give an accurate summary and commentary so that it should be possible to read this thesis without necessarily having read Friedman's original work on the subject-matter.

His argument in favor of the stockholder theory can be seen as two-pronged. The first are a set of arguments that are closely linked that when put together add up to a deontological argument for fiduciary duties and that engaging in CSR would be tantamount to breaching these duties. The second group of arguments is utilitarian and consequentialist oriented. There are two arguments here. Firstly, Friedman "questions the competence of business leaders (or any other individuals) to discern and directly promote the general good";¹⁴ and thus argues that CSR should not be undertaken. Secondly, he argues that "the market itself is the best mechanism by which to promote the public good"¹⁵ and that by pursuing profit, business is already giving back to the community in the most efficient manner possible.

¹³ Milton Friedman, "The Social Responsibility of Business Is to Increase Its Profits," *The New York Times Magazine*, September 13 1970. *Capitalism and Freedom*; Milton Friedman and Rose Friedman, *Free to Choose - a Personal Statement* (San Diego: Harcourt Brace & Company, 1980 (1990)); Milton Friedman, "Milton Friedman Responds," *Business and Society Review* 1(1972); Jr Robert L. Bradley, "Rethinking the Social Responsibility of Business: A Reason Debate Featuring Milton Friedman, Whole Foods' John Mackey, and Cypress Semiconductor's Tj Rodgers," (*Reason Magazine*, 2005).

¹⁴ Thomas Carson, "Friedman's Theory of Corporate Social Responsibility," *Business & Professional Ethics Journal* 12, no. 1 (1993): 15.

¹⁵ *Ibid.*

2.2 The deontological argument

Friedman's deontological argument can be divided into two different, but related arguments. The first den Uyl has dubbed the *Profit Maximization Argument* and the second the *Social Responsibility Argument*.¹⁶ Following den Uyl they can be structured as follows.

The Profit Maximization Argument

1. Corporate Managers are fiduciaries of the corporate owners (e.g. stockholders)
2. Corporate owners have only one interest in and reason for hiring managers – to maximize profits
3. Therefore, corporate managers would violate their fiduciary trust by engaging in actions that are unrelated to (or which consciously minimize) profit maximization

The Social Responsibility Argument

4. Acts of corporate charity ("social responsibility") lessen the amount of profits the firms and/or owners receive
5. If corporate managers act in ways described in #4, they would violate their contractual responsibilities to owners. (by #3)
6. A call for managers to be "socially responsible" is a call for them to violate their contractual obligations. (by #4 and 5)
7. Thus, managers should not direct their firms into "socially responsible" activities¹⁷

These two arguments rests on a few assumptions and other arguments. The first of which is the aspect of the moral personhood of the corporation and what type of entity the corporation is.

2.2.2 Corporations and moral personhood

The first argument of Friedman is to establish what type of entity a corporation is and the meaning of "responsibility." Friedman starts off by stating "The discussions of the "social responsibilities" are notable for their analytical looseness and lack of rigor."¹⁸ This for Friedman is sheer anathema and the source of much confusion. He then proceeds to frame the discussion in terms of moral personhood. The question then becomes "What does it mean to say that "business" has responsibilities? Only people have responsibilities. A corporation is an "artificial person" and in this sense may have artificial responsibilities, but "business" as a whole cannot be said to have responsibilities even in this vague sense. The first step towards

¹⁶ Douglas J Den Uyl, *The New Crusaders: The Corporate Social Responsibility Debate* (Bowling Green: Social Philosophy and Policy Center, Bowling Green State University, 1984), 22.

¹⁷ *ibid.*

¹⁸ Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 33.

clarity in examining the doctrine of social responsibility of business is to ask precisely what it implies for whom.”¹⁹ Individuals are moral entities and the individuals who comprise a corporation also, but it doesn’t make sense to view “business as such” as a moral entity. CSR adherents operate with the business as a “moral entity” –view, so this strikes against an implicit assumption taken for granted. The challenge Friedman has laid down is that this cannot just be assumed it must be validated and justified. He thinks that this cannot be done. Friedman is an individualist and maintains that the entities that truly matter are the individual and not groups or abstract “entities.” The appropriate level of analysis is the individual; because when it comes down to it, it is individuals who exist and corporations merely comprise them. This is a metaphysical point. One cannot have corporations without individuals. A separate existence apart from the individuals comprising it is incoherent.

To fully understand this it is important to understand how Friedman views a corporation and in what sense a “corporation” is an “artificial person.” Friedman is of the view that corporations come into being by a voluntary agreement between individuals to best pool their resources (of which they are legally entitled to) into an organization in order to generate wealth and make a profit.²⁰ The role of government in all of this is merely to uphold and enforce contracts between all those involved, including third parties.

The corporation is not an end in itself, nor is it an essentially public institution despite the fact that large number of persons come to be associated with it. Since the resources are privately held by the individuals who form the corporation, then the act of resource-pooling does not transform those assets into public assets simply because large numbers participate. On this view corporations are not creations of the state, but private institutions whose existence is recognized by law.

There is in the American literature on corporations a long standing debate in terms of the history, origin and legal standing of the judicial entity called “the corporation.”²¹ Friedman places himself within the classical liberal tradition that do not believe that corporations are the creation of the state and thus function by permission of society and the government, but is within the tradition that maintains that individuals get together and voluntarily form corporations to maintain their common economic interests and the state merely performs its

¹⁹ Ibid.

²⁰ Private property is owned by individuals in a Lockean sense, they are not trustees of society’s resources, nor are the resources gained by theft of communal property or anyone else’s property.

²¹ Robert. Hessen, *In Defense of the Corporation* (Stanford: Hoover Institution Press, 1986).

duties in enforcing legally binding contracts.²² This is the issue behind limited liability, that the corporation is legally responsible for its actions, especially in regard to effected third parties. If legal issues are to arise, the correct party to sue is the “corporation” and not the individual stockholders. The state has by this granted a judicial entity status to the corporation.

This is what Friedman means by “artificial” personhood and “artificial responsibilities” and how they come about. This meaning is to Friedman clear and rational, but going beyond that in an expanded sense of moral personhood does not make sense and cannot be rationally justified. As Friedman writes “business as a whole cannot be said to have responsibilities”,²³ the meaning of this is that individuals have responsibilities as individuals and are held accountable for their actions. In terms of “artificial responsibilities,” this means that a corporation is held accountable for the actions of the individuals that comprise it, and that it has been granted an “artificial personhood” in order to be accountable in a purely judicial sense for reasons of expediency and practicality.

The corporation is a legal entity that can be sued even by third parties but the corporation is not a “moral entity” existing separately beyond the contractual purposes that gave rise to it. Thus *it* does not have any obligations towards society. A corporation is bound to abide by the law and that is the extent of it. “Only people have responsibilities” according to Friedman. And the proper level of analysis in terms *qua* moral issues is the individual. This leads to another important distinction.

2.2.3 Principal vs. agent

Who then are these individuals that are to be “socially responsible”? “Presumably, the individuals who are responsible are businessmen, which means individual proprietors or corporate executives.”²⁴ Since most of the discussion on social responsibility is directed at corporations Friedman mainly looks at corporate executives. Individual proprietors do not stand in any contractual relations to others and are free to act in any way they see fit, which

²² Those who maintain the view that corporations are creations of the state point to examples such as the British East India Company and the Hudson Bay Company that were monopolies in a given geographical area created by the state. The theory is referred to as the Concession Theory.

²³ Friedman, “The Social Responsibility of Business Is to Increase Its Profits,” 33.

²⁴ *Ibid.*

could allow them to run their own private business with other goals than profit maximization if they wanted too.

It is here that it is important to understand that the corporation is a voluntarily entered into agreement between the different contractual partners that comprise it. In a for-profit corporation, the employee or executive have agreed to work for the owners and have voluntarily agreed to exchange his knowledge in return for payment and have obligated himself to the purpose of the business which is profit maximization for the stockholders. In an organization whose purpose is not profit-maximization, but public service of some sort, the contractual obligation is still the same that of being an *agent* of the owners that is obligated to maintain the interest and purpose of the business at hand. Judging how well the contractual obligation is maintained is not easy as it is not straight-forward to judge how well an agent is performing in his task. “But at least the criterion of performance is straight-forward, and the persons among whom a voluntary contractual arrangement exists are clearly defined.”²⁵ The purpose of the business is defined, the parties to the contract are known, this establishes a well-founded contractual agreement that is easily enforceable by the judicial system.

Friedman uses the term *agent* to denote someone acting on someone else’s behalf. The term *principal* he uses to denote someone acting on their own behalf or as the owner of resources. This is an important distinction. When it comes to being an *agent*, the executive is to maintain the interest of the corporation, which is profit-maximization. In his function as an *agent* the funds entrusted him are to be spent according to the wishes of the stockholder. The executive as an *agent* of the stockholder is responsible and accountable to the stockholder and that is the extent of his “social responsibility.” Outside of the contractual obligations of his workplace, when acting as his own *principal*, an individual could have different social responsibilities;

that he recognizes or assumes voluntarily, to his family, his conscience, his feelings of charity, his church, his clubs, his city, his country. He may feel impelled by these responsibilities to devote part of his income to causes he regards as worthy, to refuse to work for particular corporations, even to leave his job, for example, to join his country’s armed forces. If we wish, we may refer to some of these responsibilities as “social responsibilities”. But in these respects he is acting as a principal, not an agent; he is spending his own money or time or energy, not the money of his employers or the time or energy he has contracted to devote to their purposes. If these are “social responsibilities,” they are the social responsibilities of individuals, not business.²⁶

²⁵ Ibid.

²⁶ Ibid.

As a private person one can voluntarily take on all sorts of “social responsibilities.” A person is free to dispose of his own property, time and energy as he sees fit. This changes when a person takes on the mantle of an employee or executive with contractual responsibilities; where he has discretionary power to make financial judgments, but they are to be made in cohort with the purpose of the business, its value statement and mission goals which is to increase its profits. He is not free to dispose of his employers’ wealth towards purposes that are not hitherto in keeping with his contractual obligations. The money is not his to spend willy-nilly. He is an *agent* of the corporation and his actions must reflect what is in the best interest of the corporation, he is not free to do whatever strikes his “moral fancy.” This is the first part of the deontological argument, *the profit-maximization argument*.

The role has changed from being his own *principal* to that of being an *agent*. If he is dissatisfied with how the business is run and has moral objections as a private individual he is of course free to leave.²⁷ No one is forcing him to work for example for a chemical plant or a toy company that produces toy guns. When it comes to companies and what they produce it is of course a precondition for Friedman that the products are within the legal framework and not child-pornography or other illegal products. As with all voluntary agreements people can opt out if they for some private moral reason do not agree or finds it ethically dubious.

Friedman then turns from having made the point that as a private individual people are free to enter into all sorts of social obligations *qua* private individuals on their own time to ask the question, what would it mean if we are to assume that businessmen have a “social responsibility” in his capacity as businessman? To Friedman this would by necessity mean “that he is to act in some way that is not in the interest of his employers.”²⁸ This is due to the *either-or* nature of CSR and that it is mutually exclusive. An employee either acts in the interest of the corporation fulfilling his fiduciary obligations or he sets social goals that are at odds with the stated goals of the corporation in which case he is in breach of his employment contract and not fulfilling its terms. In other words he is being disloyal and in breach of his fiduciary duties.

Friedman mentions several ways an employee can take on “social responsibilities.”

²⁷ "Milton Friedman Responds," 9.

²⁸ "The Social Responsibility of Business Is to Increase Its Profits," 33.

What does it mean to say that the corporate executive has a “social responsibility” in his capacity as businessman? If this statement is not pure rhetoric, it must mean that he is to act in some way that is not in the interest of his employers. For example, that he is to refrain from increasing the price of a product in order to contribute to the social objective of preventing inflation, even though a price increase would be in the best interest of the corporation. Or that he is to make expenditures on reducing pollution beyond the amount that is in the best interest of the corporation or that is required by law in order to contribute to the social objective of improving the environment. Or that, at the expense of corporate profits, he is to hire “hardcore” unemployed instead of better qualified available workmen to contribute to the social objective of reducing poverty.²⁹

This is the second part of the deontological argument: *the Social Responsibility Argument*. That by undertaking a “social responsibility” agenda and spending stockholder money counter to the explicit wishes of the stockholders violates the contractual obligation. It is in a manner of speaking *theft* and the consequences are dire. *Theft* being *prima facie* wrong and voluntary contracts and obligations are legally and morally binding.

As Friedman writes “Insofar as his actions are in accord with his “social responsibility” reduce returns to stockholders, he is spending their money. Insofar as his actions raise the price to customers, he is spending the customers’ money. Insofar as his actions lower the wages of some employees, he is spending their money.”³⁰ By this he simply says that by taking on “social responsibilities” this has detrimental costs not just to the stockholders of the corporations, but that these actions also means that other employees in the business would as a consequence of the corporation being poorer have reduced bonuses and wages. It will also have effect on the customers who buy the product at an increased price who now are also less well of. It is not to be taken “literally” that the customers money is being spent (that wouldn’t really make any sense). Taxation is here being used to denote that there is less money available than would otherwise be the case.³¹ This then leads over from Friedman’s deontological argument over to his utilitarian arguments against taking on a wider set of social responsibilities.

²⁹ Ibid.

³⁰ Ibid.

³¹ Quite a few interpretative errors are due to taking the taxation analogy too literally and trying to construe examples of how it is not like taxation to refute it.

2.3 The consequentialist arguments

Having established the stockholder case for fiduciary duties and that taking on CSR counter to the wishes of the stockholders is a breach of the fiduciary duties, Friedman then proceeds to first ask what the consequences are of implementing CSR and then continues to argue that executives are ill-equipped to deal with what are essentially government functions. He finishes by arguing that by pursuing its own self-interests corporations use their resources in a manner that is most efficient and that by doing so it contributes in the best way possible to the “public good.”

2.3.1 Imposing taxes and the eradication of the distinction between government function and private enterprise

Friedman uses an analogy of taxation to make his point. If the manager were to spend money counter to the values and mission-statement of a business then it is as if “he is in effect imposing taxes, on the one hand, and deciding how the tax proceeds shall be spent, on the other.” This terminology should not be taken too literally. It is an analogy. We now enter the arena of political philosophy. The function of the tax analogy is to show that there is a separation of government functions and private enterprise and to allude to aspects that if corporations take on CSR then this boundary is also eradicated and becomes fleeting.

The analogy becomes clearer when we take into account that “the imposition of taxes and the expenditure of tax proceeds are governmental functions. We have established elaborate constitutional, parliamentary and judicial provisions to control these functions...”³² It is not the function of business to maintain these functions and by taking on these functions businessmen are to behave as if they were civil servants. Even worse, they are not even elected by proper democratic procedures.

In making his point for the separation of government and private enterprise functions Friedman postulates that there are two levels to this. He calls them the level of political principles and the level of consequences. In regards to the level of principles he argues that in the Western world there has been a division of labor between governmental functions and private enterprise. He contends that there have been good reasons for this specialization and that it has worked pretty well. That business needs to focus on the purpose of business which

³² Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 122.

gives employment opportunities and generates wealth. It is the role of government and not of business to solve social problems.

This division becomes blurred if the corporate executive is to take on “higher” goals such as improving the environment, fighting inflation and poverty. The argument is that government officials have been selected through a political process to deal with these issues “to make the assessment of taxes and to determine through political process the objectives to be served.”³³ On the other hand, the corporate executive has not been selected in this manner, and there is no established guideline in how the executive is to proceed to do all of these extra functions. And there are no checks and balances to this, since he “is to be simultaneously legislator, executive and jurist.”³⁴

This leads into the next argument.

2.3.2 The argument from uncertainty and lack of specialized knowledge

Friedman proceeds to argue that businessmen are ill-suited at solving, what he maintains are proper government functions. On consequentialist grounds he argues that it may not be possible for businessmen to determine what constitutes society’s interest. Thus he asks “can self-selected private individuals decide what the social interest is? Can they decide how great a burden they are justified in placing on themselves or their stockholders to serve the social interest?”³⁵ Therefore Friedman is skeptical of the *net* social benefits resulting from business people *intentionally* seeking to promote society’s interest. The argument is in a skeptical vein as he goes on to argue that given that the executive “...could get away with spending the stockholders’ or customers’ or employees’ money. How is he to know how to spend it?”³⁶ What is the standard for which this is to be judged? It can’t be just based on the emotional whim of the manager. What are the tools that will guide him? And for Friedman, many of the tools needed to solve these issues (such as inflation) and the information required is at a governmental level.

³³ Ibid.

³⁴ Ibid.

³⁵ *Capitalism and Freedom*, 133-34.

³⁶ “The Social Responsibility of Business Is to Increase Its Profits,” 122.

The argument goes that the executive is hired by the stockholders for his specific management knowledge because he is an expert in his field; but there is nothing in his specialized knowledge that makes him competent in regards to fighting inflation, poverty and other social causes. These social issues must be dealt with on a national and governmental level with a real plan and not by individual managers in different firms who lack the specific knowledge on how the different measures turn out on the aggregate level. There is also the further question: “how much cost is he justified in imposing on his stockholders, customers and employees for this social purpose? What is his appropriate share and what is the appropriate share of others?”³⁷ So he must have this “moral knowledge” as well and then take on the position and sit in judgment. This is specialized knowledge that the manager does not have. The problem is that there is no gauge to measure its successful implementation or to balance out the different interests that need to be maintained.

Friedman has thus pursued a line of reasoning inspired by Karl Popper and Friedrich Hayek about the uncertainty of knowledge and planning.³⁸ One could then ask, but isn't this also applicable to all the decisions that the manager has to answer in his expert field? What makes this any different? Friedman doesn't go into this, but as an economist he clearly believes that the price mechanism guides decisions of how much to produce and at what cost. There is no readily available price mechanism when it comes to CSR decisions. The argument Friedman gives is thus not a global skeptical argument, but skeptical within well-defined boundaries regarding decision making on certain social policy issue when handled at a local level. Which he also maintains is not the correct level. These are in a certain sense “proper governmental functions” and not in cohort with the proper field of business and its real expertise.

Friedman then turns to what happens to the corporation after a manager has reduced the corporation's stock and profits which will necessarily happen according to Friedman by pursuing CSR. The company he believes will be worse off, customers and employees may leave for companies that are less geared towards CSR. It would mean that companies that are not following CSR in actuality, but quite probably, only speaks the CSR jargon will win in the competition. Market mechanisms will thus lead to non-CSR companies winning and out-competing those who pursue CSR. There has long been a debate whether or not it is the case

³⁷ Ibid.

³⁸ Karl Popper, *The Open Society and Its Enemies* (London: Routledge, 1945 (1995)); Karl Popper, *The Poverty of Historicism* (London: Routledge, (1957) 1986); Friderich A. Hayek, *The Road to Serfdom* 50th anniversary ed. (Chicago: The University of Chicago Press, 1944 (1994)).

that CSR leads to less profit. There have been conducted many studies and the findings have been mixed.³⁹ But the findings that show that CSR is compatible with high profits can be criticized for failing to make a distinction between acts of corporate altruism and real investments that on the surface only look like CSR, but in actuality is pure self-interested behavior.

This leads up to *an argument for specialization*. That business should do what they are good at and the government should concentrate on its own established tasks. Even if it were possible for business that it could be best at everything and had a comparative advantage in everything it is still the case from economic theory that they should concentrate on that which they do best. That by overextending itself business is not doing what it is supposed to be doing, making profit, and society will be worse off for it. A business needs to have a clear purpose and by using resources on all types of benevolent projects they lose their focus and their competitive advantage. "The business of business is business." Friedman thus argues that there is a need for specialization and a division of labor: "social responsibility" issues lay with government and business needs to be free to do what it is good at; the efficient use of resources for profit-maximization, wealth generation and job creation.

2.3.3 Friedman's reply to the impatience of those demanding immediate business action to solve social problems where government fails

There are those who believe that there is a need for action "now" and that government is too slow and unresponsive and that "the exercise of social responsibility by businessmen is a quicker and surer way to solve current problems."⁴⁰ The position is that government has failed in its duties and it is thus up to private enterprise to handle the problems since they have the resources. Friedman does agree that government has not been able to do these tasks very well. His two books *Free to choose* and *Capitalism and Freedom* are replete with examples of what has gone wrong (and also his solutions to how to resolve the situation). Friedman laments how government when it took on the role of providing welfare drove private and efficient

³⁹ Joshua D Margolis and James P Walsh, "Misery Loves Companies: Rethinking Social Initiatives by Business," *Administrative science quarterly* 48, no. 2 (2003); Kenneth E Aupperle, Archie B Carroll, and John D Hatfield, "An Empirical Examination of the Relationship between Corporate Social Responsibility and Profitability," *Academy of management Journal* 28, no. 2 (1985).

⁴⁰ Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 123.

charities out of business, and made the poor less well off.⁴¹ Friedman after all is a classical liberal who is not in favor of the welfare state. So he agrees that government has failed in its mission to deal with inflation, housing problems, education, pollution, and unemployment; but it does not follow that since the government at present fails at these functions it is up to business to solve them; as has been witnessed by all the previous arguments.

The counter-argument to those who say that business has the power to act so they should implement social responsibility and take up the gauntlet is that this must be “rejected on the grounds of principle.”⁴² Then he asserts that this is a last resort argument given by people who have failed to persuade the stockholders of a company or its customers or other employees to contribute to social causes that these “activists,” as Friedman calls them, turn to use “undemocratic” means to achieve what they could not accomplish freely. He does not respond with a moral answer to what has come to be called the *noblesse oblige argument*, but more on the level of doubting the real motive behind this line of reasoning believing it to be a psychological rationalization. This is not his only response to those who believe that businessmen as such have obligations towards society. Friedman argues that business contributes to the welfare of society, not just thru taxation which the government spends on social issues, but also that it directly invests in communities making them better off and that they also indirectly contribute to a maximization of the “public good.” So in answer to those who would want business to contribute to help social problems, Friedman’s response is that business already does that in the most efficient manner possible, thru the market mechanism, and that is far more efficient use of the resources, than by enacting CSR-policies. This in a manner of speaking is also a response to the *noblesse oblige argument*.

2.3.4 Philanthropy vs. investment

Friedman has in an interview given some clarifying answers not found in his 1970-article or in *Capitalism and Freedom* in regard to some issues that on the surface look like CSR and philanthropy, but according to Friedman is just common business sense and a proper investment.⁴³ For Friedman it is important not to conflate rational and purposeful investment in a local community as “social responsibility.” Such acts are often necessary and it is often in the long run interest of business to invest in an educated and healthy workforce. Friedman

⁴¹ Friedman and Friedman, *Free to Chose - a Personal Statement*, 91-127.

⁴² Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 123.

⁴³ "Milton Friedman Responds," 6-9.

finds it understandable that companies that are often critiqued for being “callous” and “soulless” call such investments “social responsibility” in an attempt to please the public. He is sympathetic to their wishes of gaining goodwill. However, it is an investment and is justified on the basis of the self-interest that it serves and not in its other-regarding factor. Philanthropy or corporate altruism for Friedman is giving away money without expecting anything in return and it goes against the fiduciary duties of an executive manager. There are plenty of cases where it is completely justified on profit-maximizing grounds to have policies that on the surface may seem like CSR or corporate philanthropy, but in reality are nothing more than a self-interested investment in the long run for the corporation.

Friedman is captivated by the example set by Henry Ford and asks “Did Henry Ford build the Model T in order to exercise his social responsibility? He certainly did not. He made a great deal of money, but in the course of his profit-making, the community at large benefited enormously. Would the community have benefitted so greatly if Henry Ford, instead of producing the best car he could and making as much money as he could, had devoted his energies to social responsibility?”⁴⁴ To this question he vociferously replies that we would be worse off. Ford hired his workers at twice the going rate paying a lot better than his competitors, but this is not to be viewed as sacrificing profits and doing CSR as “He did that because he could make more money that way. In that way, he got more productive workers.... But he didn’t do it to discharge social responsibility.”⁴⁵ Business by pursuing its proper role in seeking to increase profits and utilizing its resources, benefit the community, directly and indirectly, by instituting policies that may look like CSR, but in reality is not. To Friedman this is not abhorrent, as long as it is in cohort with the purpose of business to increase its profits in the long run.

As Friedman writes;

The crucial question for a corporation is not whether some action is in the interest to justify the money spent. I think there will be many cases when activity of this kind will pay back dollar for dollar what the corporations spends. But then the corporation isn’t exercising a social responsibility. The executive is performing the job he was hired for - making as much money for his stockholders as possible. The fact of the matter is that the people who preach the doctrine of social responsibility are concealing something: The great virtue of the private enterprise system is precisely that by maximizing profits, corporate executives contribute far more to the welfare

⁴⁴ Ibid., 7.

⁴⁵ Ibid.

than they do by spending stockholders money on what they regard as worthwhile activity⁴⁶

So to those who say that business should give back to the community, Friedman answers that corporations have done so and continue doing so constantly; and to those who say that business has the power to act and thus should act, the answer is: business already indirectly does that, and contributes in the most efficient manner possible. If it were to be doing CSR instead it would be squandering resources.

This leads directly to another of Friedman's views; his high regard for Adam Smith and his skepticism about those who explicitly set out to serve the public good. Friedman believes in the "invisible hand" mechanism that companies that are pursuing profits leads to social utility maximization. So companies pursuing profits give rise to many social and economic benefits indirectly as a consequence, whereas trying to do so directly is not as beneficial and often inimical.

2.3.5 Adam Smith and the public good

Adam Smith is to many classical liberals and libertarians an icon. This is also the case for Friedman. The most famous quote of Adam Smith that is constantly alluded to is that "It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest."⁴⁷ Friedman pays homage to this and agrees with Smith that a businessman "...intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest, he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the publick good."⁴⁸ The invisible hand mechanism of the market allocates resources most efficiently and often give rise to preferential outcomes that would not be possible if it was intended and planned. In modern economic language influenced by utilitarianism the "invisible hand" mechanism leads to the greater good even though it was not the planned intention – that companies pursuing profits leads to social utility maximization. The pursuit of

⁴⁶ Ibid.

⁴⁷ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations Volume 1*, ed. R.H. Cambell, A.S. Skinner, and W.B. Todd (Indianapolis: Liberty Fund, (1776) 1981), 26-27.

⁴⁸Ibid., 456.

CSR directly would not give rise to equal beneficial consequences, but rather a lessening of the “public good.”

This is of course only possible given the right institutional framework to operate within. This framework for Friedman is the rule of law, the institution of private property, and what has come to be identified as Western liberal democracy. Since without the proper legal framework the harmonization of interests that is accomplished by the “invisible hand” would not arise.

Self-interested behavior only leads to net aggregate social utility maximization within a market economy, when the proper legal framework and institutions are established.

Otherwise, self-interest and its pursuit is deemed as harmful. As Friedman writes: “The sum of all the private goods is the public good, but the sum of what all the people *think* to be in their private good is not necessarily the public good. Also, Adam Smith’s invisible hand requires the right framework. If people are required to compete, then individuals acting in their own self-interest will act jointly in the public interest through the market.”⁴⁹ However, the reverse is often true when it comes to policy enactment through the state as Friedman posits: “Now under *political* arrangements, it is not true that people separately pursuing their self-interest will promote the public interest. In fact it is quite the opposite. There is Adam Smith’s invisible hand in economics and there is an invisible hand in politics which works in the opposite direction. The social reformers who seek through politics to do nothing but serve the public interest invariably end up serving some private interest that was no part of their intention to serve. They are led by an invisible hand to serve a private interest.”⁵⁰ So whereas the framework of people following their own interests in the market leads to wealth generation and an abundance of goods to be traded and positive consequences in following self-interest and profit-maximization, the opposite is true when it takes place through the *political mechanism*.

The consequentialist argument of Friedman can now be summarized as there ought to be a division of labor between government and business and both need to concentrate on their tasks. If a business implements CSR the executive is in no position to do it effectively lacking the know-how and it will dilute the proper purpose of business making it less effective in its proper goals. If corporations, however, are left free to maximize profits, this leads indirectly to the “public good” and society and the public is better served that way. The market mechanism will lead to social utility maximization, so that by not engaging in CSR, a

⁴⁹ Friedman, "Milton Friedman Responds," 14.

⁵⁰ Ibid.

corporation allows for the best utilization of resources and creates a net benefit, which would not be the case by engaging in CSR.

2.4 CSR as “socialistic” and “subversive”

When Friedman wrote his articles and books it was against the backdrop of the Cold War, between the Western liberal democracies on the one hand and the socialistic and communistic countries with their planned economic and political systems on the other. Friedman charges that CSR is a “subversive doctrine” and that it will lead to socialism. Some commentators and opponents of his regard this as nonsensical since they maintain that CSR does not advocate that the state should own the means of production.⁵¹ So what does Friedman mean with the term “socialism,” and the mechanisms by which he regards CSR to be a “subversive” cloak that undermines business, the free market and Western liberal democracy?

The danger that for Friedman makes CSR unpalatable and morally abhorrent is that it “would extend the scope of political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means.”⁵² It would mean an extension of the power of the state/society over business, but this is not achieved directly, but by indirect means. The argument is more than the simple notion that it is subversive in the sense that private sector institutions are engaging in redistributing wealth and such functions that he identifies with socialist governments and that socialism as such is subversive. The argument is more fundamental. The argument does turn on who controls the means of production and how they are to be disposed of. In a capitalist system property is privately owned, and what a person or a business person does with his wealth is up to him. If a corporate manager is to act “socially responsibly” that would mean that he would be an agent of “society” which would by extension mean socialism since society needs a political mechanism to act through. This would mean that property is not actually owned by the individual and free to be disposed of as the owner sees fit, it is actually held as a trustee of society and is to serve society. That is the reason for viewing CSR as “socialistic.” Friedman

⁵¹ Thomas Mulligan, "A Critique of Milton Friedman's Essay 'the Social Responsibility of Business Is to Increase Its Profits'," *Journal of Business Ethics* 5, no. 4 (1986): 268-69; Bill Shaw, "A Reply to Thomas Mulligan's 'Critique of Milton Friedman's Essay 'the Social Responsibility of Business to Increase Its Profits'," *ibid.* 7, no. 7 (1988): 541-42.

⁵² Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 124.

writes “But the direction in which policy is now moving, of permitting corporations to make contributions for charitable purposes and allowing deductions for income tax, is a step in the direction of creating a true divorce between ownership and control and of undermining the basic nature and character of our society. It is a step away from an individualistic society and toward the corporate state.”⁵³ The corporate state being one which *nominally* has private property, but *de facto* the government indirectly controls the means of production. It is private property, but in name only. Not so much a planned economy, as one in which private enterprise exists by permission of the state and that the permission can be revoked if it is not deemed in the interest of “society.” So it is socialistic in the meaning of corporate socialism.

The argument rests on an *either-or* premise. It is not possible to have both CSR and profit-maximization. There is no stable middle ground in terms of being principled. For business to take on elements of “the social responsibility doctrine” would mean that the purpose of business is no longer primarily to increase profits, but to achieve other goals, which in the end will be transferred to: *the purpose of business is to serve the interest of the local community or society.*

The end result when businessmen advocate this view is for Friedman short-sighted and detrimental to the free market system as “...it helps to strengthen the already too prevalent view that the pursuit of profit is wicked and must be curbed and controlled by external forces. Once this view is adopted, the external forces that curb the market will not be the social consciences, however highly developed, of the pontificating executives; it will be the iron fist of Government bureaucrats.”⁵⁴ This is for Friedman a reason why the CSR battle matters and why he regards CSR as a “subversive doctrine.”

2.5 On self-interest and side-constraints

In order to understand the Stockholder position it is important to understand the role self-interest plays and how it is to be understood. It is of equal importance to understand the nature and role of the side-constraints and how they operate. Having an improper understanding in this regard will lead to an erroneous understanding of what the stockholder position is and what moral guidance it gives as well as how much moral guidance it gives.

⁵³ *Capitalism and Freedom*, 135-36.

⁵⁴ “The Social Responsibility of Business Is to Increase Its Profits,” 124.

2.5.1 Friedman's use of self-interest

Friedman is an adherent of rational and benevolent self-interest akin to the enlightened self-interest view of Adam Smith. What he regards as self-interest needs to be stated so as to show that his position still is an ethical position, since many when they hear the words “the pursuit of self-interest” would simply cringe and disregard the position on those grounds alone; holding to a dichotomy between being “moral” and being “self-interested;” and would thus presume that Friedman is not making a moral argument at all, but just rationalizing greed. That all Friedman does is arguing a purely economic case, even disregarding the moral aspects of the deontological argument he presents. Quite a few regard self-interested action as outside the scope of morality as such;⁵⁵ but Friedman comes from another ethical tradition, where self-interest is not something malevolent, nor outside the field of morality nor its antithesis. He is heavily influenced by Adam Smith and the Scottish enlightenment tradition. Self-interested behavior or the pursuit of profit has in the west historically been viewed as the sin of avarice and greed. This becomes re-evaluated during the enlightenment, when commerce and the middle classes start making their breakthrough.⁵⁶

Bernard Mandeville wrote his *Fable of the Bees* subtitled *Private vices, public benefits* in 1705 arguing the case that the pursuit of self-interest lead to beneficial social results.⁵⁷ The point the Scottish enlightenment thinkers made was that by pursuing “sinful” behavior such as self-interested profit-seeking rather than being “public spirited” the effect in the aggregate was that everybody was better off. And the opposite was also true that pursuing selfless kindness did not stock up the shop windows with an abundance of goods. There is thus a historical reappraisal and reevaluation of self-interest. The enlightenment believed in a harmony of interest that comes about thru an “invisible hand” that guides self-interest to work and achieve the public good. A necessary precondition for this is that the government maintains its primary purpose of enforcing contracts and provides the necessary legal framework and institutions for business to take place within.

⁵⁵ Kelly Rogers, "Beyond Self and Other," in *Self-Interest*, ed. Ellen Frankel Paul, Fred D. Miller Jr, and Jeffrey Paul (Cambridge: Cambridge University Press, 1997); Thomas j. jr Hill, "Reasonable Self-Interest," in *Self-Interest*, ed. Ellen Frankel Paul, Fred D. Miller Jr, and Jeffrey Paul (Cambridge: Cambridge University Press, 1997). These two articles documents and counters this view.

⁵⁶ Deidre N. McCloskey, *The Bourgeois Virtues - Ethics for an Age of Commerce* (Chicago: The University of Chicago Press, 2006); Mathilde Fasting and Ulla Fjeldstad, *Marked & Moral* (Oslo: Civita, 2010). These books give an historical account of this transition.

⁵⁷ Bernard Mandeville, *The Fable of the Bees* (London: Penguin Books, 1705 (1989)).

Friedman states himself what he means by self-interest in *Free to Choose* where he also makes the point that he does not believe in any *Homo economicus*; an exceedingly terse view that many attribute to the notion of self-interested behavior within an economic context. “Narrow pre-occupation with the economic market has led to a narrow interpretation of self-interest as myopic selfishness, as exclusive concern with immediate material rewards. Economics has been berated for allegedly drawing far-reaching conclusions from a wholly unrealistic “economic man” who is little more than a calculating machine, responding only to economic stimuli. That is a great mistake. Self-interest is not myopic selfishness. It is whatever it is that interests the participants, whatever they value, whatever goals they pursue.”⁵⁸ This wording could be interpreted carelessly to mean complete subjectivism of values and psychological egoism or in a more narrow sense that is more in alignment with there being other goals than the purely economic. The purpose here is to underline that Friedman is not in favor of the maligned concept “selfishness,” nor is he an advocate of ethical egoism, but that he adheres to the benign and benevolent self-interest tradition of the Scottish enlightenment thinkers and moral philosophers and that this is not counter to morality as such, but another moral viewpoint, with a different appraisal of self-interest. For Friedman it is important that self-interest and profit-maximization takes place within the *rules of the game* and with respect for these rules; otherwise the whole system collapses since the pursuit of self-interest outside of the framework and boundaries is destructive and harmful.

Harvey James jr. and Farhad Rassekh have looked at the use of self-interest in Friedman and Adam Smith.⁵⁹ They argue that for Friedman there is an other-regarding component that requires individuals to, in their terminology, “moderate” their actions when others are affected negatively. So that it is not deuces wild. “Friedman’s interpretation and application of self-interest to profit seeking also embodies restrictions that individuals are ethically required to observe. To understand Friedman’s views on self-interest and the pursuit of profit, one must understand his philosophy as detailed in many of his writings.”⁶⁰ In this regard they point out *non-coercion* as an overriding virtue for Friedman. The authors take to task the standard falsehood promoted by many textbooks that in regard to pollution and other negative externalities the Friedman position would imply that a company president should try to conceal the facts and make money to the detriment of everybody else.⁶¹ This is the standard

⁵⁸ Friedman and Friedman, *Free to Chose - a Personal Statement*, 18-19.

⁵⁹ James Jr and Rassekh, "Smith, Friedman, and Self-Interest in Ethical Society."

⁶⁰ *Ibid.*, 666.

⁶¹ *Ibid.*

(wrong) view of profit-maximizing self-interested behavior. This cynical approach, however, is not how managers who hold the Friedman position would act. James and Rassekh argue that the Friedman position in this regard would be for the manager to inform the public and accept the consequences. The very opposite of what is being taught in many business schools is the Friedman position.⁶²

2.5.2 The side-constraints

Business executives have a fiduciary duty to focus on profit maximization, but it doesn't follow from this that they should pursue this by any means necessary and that everything that is being done in the name of profit is acceptable. Friedman places four restrictions on profit seeking: Business people must *obey the law*, follow *ethical customs*, commit *no deception or fraud*, and *engage in open and free competition*. For Friedman this is obeying the *rules of the game*.

This is formulated slightly differently in *Capitalism and Freedom* and in the 1970-article on social responsibility. Stating the moral purpose of business Friedman extols; “In such an economy, there is only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.”⁶³ And as follows in 1970; “In a free enterprise, private property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which will generally be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and in ethical custom.”⁶⁴

The side-constraints are system checks that are in place so that profit-seeking will not be at the expense of anybody else, that people will have faith to freely enter into agreements, and that all are fully aware of the risks and consequences of their actions. In this regard Friedman holds that withholding information of harmful consequences is in breach of the side-constraint that one should not commit deception or fraud; and that if businesspeople behave in that

⁶² Ibid.

⁶³ Friedman, *Capitalism and Freedom*, 133.

⁶⁴ "The Social Responsibility of Business Is to Increase Its Profits," 33.

manner then the rules of the game will collapse and with it; the benevolent aggregate results of profit maximization.

When it comes to pollution and negatively affecting third parties Friedman writes about such questions as well and contends that it is *not* acceptable and that it should be prohibited to pollute or negatively affect the property rights of others.⁶⁵ This means that in a certain sense that Friedman does believe that the interests of other stakeholders than the stockholders need to be taken into account. Which means that the Friedman position is not in all respects the radical opposite of the stakeholder position, however, there is a criteria to being a stakeholder with a valid claim, and that is showing that a third party has been affected by a negative externality. This differentiates it from the stakeholder view.

The reason for this is that Friedman holds that it is the ethical responsibility of individuals themselves in exercising their freedom that they take into consideration the involuntary costs or harmful effects that they impose on others. These costs are known in the economic literature as “neighborhood effects” or negative externalities. Friedman defines them as “arbitrary obstacles that prevent others from using their capacities to pursue their own objectives.”⁶⁶ These negative effects are to be avoided as far as possible, but that is not always possible. “Friedman argues that when actions involve external effects, the question is not *whether* but *how* such actions are to be restrained. He believes strongly that individuals should limit their conduct with self-restraint when possible. Otherwise, it is the duty of government to intervene through “the enforcement of contracts voluntarily entered into, the definition and meaning of property rights and the interpretation and enforcement of such rights” in order “to prevent coercion of one individual by another”⁶⁷

So when and under what conditions can negative external effects be allowed by those adversely affected by them? The primary condition is that those who are negatively affected allow it, which they might under two conditions. The first condition being that there is *full disclosure* of information in that regard. Secondly, they have to be *compensated* or the effects need to be able to be avoided at relatively low cost.⁶⁸

⁶⁵ Friedman and Friedman, *Free to Chose - a Personal Statement*, 213-18.

⁶⁶ *Ibid.*, 119.

⁶⁷ James Jr and Rassekh, "Smith, Friedman, and Self-Interest in Ethical Society," 668.

⁶⁸ *Ibid.*

It is important to hold this in mind when interpreting Friedman's view on social responsibility. Actions that impose actual harm on others are *unacceptable* and are *prohibited* by the side-constraints. Business actions must be assessed by whether they are compatible with the freedom and property rights of others.

2.5.3 The level of obligation called for by Friedman

Many have taken issue with the Friedman position saying that businesses have no obligations beyond complying with the law and some thus question whether it truly is a moral position on those grounds. Christopher Cosans has disputed this interpretation of Friedman.⁶⁹ The most common reading of Friedman is that his analysis minimizes any moral duties beyond following the law, and thus supports a weak version of business ethics, where corporate morality is reduced to strict legality. This is the view maintained by Colin Grant, Sean McAleer and David Silver.⁷⁰ Cosans asks the question "just how low or high of an ethical bar does Milton Friedman set for business ethics?"⁷¹ He then goes on to argue that the bar is actually quite high. "For while analyzing situations in terms of interests, and ensuring that one never advances his or her self-interest at the expense of others' interest provides an ethical floor, it is a floor with a robotic vision of business relationships. If we delve into the details of Friedman's text we find him taking an approach to morals that are also sensitive to duties, desires, and understanding of others perspectives."⁷²

There are two aspects: executives must respect stockholders' desires and they must conform to ethical custom. Profits are not ends-in-themselves according to Cosans; the only reason why executives are obligated to increase profits is because that is what the stockholders desire and what they are contractually bound to do.⁷³ While there is no doubt that Friedman's formulation emphasizes money, he also indicates that there is a duty of the executive to consider non-monetary factors in his decision-making. Cosans then accentuates the need for goodwill and the need to make a favorable impression.

⁶⁹ Cosans, "Does Milton Friedman Support a Vigorous Business Ethics?," 391.

⁷⁰ Colin Grant, "Friedman Fallacies," *Journal of Business Ethics* 10, no. 12 (1991): 910-13; Sean McAleer, "Friedman's Stockholder Theory of Corporate Moral Responsibility," *Teaching Business Ethics* 7, no. 4 (2003): 439-40; David Silver, "Corporate Codes of Conduct and the Value of Autonomy," *Journal of Business Ethics* 59, no. 1 (2005): 3-4.

⁷¹ Cosans, "Does Milton Friedman Support a Vigorous Business Ethics?," 392.

⁷² *Ibid.*

⁷³ *Ibid.*

Because he is sensitive to publicity and how businesses are part of their communities, Friedman does say that the desire to make profits gives corporations financial incentive to engage in low cost projects that can help their community, or even higher cost projects that benefit the community in a way that gives a high benefit back to business as well. He points out, for example that it may be in the interest of a business to do what it can to ensure the integrity of its community and its local government if it relies on the community to hire good workers.⁷⁴

Cosans relies on this information to convey that this allows for more than just obeying the laws and abiding by the side-constraints Friedman has envisioned. I believe that Cosans overstates his claim. As have been documented earlier in this chapter Friedman believes that such projects can be pursued, but only in terms of there being a long range profit to be had. It cannot be charity. It has to be a self-interested investment and it should not be regarded as anything other than that.

Cosans raises a valid and very important point, which raises further questions that will be handled in chapter 5 and that is that Friedman has failed to;

...outline in detail what he sees as the core of ethical custom is perhaps the reason why some business ethicists have gone on to argue that his position is that executives should do anything that maximizes profits as long as it is legal. At the end of the essay, he states that businesses should engage “in open and free competition without deception or fraud” (1970, p. 125), but this does not give the entire scope of what he means by ethical custom. If we look at Friedman’s text, we can indeed identify underlying values that go beyond an etiquette of honesty⁷⁵

Cosans then goes on to state that Friedman does not regard profits as ends-in-themselves, but as carrying value because of other ends that they facilitate. A more central end to Friedman is according to Cosans freedom. He cites that both of Friedman’s books *Capitalism and freedom* and *Free to choose*, identify freedom as a key social end throughout their analysis. When it comes to interpreting Friedman’s social responsibility article “most of the other arguments of this essay can be seen as grounded in the value of freedom as an ultimate good.”⁷⁶ Cosans applies the framework of “freedom” found in Friedman’s books and applies it to Friedman’s stockholder theory and social responsibility.

The basis of the title claim of the essay that executives have an ethical responsibility to “increase profits” can in fact be traced to his value of freedom. He argues that the executive must act as the shareholders would act, because doing otherwise would infringe upon the shareholders’ freedom. Because shareholders hire and are dependent

⁷⁴Ibid., 394.

⁷⁵ Ibid., 395.

⁷⁶ Ibid.

on executives to do certain things as their “agent” (Friedman, 1970, p. 33), their freedom of choice would be abrogated if the executive did something else. Hence he argues that executives should not spend a company’s resources on social causes the shareholders would not support, because it is “in effect imposing taxes” (1970, p.33) on the stockholders with lower profits. This requires executives to eschew spending corporate resources on social causes not endorsed by stockholders.⁷⁷

Freedom or liberty is here used in the classical liberal or libertarian meaning of the term.⁷⁸

This would also explain why negative externalities are to be avoided since that would mean an abrogation of the liberty and property rights of the third party that is harmed. This provides a valuable interpretive framework for understanding the side-constraints and the wider free market orientation of Friedman.

I agree with Cosans that Friedman’s position extends beyond the mere pursuit of profit and that with the side-constraints mentioned that it is a moral position that goes beyond strict legality, however, I regard that Friedman’s position is rightly labeled morally minimalist. “The bar” isn’t as low as Grant, Silver or McAleer would have it to be, that the ethical requirements do not extend beyond following the law, but it is not quite as high as Cosans will have it. This might just be quibbling over terminology, in regard to what “minimalist” is, but the nature of the side-constraints are that they “limit” profit-maximization, not that they impose duties of a positive variant, but more akin to negative obligations such as respecting the rights of others. Just as the classical liberal view of rights is limited to negative rights and do not entail positive rights. The side-constraints just stipulate the moral requirements for a free society’s continued existence and the minimal rules of the game required. Friedman does not state explicitly what he regards to be ethical customs, but one would assume it to be Western moral and social norms. How wide-reaching these are it is hard to know since they are not explicitly enumerated or defined. The most one can say is that ethical custom would go beyond the boundaries of the law constraint, but does not explicitly state any duties, apart from not being deceptive or engaging in fraud, and thus it is compatible with many ethical viewpoints, but only explicit in terms of not going counter to the ethical values of a culture. This is more akin to stating what an executive must not do, but leaving the question open in regard to what he must do.

⁷⁷ Ibid.

⁷⁸ David Boaz, ed. *The Libertarian Reader - Classic & Contemporary Writings from Lao-Tzu to Milton Friedman* (New York: Free Press, 1997). *Libertarianism - a Primer* (New York: Free Press, 1997); George H. Smith, *The System of Liberty - Themes in the History of Classical Liberalism* (Cambridge: Cambridge University Press, 2013). These books give an introduction to classical liberalism and libertarianism and important concepts and their use such as freedom, rights and liberty.

Friedman's position will in my view and Cosans as well be compatible with many ethical views as long as they are not in conflict with the required side-constraints and are not at odds with the fiduciary duties of the manager to increase profits.⁷⁹ My disagreement with Cosans is that compatibility does not imply active endorsement. So Friedman's position could be compatible with a manager having Kantianism as his own personal morality that will not use other people as means, but as ends in themselves, or with managers who are either rule or act-utilitarian in their approach. It could also be compatible with virtue ethics and pragmatism. The position allows for a *pluralism* of values which in the classical liberal sense is also viewed positively. One could look at this morally minimalist position as a problem that doesn't specify enough how a manager should go about pursuing profits or one could argue that it is a blessing allowing for diversity, flexibility, adaptability and different approaches, who again can compete on the ethical marketplace of moral belief in free competition. That the position is not rigid and gives the possibility that different companies can have different moral philosophies better suited to the type of company they are and their core values, rather than there being *a priori* one right way of doing things, which all companies regardless of the specifics of their business environment must adhere to. As such it can be viewed as a strength rather than a weakness for the position.⁸⁰

There are those who view ethical custom and following the legal requirements as near synonyms in how they interpret Friedman.⁸¹ This has some credence since Friedman doesn't specify what exactly he means when he states that managers need to operate within social norms and ethical customs while obeying the law. However, there is a long tradition amongst classical liberals that the ethical domain and the legal domain do not have an exact overlap. In other words, they are not co-extensive. So that the two are not in any direct sense interchangeable.

Classical liberals and libertarians have often been critical of the tendencies of social democrats and conservatives to overlap the realm of ethics and the law.⁸² Where something is either good, in which case it has to be mandatory or something is bad, and then it has to be prohibited. This I believe is the reason why Friedman uses *both* the term *ethical custom* and

⁷⁹ Cosans, "Does Milton Friedman Support a Vigorous Business Ethics?," 395-96.

⁸⁰ I will discuss this issue further in chapter 5 and argue for the need for an ethical foundation that allows for flexibility.

⁸¹ Grant, "Friedman Fallacies," 910-13; McAleer, "Friedman's Stockholder Theory of Corporate Moral Responsibility," 439-40; Silver, "Corporate Codes of Conduct and the Value of Autonomy," 3-4.

⁸² Boaz, *Libertarianism - a Primer*, 19-22.

the *law* and why I don't think he reduces the domain of the ethical to that of the legal. Classical liberals believe that there is a large area of moral choices that are outside the province of law. Friedman's position then goes beyond just obeying the law. There will be a few ethical customs and social norms that are outside of the parameters of the law, but nonetheless needs to be heeded when companies pursue profits.

However, Friedman has not written a full treatise on what these elements are. So we can only conclude that they consist of the virtue of honesty and truthfulness, and integrity, since fraud and deception is prohibited through side-constraints. Now, how these are grounded, whether truthfulness is a duty and grounded deontologically or in a utilitarian fashion through its beneficial consequences is not stated by Friedman, and it can be validated differently.

Apart from these few requirements people are free to follow their own individual moral code. If Friedman had written more about ethical customs his position could have been less minimalist, but since he has not we can only go by the explicitly stated side-constraints. This would make Friedman less minimalist, but since he himself does not give any examples of this, we can only state that he regards that such might be the case. So Friedman's position goes beyond just obeying the law, but it is not quite clear how much further he is willing to go and what else he would include in ethical customs or social norms. However, the ethical customs and norms that Friedman alludes to are the traditional Western ethical customs, values and social norms which have provided much of the framework and background of Western capitalism.⁸³

The question of how morally minimalist Friedman's position is can be asked in a different manner. How much guidance does it give in the ethical running of a company? The answer is that it does give some absolute boundaries that would disallow the ethical conduct perpetrated by scandalous companies such as Enron and WorldCom that withheld information from the public and also to companies that inflict negative externalities on populations in third world countries so in that sense there are plenty of current business practices that would be at odds with the side-constraints of the stockholder position.⁸⁴ This makes the position less minimalist. The positively oriented guidelines extending beyond the virtues of honesty and

⁸³ I will return to these issues in chapter five and look at problems that arise from globalization and when there are different laws, social norms and cultures that may be in conflict with Western values and that this gives little guidance in business dealings in third world countries or when dealing with corrupt regimes.

⁸⁴ Cosans, "Does Milton Friedman Support a Vigorous Business Ethics?," 396-98.

integrity are not enumerated upon, but the negative boundaries that may not be circumvented are such that there are plenty of decisions that will not be acceptable and thus ruled out.

3 Answering the moral charges leveled at the stockholder position

This chapter looks at charges that opponents of the stockholder theory have raised against the position. Firstly, I give an account based on Nicholas Capaldi of two different rival paradigms and their underlying framework as it pertains to the issue of social responsibility. This clarifies the suppositions of the charges leveled at Friedman, what they rest on and also how the positions differ in ontology, epistemology and business ethics. Secondly, after having gained a clearer picture of the opposing rival systems, the next step is to look at arguments that strike at the logical consistency of Friedman's argument and that argues that he commits different logical fallacies and is to be dismissed on these grounds. Thirdly, I counter arguments that purports to challenge Friedman's ethical basis. I have chosen what I contend are some of the best arguments against Friedman and in their strongest form. The arguments in the literature against Friedman are often variations on these. There are a few issues that pertain to Friedman that will not be covered due to space limitations, such as the arguments about minority shareholders and their rights, critiques of the libertarian theory of corporate property, the Creating Shared Value (CSV) approach, the strategic management approaches or Thomistic scholastic critiques of modern business.⁸⁵ These are of course interesting and deserve attention. However, the focus in this thesis is limited to the ethical debate; which I regard to be more interesting and fundamental.

⁸⁵ Richard Nunan, "The Libertarian Conception of Corporate Property: A Critique of Milton Friedman's Views on the Social Responsibility of Business," *Journal of Business Ethics* 7(1988); Denis G Arnold, "Libertarian Theories of the Corporate and Global Capitalism," *ibid.*48, no. 2 (2003); Scott Gallagher, "A Strategic Response to Friedman's Critique of Business Ethics," *Journal of Business Strategy* 26, no. 6 (2005); Sigmund Wagner-Tsukamoto, "Moral Agency, Profits and the Firm: Economic Revisions to the Friedman Theorem," *Journal of Business Ethics* 70, no. 2 (2007); Michael E Porter and Mark R Kramer, "The Competitive Advantage of Corporate Philanthropy," *Harvard business review* 80, no. 12 (2002); Michael Porter and Mark R Kramer, "Creating Shared Value," *Harvard Business Review*, no. January-February (2011); Jim Wishloff, "The Land of Realism and the Shipwreck of Idea-Is: Thomas Aquinas and Milton Friedman on the Social Responsibilities of Business," *Journal of business ethics* 85, no. 2 (2009). These articles deal with these important issues and are in disagreement with Friedman.

3.1 Two rival paradigms

Nicholas Capaldi has argued for the existence of two competing narratives about modernity: the Lockean narrative and the Rousseauan narrative.⁸⁶ These two “permeate and largely define the entire spectrum of political and economic debate. It should come as no surprise to find that disputes in business ethics reflect these narratives.”⁸⁷ The stockholder theory is located in the Lockean narrative whereas CSR and its advocates are mainly to be found within the Rousseauan narrative. This clarifies some of the underlying assumptions not just of the Friedman position and what it rests on, but also what presupposition the counter-arguments rests upon. Capaldi produces a number of comparison charts that prove enlightening in this regard. I reproduce them below.

Ontology (What is the basic truth about ourselves?)

Lockean Liberty

Rousseauan Equility

Persons	Individuals have free will	Society defines (is constitutive of) the individual
Ultimate Goal	Personal autonomy	Social Good
Negative Concern	Tyranny	Victimization (exploitation, alienation)
Positive Concern	Liberty	Equality

⁸⁸

Epistemology (How is the ultimate goal identified?)

Lockean Liberty

Rousseauan Equality

Individualistic	Communitarian
Moral pluralism: each individual creates his/her own substantive good	Individuals fulfill themselves within social institutions.
Public practices are not ends in themselves, but instrumental to private good	Every institution and every practice must reflect the larger social good

⁸⁹

⁸⁶ Capaldi, "Rival Paradigms in Business Ethics."

⁸⁷ Ibid., 7.

⁸⁸ Ibid.

⁸⁹ Ibid.

Axiology (Who or what is of ultimate value?)

Lockean Liberty

Rousseauan Equality

Politics	Civil association; protect individual negative rights	Enterprise association; Protect positive rights with democratic socialism
Law	Rule of Law	Distributive justice (fairness)
Legislation	Maximize equality of opportunity	Maximize equality of results

⁹⁰

Business ethics (How ought people relate in the economic realm?)

Lockean Liberty

Rousseauan Equality

Corporation	Nexus of contracting individuals	Social entity
Role of Management	Production of profitable product or service; maximize shareholder value	Distribution trumps production; social good requires multifiduciary duty to stakeholders
Internal Organization	Hierarchy; contractual autonomy; employment at will	Industrial democracy

⁹¹

This helps to show how radically different the conceptions are and how they rest on different fundamental assumptions. This has further ramifications when it comes to understanding the arguments being raised. The old adage comes to mind: where you stand depends upon where you sit. Or in others words more fundamental viewpoints in ontology and epistemology will shape and buttress viewpoints in business ethics.

Stephen Dunne has argues that the stockholder theory and the CSR-viewpoints speak a set of different languages and that they don't communicate.⁹² Furthermore, Dunne argues that the alternative to Friedman has become the new "conventional wisdom" and is accepted on faith.⁹³ Dunne looks to Nietzsche's work *The Genealogy of Morality* to provide a framework. Reading the debate in this manner he comes to regard the viewpoints as two opposing systems

⁹⁰ Ibid., 8.

⁹¹ Ibid., 8-9.

⁹² Stephen Dunne, "Corporate Social Responsibility and the Value of Corporate Moral Pragmatism," *Culture and Organization* 14, no. 2 (2008): 135-38.

⁹³ Ibid., 137.

that are mutually exclusive and that are akin to “two opposing articles of faith.”⁹⁴ Dunne proceeds to argue that in the dispute regarding moral personhood of corporations CSR has taken on the mantle of having a “conscience” in Nietzschean terminology. Friedman thus becomes an iconoclast who challenges this ethical “conscience.” According to Dunne, Friedman’s critique of CSR hinges upon a distinction between two distinct and separate concepts of moral personhood. Friedman first describes the real human person and then he sets up the opposing artificial corporate person. “This distinction...challenges the very idea of corporate moral personhood on both juridical and moral grounds. Through it, Friedman attempts to ridicule the notion of corporate moral personhood *as such*, an idea which many advocates of corporate social responsibility have none the less subsequently come to rely upon within their arguments against his work.”⁹⁵ Friedman has thus challenged the moral “conscience” of the CSR adherents.

This sets up two rival camps. Most people according to Dunne due to conventionalism or other such reasons tend to end up in the CSR camp without much analysis of the basis of that position. One could get the impression that Dunne is an adherent of Friedman. That is not the case and Dunne explicitly states that he does not endorse Friedman.⁹⁶ His errand is that there is a need to expound and lay out all hidden assumptions not just for Friedman, but for the opposing view as well. A point I agree with. This is an agenda that the moral philosopher and business ethicists must stress and demand; and one I shall endeavor to pursue.

A prominent reaction to Friedman’s ideas has been shown here to be distinguished from them by the simple offering of an alternative opinion upon affairs. Corporations should not pursue extra-fiduciary responsibilities *versus* they should. This alternative opinion has become popularized, indeed it has become an object of populism. Within this faithful movement towards corporate social responsibility, belief in the goodness of corporate social responsibility seems to have become enough to guarantee the actual goodness of corporate social responsibility. Fervent devotion and commitment, devoid of any significant empirical and/or conceptual support, has come to take on some sort of hermeneutical currency. In this particular light the extant self-confidence accompanying contemporary arguments made in the name of corporate social responsibility becomes as compelling as it is worrying.⁹⁷

This of course goes for both sides. I will in chapter 5 show a number of weaknesses in the Friedman position regarding the side-constraints that do not hold under rigorous scrutiny and needs to be augmented. The problem as Dunne sees it is of an epistemological nature since

⁹⁴ Ibid., 142.

⁹⁵ Ibid., 138.

⁹⁶ Ibid., 145.

⁹⁷ Ibid.

“This is a scholarly concern to the extent that the dogmatic acceptance and perpetuation of a particular set of beliefs has somehow become a legitimate barometer of truth within the field of business and management studies. But it is also a problem to the extent that an unjustified set of beliefs has widely become accepted by the very people who are so often expected to subject widely held beliefs to systematic and critical interrogation.”⁹⁸ I will pursue this line of inquiry when I critique those who critique Friedman and I shall follow this admonishment in chapter 5 where I myself critique Friedman and his assumptions.

These two narratives or positions are seen as mutually exclusive and people are either in the one camp or in the other. Critique of the other system is often such that it doesn't make much sense to the other group who has a set of mutually buffering support elements in its total philosophy. The question becomes is communication possible or are we facing a set of Kuhnian competing paradigms, where one set of beliefs wins out, due to having more adherents than the other system who ends up with none when the system dies out?⁹⁹ I do not hold to any radical post-modernist views about language and meaning.¹⁰⁰ It is my contention that the underlying questions are the same although the answers and specifications are different and so is the approach towards the subject matter.¹⁰¹ It is important that this does not turn into a “religious” view held as a faith, making any discussion and dialogue impossible since one cannot speak rationally to those impervious to reason and rationality. The best way is to enunciate all premises and assumptions, and validate them as best one can. This is the purpose of laying out the two narratives of Capaldi. This will become more apparent later, when I show some of the underlying assumptions that the counter-arguments rests on. The interpretive principle of charity is also a good start for an honest approach to the debate.¹⁰²

⁹⁸ Ibid.

⁹⁹ Thomas S. Kuhn, *The Structure of Scientific Revolutions*, Second, Enlarged ed. (Chicago: The University of Chicago Press, 1962 (1970)).

¹⁰⁰ Keith Jenkins, *Why History? Ethics and Postmodernity* (London: Routledge, 1999); Stephen R.C. Hicks, *Explaining Postmodernism - Skepticism and Socialism from Rousseau to Foucault* (Tempe: Scholargy Publishing, 2004). These two books give an introduction to post-modernist thinking about meaning and communication.

¹⁰¹ Donald Davidson, "Radical Interpretation (1973)," in *Inquiries into Truth & Interpretation*, ed. Donald Davidson (Oxford: Oxford University Press, 1984); Wilard van Orman Quine, "Ontological Relativity " in *Ontological Relativity & Other Essays* (New York: Columbia University Press, 1969); Martha C Nussbaum, "Non-Relative Virtues: An Aristotelian Approach," in *The Quality of Life*, ed. Martha C. Nussbaum and Amartya Sen (Oxford: Oxford University Press, 1993). I generally agree with the position maintained here, where communication of meaning is possible.

¹⁰² Davidson, "On the Very Idea of a Conceptual Scheme (1974)," 183-88; Wilard van Orman Quine, *Word and Object* (MIT Press, 1960), 59.

3.2 Arguments against the internal logic of Friedman

3.2.1 The Six arguments of McAleer

Sean McAleer condenses Friedman's text "the Social responsibility of business is to increase its profits" into the form of six deductive arguments that he then proceeds to analyze.¹⁰³

These he calls: *The Artificial Person Argument*, *The Agent-Principal Argument*, *The Taxation Analogy Argument*, and *The Argument from Expertise*, *The Personal Responsibility Argument*, and *The Free Society Argument*.

McAleer's approach is problematic as I shall proceed to show. His fragmentation into six arguments loses valid information in the process. This is my main counter-contention. His approach differs from my rendering of the arguments in Chapter 2 where Friedman's arguments add up to two broad different arguments, one a deontological argument that rests upon moral personhood and fiduciary duties, and then secondly an argued case for the negative consequences of implementing CSR. My position and choice of a long exposition of Friedman's argument was to show its richness and that the arguments are interrelated and buffer each other, to form a unified whole. Some of this richness is lost if the arguments are forced into the structures and deductive forms McAleer has chosen to give them. To his defense McAleer has given the arguments the strongest form he could give, constructing the arguments as valid.

Of the six arguments, McAleer starts with what he has called *The Artificial Person Argument*. He states the argument in the following fashion.

P1 Corporations are artificial persons
P2 Artificial persons can have only artificial responsibilities
C1 so, Corporations can have only artificial responsibilities
P3 But moral responsibilities are not artificial responsibilities
C2 So, corporations cannot have moral responsibilities.¹⁰⁴

This argument he claims looks valid on the surface, but commits the fallacy of equivocation. McAleer takes the Friedman argument that only people have responsibilities and tries to spell it out "rigorously" and in so doing turns it into a deductive argument. He claims that the

¹⁰³ McAleer, "Friedman's Stockholder Theory of Corporate Moral Responsibility."

¹⁰⁴ Ibid., 441.

argument commits the fallacy of *equivocation* using the term “artificial” differently and is thus fallacious. The argument goes that in P1 and in P2 and C1 “artificial” is opposed to “natural” and is construed as a constructed “entity” whereas in P3 the meaning seems to mean “non-genuine.” It is as would be clear from my treatment in chapter 2 a metaphysical statement and a differentiation between it and the voluntary judicial sanction of a contract. Corporations are artificial in the meaning that they are created and given a judicial status by the government and do not exist as separate entities apart from that. Friedman simply points out that it is not the same as moral responsibilities on a personal level. Friedman also points out that the boundaries for this “artificial” responsibility are the fiduciary duties and these do not coincide with the boundaries of personal moral responsibility. Friedman’s argument is intended to state that “artificial” responsibilities are vague in meaning outside of the explicitly stated judicial contract and does not go beyond what is contractually agreed to; and this is different from moral responsibility as it is usually understood. So, I argue, there is no equivocation, there is a simple differentiation between metaphysical statuses; pointing out that they are not equivalent.

McAleer also maintains that the argument *begs the question*: “P2 asserts that the only responsibilities an artificial person, such as a corporation, has are those spelled out in the document by which it comes into being. But why would anyone except a committed stockholder theorist accept such a premise? No one who subscribes to the stakeholder theory of corporate moral responsibility – according to which the interests of all stakeholders, not just the stockholders, are to be considered – would accept P2, for a stakeholder theorist holds that corporations *do have* extra-legal duties to non-stockholders.”¹⁰⁵ The stockholder theory views corporations and what they are and how they come about differently than those who hold social contract viewpoints and the communitarianism of the Rousseauan narrative; where everyone is a stakeholder that needs to be taken into account. The real question is according to the stockholder theory: why should everyone be taken into account or count equally? The Stockholder theory maintains that there is a clear differentiation between stockholders and others. There are strict criteria for when others are to be taken into account. The criteria are that they need to be significantly affected, and that there is a conflict with the side-constraints. For the stockholder position third parties are not to be taken into account unless they are harmed through negative externalities. Apart from that it is a legal document binding the parts of the contract and other stakeholders are not a part of the contract. It doesn’t beg the question

¹⁰⁵Ibid.

at all. This is the way the contract is set up. For third parties to become relevant they must be shown that there is culpability on part of the business and that there is a causal link. If so, then the right person to sue for damages isn't each individual stockholder, but the "artificial" personhood granted to the corporation. This is the meaning of limited liability and how a corporation "takes responsibility." If others are morally relevant, but not negatively affected, the burden of proof rests on those who maintain that they ought to be treated as equals to a compact they are not signatories of. This is not self-evident and must be demonstrated.

McAlear then turns to what he considers the most important argument of Friedman which McAlear calls *The Agent-Principal Argument*. He sets up the argument with the following premises.

P1 Management is the agent for the stockholder, who are the principals.

P2 An agent's primary responsibility is to protect and promote the interests of the stockholders

C So, management's primary responsibility is to protect and promote the interests of the stockholders.¹⁰⁶

The argument he maintains is valid, but "even if the Agent-Principal argument is sound, it is too weak to support Friedman's theory of corporate moral responsibility; indeed it is guilty of an *ignoratio*."¹⁰⁷ McAlear proceeds to argue that there is a difference in the meaning of *only* and *primary* that is relevant here. There is a difference in management's *only* responsibility is to protect and promote the interests of the stockholders which is the stockholder position, but the conclusion of *The Agent-Principal Argument* is that this is management's *primary* responsibility. 'Primary' and 'only' are not synonymous, but 'primary' leaves open and suggests the possibility that there are other interests to be considered, although not primarily according to McAlear. It is here that the problem of forcing a long text without looking into all the other material on the matter into a short formulaic syllogism loses the relevant argumentative context and with it the relevant background. The argument is not as weak as it is purported, if one doesn't drop the full context. The argument of the fiduciary duties of the manager is to the stockholders, and that is primary, but it is not in the sense that the manager has secondary duties to any other stakeholders. This, however, must not be conflated with the aspect that the corporation of which the manager is an agent of, could not enter into situations that make them liable to other third parties thru externality effects which they as agents of the stockholders are responsible for rectifying. By doing this they would still be maintaining their

¹⁰⁶ Ibid., 442.

¹⁰⁷ Ibid.

fiduciary duties, they have not suddenly acquired a different principal. The difference between ‘only’ and ‘primary’ social responsibility of business is to increase its profits is that this is on the level between stockholder and executive, the ‘only’ responsibility that is spoken of is the fiduciary duties, but this as understood from the context is also to take into account the side-constraints that Friedman has set. The shift to “primary” indicates that increasing profits does not take place in a social vacuum and the side-constraints imply boundaries of which increasing profits have to take place within. It is not an absolute that reigns supreme no matter the consequences to third parties. The ‘only’ social responsibility of business is still profit it has not changed into following CSR goals. That is the context of the different terms. So in a sense the stockholder position is consistent with a weak version of stakeholder theory, that other stakeholders are relevant if they are negatively affected, but only then. So counter to McAleers view this defense is not too weak to support Friedman’s theory, as long as one doesn’t drop the different contexts and conflate them.

The third argument McAleer gives is what he calls *The Taxation Analogy Argument*.

- P1 If management seeks to promote or protect the interest of non-stockholding stakeholders at the expense of the interests of the stockholders then it is in effect “taxing” the stockholders
- P2 But it is wrong *in principle* for management to “tax” on stockholders
- C Therefore, management should not seek to promote or protect the interests of non-stockholders at the expense of the interests of the stockholders.¹⁰⁸

McAleer views the argument as valid, but he contends that P2 is not adequately supported. The argument turns to what Friedman has stated on the need for a separation of powers that can be found in government into legislative, executive and judicial and a system of checks and balances. McAleer then goes on to list numerous examples such as Britain and Canada having a parliamentary system and not a separation of powers, and that stockholders elect a board of directors; in this way he tries to show that the premise P2 is not supported by providing counter examples. However, I believe this is taking the taxation analogy too literally. Friedman does not intend to state more with the analogy than that by a manager seeking to promote other interests, this leads to less profits and it is akin to a “taxation” meaning only that there is less available for what he deems as the primary function of business. The Taxation Analogy doesn’t go much further than stating the mathematical truth that if a manager was to divert a set sum of money away for CSR purposes, this would be

¹⁰⁸ Ibid., 444.

taken out of the budget making it smaller. The difference between what would otherwise be available and what is now available can be viewed as a “tax” which instead of the government spending the money the company does. This amounts to less money available for the proper functions of business as Friedman sees it; this is akin to the effects of a *tax*. And this must also be viewed in terms of the proper goal of business as being to increase, rather than decrease profits. The taxation argument, by way of simple math shows that by promoting other interests the executive is then in breach of his fiduciary duties.

The fourth argument that McAleer attacks is what he has dubbed *The Argument from Expertise*. Where the *Taxation Analogy Argument* was concerned with it being wrong in principle, the *Argument from Expertise* takes on Friedman’s utilitarian argument against negative consequences of taking on CSR. He states it in the following manner.

- (1) Management can effectively promote the interests of the non-stockholding stakeholders only if it has expertise in this area.
- (2) Management lacks expertise in this area
- (3) Therefore, management cannot effectively promote the interests of the non-stockholding stakeholders
- (4) If management cannot effectively promote the interests of the non-stockholding stakeholders, it is likely that its efforts will actually demote their interests – the consequences of its attempting to promote their interests will be baleful.
- (5) Therefore, management’s attempt to promote the interests of the non-stockholding stakeholders will have baleful consequences.¹⁰⁹

According to McAleer the argument is valid, but factually wrong. The argument holds if the facts hold. This is an empirical question. The question of soundness hinges on whether technical expertise in one field would also lead to expert knowledge in unrelated fields. Friedman as an economist holds to the view that a company should stick to what it is good at; and that gives it a competitive advantage, and not dilute its efforts which would lead to a loss of focus. There is also the underlying view from Adam Smith that directly trying to promote interests in the name of the *public good* is not the best way of achieving it and often leads to detrimental results.

Counter to this it can of course be argued that a manager having an MBA is a universalist and that management in a nuclear power plant is much the same as managing a charity, and that no real specialized knowledge apart from leadership and management knowledge is really required. A CEO if he doesn’t have a specialized knowledge will still have access to people

¹⁰⁹ Ibid., 446. The style is different and (1)-(5) indicates a difference in what was in the previous argument P2 and is here dubbed when summed up P2*

who have the required specialized knowledge. Granting that this might be so, it is not the case by absolute necessity. It is of a conditional nature. Granted knowledge in one field *management* could be enough to run a funeral parlor, a nuclear power-plant or a charity. It is not true by necessity. It might well be true that management knowledge is required, but not sufficient and that to run a power-plant it is not enough that others know about nuclear fusion and particle physics, but that it requires that the managers know this specialized knowledge as well.

Even so, one can see that Friedman would say that it goes counter to what we know in economic theory that even if a company could be good at all of these things separately and individually, there is a need to specialize and do what one does absolutely best, *the theory of comparative advantage*. If a company doesn't specialize in this manner it would lead to economic resources being diverted from their primary purpose with the net result that it instead of doing one thing well, now does two things mediocly. With the added result that everybody is left worse off and resources are being used in a wasteful and inefficient manner.

The fifth argument McAleer gives is what he calls *The Personal Responsibility Argument*. This is garnered from Friedman's statement that "the difficulty of exercising "social responsibility" illustrates, of course, the greater virtue of private competitive enterprise – it forces people to be responsible for their own actions and it makes it difficult for them to "exploit" other people for either selfish or unselfish purposes. They can do good – but only at their own expense."¹¹⁰ McAleer presents it as follows:

- P1 if stockholder theory promotes individual responsibility then *ceteris paribus* we should endorse it
- P2 Stockholder theory promotes individual responsibility
- C Therefore, *ceteris paribus* we should endorse stockholder theory¹¹¹

McAleer regards the argument as valid, but again believes that it is factually wrong. The soundness of the argument reflects the differences between the Lockean and Rousseauan narrative. Friedman has argued that the stockholder theory makes people responsible for their own actions and that it is difficult for them to exploit others for selfish or unselfish purposes. McAleer then argues that P2 is "obviously false"¹¹² since the "stockholder theory *encourages*

¹¹⁰ Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 123.

¹¹¹ McAleer, "Friedman's Stockholder Theory of Corporate Moral Responsibility," 447.

¹¹² Ibid.

the exploitation of employees, suppliers, customers, etc., for the benefit of the stockholders.”¹¹³ This is akin to a Marxist view which is at odds with the classical liberal view of Friedman. It is “obviously false” to an adherent of the Rousseauan narrative, thus the argument is unsound. For someone inside the Lockean narrative such as Friedman it is “obviously true.” The reason someone inside the Lockean narrative has for viewing it as sound is as Adam Smith has argued; trade only takes place if it satisfies the criteria that it is of mutual benefit and advantage to both parties. So within the Lockean narrative there is no exploitation and everybody gains through trade. That is the essence of free trade according to classical liberalism. No one would trade their goods, knowledge, time or energy without getting paid for it. On the Lockean narrative the argument is valid and sound.

When it comes to whether or not it increases personal responsibility is an empirical question. McAleer believes that it would lead to less accountability since executives would try to levy the costs over to others, such as have others pay for the pollution done by the company. Friedman holds another view, and maintains that everybody is being held accountable within the corporations to do their fiduciary duties and that inside a free system where people are free to choose and decisions are not made for them by the government this supports and encourages free decision making and a culture of accountability. For Friedman, if you make bad decisions you have to answer for the consequences. This will make you more accountable, rather than less. The opposite of this is a system where it is the responsibility of others or the government to carry the costs and be “socially responsible.” This will lead to less accountability since one can pass the negative consequences over to somebody else, and this gives an incentive to continue being wasteful and take less responsibility for one’s own actions. Again soundness of the argument can be traced back to a difference in *weltanschauung*.

The sixth argument McAleer mentions is *The Free Society Argument* which he again believes to be valid, but wrong factually. McAleer states it as follows:

- P1 Whatever reduces economic freedom harms the foundation of a free society
- P2 The practice of stakeholder theory reduces economic freedom
- C1 Therefore, stakeholder theory harms the foundation of a free society
- P3 We should reject whatever harms the foundations of a free society
- C2 Therefore, we should reject stakeholder theory¹¹⁴

¹¹³ Ibid., 447-48.

¹¹⁴ Ibid., 448.

McAleer believes that P2 and P3 are not implausible, but that Friedman overstates his view that stakeholder theory is essentially a “socialist view” and he then counters that “stakeholder theory does not advocate the public ownership of the means of production.”¹¹⁵ To this it is important to state that stakeholder theory and CSR are not the same and that the relevant opponent view here for Friedman is CSR. And as discussed in chapter 2 the “subversive doctrine” Friedman calls CSR does not directly argue for public ownership of the means of production, but that businessmen arguing for CSR are implicitly agreeing with the opposite principle; not that private property and contract is the foundation of business, but that business does not in fact own its resources, but are merely a trustee of society, which actually owns everything and can revoke this trusteeship. The socialism spoken of is of the corporate state variety, where private businesses own property in name only, and *de facto* everything is owned by the government or society that has merely licensed and delegated a trusteeship to business. So Friedman does not overstate his case as McAleer maintains. In principle either business is based on private property, where corporations are free to dispose of their resources how they see fit or they are merely trustees of society and the state and must use their resources in accordance with how society and the state sees fit.

McAleer next maintains that P1 is false: that capitalism is a necessary condition for political freedom. He finds it provocative, but states that he doesn’t have time to argue against Friedman’s whole book *Capitalism and Freedom*, but he gives a reason for doubting it. He argues that “any tenable account of morality will rule out certain forms of economic behavior”;¹¹⁶ and by this he means that it “is hard to see how restricting a company’s freedom to externalize its costs (by imposing a duty not to pollute, as Australia does) harms the foundation of a free society.”¹¹⁷ This also rests on a Rousseauan narrative which is alien to Friedman.

In the classical liberal sense there is no “right” to infringe on the rights of others and to pollute them and make them suffer any negative externalities. Friedman also believes that this is part of a free society and essential to it, not counter to it. However, when it comes to outlawing pollution it is not very practical. That is why he has been a champion of buying and

¹¹⁵ Ibid.

¹¹⁶ Ibid., 449.

¹¹⁷ Ibid.

selling “pollution quotas” as a practical means of recompense and that it is up to government to oversee this function.¹¹⁸

McAleer also writes that ““far from harming the foundations of a free society, moral constraints on voluntary economic arrangements can be seen to promote these foundations.”¹¹⁹ This reveals clearly the difference between the Lockean narrative of liberty and personal autonomy versus the communitarian and social good alternative of the Rousseauan narrative. The Rousseauan and the Lockean narratives operate with two different conceptions of freedom that are not compatible.

McAleer doesn't go into details of Friedman's books *Capitalism and Freedom* or *Free to Choose* that argue there is a correlation between political freedom and economic freedom. Friedman here produces long factual arguments for the relationship between the two spheres. I will not go into detail about this, but for Friedman restricting economic freedom is at the same time restricting political freedom since the two are strongly interrelated and one cannot have one without the other.¹²⁰

McAleer presents all of Friedman's arguments validly and finds them consistent, but from a Rousseauan narrative vantage point he regards them as factually untrue. This bears hallmark witness to the differences in view between the Rousseauan narrative and the Lockean narrative and that it leads to a difference in outlook regarding soundness and what facts are cited. From within the Lockean narrative Friedman's arguments are both valid and sound.

3.2.2 Feldman and the dichotomy of making profits or benefitting others

Glenn Feldman “finds Friedman's work to be profoundly unpersuasive – indeed much of it illogical, sophistic, and potentially foundational for a form of economic and social callousness.”¹²¹ He has much contempt for the stockholder position describing Friedman as engaging in “academic McCarthyism” and a few other vituperative adjectives that are not in line with interpretive principle of charity. However, if we look beyond the adjectives we find

¹¹⁸ Friedman and Friedman, *Free to Chose - a Personal Statement*, 215.

¹¹⁹ McAleer, "Friedman's Stockholder Theory of Corporate Moral Responsibility," 449.

¹²⁰ For Friedman's argumentation in this regard chapter 1 "The Relation Between Economic Freedom and Political Freedom" and chapter 2 "The Role of Government in a Free Society" in *Capitalism and Freedom* gives the details of his view. Chapter 2 "The Tyranny of Controls" in *Free to Choose* also covers the same issue.

¹²¹ Glenn Feldman, "Putting Uncle Milton to Bed Reexamining Milton Friedman's Essay on the Social Responsibility of Business," *Labor Studies Journal* 32, no. 2 (2007): 125.

the argument that Friedman has created a false dichotomy. As Feldman writes “the framework provided is one in which any activity that involves benefit to society, community, or one’s fellow man could be regarded as mutually exclusive to making of profits.”¹²² In regard to Friedman’s terminology that we have seen earlier this can quite easily be dispelled. It can be argued that there is no false dichotomy; it only seems so at a casual glance. As I have described previously in chapter 2 Friedman distinguishes that there are plenty of times that businesses can invest in the local community, such as Henry Ford did, but this is not CSR; it is an *investment* that the managers regards to be profitable in the long run. This activity may look like CSR on the surface, but it really isn’t. The investment then benefits people outside the company, but it is not charity. It is an investment based on self-interest and the profit motive. It can thus be argued that there is no dichotomy, the activity benefits both parties. There is no fallacy since both gains from this. Friedman doesn’t hold to the Marxist premise of a zero-sum game where what one side loses another gains. For Friedman it is not *either-or*, since all parties benefit. Again this shows a difference between the two underlying narratives.

Friedman, however, does hold that managers should not counter to their fiduciary duties give away money that benefits other outside groups without at least giving some benefit in return to make it worthwhile. It doesn’t have to be monetary; good will could also be an investment. Friedman is against pure corporate altruism, where the company gives away something, and doesn’t expect to get anything in return, apart from expenses endured. This is not a straw man-argumentation. For Friedman there is a relevant difference between CSR and investment that makes all the difference. To be fair to Friedman he does hold as a matter of empirical fact that by corporations pursuing their own interests that leads to a greater net benefit for society as a whole. That what is good for a corporation is also in the interest of the public good. By pursuing its own interest, which to Friedman is being socially responsible in a narrow sense and increasing its own profits a corporation also leads to more taxes being available to the government to do its job and provide for people and solve social problems.

Feldman also makes the argument that it is rather weak and begs all the questions for Friedman not to spell out what he means with “ethical customs” and whether this is to be narrowly or broadly interpreted? This is a valid question and I will return to it in chapter 5 when the focus is on what I regard to be true problems with the side-constraints.

¹²² Ibid., 128.

3.2.3 Grant's three critiques of purported logical fallacies

Colin Grant like Feldman sees Friedman as fallacious and wrong from the perspective of the Rousseauan narrative, but has a less spiteful tone.¹²³ Grant argues that Friedman in “The Social Responsibility of Business is to increase Its Profits” owes its appeal to rhetorical devices and that careful consideration reveals oversimplification and ambiguity that conceals empirical errors and logical fallacies. Grant maintains that “On one level, these fallacies can be seen as simply empirical errors in his descriptions of business and of the significance of ethics for business; but ultimately they are indicative of cardinal contradictions at the heart of Friedman’s position as outlined in that seminal article.”¹²⁴ I will here concentrate on what Grant believes to be logical fallacies that Friedman commits, though the two are for Grant intertwined. I will return to Grants more ethically oriented line of argument in a later section in this chapter.

Grant believes that ambiguities in Friedman’s treatment of business and ethics can be traced back to foundational assumptions. He argues that Friedman has *an apolitical basis of political freedom*. Grant maintains that “The market is supposed to function in its own independent economic terms, and yet this independent market is also touted as the source and guarantee of political freedom.”¹²⁵ This must according to Grant be a contradiction since he contends that Friedman insists in *Free to Choose* that economic freedom is an essential pre-requisite for political freedom. “The Economic arrangement which prides itself on the separation from the political realm, in contrast to the socialistic alternative where the economic and the political are intimately connected is also supposed to underlie and sustain the reality of a free political system. Economic freedom is the cradle of political freedom and yet the economic itself is supposed to be totally apolitical.”¹²⁶ Now, how can this be the case without there being a contradiction? In the classical liberal sense and from within the Lockean narrative there is no contradiction here between a free market depending on a free political system and a political system depending on economic freedom. The two are mutually enhancing and related. There is a separation between the fields of the two, but they are mutually re-enforcing *corollaries* and co-exist. Accordingly it is also false to maintain that business is totally autonomous and takes place in a vacuum. Grant misrepresents Friedman’s view since according to Friedman

¹²³ Grant, "Friedman Fallacies."

¹²⁴ Ibid., 907.

¹²⁵ Grant “Friedman Fallacies” 911

¹²⁶ Grant “Friedman Fallacies” 911

himself “Economic arrangements play a dual role in the promotion of a free society. On the one hand, freedom in economic arrangements is itself a component of freedom broadly understood, so economic freedom is an end in itself. In the second place, economic freedom is also an indispensable means towards the achievement of political freedom.”¹²⁷ Grant conflates two different aspects. That Friedman argues that the government should intervene in the market as little as possible is not the same as saying that there is no connection between the two and that business takes place in a vacuum separated from the political.

The second logical fallacy Grant maintains that Friedman makes is what Grant refers to as *the contradiction of altruistic agents of self-interest*. Grant writes that in his portrayal of business managers as dedicated agents of profit-intent shareholders, is equally indicative of a fundamental contradiction “between the assumption that shareholders are motivated entirely by self-interest and the requirement that the managers of corporations, as agents of these self-interested individuals, must be essentially devoid of self-interest, or at least have their self-interest sufficiently in check to dedicate themselves to the self-interest of the shareholders.”¹²⁸ According to the Lockean narrative there is no conflict here. Recollecting Friedman views on self-interest from chapter 2; there is a harmonization of interest. That the manager is an employee means that he is hired to maintain the interest of the stockholders. This does not, however, mean that any sense of his own self is totally eradicated, but he cannot pursue any interest that is counter to his fiduciary duties. If he wants to follow other interests then he is free to leave his job and seek gainful employment elsewhere; if he believes that working for the corporation is not in his best interest. It is false that the managers are altruists who are totally self-serving when viewed from the Lockean narrative. Their interest is maintained through wages and bonuses in exchange for the expert knowledge that they selfishly trade in order to maintain the profit-maximizing obligations that they have to “serve” in the interest of the stockholders. It is a trade, not self-negation. According to the Lockean narrative this is simply two concerned parties making a trade, which is all that employment is. One party exchanges knowledge that leads to profit for the other party, the company, who in turn pays with wages and bonuses. It is accordingly a win-win situation and self-interested behavior on account of both parties concerned.

The third fallacy Grant maintains that Friedman commits is that “Greed yields good.” Grant maintains that the “private vice, public virtue” argument is false and that capitalism in the

¹²⁷ Friedman, *Capitalism and Freedom*, 8.

¹²⁸ Grant, “Friedman Fallacies,” 911.

West has led to more inequality and pollution of the environment. And that this is inevitable and inherent in the capitalist system and its internal logic. “On the one hand, while this system has achieved unheard of levels of productivity, it has also resulted in a dramatic increase in disparity between rich and poor, with levels of luxury assured for the few at the top and more and more people at the other extreme relegated to foodbanks and soup kitchens.”¹²⁹ Here in lies a difference between the social justice and equality of results view of the Rousseauian narrative counter to the Lockean narrative focused on the rule of law and equality of opportunity. Granted that not everyone might be better off, this is a problem if one argues with the line of reasoning that everybody should be better off for it to be proper, in a Rawlsian defense of income differences.¹³⁰ Friedman does not pursue his line of reasoning in the manner of John Rawls. The public good for Friedman is an aggregate good and viewed on an aggregate level. According to the Lockean narrative, self-interested pursuits of profit leads to social utility maximization at the aggregate level; which is how the public good is conceived of in this tradition. Also, the Lockean narrative would dispute the empirical facts of more and more people in the lowest economic strata becoming worse of.

Friedman’s main argument is a deontological defense for fiduciary obligations and that CSR would run counter to this. However, Friedman’s consequentialist arguments do not just argue against CSR, but also that profit-maximization allows for the most efficient use of resource that there could be and that this occurs as if lead by an invisible hand that makes society better off. However, society is not the standard of value. Friedman is an individualist and individuals have primacy. Society is merely “a collection of individuals and of the various groups they voluntarily form”¹³¹ and it would on the classical liberal view be wrong to not respect the freedom and rights of individuals, even if others were better off (barring an acute emergency). Friedman’s case for the stockholder theory is as has been shown earlier two-pronged. For Friedman there is a harmony between his deontological and consequentialist arguments that make them supplement and complete each other.

Friedman’s book *Free to Choose* documents how there have been a dramatic increase in absolute terms in the western world. The standard example that Friedman uses that society is better off if people and corporations follow their interests are the differences between China

¹²⁹ Ibid., 913.

¹³⁰ John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1971 (1992)), 83-90.

¹³¹ Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 124.

and Hong Kong and West and East Germany under the Cold War.¹³² The different “facts” and interpretations once again come from the difference in the two narratives and their focus. In the Rousseau narrative there are fallacies being committed, whereas in the Lockean narrative this is far from the case.

3.3 Ethical arguments against Friedman

In chapter 2 I indicated that there are side-constraints on the pursuit of profit. This point is often missed by opponents who thus dismiss the stockholder theory and do not see much of an ethical perspective at all; believing that it is a purely economic perspective. By reading Friedman out of context without the side-constraints some, like Feldman, inquire: “How far would Friedman take his analysis? Slavery, the convict-lease system, sweatshops in which prepubescent girls are locked in, beaten, sexually harassed, and raped and where pregnant females are forced to have abortions are it could be argued profitable... What about the military subjugation of indigenous people for use as cheap labor? If this can be accomplished, and a profit realized, are executives who demur from such behaviors neglecting their fiduciary responsibilities to the firm? Is it not cheaper for firms to poison the air people breathe and the water they drink by disposing of chemicals in rivers and skies – even if trace amounts of lead in drinking water cause brain damage to infants and chemical carcinogens cause death?”¹³³ Not all go to such lengths as Feldman do in portraying Friedman and the stockholder position as callous, but many textbooks for MBA-students and other business students do not give an accurate account. This inaccurate portrayal leads to an erroneous view of what it would be like for an executive to behave morally according to Friedman. As shown previously the stockholder position does not condone fraud, deception or harm to third parties. Many business students who are to become future business-leaders are often presented this caricature of Friedman and the stockholder position before being waylaid the alternatives to Friedman.¹³⁴ The importance of this lays in the consequences this has had since “Friedman’s arguments have been misinterpreted by business managers and have provided justifications for engaging in any and all types of immoral, unethical, and illegal activities for personal gain

¹³² Friedman and Friedman, *Free to Chose - a Personal Statement*, 34-35, 54-64.

¹³³ Feldman, "Putting Uncle Milton to Bed Reexamining Milton Friedman's Essay on the Social Responsibility of Business," 137.

¹³⁴ James Jr and Rassekh, "Smith, Friedman, and Self-Interest in Ethical Society," 660-63.

and corporate greed.”¹³⁵ Many thus dismiss the stockholder position without further ado and construct a dichotomy, albeit a false one, between being ethical which is to adhere to the CSR viewpoint or to be efficient and profit-maximizing.¹³⁶ This thesis contends that the stockholder theory is an ethical theory, not so easily dismissed.

In the next section, the focus will be on serious and sincere arguments against Friedman’s ethical base.

3.3.1 Is it an ethical position at all?

Colin Grant poses three ethical charges against Friedman.¹³⁷ The first is the “equation of ethics with law.”¹³⁸ I have dealt with this aspect and why this is not the case in chapter 2; arguing that the two are not coextensive. Grant writes that “in this starkest form, the implication is not only that ethics is excluded from the deliberations of business, but that the ethics that is recognized is of the minimalist variety. Business is assumed to be endowed with its own intrinsic integrity. Ethics comes into play only when the wider society finds some aspects of business operation intolerable so that it has to pass a law restricting the scope of this otherwise autonomous activity.”¹³⁹ Ethics is then according to Grant an outside danger and intrusion, that “business might have to deal with, but, if so, this should be strictly on the terms of business itself, monetary penalties that business can either take into its stride or seek to avoid.”¹⁴⁰ Friedman as previously pointed out in chapter 2 does not give a full enumeration of business virtues or maxims to live by in a business context, but when it comes to integrity, he does state that deception and fraud are unacceptable and prohibited by the stockholder theory. So he does state that the stockholder position rests on honesty being a virtue. This, however, does not amount to business automatically having an intrinsic integrity. Friedman himself is quite skeptical of plenty of businessmen and their own morals.¹⁴¹ The specification Friedman gives to ethics is of the minimalist variety, by not being a complete enumeration, but that does not mean that ethics is to be avoided. The side-constraint of abiding by social moral norms and the ethical customs of the place you are operating in does mean that an executive cannot

¹³⁵ David Bejou, "Compassion as the New Philosophy of Business," *Journal of Relationship Marketing* 10, no. 1 (2011):1

¹³⁶ Dunne, "Corporate Social Responsibility and the Value of Corporate Moral Pragmatism," 145.

¹³⁷ Grant, "Friedman Fallacies," 910-11.

¹³⁸ *Ibid.*, 909.

¹³⁹ *Ibid.*, 909-10.

¹⁴⁰ *Ibid.*, 910.

¹⁴¹ Friedman, "Milton Friedman Responds," 8.

do as Grant maintains; since he cannot behave in a manner that society views as abhorrent. It is not the case according to Friedman that business ought to operate counter to the norms and ethical customs of the country unless countered by law. It is also to behave within culturally sanctified norms and ethical customs be they western or middle-eastern or any other culture. Minimalist is used in two different senses and it is important to keep them separate. Friedman is minimalist in terms of not having many positive obligations, and duties that reign absolute, but there are plenty of negative side-constraints such as *not* breaching social norms, ethical customs and the law. These are as complete as the society that gave rise to them. The amounts of choices that are still left for the executive have thus been significantly limited. The sheer amount of considerations that the executive has to take heed of in making his decisions, in different countries; such as the law, social norms and ethical customs do not constitute anything remotely minimalist due to the extensiveness of these fields themselves. As discussed in chapter 2, the law constraint and the ethical customs side-constraint are not co-extensive, so Grant is wrong in maintaining that the stockholder position equates ethics with the law. That the laws keep expanding to cover more fields so that ethics and the law are becoming more co-extensive is a whole different matter.

Grant raises the issue of business behaving in an autonomous manner until government intervenes and regulates the field with law implying that it would be dangerous to leave it to executives and businessmen and their “own intrinsic integrity.” The question then becomes is this only true for businessmen? Is there any inherent untrustworthiness in businessmen as such? What if one were to approach other professions such as doctors, or journalists and maintain that it would be dangerous if the profession itself would primarily rely on “its own intrinsic integrity” – why would it be the case that “a few rotten apples” in the world of business is enough to question the integrity of the entire field; whereas this is not the case in medicine where we know that not everyone is a doctor Mengele, performing inhuman experiments or a Stephen Glass in journalism concocting and making up news and news sources. Since the medical profession and journalists are able to regulate their own fields, shouldn’t business also be able to do this? Within the Lockean narrative the answer is yes. Whereas this is not the case for those in the Rousseauan narrative where there is an inherent distrust of the self-regulating features of the marketplace.

Grant also makes the point that business then deals with fines and penalties as costs, but this is only natural. Businesses should according to Friedman try hard to avoid inflicting negative

externalities on others, but if they occur recompense is morally demanded. It is part of being accountable. Sometimes this can be done by the business itself and the inflicted third parties. Other times such as in pollution cases where many people are affected, but exactly how everyone is affected is difficult to determine; it is easier that the government steps in with a “fine” or “penalty” or taxes everyone.

The second argument that Grant argues is the relation between ethics and social responsibility as Friedman views it. “For all that can be ascertained from the article itself he might well accept the common tendency to equate the two, or he might not regard social responsibility as an ethical matter at all. Either way, we are faced with a very ambiguous and confusing situation. If he regards social and ethical responsibility as synonymous, he must explain how “ethical” can mean any more than a power play between competing social forces.”¹⁴² This I maintain is a false alternative. CSR or non-CSR are both within the field of ethics. The stockholder theory prescribes to a different view of what social responsibility consists of. The stockholder theory limits it to fiduciary duties and remedying any harm caused by their actions to third parties. For the CSR adherents this responsibility is to a wider set of stakeholders of which stockholders are only one group, whereas the local community, the environment and customers and others also enter into it. That this seems categorical that for the stockholder position uses a narrower set of stakeholders than the CSR position does not place the stockholder position outside the field of ethics. Charity and philanthropy and the other-regarding virtues do not exhaust the entire field of ethics, even if this is often felt to be the case by some adherents of CSR. Ethics is the wider field, social responsibility, is a sub-field. The specification of what social responsibility actually consists of is the real point of contention. Grant’s disagreement here also rests on having the faulty premise of attributing ethics and the law as co-extensive for Friedman. This again leads to the positing of this false alternative.

Ethics for Friedman does not become a battlefield of lobbyist involved in a power play to gain dominance over the application and formation of law. Friedman is strictly against “crony capitalism,” which for him is a blatant attack on the rules of the game, of not engaging in free and open competition without deceit.¹⁴³ Economic self-defense, where a company does not set out to cripple competitors or be granted special privileges, but instead sets out to maintain its

¹⁴² Grant, “Friedman Fallacies,” 910.

¹⁴³ Friedman, *Capitalism and Freedom*, 133.

own legitimate self-interest would according to Friedman be acceptable; just as it would be acceptable for other professions such as doctors and the medical profession to speak out against laws and their negative influences. This is an important distinction within the Lockean framework.

The third argument of Grant is a challenge in regard to Friedman assuming “basic ethical integrity on the part of individuals who engage in business. It seems that he takes personal ethics for granted.”¹⁴⁴ This for Grant is problematic since he doesn’t see how integrity can be expected from individuals in business. “On his own terms, avoidance of deception and fraud would seem to be precisely the kinds of things that cannot be expected of business.”¹⁴⁵ Being ethical for Grant is viewed as being at fundamental odds with the pursuit of profit. The two are not compatible. The argument is that “how are they to make serious efforts to avoid deception and fraud if their primary and determinative loyalty is to the pursuit of profitability?”¹⁴⁶ This is a fundamental clash of differing worldviews. Grant and others in the Rousseauan narrative have a pessimistic view of businessmen, and that they need to be regulated through law. Friedman and the Lockean narrative, on the other hand, believe in individualism and a harmonization of self-interested behavior and where the government provides the necessary framework through upholding the rule of law.

For Friedman’s ethics the side-constraints are absolute and may not be breached. To trespass beyond them and make profits to the detriment of others and by lying and cheating is reprehensible and goes counter to the precepts of the stockholder theory. Some businessmen will of course be deceitful, but that according to the Lockean narrative is not inherent in businesspeople as such; even so, such behavior is prohibited by the stockholder theory. Profit-maximization takes place within a domain of side-constraints in order for it to be morally acceptable and for the system itself not to collapse. There may of course be psychological pressures on the executives to breach these side-constraints, but according to the stockholder theory it would be morally inadmissible to yield to those pressures.

¹⁴⁴ Grant, "Friedman Fallacies," 910.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

3.3.2 Can Friedman's theory be defended by any reasonable ethical theory?

Ivar Kolstad critiques Friedman for having an overstated survival argument that cannot ethically be defended.¹⁴⁷ Furthermore he claims that the Friedman view of profit-maximization "cannot be defended by any reasonable ethical theory."¹⁴⁸ He also maintains that "unlimited profit-maximization implies special duties of firms to shareholders that cannot be derived from any reasonable ethical theory."¹⁴⁹ Kolstad states that for Friedman "profit-maximization is thus a moral imperative for corporate executives."¹⁵⁰ He interprets the stockholder theory as having four arguments supporting it. He then maintains that these four arguments are not the right level to argue against Friedman and that there is a broader and more fundamental critique, in terms of there being an overlapping consensus of ethical perspectives on profit maximization, that dismisses the Friedman position. Kolstad sums up Friedmans position and states that:

Four basic arguments are commonly used to underpin this position. First, it is argued that the contract between shareholders and a manager of a firm, binds the manager to pursuing the interest of shareholders, and therefore makes it illegitimate to pursue other ends. Second, pursuing other ends to the detriment of shareholders, and taxation is a task for democratically elected governments, which it is illegitimate for managers to assume. Third, if businesses focus on too many tasks beyond their core-operations, they become less efficient. An efficient division of labor between business and government is for business to create value, and the government to redistribute it. Fourth, a business that assumes responsibilities beyond profit maximization, will incur added costs, and will therefore be wiped out in a competition with firms that do not assume such responsibilities.¹⁵¹

Kolstad then states that the first argument "intuitively appears too simplistic to hold."¹⁵² He then gives his reason for believing otherwise; that "two parties that enter into an agreement of any kind cannot reasonably argue that this releases them from responsibilities for third parties."¹⁵³ Now this is a misrepresentation of the Friedman position. The signatories to the contract are the stockholders, but it is quite clear it doesn't take place in a vacuum. As have been shown in chapter 2 there are side-constraints in regards to how third parties who are not actually signatories to the contract become effected parties. They become relevant as

¹⁴⁷ Ivar Kolstad, "Why Firms Should Not Always Maximize Profits," *ibid.*76, no. 2 (2007).

¹⁴⁸ *Ibid.*, 138.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

“stakeholders” if and only if, they and their property rights or other liberty rights are negatively affected. They however, do not become contextually relevant as third parties unless directly affected in a harmful way. Kolstad gives an example to support his view: that “two people that get married, cannot claim that this bond precludes responsibilities for other human beings.”¹⁵⁴ He is right, but not in the way he thinks, since other people would not have a right to enter their house and bedroom and force them to conform to certain sexual practices or how to manage their own household, which would be the same as claiming all stakeholders equal and should have a say in the boardroom (or in our case the bedroom) and not just when negatively affected. For third parties to be relevant and significant there needs to be shown a culpable act by the corporation, and a causal connection showing how a third party is negatively affected; what it consists of, the size of the amount of damages incurred and then either privately or in a court of law rectify the situation after a full review of the evidence. Third party relevance needs to be demonstrated as causally relevant for it to have significance. If this is shown to be the case then the corporation is responsible for its actions to third parties. This is inherent in the side-constraint of abiding by the law.

Against the second argument Kolstad maintains that taxation argument as “unnecessarily complex”¹⁵⁵ Stating that the key question is not redistribution, but whether business ought to give up some profits so as to promote other ends. If this can be done, then the manager is the person to put this into practice. This argument does not impact Friedman at all since he has already stated that there can be corporations or businesses that have different goals than profit maximization, such as hospitals for instance. A corporation and its shareholders can of course establish practices such as those of John Mackey’s corporation Whole Food Markets that donates some of its profits.¹⁵⁶ The case in point is still that it is the fiduciary duty of the manager to act upon that set of goals whatever they may be (as long as it is legal). Implicit in Kolstads arguments there are a few assumptions such as charity and philanthropy as necessary values that everyone must hold. The question remains: why should it be a maxim that a certain amount should be deducted from profits and this should be the case for all? Why should all companies have a duty to have other goals than what they freely have entered into? This is a difference in what the purpose of a corporation is: is it to serve the contracting

¹⁵⁴ Ibid.

¹⁵⁵ Ibid., 139.

¹⁵⁶Robert L. Bradley, "Rethinking the Social Responsibility of Business - a Reason Debate Featuring Milton Friedman, Whole Foods' John Mackey, and Cypress Semiconductor's T.J. Rodgers.," Reason Magazine, October, <http://reason.com/archives/2005/10/01/rethinking-the-social-responsi>. (Accessed 9.11.2013)

partners or is it to serve society. If a group of people have voluntarily come together to pool their resources with the explicit goal of increasing profits, using their own rightfully owned resources and hiring people with expert knowledge to run their company and all this is legal and it is not immoral. Why should they be forced or otherwise be made to do something which is not in compliance with their original concord? Kolstad does not answer why contracts are to be set aside or why philanthropy and corporate altruism is to be a universal value to be practiced by all; he just alludes to it. For him it is an implicit premise. He holds different views on the moral necessity of charity than Friedman, who would reply that people can freely start companies with different purposes than purely profit-maximization and give as much to charity as they want. That is their prerogative. This, however, does not counter the deontological argument for fiduciary duties. That it would be wrong to spend other people's money in defiance of their explicit wishes and in breach of written contracts.

Against the third argument about the ideal division of labor between government and business, Kolstad states that this isn't always the case since in many Third World countries governments are corrupt and not doing their parts so this "entails a greater responsibility for corporations than focusing on its core operations."¹⁵⁷ On a factual level some Third World countries are corrupt and dysfunctional, however, the mere existence of a non-functional government does not by itself create any duties or claims on others to engage in charity whether they are businessmen or not. It does not render the question of the proper functions of government moot; that since somewhere in the Third World there is a governing body where government officials run rampant and are not maintaining the proper functions of government; that this leads to an automatic transference of these functions to corporations and it becomes their concern. I shall further pursue the issue of wider obligations and its underlying assumptions in chapter 4.

The fourth argument is imprecisely stated that taking on "extra responsibility would put a firm out of business."¹⁵⁸ Friedman is not that categorical. He states that a company pursuing CSR to the detriment of profit-seeking will lose out in competition against companies that do not and that investors will seek other opportunities and pull out their money. This will lead to a vicious circle. Not necessarily bankruptcy, but that is a worst case scenario.

¹⁵⁷ Kolstad, "Why Firms Should Not Always Maximize Profits," 139.

¹⁵⁸ Ibid.

Kolstad then proceeds to argue that sometimes it is in a company's interest to take on CSR because that could give them a strategic advantage and lead to a company thriving. As we have seen in chapter 2 this is not an argument against Friedman since he allows for "investments" that on the surface might look like CSR. What he disapproves of is philanthropy that is merely wasted. If a company can thrive and increase its profits, then according to Friedman, this is what the corporation should do and how an executive maintains his fiduciary duties.

Kolstad then goes on to state that there is a need for a broader view of responsibility that goes beyond the narrow view which Friedman holds. He then mentions approaches such as Kantian ethics and social contract theory. He maintains that these views provide a basis for "discussing the overlapping consensus of ethical perspectives on profit-maximization."¹⁵⁹ Through this he signals his own views that he belongs in the social permission camp, and that business is merely a trustee of society and doesn't accept that there are moral traditions that do not derive from "society," but from the individual and individual contracts; nor does he mention the possibility of teleological foundation in the set of theories that he looks to. In chapter 5 I will argue the case for the possibility of a neo-Aristotelian ethical foundation and a revision of the side-constraints in alignment with this.

Kolstad proceeds to state an alternative approach that he will use and that is "to focus on what a maxim of profit maximization implies in ethical terms, and discuss whether these implications are consistent with the demands we would place on any reasonable ethical theory. For this purpose, the implications of profit maximization can be phrased in the language of special duties."¹⁶⁰ A special duty is a duty that we have to some and not to others. The stockholder position that a firm should increase its profits entails a fiduciary duty a firm has to its stockholders that it does not have towards other agents, which translates into: premise A: "a firm has a special duty to its owners."¹⁶¹ This also leads according to Kolstad to a hierarchy where the special duty to owners trumps any other duties that the firm has towards other agents so that, Premise B: "the special duty of firms to their owners takes preference over duties to other parties."¹⁶²

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid., 139.

The question then becomes can this particular type of special duty be defended from an ethical viewpoint. According to Kolstad there are two ways in ethical theory that special duties can be derived. Either an agent has a special duty towards another because they stand in a certain kind of relation to each other, the *relationship approach* to special duties. Then there is the second approach, which takes a universalistic point of view, stating that everyone has the same general duties to everyone else, but that these general duties can be discharged more effectively, if each agent is assigned special duties towards a limited set of other agents. Kolstad then sets out to see how special duties that follow from profit maximization hold up in the framework of three different traditions in regard to the *relationship-approach*. The three traditions are: *the voluntarist tradition*, *the mutual benefit tradition* and *the communitarian tradition*. In the voluntarist tradition, special duties arise only from voluntary and informed agreement. Kolstad then goes on to mention the libertarianism of Nozick as one of the most well-known of such theories. It is not mentioned by Kolstad, but as I have shown in chapter 2 Friedman also stands in this tradition where the corporation is a voluntary agreement where the contractors pool their resources to obtain an advantage and has hired others to maintain this interest. On this position according to Kolstad premise A is vindicated since it is entered into voluntarily. Kolstad then claims that premise B cannot be maintained in the libertarian framework since “The point is that though special duties can arise only through voluntary agreement, this does not nullify the duty of the parties to the compact to respect the self-ownership of agents not party to the compact. In other words,...Friedman was not a libertarian.”¹⁶³ Kolstad, however, is mistaken in this, since he has not taken account of Friedman’s side-constraints or the wider framework of Friedman in his other works *Free to Choose* and *Capitalism and Freedom*. As I have shown in chapter 2; non-coercion and freedom of others is not to be transgressed against. This for Friedman is also extended to corporations that they are not to inflict negative externalities on others, which in a different language, the language of libertarianism, translates into not harming others who were not part of the original compact. These side constraints are such that they do trump profit maximization to the owners. There is a given context to how and when both premise A and premise B in Kolstads formulations are operant and when they are not for Friedman. Kolstads argumentation is oblivious to these side-constraints and this leads the argumentation astray.

Friedman’s position is concomitant with the libertarian position where negative externalities are consonant with harming the rights of others. There is not a complete overlap between the

¹⁶³ Ibid., 140.

libertarian position of the complete and absolute right of private property that may not be infringed upon and the Friedman view that negative externalities are to be avoided, but the similarity is there. Friedman is a classical liberal and not a libertarian like the early Nozick; where libertarianism is a more radical form of liberalism. Kolstad misrepresents Friedman's position and comes to the conclusion that it is false, through not having taken account of the total context of Friedman's argument and the importance of the side-constraints and the role that they play. So when he states that there are limits to profit-maximization in the voluntarist tradition he is right, but that is also Friedman's position. According to Friedman there are certain boundaries to profit maximization inherent in what he calls the rules of the game which is the superstructure in which competition has to take place within and any breach of this is prohibited in the stockholder theory. So counter to Kolstad, Friedman can be defended within the voluntarist and libertarian tradition.

Kolstad then proceeds to argue that neither the communitarian nor the mutual benefit tradition would allow for profit-maximization and grounding premise A and B. Having failed to find support in the *relationship* approaches to special duties, Kolstad, then shifts the approach arguing that the alternative would be to ground it in "universalistic theories such as utilitarianism or Kantianism."¹⁶⁴ These theories then make a departure from the relationship approaches to argue that everyone has a special duty to everyone else.

So Kolstad misconstrues Friedman which allows him to discard that it could be defended on voluntaristic and libertarian grounds, which it can; then he proceeds by arguing for his apparently preferred ethical premises - that of the social permission alternative. We shall quickly look at his argument here. Kolstad is particularly enamored with the assignment approach of Goodin. Here everyone has the same general duties to everyone else and these general duties can be discharged more effectively if agents are assigned special duties for a subset of the total population. Primary responsibility for a task is allocated by society to the agent who can fulfill the task most efficiently. The case can then be made that profit maximization firms are particularly well suited for making efficient use of society's productive resources. There is then a division of labor where firms maximize profits and the state redistributes income. This at least according to Kolstad gives a *prima facie* argument for profit maximization for firms. But what happens if Government defaults on its allotted tasks?

¹⁶⁴ Ibid., 141.

Then it becomes the responsibility of all including business. This is the case since everyone has a duty to everybody else.

Many libertarians in the voluntarist tradition would of course counter saying that there are no involuntary duties, only obligations that have been freely entered into. That being a human and existing amongst others and any other interrelatedness does not bestow duties on anybody. Many in the Lockean narrative would challenge this foundation. Furthermore the libertarian tradition would not accept that property is held in stewardship of society.¹⁶⁵ As Friedman has stated, only individuals exist and only individuals hold property, unless they voluntarily enter into a group arrangement such as a corporation, and pool *their own* resources and property.

Kolstad claims that “To argue that owners are in any way special because they form relationships others do not, is to implicitly argue that owners are special because they are owners. And besides violating the impartiality requirements of universalistic theories, this would relax impartiality requirements far beyond what any reasonable approach would permit. The special duties implied by profit maximization therefore cannot be defended from any reasonable position, universalistic or otherwise.”¹⁶⁶ This is rather bold statement with wide-reaching claims, especially since Kolstad is not exhaustive in his listing of reasonable ethical theories. A point I shall return to later.

Firstly, owners are special since they are the only parts of the contract that have voluntarily been entered into to pool their resources so as to best maintain *their property*. Third parties and their interests if negatively affected are to be taken account of and are not to be inflicted with negative externalities. This is the position of Friedman. There are two different relationships and these relationships are not of an equal standing according to the stockholder theory. There is the relationship between the stockholders and how their legally acquired property is to be used. Then there is the relationship between the corporation and those not originally part of the compact, who only become relevant as participants in this agreement if they are adversely affected and thus enter into a relationship. These two relationships are fundamentally different in nature and cannot be treated as the same. One is an actual contract-based relationship, and the other is a potential relationship hinging on the necessary condition of a breach of side-constraints. A potentiality and an actuality are not of equal stature.

¹⁶⁵ See The Entitlement Theory of Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), 149-82.

¹⁶⁶ Kolstad, "Why Firms Should Not Always Maximize Profits," 142.

Secondly, profit-maximization is not held by Friedman as a universal rule that is to be applied as an absolute regardless of the situation or context. This, as shown earlier, is where the side-constraints enter. For instance one could generalize and create a maxim or rule that a company is to seek profit, but may not inflict harm on any third parties through negative externalities and that this does not only apply in Norway, but also in China and in the USA and every other country that exists now and in the future. It could also be generalized as follows “if a negative externality has inflicted harm, the corporation is then liable to provide full monetary recompense.” Friedman has never argued that profit-maximization is an unconditional good to be pursued at all costs regardless of situation. So Friedman doesn’t argue that it should be held as a maxim. It is tempered by the side-constraints and those are held to be universally applicable.

Kolstad then goes on to discuss the component facet of self-interest in Friedman. This he finds to be at odds with morality. “A similar way to put this, is to say that an ethical theory built around (or consistent with) the idea that corporations ought only to pursue the interests of their owners, would include a strong element of egoism on the part of owners (through the construct of a corporation).”¹⁶⁷ Kolstad is reprehensive of voluntary agreements that do not have an explicitly other-regarding component and decisions that do not primarily have as beneficent society as a whole. This in the Friedman-Smith tradition of the invisible hand is not the reason for actions when they are pursued, but a happy side-benefit that is held to be true. Kolstad upholds the view that egoism and self-interest is outside the province of the field of ethics. Kolstad does not go on into the details of what Friedman views as self-interest nor does he go into the restrictions Friedman poses on self-interest or the institutional framework that is deemed necessary for it to function. Friedman does as I’ve shown in chapter 2 have a view of when the pursuit of self-interest is negative and harmful; and he has given side-constraints to ward off profit-maximization becoming self-defeating, self-destructive and malevolent.

Kolstad does not explicate on why he believes self-interest is outside the field of ethics, but this view can be traced back to Henry Sidgwick who made a distinction between ethics as other-regarding and separated this from prudence, which is self-regarding.¹⁶⁸ Kolstad simply states that “We have intuitions that ethics is about other people and their needs and claims and an ethical theory that is based entirely on self-interest, thus leaves out an essential component

¹⁶⁷ Ibid.

¹⁶⁸ Henry Sidgwick, *The Methods of Ethics*, (London: Macmillan, 1907). 327-31.

of any reasonable ethical theory.”¹⁶⁹ Not all have such intuitions. Nietzsche did not.¹⁷⁰ Aristotelians and some utilitarians do not have this intuition.¹⁷¹ Even so, for Friedman, the stockholder theory is about resource-pooling for the greater benefit of a group of investors, but it does have an other-regarding component, and that comprises the side-constraints such as adhering to social norms and ethical customs of the community, not engaging in fraud or deception of others and respecting their the rights and property. For Friedman profit maximization and self-interested motivation and behavior does not take place in an ethical vacuum. It takes place within the rules of the game and within a distinctive legal framework. A person may have duties and responsibilities outside of his role as an executive, but inside this role he has only fiduciary duties to the stockholders, and the side-constraints that bind the corporations in regard to third parties.

Kolstad along with many modern philosophers regard ethics to be a field that nearly exclusively is about how to deal with others. This is not the only possible approach. This has only been a common “intuition” in the last few centuries. Ancient Greek philosophy does not regard the ethical questions as mainly how to deal with other people and social justice, but in how individuals are to better themselves and flourish and what the good life consists of.¹⁷² These are viewpoints that have had a revival in the last 60 years. In this neo-Aristotelian eudaimonistic ethics perspective other people play a part, but the main concern is for the individual to flourish. This tradition is not about needs and claims of others or of duties. So Kolstad is wrong in his “intuitions” that this is the only possible approach. Also, I would contend that neo-aristotelianism is a “reasonable ethical theory.” Neo-Aristotelianism can of course be extended to view a corporation and its stockholders as a group of individuals who have voluntarily banded together to create a corporation. One can then ask the question: given that the goal is for the corporation to flourish, how is this best achieved? How does the corporation grow?

¹⁶⁹ Kolstad, "Why Firms Should Not Always Maximize Profits," 142.

¹⁷⁰ Stephen Darwall, *Philosophical Ethics* (Boulder: Vestview Press, 1998), 177-90.

¹⁷¹ Rogers, "Beyond Self and Other; *Self-Interest - an Anthology* (London: Routledge, 1997); Jean Hampton, "The Wisdom of the Egoist: The Moral and Political Implications of Valuing the Self," in *Self-Interest*, ed. Ellen Frankel Paul, Fred D. Miller Jr, and Jeffrey Paul (Cambridge: Cambridge University Press, 1997); Thomas j. jr Hill, "Reasonable Self-Interest," *ibid.* (Cambridge); Neera K. Badhwar, "Self-Interest and Virtue," *ibid.*

¹⁷² George Sher, *Ethics, Character, and Action*, ed. Ellen Frankel Paul, Fred D. Miller Jr, and Jeffrey Paul, *Virtue and Vice* (Cambridge: Cambridge University Press, 1998); Richard Kraut, *Aristotle on the Human Good* (New Jersey: Princeton University Press, 1989); Julia Annas, *The Morality of Happiness* (Oxford: Oxford University Press, 1993); "Virtue and Eudaimonism," in *Virtue and Vice*, ed. Ellen Frankel Paul, Fred D. Miller Jr, and Jeffrey Paul (Cambridge: Cambridge University Press, 1998).

These are of course completely valid ethical questions and not to be simply dismissed for having self-regarding component in an extended sense of the term. The result of doing so would drastically narrow the field of business ethics, since the field of business is geared towards the prudential. If other-regard was the extent of ethics, then ethics in the business world would be relegated to the periphery. That would be the rather unfortunate conclusion if self-interest and prudence is to be viewed as antithetical to ethics and normative business ethics. It would render the field with little content left and could add to the prevailing view that ethics is a disparate issue, not integral to the affairs of business.

I have in this chapter argued that Friedman position is internally consistent and that the arguments against Friedman rest on faulty premises and misrepresentations and do not hold. In chapter 5 we will look at grounding of the side-constraints that are problematic and I will argue that the side-constraints need to be augmented and how this can possibly be achieved. In the next chapter I will continue the discussion of widening the responsibilities and obligations of corporations and show what would be required to dislodge the deontological argument for fiduciary duties.

4 Bolstering and buttressing the Stockholder position by arguing against the underlying assumptions of CSR

This chapter looks at the underlying moral premises of CSR and its assumptions of why corporations ought to take on a wider set of social responsibilities. Many of these assumptions are often just taken for granted, but they need to be defended and validated if a case is to be made for corporations having social responsibilities that go beyond executives and their fiduciary duties.

This will not be a complete case due to space limitations, but mainly a set of highlights that will provide a contrast and show thru this foil that the stockholder position is a viable normative business ethics alternative.

4.1 What is required of an argument to counter the deontological argument

The stockholder theory uses the term “social responsibility” to refer to ethical obligations, that an executive have to expend company resources in a manner that doesn’t promote the specific purposes for which the business has been created for and organized around. When used in this manner it makes perfect sense that corporations have no “social responsibilities” in the CSR meaning of the term. Friedman also uses the term derisively in another meaning; where “the only social responsibility is to increase profits”; in other words, limiting the extent of it to shareholders. This of course is an important responsibility, with important derivative social consequences.

If the stockholder theory is to be attacked and refuted it is not so much the consequentialist arguments of Friedman that needs to be countered that CSR is not effective, but his deontological argument for fiduciary duties. This is also the strongest argument Friedman gives and the one that is hardest to disprove.¹⁷³ The utilitarian arguments against CSR are

¹⁷³ Hasnas, "The Normative Theories of Business Ethics: A Guide for the Perplexed," 24.

prone to counter-examples of instances where CSR apparently has worked. Against the deontological argument the counter argument has to be stronger than merely contesting the Friedman view and having a counter- “belief” that corporations have a “social responsibility.”¹⁷⁴ It has to explicitly challenge the deontological argument of Friedman and its base and have arguments that nullify fiduciary duties. In other words, show that it is not wrong to spend other people’s money counter to an explicit consensual agreement, and that breaches of voluntary agreements and contract are morally acceptable as long as this promotes the public interest or the social good or society. Making decisions in the name of the public good or social good is usually the purported reason for government actions, so why shouldn’t this also be the case for businesses?

The assertion that businesses should take on “social responsibilities” in the name of the public good misses the point of the deontological argument for fiduciary duties. The underlying assumption of the fiduciary duties is that voluntary agreements and contracts that one has knowingly entered into are to be honored. The argument is that it would be *wrong* to violate an agreement to use stockholder resources that has been *entrusted* for the specific goal of increasing profits, even if by doing so would benefit society. Denying this is to declare that the common good overrides duties to honor one’s commitments and contracts, and that the standard of value in regard to viewing the morality of one’s actions is utilitarian social utility. Some will argue that this is the standard of value for all endeavors, but this cannot be just assumed and then just simply dispel the deontological argument without further ado.

The assumption on acting for the public good also rests on a false analogy where business is a similar institution as a governmental institution; that both are in a sense “public” institutions.¹⁷⁵ That government can spend taxpayers’ money without their consent in order to promote the social good does not translate into executives being justified without *explicit consent* to divert company resources for the same reason. If you as a private citizen have contributed what is already required of you as a taxpayer in order for government to work for the benefit of society, and it is assumed that all the money that you have left after paying taxes is rightfully yours. A plausible intuition most people would agree. You would also assume that you should be able to control, invest or spend those means in any way you sees fit as long as the endeavors are legal. If instead of spending the money you have left after taxes on a vacation, a new apartment or a car, what if you were to spend your money by investing it

¹⁷⁴ Dunne, "Corporate Social Responsibility and the Value of Corporate Moral Pragmatism," 145.

¹⁷⁵ Hasnas, "The Normative Theories of Business Ethics: A Guide for the Perplexed," 24.

in stocks and becoming a stockholder and you do this as an investment so that you can retire early or pay for your children's education. Why should suddenly this be any different? Why should you when you spend your money after already having paid taxes so that the less fortunate are to be helped, are you to be given a double duty? It is here that the principle of equality arises: Like cases are to be treated alike. To treat cases differently there has to be a morally relevant feature that allows for this discrimination.¹⁷⁶

What if you were to put your money in a bank instead of investing it in a company and the executive banker took a certain percentage into his own pocket. You would regard that as theft and embezzlement, and you would call the police. What if instead the executive banker decided to take "social responsibility" and take the money in your account and put it to better social use and give some of your money to charity? This would be exactly the same as in the case of CSR and a breach of fiduciary duties. Why would this be any different than investing in a company, rather than in a bank, given that it is your money and that you have already contributed to the upkeep of the state and its welfare functions? If the two cases are to be treated differently, then there has to be a morally relevant feature that would allow for not honoring contracts in the one case and keeping it in the other. If there is a relevant difference, then it is up to those who maintain that you incur special duties as a stockholder to society to show that you are not free to dispose of your own property; since the moment you put your money in a few shares in a friend's company instead of in a bank, those resources become society's resources, rather than yours. What morally relevant feature is there that would allow for treating the two investments differently? Both are agreements, both are legal, both are entered into for financial gain, and the amount is the same. Wherein lays the moral difference? The onus of proof lies on those who maintain that corporations are to take "social responsibility" and break contracts and agreements that for all intents and purposes are legally binding and set them aside. It is also required that the counter-intuitive notion, that you don't own your own property and wealth, and are not free to invest it anyway you like, since it belongs to "society," which have to give you permission, to validate this assumption.

Friedman states that there can be duties outside of business that a person has freely entered into. According to Friedman, there can be duties to family, friends and country and others.¹⁷⁷ This is not in dispute here. But the question is if there are duties that you have that come on top of these, from the mere fact of being involved in business. If so, then it must be

¹⁷⁶ Øyvind Kvalnes, *Etikk Og Samfunnsansvar* (Oslo: Universitetsforlaget, 2012), 23-28.

¹⁷⁷ Friedman, "The Social Responsibility of Business Is to Increase Its Profits," 33.

shown how they arise, what they entail and what validates this notion of extra duties. That you not only have duties to your fellow man as a private citizen, but that the moment you start a corporation, then you have taken on extra duties, to people who are not signatories to the business contract and foundational document.

It must be shown that the deontological argument fails, and that it is acceptable to breach these contracts. That there is a foundation for “social responsibilities” with valid assumptions, properly grounded, that can be proven and that would allow for morally discarding fiduciary duties.

4.2 Arguments given in favor of social responsibility

The opposing views to the stockholder theory holds that corporations have a “social responsibility” to society that goes wider than that maintained by Friedman. What CSR is there is little consensus about.¹⁷⁸ The unifying belief is that counter to Friedman, corporations are to be morally accountable to more stakeholders than the stockholders and not limited to rectifying harm caused by the corporations, but actual positive duties. This is often just assumed as what morality requires, without closer scrutiny.¹⁷⁹

4.2.1 The noblesse oblige argument

One of the arguments used in favor of corporations taking on a wider set of obligations and responsibilities than maintaining stockholder interests is the argument that since business and corporations have the power to solve social issues then they are also responsible for doing so. This is the *noblesse oblige argument*: that with possession of wealth come the responsibility to take care of the less fortunate. The implication of this is that since government is failing in its stated duties, then corporations and businesses are morally obligated to step in. Or even if governments were maintaining their proper functions, that having power to enact betterment for mankind is enough to make it required. The argument is that wealth and economic

¹⁷⁸ Luuk Knippenberg and Edwin BP De Jong, "Moralising the Market by Moralising the Firm," *Journal of business ethics* 96, no. 1 (2010); Duane Windsor, "Corporate Social Responsibility: Three Key Approaches," *Journal of management studies* 43, no. 1 (2006); Garriga and Melé, "Corporate Social Responsibility Theories: Mapping the Territory; Dahlsrud, "How Corporate Social Responsibility Is Defined: An Analysis of 37 Definitions." These articles map out and give a good overview of different CSR theories.

¹⁷⁹ Dunne, "Corporate Social Responsibility and the Value of Corporate Moral Pragmatism," 145.

resources translates into obligation. This is usually just assumed and taken for granted as if it was self-evident by opponents of the stockholder theory. It is often an implicit assumption.

On the level of consequences Friedman argues that by pursuing its own interest corporations lead to positive benefits thru the invisible hand as shown in chapter 2 so in a manner of speaking business is already contributing to the welfare of the community. As well as corporations paying taxes so also do the stockholders. Taxation systems also tend to be progressive, so that the more you have, the more you pay in taxes. So the wealthy and powerful are already contributing progressively. And if someone is wealthy and given that this creates an obligation for the less fortunate, this would surely apply at the personal level and not as it pertains to agreements amongst separate parties. Stockholders it can be granted may in their capacity as private individuals have this obligation, but the *noblesse oblige* argument has not shown that a set of special duties arise for stockholders and executives simply by being businesspeople. The question that someone could affect a betterment for someone else, does not by necessity imply that one should, especially if it isn't the executive's own money. The *noblesse oblige* argument is not strong enough to warrant theft (of the Robin Hood variety) and to set aside the fiduciary duties of executives.

The noblesse oblige argument states that as a business executive one has the power to do much social good, thus one is obligated to do so. It, however, doesn't challenge the deontological basis of Friedman's argument. It doesn't show how and why this power to enact change is a moral trump card that is to push aside and supersede the fiduciary duties that an executive has and why contracts and voluntary agreements are to be dismissed. The noblesse oblige argument may be relevant on a personal level for individual stockholders as private citizens, but is not applicable to a voluntary agreement with an explicit goal that goes counter to it and is focused on increasing profits.

4.2.2 Social responsibility as arising out of social power and proportionality

Some argue a slightly different version of the noblesse oblige argument. Keith Davis writes:

One basic proposition is that *social responsibility arises from social power*. Modern business has immense social power in such areas as minority employment and environmental pollution. If business has the power, then a just relationship demands that business also bear the responsibility for its actions in these areas. Social responsibility arises from concern about the consequences of business acts as they

affect the interests of others. Business decisions do have social consequences. Businessmen cannot make decisions that are solely economic decisions, because they are interrelated with the whole social system.¹⁸⁰

This social power rests on corporations and its ability to “deliver the goods” efficiently to consumers. Anyone who disagrees with the morality of a corporation can refuse to grant them social power by not buying their products. The “power” of corporations rests on persuasion and not “force” and anyone who believes that a corporation is not acting responsibly are free to decrease its power by refusing to deal with it. This is how Friedman views it. Friedman would agree that no decision arises in a vacuum devoid of consequences. His side-constraints, deal with taking responsibility for consequences for its actions in regard to third parties. This is what being accountable for one’s actions means according to the stockholder theory. This for Friedman is applicable to all negative social consequences that the corporation has wrought. Anything that has had harmful social and health consequences is to be rectified. Friedman, however, would not agree that this extends beyond the negative obligation not to harm others. Davis is in favor of business taking on “social responsibility” that goes beyond being accountable for the corporations own actions to also be “socially responsible” for the welfare of others. It is this extended sense of social responsibility that is at the center of contention. Much of the arguments given relate to harm and negative consequences, but the implicit intention behind “social responsibility” is not akin to rectifying pollution or products that have failed and need to be pulled back of the market. The argument is that having power to elicit change for betterment, implies an implicit duty to do so, as a goal, and not just as a consequence of corporate economic activity.

“Most persons agree that businessmen today have considerable power. Their counsel is sought by government, and what they say and do influences their community. Social power comes to businessmen because they are leaders, are intelligent men of affairs, and command vast economic resources.”¹⁸¹ And this economic resource situation then transforms into a general relationship where “social responsibilities of businessmen arise from the amount of social power they have.”¹⁸² This is in essence a matter of proportionality. The more wealth and resources one has at one’s command, the more social power one has, which translates into more “responsibility.” “The demand of the law in a well-ordered society is that responsibility

¹⁸⁰ Keith Davis, "Five Propositions for Social Responsibility," *Business Horizons* 18, no. 3 (1975): 20.

¹⁸¹ "Understanding the Social Responsibility Puzzle," *Business Horizons* 10, no. 4 (1968): 48.

¹⁸² *Ibid.*

shall lie where the power of decision lies.”¹⁸³ This is not questioned by stockholder theory with its side-constraints. The departure comes when Davis writes “The idea of equal power and responsibility is not a stranger to business either. For example, one of the rules of scientific management is that authority and responsibility should be balanced in such a way that each employee and manager is made responsible to the extent of his authority, and vice versa. Although this rule refers only to relations ships within the firm, it should apply as well to the larger society outside the firm.”¹⁸⁴ He explicitly attacks Friedman when he states that: “The logic of reasonably balanced power and responsibility is often overlooked by those who discuss social responsibility. Some argue that business is business and anything that smacks of social responsibility is out of bounds.”¹⁸⁵ For Davis it is all about “balancing the equation between power and responsibility.”¹⁸⁶ The idea has coherence when it comes to taking responsibility for one’s actions, that proportionality would require a corporation and a businessperson to make restitution equal in size to the damages incurred or replace faulty products. Also, corporations as a side effect increase the public good by efficient use of resources, job-creation and the like. This is also a “balancing” act where others are given positive benefits, but this is not the sense Davis is thinking of. This is merely economic, and not taking real “social responsibility.”

Extending proportionality beyond what a corporation itself is responsible for is not a coherent notion. The scale of proportionality in terms of moral accountability and degrees is understandable in regard to size of compensation for harm inflicted, but moral agency and accountability gets removed from the causal relationship, when this turns into being “socially responsible” for actions where one is not morally culpable, but proportionality is still to remain in terms of the size of the social “need.” These are not commensurable sizes. The scale of rectifying damages stops when the full amount is paid, it doesn’t continue any further when it comes to atoning for negative externalities. Proportionality does not extend beyond what one is morally accountable for and into positive obligations. This is not part of the same scale which extends to the more needy someone is, then the more responsible for the welfare of that person a business becomes. Taxes are progressive so the more a corporation or stockholder owns the more they pay in taxes. Any proportionality-argument or argument in terms of size,

¹⁸³ John F. Taylor, “Is the Corporation above the Law?” Harvard Business Review (March-April, 1965) p.126 quoted in *ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

needs to show why size is a distinguishing feature that is morally relevant and that there is a proportionality that is coherent and that arises out of corporations as such and that goes beyond tax-paying ability and that business is a social institution and not a private enterprise.

Moral accountability is associated with being personally responsible for one's own actions and rectifying damages. Any moral accountability that extends beyond this to the actions or lack of actions of others, need a foundation and proportionality does not ground the morality of obligations extending beyond moral culpability. Positive obligations for social responsibility would make responsibility fall outside of the domain of "where the power of decisions lie," which is what according to Davis grounds responsibility.

This argument does not give any well-founded reason as to abandoning the fiduciary duties and taking on "social responsibilities" beyond what the stockholder theory already agrees to in terms of rectifying "social harm" that it itself has caused. The argument given by Davis does not challenge the base and show that it would be just to abandon the fiduciary duties and take on "social responsibilities" and in breach of contract spend other people's money against their explicit wishes. The proportionality principle of moral accountability is valid when it comes to negative externalities, but those the stockholder theory is in favor of. That this proportionality extends to positive duties towards others, for actions that one has no dominion over seems odd and incoherent and would be hard to rationally maintain.

4.2.3 Business as citizens

Davis has argued that businesses are of a similar nature as individuals and must be regarded as "citizens" with all that it implies.¹⁸⁷ This is also known as Corporate Citizenship.¹⁸⁸ The basis for this citizenship-view is that the government has given business judicial status, just like private citizens. Since corporations are a major "social institution," it bears the same kind of responsibilities that an individual has. The argument is that "Business will benefit from a better society just as any citizen will benefit; therefore business has a responsibility to recognize social problems and actively contribute its talents to help solve them."¹⁸⁹

Corporations are to be treated as private citizens who have obligations to society. This rests

¹⁸⁷ "Five Propositions for Social Responsibility," 19.

¹⁸⁸ Carroll, "The Four Faces of Corporate Citizenship; Dirk Matten, Andrew Crane, and Wendy Chapple, "Behind the Mask: Revealing the True Face of Corporate Citizenship," *Journal of Business Ethics* 45, no. 1-2 (2003).

¹⁸⁹ Davis, "Five Propositions for Social Responsibility," 23.

on a false premise. Corporations are private institutions. That they have beneficent consequences and increases the “public good” does not negate the fact that it is a private institution; set up by individuals who come together to achieve their own private ends, with their own resources and do not have an explicitly social agenda or goal and aren’t required by law to have one. The individuals involved already are citizens who pay taxes and are obligated as private citizens. That they join their excess resources together, doesn’t automatically give them a dual citizen-role, either as stockholder or as executive, beyond their role as private citizens and holders of wealth. If corporations are to be viewed as “citizens” it needs to be demonstrated that counter to the intuitions of those who start a business for their own goals, that they have now assumed another “citizen” role and that they are in fact a public institution rather than a private enterprise. It cannot just be assumed, it has to be demonstrated that it is true or at least shown to be a reasonable starting point.

It does not provide an ethical base to challenge the fiduciary duties and that they must be abandoned in order to pursue “social responsibilities,” nor that all fiduciary duties are void if a corporation is legally founded and not based on corporate citizenship. Corporate citizenship needs to show that all corporations ought to by necessity be made to serve the public interest, counter to the express legal agreements of the contract and that such contracts though legal in today’s society and intuitively so, really aren’t and should be made illegal. This is a tall order, but the burden of proof rests on those who assert that corporations have an existing moral personhood beyond the individuals who comprise it and that all corporations are “social” institutions, no matter what the original contracts state, to give justification for this “belief.”

The foundation of business as such as a private institution built on private resources needs to be challenged. It is here that social permission theory comes in.

4.2.4 Social permission and trusteeship

Some of those who argue that business have this extended set of responsibility rest their view on business merely being a steward of the resources of “society” and that corporations and business is not a nexus of contracts, but instead a social institution that can have its permission to exist withdraw if society’s interests including social responsibilities is not properly maintained. Here again we see the fundamental difference between the Lockean and Rousseau narrative. “The social permission theory tends to ground the moral foundations of CSR on the idea that society determines the nature and scope of moral obligation or

responsibility.”¹⁹⁰ In regard to the origin of this responsibility Davis asserts that: “The fundamental assumption of this model is that society has entrusted to business large amounts of society’s resources to accomplish its mission, and business is expected to manage these resources as a wise trustee of society.”¹⁹¹ This explicitly is the opposite of the stockholder view of the corporation, where individuals pool their rightfully owned resources in order to generate wealth for themselves. Davis and other adherents of the social permission theory starts out with assuming an original position amounting to communism; where everything is owned collectively by “society” and that businesses are then in the name of efficiency provided with a stewardship to act as trustees of the collective resources since they would use resources wisely and effectively. The assumption that everything is in essence owned by “society” cannot just be asserted, it needs to be demonstrated and validated. Especially since, this is not a common intuition to all. Most people tend to think of their bank accounts and their homes as their own as well as their own business acumen and expertise. That this is owned by “society” would come as quite a surprise to many. Within the Lockean narrative these premises of an “original communism” have been challenged and are not accepted. The opposite of private property is not communism, communal ownership and that everything is owned by “society.” The antonym of private property (and also of different collectively owned property including communism) is no ownership at all, the un-owned, rather than the collectively owned. The pairing would be owned (by a private individual or group collectively) or not owned. It can also be argued that collective ownership rests on a prior understanding of (private) ownership, and to deny the prior understanding of ownership is to render collective ownership non-coherent.

Both Locke and Nozick then have their own theories about how property rights justly develop.¹⁹² Nozick has his entitlement theory which is inspired by Locke.¹⁹³ There is no similar theory of how everything is collectively owned and how this justly comes about, and that property justly can revert back to society, but this is a pre-requisite for the argument. It would be poor form to just arbitrarily assume an original communism, without at least giving some justification for the rationality of this as a starting point. Properly it would be required

¹⁹⁰ Den Uyl, *The New Crusaders: The Corporate Social Responsibility Debate*, 12.

¹⁹¹ Davis, "Five Propositions for Social Responsibility," 20.

¹⁹² John Locke, *Two Treatises of Government* (Cambridge: Cambridge University Press, 1988 (1690)). See the second treatise; Nozick, *Anarchy, State, and Utopia*. This is covered in the section named Entitlement theory

¹⁹³ Locke does however state that it wouldn't be just to take all the fruits of a tree, claim it as one's own and leave no fruit left to anyone else. So that there are concerns for others well-being, but this does not amount to a position of original communism and all resources owned by society or the state.

to have a theory of how all property is communal and how this came about. Further, a requirement would be to show that in essence no private property can ever be established countering Nozick's argument in regard to distributive justice.¹⁹⁴ The social permission theory needs to establish a proper standard of how communal property rights come to exist and how the community can parcel of a stewardship of property and resources. Without justification of these assumptions theoretically, there are no grounds for the acceptance of stewardship and corporations being merely a trustee of society's resources. It's an arbitrary assumption that goes counter to the intuitions of a majority of people. The burden of proof rests on those who assert that business is only a trustee of society's resources to show that this is the case. And if this can't be maintained, then neither can "society" withdraw its "permission." This again has dire consequences for establishing a social basis for the obligation of business to society. So the fiduciary duties remain, since society cannot take back what it doesn't own and can't bestow.

It is here that social permission theory often turns into social contract theory.

4.2.5 Social obligations and social contracts

"It is reasoned that the institution of business exists only because it performs valuable services for society. Society gave business its charter to exist, and that charter could be amended or revoked at any time that business fails to live up to society's expectations. Therefore, if business wishes to retain its present social role and social power, it must respond to society's needs and give society what it wants. This has been stated as the Iron Law of Society"¹⁹⁵ Many business textbooks and articles expound on the idea that business has made a social contract with society.¹⁹⁶ The obligations of business to society and that business must practice CSR is to be found in this contractual relation which establishes obligations on the behalf of the "signatories." Social contract theory as a normative theory of business ethics is based on the traditional concept of a social contract and is explicitly modeled on the political contract theories of Hobbes, Locke and Rousseau. Though one could argue that it differs since it is not amongst the members of society, but between "society" as such and those who wish

¹⁹⁴ Nozick, *Anarchy, State, and Utopia*, 149-231.

¹⁹⁵ Keith Davis, "The Case for and against Business Assumption of Social Responsibilities," *Academy of Management journal* 16, no. 2 (1973): 34.

¹⁹⁶ Donaldson and Dunfee, "Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory; *Ties That Bind: A Social Contracts Approach to Business Ethics*; Dunfee and Donaldson, "Social Contract Approaches to Business Ethics: Bridging the "Is-Ought" Gap."

to pursue business ventures. No similar contract theory is to be found between society and other groups such as lawyers, medical doctors, nurses, school teachers or philosophers and that they exist by social permission and that this permission can be “withdrawn.” So it can be viewed as a slightly odd notion since in the usual political social contract theories, “society” comes together to set up rules regarding itself, where all the signatories are members of “society.” In the business ethics version, the contract is made between “society” and a group who wants to pursue business interests. The purpose of the contract being “in its most widely accepted form, the social contract theory asserts that all businesses are ethically obligated to enhance the welfare of society by satisfying consumer and employee interests without violating any of the general canons of justice.”¹⁹⁷

It begins with a situation where there are no organizations only “individual production.” The question then becomes “what conditions would have to be met for the members of such a society to agree to allow businesses to be formed. The ethical obligations of businesses are then derived from the terms of this agreement. Thus, the social contract theory posits an implicit contract between the members of society that grant businesses the right to exist in return for certain specified benefits.”¹⁹⁸ By being given a right to exist, members of society give business a legal recognition and authorize it to use natural resources and allow for employment contracts and other contracts. This then is partaken on behalf of society that expects a good utilization of its resources and an increase in society’s wealth. That business is to be a good shepherd.

The whole notion of a “contract” is itself a peculiar idea. It is often criticized that it is not a real contract at all, since it doesn’t look like any “real” type of contract that is recognized by any existing law. It is not an explicit agreement made in speech or put in writing. Social contracts are nothing like these. “This is because there have been no true meeting of the minds between those who decide to form businesses and the members of society in which they do so. Most people who start businesses do so by simply following the steps prescribed by state law and would be quite surprised to learn that they by doing so they had contractually agreed to serve society’s interests in ways that were not specified by law and that can significantly reduce the profitability of the newly formed firm.”¹⁹⁹ From this it is gathered

¹⁹⁷ Hasnas, "The Normative Theories of Business Ethics: A Guide for the Perplexed," 29.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid., 31.

that for a “contract” to be formed, even by implication, the parties to the “contract” must at least be aware that one has become a “signatory” and a part to the “contract.”

This is countered by the social contract adherents that it is of course entirely hypothetical in nature and they maintain that this is actually a strength and not a weakness, since this is what is required to *identify* the ethical obligations of business. “The moral force of the social contract is not derived from the consent of the parties. Rather they are advancing a moral theory that holds that “productive organizations should behave *as if* they had struck a deal, the kind of deal that would be acceptable to free, informed parties acting from positions of equal moral authority...”²⁰⁰ This then means that much of the psychological appeal of the theory is based on a special “confusion.”

People generally accept consent as a source of moral obligation, and this is especially true of the business practitioner who makes contracts every day and whose success or failure often turns on his or her reputation for upholding them. Most people would agree that when one voluntarily give’s one’s word, one is ethically bound to keep it. Thus, business practitioners as well as people generally are psychologically more willing to accept obligations when they believe that they have consented to them. By employing contract terminology when consent plays no role in grounding the posited social responsibilities of business, the social contract theory inappropriately benefits from the positive psychological attitude that this terminology engenders. For this reason, it is not unreasonable to suggest that the social contract theory trades upon the layperson’s favorable attitude toward consent with no intention of delivering the goods.²⁰¹

This, however, doesn’t strike at the *adequacy* of the theory. “Once consent has been abandoned as the basis for the posited social responsibilities, the acceptability of the social contract theory rests squarely on the adequacy of the moral theory that undergirds it.”²⁰² The foundation of this social contract being as previously quoted an implicit contract acceptable to free and informed parties, acting from a position of equal moral authority. This is also where the theory needs to be challenge and it is here that the social contract theory clashes with the fiduciary duties of the stockholder position. Since, why should contracts with “hypothetical people,” supersede and allow for breaking of actual agreements and contracts made with real flesh and blood people, the stockholders? And in terms of justice why should this require anything “more” of executives than abiding by the “will of the people” and “society” as this

²⁰⁰ Thomas Donaldson, *The Ethics of International Business* 56 (1989) quoted in *ibid.*, 32.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

have been expressed thru electoral process and commercial law and taxes? Or as some would argue, the social obligations people come to have by way of the traditional political social contract theory. Why would any contract go beyond this? This clashes with ordinary common held intuitions. Thus it can be dismissed.

There are also those social contract theories that are based on consent and where 'social responsibilities' is grounded in consent.²⁰³ The foremost critique of this is how such a "contract" could ever go beyond the most minimal of terms, certainly a lot less than what the CSR adherents would accept as fulfilling social responsibilities. Usually contracts between different partners are viewed as fair if it is balanced and based on consent and that there are exit options that allow the different signatories to withdraw from the agreement and that both parties act from a position of equal authority. This, however, is not the case, if "society" has all the resources and business has no economic resources nor even the skills and knowledge of the executives are to be granted. Apart from this going counter to all our intuitions that we own our own property and business skills and acumen and are free to enter contracts. This is not balanced at all, nor a negotiation between equals. This is the case if the premise is to be granted that "society" owns all the resources. This of course cannot just be assumed as previously discussed.

The contract is not balanced at all, it is inherently one-sided, where "society" can add new stipulations and clauses adding benefits to itself, which is to be paid for by the businesses (the other contractual part), which are not allowed to withdraw from the agreement. This is not so much a voluntary agreement as the social contract adherents would have it be, but more akin to an "order" or *diktat* from up high, to be accepted without question, rather than a true contractual relation amongst equal signatories based on mutual consent. Since it is not a common well-founded and widespread intuition that when businessmen and corporations became a contracting part to the "contract" it did so as a trustee and not as an owner of resources; this must be established as a reasonable starting position. The burden of proof rests on the social contract theorists. It cannot just be assumed, it is an unfounded and arbitrary premise which validity needs to be demonstrated. The burden of proof rests on those who assert that everything is owned in common rather than not owned at all to demonstrate a communistic entitlement theory and it even needs to give plausibility to the notion that any skill or knowledge a person has in regards to business is to be disregarded. The business

²⁰³ Ibid; Donaldson and Dunfee, "Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory."

ethics version of social contract theory is not even remotely like John Rawls thought experiment of a veil of ignorance, where the parties don't know where in society they will end up. This is not the case in regard to businesspeople and the negotiations at hand. The purpose and skills are known and so are their goals, which do not hinge on the determination of any economic strata.

Now, of further concern if one were to grant the premise that society is the owner of all resources, why should one stop with business being a trustee of society, why delineate it there? Why not also view personal property and even bodily parts of individuals, not as an entitlement, but as something to be exercised by permission of society given that society itself is conceived as a person who has "values," "interests" and "resources," where the individual is a means to social ends and not ends in themselves. Why is there a demarcation line ending with the trusteeship of businessmen? Having the boundary be businesspeople seem a rather haphazard and arbitrary demarcation line. Why should businessmen have any special duties arising from them as businesspeople that do not arise from being a person as such? Why shouldn't other professions be required to be contracting partners with society for the use of society's "resources" and skills that belong to society? Why not make doctors, nurses, architects and philosophers subject to a "contract" with society where "society" can withdraw its social permission to use its resources? What is it about businessmen and corporations that would make them stand out and make them "subject" to an extra contract with "society" that no other group is? To allow for this there must be shown a morally relevant feature to allow for this "discrimination." What is the moral difference between a medical doctor who operates on patients for money at a private hospital and a group of businessmen who have made a stockholding company to make and sell a government approved drug that cures HIV? It cannot just be assumed, it must be shown that there is a relevant moral difference. If there is no relevant difference, then maybe philosophers, and doctors should also be required to act "socially responsible" and donate of their time, energy and resources pro bono, in disregard of their employment contract and other voluntary contractual obligations, otherwise "society" is allowed to withdraw its "social permission." If society owns all the resources and businessmen are merely trustees of society, this would imply that businessmen are to be means of society and not ends in themselves. And if this is the case, why shouldn't everybody be viewed as means to the ends of society? This goes counter to the moral intuitions of most people if it is extended in this manner. The point remains; the burden of proof rests on the social

contract theory to demonstrate why it would be acceptable to discriminate against one group of people, businesspeople, and treat them as means to the ends of others.

Now, if a social contract was to be established based on mutual consent and based on the resources and expertise they actually bring with them into the original negotiation. Why should businesspeople accept any positive obligations beyond those negative obligations that arise in a society respecting property rights? Why would businesspeople accept positive claims upon their time, energy and resources, and be subject to “social responsibilities”; bear all the costs and not get anything in return? The answer is no one would sign such a contract. The contract signed would not go beyond the stockholder position in regards to accepting social responsibility, so that would be a dead end for those arguing for CSR through a social contract where the people in regard to common intuition bring what they have to the negotiation table.

So, the social contract apart from going against our intuitions that we are free to start corporations voluntarily; and that we own our own bank accounts and skills and knowledge; can't just assume that society owns all resources. This must be demonstrated to be true or plausible, especially in light of its “counter-intuitiveness.” In their present form, social contract theory and social permission theory aren't able reasonably ground “social responsibilities.” Therefore they can be rejected.

Now, if social contract theory were to assume that corporations own their own resources and executives own their own skills and business acumen; then in a “real negotiation” given that “society” has little to offer in return than buying products and in exchange for taxes corporations are to have legal protection, this would amount to the stockholder position and no extended “social responsibilities.” This is pretty much the legal situation that we have today. Therefore, Social contract theory cannot dislodge the fiduciary duties of the stockholder position.

4.2.6 What about a utilitarian defense of CSR?

What if all economic decisions, not just of government and public institutions, but also corporations and the private sector were to be made in order to maximize the public benefit and social utility? And this is to be made mandatory.

A utilitarian defense of CSR would not appeal to social rules or contracts, but to the total social benefit of expanding the responsibilities of corporations. It is interesting to note, however, that although utilitarian modes of analysis are used in *applying* the concept of CSR (e.g., the corporate social audit), utilitarianism is not as common a defense of the foundations of CSR as other approaches. This could be because of the decline in the use of utilitarian arguments amongst moral philosophers. I suspect, though, that the reason lies elsewhere. Since business itself conducts its operations in terms of contracts, and since obligations associated with contracts are generally held to be binding, social contract theories can readily play on the sense of obligation that already exist in business. . . . Finally, those businessmen who themselves see moral obligation in utilitarian terms do so from primarily an economic point of view. Yet most who argue for a strong sense of CSR want to expand the scope of moral obligations beyond the economic. Indeed, if economics is regarded as the science of maximizing social benefit, many of the proposals made to increase CSR would find opposition from economists. For these reasons utilitarianism is not as common a foundation for CSR as one might expect.²⁰⁴

The answer given is that most economists would on consequentialist grounds argue against CSR and its purported efficiency, which would defeat its purpose. Few CSR –adherents would argue that business needs to be re-arranged to not be concerned with profit-maximization, but make every decision in line with social utility maximization. The arguments against Friedman’s consequentialist arguments are not that capitalism is inefficient, nor do his opponents point to a more efficient system (especially after the collapse of the Soviet Union). The arguments from the CSR adherents are not to abandon the profit-motive and replace it with the public good, but a modification that would allow for CSR to be pursued sometimes; a rather limited case by case form of consequentialism.

Most economists, in line with the implicit utilitarianism manifest in economics as such, would also argue like Friedman, that CSR is not viable and that more social utility maximization occurs if corporations concentrate on their primary purpose of maximizing profits.²⁰⁵ The case can also be made that many of the studies that tries to show that CSR is profitable, are methodologically weak, and often conflate investment in the local community as CSR, rather than as an investment. This skews the results. There are strong utilitarian arguments against taking on CSR, and not only the ones given by Friedman.²⁰⁶

²⁰⁴ Den Uyl, *The New Crusaders – The Corporate Social Responsibility Debate*; 19

²⁰⁵ Margolis and Walsh, "Misery Loves Companies: Rethinking Social Initiatives by Business; Porter and Kramer, "Creating Shared Value."

²⁰⁶ "Creating Shared Value," 64-65.

If we return to the beginning of this chapter and the question, what if there were no difference between public and private institutions and that all were to pursue the public good as their *raison d'être*; that business are to make all decisions in terms of social impact rather than profit-maximization. That fiduciary duty is simply to be put aside in the name of the greater good.

There is in the Lockean narrative little evidence to support the practicality of this goal. Economic planning which has been concerned directly with increasing the public good, will on the Lockean narrative be dismissed as inefficient and it will be pointed out that they have always failed in the past and then point to the differences in wealth and health between the more capitalistic countries and the more socialist and communist economies such as those of former Eastern Europe that had public good as its standard. The historic evidence according to the Lockean narrative from Adam Smith to Friedman is in favor of business primarily focusing on profit-maximization and that this would provide the best net aggregate results.²⁰⁷ So if the debate was to switch from countering the deontological argument of Friedman, with a consequentialist argument, this would be countered by consequentialist counter-arguments that the Lockean narrative would view as true and stronger. Friedman and the Lockean narrative would be self-confident on economic grounds that self-interest leads to a higher net aggregate of social utility through the market mechanism than any other economic system purporting to be geared towards the public good like communism or socialism. That the best way of increasing the public good is through profit-maximization and that on consequentialist grounds the case for profit-maximization is stronger than for its replacement or abandonment.²⁰⁸

I have now indicated that the underlying assumptions for taking on “social responsibilities” are not thoroughly grounded and are thus unable in their present form to challenge the deontological argument for fiduciary duties. The stockholder theory is internally strong and hard to challenge. In the next chapter the focus shifts to the real weaknesses of the stockholder theory in regard to the foundations of its side-constraints and a possible way to augment and salvage the stockholder theory.

²⁰⁷Johan Norberg, *In Defence of Global Capitalism* (Stockholm: Timbro, 2001); Andrew. Bernstein, *The Capitalist Manifesto - the Historic, Economic and Philosophic Case for Laissez Faire* (Lanham: University Press of America, 2005). These books are examples of this type of historic and economic reasoning

²⁰⁸ Friedman and Friedman, *Free to Chose - a Personal Statement*, 9-38; Friedman, *Capitalism and Freedom*, 7-21.

5 The weaknesses of the stockholder position and the need for augmentation

The stockholder theory is hard to dislodge. The case that it makes against corporations taking on “social responsibilities” is consistent. The adherents of CSR have not been able to show that fiduciary responsibilities are to be discarded. This, however, does not mean that the stockholder theory doesn’t have weaknesses. It does, and they are of a serious nature. The weaknesses of the stockholder theory are mainly to be found in the side-constraints and their lack of a proper foundation. This gives rise to a number of serious moral contentions. Furthermore, I shall argue, that there is a weakness in the stockholder theory resulting from its lack of specificity in regard to how the goals of self-interested profit-maximization is to be pursued. After having shown these weaknesses and argued that there is a need for an augmentation of the stockholder theory; I briefly indicate a possible solution to this.

5.1 The ad hoc nature of the side-constraints

The stockholder theory is able to answer many of the criticisms launched at it by having a set of side-constraints. Profit-maximization and self-interested behavior is reined in by side-constraints so as to avoid most negative consequences. This would point to flaws within the classical understanding of enlightened self-interest and its pursuit, and the harmony of interests; since the purpose of the side-constraints is to deal with clashing interests. Our concern here is that the side-constraints function and are adequate to many tasks and avoids the worst negative consequences and do solve clashing interests. A corporation is free to pursue profit-maximization, and this does not lead to a pursuit of profit at the expensive of the liberty and property rights of others, since that is explicitly prohibited. This can be argued has a long history of validation and grounding within the classical liberal tradition and the rule of law.²⁰⁹ But what is the underlying rationale behind honesty, not engaging in fraud and deception or for the acceptance of social norms and ethical customs of the society that one partakes in? Is it merely “conventional wisdom”? Is it just that it works and that the reason is purely “pragmatic” or is it on utilitarian grounds that it reinforces the system and helps

²⁰⁹ Boaz, *Libertarianism - a Primer*, 27-93; Smith, *The System of Liberty - Themes in the History of Classical Liberalism*, 73-94.

maintain it, while also allowing for “social utility maximization”? I suspect the latter.²¹⁰ Friedman doesn't give any fundamental grounding of the side-constraints, answering specifically the question, what is the moral foundation of these side-constraints. The side-constraints work on utilitarian and pragmatic grounds most of the time and could be grounded and justified in that manner. They could also be justified on teleological grounds. The point is that one or another form of justification is required and it needs to be shown that it is adequate to its purpose. That it can be integrated into the system as such, so that the side-constraints are not merely tacked on ad-hoc so as to save the system, but is also adjuvant to the purpose of the stockholder theory. Eclecticism must be ruled out since a good theory can't just add side-constraints ad-hoc to deal with issues that arises *ad infinitum*. That would imply that there is something wrong with the theory itself, if it cannot stand on its own, but needs an ever-increasing set of buffers to maintain the core theory.

5.2 The law, externalities and the danger of the stockholder position collapsing into the stakeholder position.

Friedman has argued that there are negative externalities and that it is not right to pass those costs on to others without their consent, especially without proper recompense. It could be argued that the laws deal with that, so it is a none-issue. The fact of the matter is that the stockholder position in regard to this side-constraint is as good as the law is well-defined and clear as to dealing with causes and responsibilities. The legal system is not equally worked out in regards to property rights and human rights in all countries. There is a need for a well-functioning government and detailed laws handling externalities and third parties.

As an example, Coca-Cola has been criticized for creating water-shortages in Kerala in India by extracting great quantities of water to their factories. This has negatively affected the local population and their rights to use water.²¹¹ The stockholder position is that one should abide by the law and that negative externalities are to be compensated. That companies and individuals must respect the freedom and rights of others. This could be viewed as straightforward and then just leave it up to the law to decide. Solving such questions

²¹⁰ John R Danley, "Polestar Refined: Business Ethics and Political Economy," *Journal of Business Ethics* 10, no. 12 (1991): 918-21.

²¹¹ Jyotsna Sing, "India Coca-Cola Compensation Law Is Passed in Kerala," BBC News South Asia, <http://www.bbc.co.uk/news/world-south-asia-12567542>. (Accessed: 9.11.2013)

regarding externalities is not clear cut and the answer is not automatic, and there will be some conflicts of interest. The side-constraint is only as strong as the philosophy of law that underlies the judicial system; how well property rights and conflicting interests are dealt with, and the concept of moral culpability and of causal linking between events.

This again is made even more complicated when the outcome could be different in different countries with different legal traditions. Would it then be a side-constraint only in some countries and not in others? This can of course be rectified by stating that human rights and individual rights are to be respected no matter which country; making the side-constraint as universalistic as individual rights are. The concern still remains. That the greater detail in terms of being able to determine causality and moral culpability there is, and also the details that the law has in terms of property rights and boundary issues such as the usage rights of others to the same resources and compensation, the firmer will be the grounding of the side-constraint and with it the stockholder theory.

The point at issue is that the stockholder position is dependent on actual concrete existence of a legal framework of property rights and judicial responsibility derived from causal connections, where each stakeholder or third party is well-defined as is the mechanism of how they are affected and the extent. If this is “vague” in any sense the effect of it is to turn the stockholder theory where stockholders are the only stakeholders, into stockholders being only one of many stakeholders; the position of some of its opponents. In a certain sense if negative externalities are not defined in terms of property rights and individual rights making it concrete and an object of well-defined law, then the stockholder position due to these more vague aspects quite quickly could succumb and turn into a stakeholder position; where everybody due to the interrelatedness of everything to everything else, would become an interested party. Since “interest” is not defined in terms of “harm,” to “property” or individual “liberty rights” or how they are “judicially affected” in terms of rigid causality it can’t differentiate between the legitimate financial interests of the stockholder and the “interests” and concern others have in the running of the company, since the basis has been diluted to something akin to everybody being affected in some unspecified way or other by the actions of others.

There is a need to define such terms as “negatively affected” and to what degree and when it is significant. The stockholder position is dependent on the view that its responsibility towards third parties is strictly one of rectifying negative externalities and harm that it has

caused. “Harm” needs a concrete definition and the operant causal mechanisms in a judicial sense need to be worked out in detail.

Externalities in the context of business responsibility need to be defined in a way that makes it concrete and practical, so that it can function as a real side-constraint with proper well-defined boundaries. The side-constraint requires more specificity than simply stating that the freedom of others may not be infringed upon. This needs to be worked out in greater detail to be able to handle borderline cases and grey areas. To be fair to Friedman, classical liberals and libertarians have done much work in these areas. It is also not very likely to happen that the law becomes so diluted that the stockholder position would lose cohesion. Western society and law is quite robust. The point still remains, that the side-constraint is only as strong as the law is well-defined and as strong as the underlying philosophy of law. Supplementing the side-constraint of law explicitly with a worked out philosophy of law, legal culpability, individual rights and property rights would enhance the stockholder theory and make it stronger. This it could be argued is also implicit in Friedman’s general philosophy with its focus on liberty and respecting the rights of others. The point is that it needs to be developed further.

5.3 What if doing CSR is the social norm and ethical custom?

Friedman’s deontological argument is a strong argument, not easily dislodged. His case is internally consistent when it comes to fiduciary duties, but what happens if it is the social norm and ethical custom in the country one does business in to practice CSR?²¹² The executive would then have to set off a certain amount to CSR duties. This shows an inherent weakness in the system which undermines the stockholder position. If the manager refuses to pay anything to charity or engage in CSR then he is in breach of the social norms and customs and if he abides then the position looks less and less like the original stockholder-position. This is a loophole due to the rather vague nature of “ethical custom.” This does not affect what the goal of the corporation should be, which is still profit-maximization, but it will dilute the concept with CSR elements. In the current business climate it has become a social moral norm that business should engage in CSR. Many do this for image purposes only, however,

²¹² Mark S Schwartz and David Saiia, "Should Firms Go “Beyond Profits”? Milton Friedman Versus Broad Csr," *Business and Society Review* 117, no. 1 (2012): 13.

that is not pertinent in our case. That it is expected of a company to engage in CSR has made it into a social moral norm and since ethical customs are side-constraints that *are to be followed*, then the company being an adherent of stockholder theory must take on a broader set of social responsibilities, which is what the theory is against. Engaging in CSR has thus thru a changing culture become to be expected as part of the fiduciary duties. The consequentialist arguments that this will have negative effect on the corporation and will lead to wastefulness and inefficiency still remain standing and are potent arguments about why companies should not engage in CSR; but the vagueness of the ethical custom and social norms as depicted as cultural conventions rather than as resting on explicit and well-defined ethical code or philosophy has subverted the stockholder position. This can of course be dealt with by getting rid of the side-constraints in its present form and replacing it with a fully justified ethics.

5.4 Going beyond moral minimalism

Ethical issues cannot be side-stepped, and will be ever present and moral conundrums will often be put in front of executives. It is not enough that the stockholder position is a meta-framework compatible with different ethical systems; it must at least ally itself with other perspectives to be able to give enough moral guidance for the perspective to have moral sway and remain relevant. It can't just outsource the issues; in that case it would still be required to show how compatible ethical philosophies will deal with the issue and solve them. It would also need to demonstrate how it is compatible.

The case can be made for the inherent pluralism that is manifest in the stockholder position and that it is good for the position to be flexible and pragmatic and allowing for compatibility with a multitude of ethical positions. Businesses are of course different and operating in different climates and serving different niches. This, however, does not dispense with the fundamental questions. There are quite a few aspects of the day-to-day running and the pursuit of the self-interest of the corporation that is not automatic, and requires guidance beyond the minimal and a "yardstick" to gauge that actions on the part of the executives are indeed in the interest of the stockholders.

Dealing with negative externalities and issues such as fraud and deception which Friedman lists hardly gives enough of an answer to businessmen in running a corporation. The side-

constraints merely enumerate what is incompatible with profit-maximization and what one should not do. It gives little in terms of positive guidance. If you had a list of 30 pages of what you should not do, it would narrow in the field of options and choices, but it would not tell you what to do and the reason why.

The stockholder theory sets the goal (the *why* and the *what*) which is profit-maximization and taking care of the self-interest of the stockholder, it says nearly nothing of the means to achieve this (the *how*). Pursuing self-interest and knowing what is in one's self-interest is not automatic or self-evident and is definitely not easy. It does not become easier when the interest that is to be taken care of is that of someone else. Friedman acknowledges this when he writes; "needless to say, this does not mean that it is easy to judge how well he is performing his task. But at least the criterion of performance is straightforward, and the persons amongst whom a contractual arrangement exists are clearly defined."²¹³ The criterion "profit-maximization," however, is not as straightforward as Friedman would have it as that too raises many questions.

What is in the interest of a company is hard to gauge. This, however, must not be subjective or arbitrary; simply leaving the whole thing up to the emotional sentiments of the executive manager and how "he feels." Profit in a sense will gauge value; and more profit, is valued as better. This, however, disregards the complexity of it. Profit is not an easy straight-forward term. It raises a whole lot of questions, beyond more is better. For instance, what is the time-frame in question? Short run or in the long run? How is the manager to interpret the horizon and decide how to make tradeoffs between the present and the future? It does not rely on automatic insight? The question of what will enhance a corporation's profitability is not unambiguous.

It could be argued that it would be best not to answer such and leave it up to individual firms and managers since in a free market there could be a wide variety of corporate attitudes on profitability and different companies could be reliant on different present or future orientations, just as it is amongst individuals *qua* individuals. This would leave the question on a level of advice that one should look to the future, but not specify it any further. On the surface and intuitively it seems that a long term perspective is better in serving the interests of the stockholders rather than a short term attitude, but it is an unwarranted determination to *a priori* assert that all must operate under a universalized normative rule to maximize in the

²¹³ Friedman "The Social Responsibility of Business is to Increase its Profits": 33

long run. It would also be equally imprudent to suggest that a certain course of action is necessarily profit maximizing under any and all circumstances. Friedman's argument by not specifying it allows for *diversity* on these matters. Still the question and need for moral guidance remains. And an ethical system that is integrated with the stockholder position needs to be able to give the required flexibility that not all companies are operating in the same environment.

Furthermore, what about those cases where one has to deal with non-commensurable aspects such as making trade-offs between quantitative and qualitative elements where decisions are to be made. There is a need for a "yardstick" to measure or make well-reasoned trade-offs between these incommensurable dimensions in some sense in order to plan, and to come to conclusions regarding what is in the best interest of a company. For the most part, the world of business is properly a world of "facts and figures." This could easily enough be dealt with on a quantitative level by looking at numbers and then making decision in line with this; but there are non-quantifiable elements such as image, personal relations, good will, reputation, and a company's brand that do have an impact on profitability which in no way is easy to translate into monetary terms. Like the time-preference issue it would also be unreasonable to demand a set of universalizable rules to "correctly" ascertain "the correct" decision "as such," since in some fields of businesses such as the service industry qualitative factors such as brand and image might be more important than in manufacturing industries. The impossibility of a set of universal maxims, does not however, render the question moot, and that it needs to be handled pragmatically without any principled guidance. The question is difficult, but it needs to be answered, not waylaid due to complexity-issues. The underlying need for moral guidance in obtaining profit-maximization is still there. There is a need for a corporation to have a hierarchy of values, of means and ends, when it comes to profit so as to make well-informed decisions and relate quantitative and qualitative measures so as to make decisions that are not based on purely subjective "gut feelings!" The manager is off course accountable and must be made so to the stockholders and the board. Criteria for this are required.

By simply stating that the manager is an expert in his field and has the knowledge, would just be to side-step the issue. The question is "how" and this needs to be answered. It is not self-evident which courses of actions are to be pursued and what will enhance and what will detract from profits. If the argument is to just rest on that a manager is an expert in the field and has been hired for his expertise, then it must be shown how he has become an expert,

what it entails and what this knowledge consists of, and what makes the executive a “master” at deliberation. A theory concerning practical wisdom, the ancient and lost virtue of prudence, or *phronesis*, could come in handy in this case.²¹⁴ Or a theory showing how managers develop a *habitus* and concrete experience dealing with these questions and how this is a learning environment where omniscience is not the standard of gauging profit-maximization.²¹⁵ There is a need for a theory to answer these aspects to buttress and augment the stockholder position. It is not enough to state that free competition amongst different ethical positions will determine the questions: that would translate into simple surrender. Also pragmatism is not good enough of an answer. The question of a measure and standard of determining if the interests of the stockholders are maintained is still there. And there is then a subsequent need to determine what the correct means are in particular circumstances to achieve the goal. The stockholder position needs to go deeper and be able to state explicitly how this can be done.

Many of these questions can be answered through an Aristotelian framework such as the one sketched out by Nussbaum in terms of practical deliberation.²¹⁶ This would also deal with questions such as profits being both *means* and *ends*. The position would also allow for the flexibility of different corporations by taking care of special aspects in their line of business and still in a sense be generalized to subsume many ethical cases without being maxim driven. Nussbaum’s article is concerned with how to rationally compare diverse non-commensurable alternatives without it being reduced to arbitrary choice or guesswork. Alternatively, how to make decisions without just trying to reduce the qualitative to a quantitative measure and turning it into an ordinal ranking of preferences?²¹⁷ For Aristotle ethics cannot be reduced to *episteme*, and in order to deal with complexity and non-commensurability there is need for a ruler to measure and gauge the alternatives. Such a ruler is for Aristotle, the *aoriston* which can deal with complexity, variety and situational particularity.

²¹⁴ Douglas J Den Uyl, *The Virtue of Prudence* (New York: Peter Lang, 1991). Gives a good account of Prudence.

²¹⁵ Sarah Broadie, *Ethics with Aristotle* (Oxford: Oxford University Press, 1991); M.F. Burnyeat, "Aristotle on Learning to Be Good," in *Aristotle's Ethics - Critical Essays*, ed. Nancy Sherman (Oxford: Rowman & Littlefield, 1999); Nancy Sherman, "The Habituation of Character," *ibid.* These articles deal with habituation and character development Cathrine Filstad and Gunnhild Blåka, *Learning in Organizations* (Oslo: Cappelen, 2007); Peter Senge, *The Fifth Discipline - the Art and Practice of the Learning Organization* (London: Random House, 1990 (2006)). These books give valuable insight into the learning environment.

²¹⁶ Martha C Nussbaum, "The Discernment of Perception: An Aristotelian Conception of Private and Public Rationality," ed. Nancy Sherman, *Aristotle's Ethics - Critical Essays* (Oxford: Rowman & Littlefield Publishers, 1999).

²¹⁷ This would be the utilitarian solution.

Aristotle tells us that a person who attempts to make every decision by appeal to some antecedent general principle held firm and inflexible for the occasion is like an architect who tries to use a straight ruler on the intricate curves of a fluted column. Instead, the good architect will, like the builders of Lesbos, measure with a flexible strip of metal that bends round to fit the shape of the stone and is not fixed' (1137b30-2) Good deliberation, like this ruler, accommodates itself to what it finds, responsively and with respect for complexity. It does not assume that the form of the rule *governs* the appearances; it allows the appearances to govern themselves and to be normative for correctness of rule.²¹⁸

The *aoriston* changes its shape in accordance with what is in front of it that needs to be measured. The *aoriston* implies that the person making the judgment will not make a decision by simply assuming a case under a set of antecedently fixed rules, but that there is no general algorithm for what to do in every case; where the appropriate decision does not take place automatically in a mechanical fashion. It is a practical insight developed into an ability to recognize the salient features of a complex situation. If this practical wisdom of measurement of quantitative and qualitative, and different time-frames, and value-hierarchies can be developed in a business context it would answer the question of how the manager by becoming a *phronimos* can maintain profit-maximization and the “real” self-interest of the company.

The question then is if this can be taken and developed even further where by way of an analogy profit-maximization becomes the goal of a neo-Aristotelian business ethics as such, much like flourishing is the goal or *telos* of eudaimonistic neo-Aristotelian ethics. The details of such an overarching position would need to be worked out, but it would lend greater credence to a stockholder theory that is on the defensive and that needs to answer the fundamental questions. There could of course be other ethical systems that could be joined and supplemented to the stockholder position and concomitantly reinforce it, but it would need to answer the questions that I have raised, and the questions do need to be answered if the stockholder position is to be a viable theory and provide guidance.

²¹⁸ Martha C Nussbaum, *The Fragility of Goodness - Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press, 1986).; 301

5.5 Globalization, different cultures and conflicting ethical values

Friedman wrote in an age where most trade and commerce took place within western countries with western values. The world has since changed dramatically.²¹⁹ This is an age of globalization, where business takes place all over the globe and has to deal with a set of different social norms, ethical customs and different legal traditions that are at odds with each other. This is problematic for Friedman since “ethical custom” is not well-defined. What is the correct response of an executive when for example Western ethical norms clash with the local ethical traditions of a Muslim country? Whose ethical customs are to be given supersedence in an ethical conflict, and why and in regard to what standard?

The Friedman position assumes a liberal democracy and trade amongst such countries, but what when the business transaction being done needs to be done in a corrupt third world regime? What happens to not being deceptive and playing with open cards when this is the legally sanctioned norm? Furthermore, what then if what is unacceptable and illegal by western laws and ethical customs is actually “legal” and socially acceptable? The side-constraints that may be in conflict is not in any way ranked by Friedman in regards to giving preference or how they are to be dealt with when they are in conflict. Following ethical customs and social norms is a weak side-constraint given how vague it is. It does not account for a clash of values, or dealing with corruption where it is the socially accepted norm. In a globalized setting “ethics” seems relegated and downgraded into simply taking heed of industry norms in the current and regional place of transactions. This would allow for different customs and dealing with different cultures, and it would allow for lots of wriggle room and differences of opinion, but this isn’t necessarily a good thing. The position does not give much in the form of moral guidance dealing with different cultures around the world and different legal settings, mainly the negative admonishment that one should not breach social norms, the law, and ethical customs. It only say do not do this, not much in way of positive guidance and “in this situation, do this.” It also does not provide any guidance if an executive is not to commit fraud and deception, if what is considered fraud and deception in a western country is legal in the country that one does business in. For example for Western oil companies paying bribes to local officials would amount to not engaging in free and open

²¹⁹ Thomas L. Friedman, *The World Is Flat - a Brief History of the Twenty-First Century - Further Updated and Expanded - Release 3.0* (New York: Picador, 2007).

competition, but committing fraud and deception. In certain Middle Eastern and African countries this could be considered a social norm and the ethical custom. What then is the executive to do? There is a danger that by taking social norms and the different ethical customs and laws of the host country into account that this gives flexibility and pluralism, but this could quite easily collapse into cultural and ethical relativism. And that is where the problem lays. In Friedman's defense, his general pro-Western values and libertarian freedom-orientation would not have him condone relativism. Western values and cultural norms and views on fraud and deception and engaging in open competition would in Friedman's view probably have priority. The problem with the side-constraints still remains.

The side-constraints of following "social norms," "ethical customs" and the "law" needs to be established on firmer ground so as to avoid collapsing into ethical and cultural relativism, with no standard of value, where there is no "right" or "wrong," just cultural differences. The side-constraints need to be replaced and given more content, preferably without losing all of its flexibility in dealing with other cultures and their norms, so that it is still sensitive to cultural differences and is not chauvinistic; that there is only one right way of doing things. A set of maxims to handle all conflicts has its appeal, but there will always be different cultures with different *optional* social norms and being able to handle this diversity is an important concern that needs to be maintained. There is a need for moral guidance in dealing with culturally and socially diverse societies with different legal traditions. So there is a need for the stockholder position to work out and have positive content and guidance that deals with this cultural diversity.

Acceptance of human rights or to go even further and replace the side-constraint of the law with a theory of individual rights could function as a guide and give more universal standards of dealing with citizens, customers and governments in different parts of the world and such issues as fraud and corruption. This would be universalizable and be able to deal with a number of different ethical conundrums and provide an answer to what the right course of action is for a company.

Corporations (being groups of individuals) would have the same obligations to respect individual rights as individuals have amongst each other. And it is because of this theory of individual rights that corporations cannot employ acts of violence, fraud or deception against consumers or competitors. This theory of individual rights also explains why employees of a corporation must live up to their contract with their owners not to sacrifice profits. Traditional examples of management abuse of this fiduciary trust include divulging company secrets, maintaining an interest in a

competing firm, using company resources for unauthorized personal gain, and the like. By the same token it would violate the rights of those persons who are the owners of a corporation to require (e.g., by government dictate) that some of their resources be used to “cure social ills.”²²⁰

This means that individual rights would trump any local law that doesn't respect rights, so that there is a hierarchy; that when local laws, social norms, industry standards and local customs are in conflict, then it is individual rights that are to be followed and takes precedence. Replacing local laws as a side constraint with individual rights would solve some issues, but not all issues are *rights* issues. Being guided by a right-based perspective is not enough of a moral guidance. Since not all ethical conundrums and situations are reducible to a question of rights; the wider problem of cultural and ethical relativism still remains.

I would argue that social norms and ethical customs could be replaced with a stronger side constraint, with non-relativist virtues and a neo-Aristotelian ethics could quite easily deal with contextual sensitivity towards particular ethical situations without dogmatism, and give the much sought after flexibility without cultural relativism. Nussbaum provides one such neo-Aristotelian framework that could be integrated into and replace the side-constraints of social norms and ethical customs.²²¹ Nussbaum rejects the approach of utilitarianism and Kantianism which universalizes without taking account of the particular contexts or histories that take place as well as the approaches of many current defenders of virtue ethics that are mired with relativism. Nussbaum seeks to show how Aristotle's approach is neither of these. The approach is to isolate a sphere of human experience that has prominence in human life and where a “human being will have to make *some* choices rather others, and act in *some* way rather than some other.”²²² This then gives a “thin account” of what the virtue is and how to appropriately act in that sphere. There will then be competing specifications of what acting well in that sphere consists in. Aristotle then goes on to defend in each case some concrete specification which leads to a “thick” definition of the virtue involved. “People will of course disagree about what the appropriate ways of acting and reacting in fact *are*. But in that case, as Aristotle has set things up, they are arguing about the same thing, and advancing competing specifications of that same virtue. The reference of the virtue term in each case is fixed by the sphere of experience – by what we shall from now on call the ‘grounding

²²⁰ Den Uyl, *The New Crusaders: The Corporate Social Responsibility Debate*, 26.

²²¹ Nussbaum, “Non-Relative Virtues: An Aristotelian Approach.”

²²² *Ibid.*, 245.

experiences.”²²³ This then gives rise to an “objective human morality based upon the idea of virtuous action – that is of appropriate functioning in each human sphere. The Aristotelian claim is that, further developed, it will retain the grounding in actual human experiences that is the strong point of virtue ethics, while gaining the ability to criticize local and traditional moralities in the name of a more inclusive account of the circumstances of human life, and the needs for human functioning that these circumstances call forth.”²²⁴ Here then we find a possible solution that will both be able to ground ethics and give the necessary moral guidance and also handle particularism and diversity; and at the same time not end up in relativism. This could be a fruitful line of pursuit and further development within a business ethics setting, where a set of business virtues are developed within and connected to a sphere of experience that often will occur.

By replacing the side constraints of negative externalities and respect for legal traditions with a theory of individual rights and by replacing social norms and ethical customs with a non-relativist set of business virtues, cultural diversity can be handled ethically and be firmly grounded without it ending up in cultural relativism. I have now shown, possible solutions to the serious problems of the original side-constraints of the stockholder theory; and argued that they need to be replaced, and that a set of augmented “side-constraints” (Individual rights and non-relative virtues) that are fully integrated into the theory, and firmly grounded, and able to deal with complexity, diversity and non-commensurability along with a proper theory of practical deliberation (phronesis) could give the required foundation, and make the stockholder theory a viable alternative. It could be argued for other foundations for the side-constraints on utilitarian grounds or a number of other grounds, but the issue here has been to show that such grounding is required and indicate the direction of a possible solution. The details of which would need to be worked out thoroughly.

²²³ Ibid. 247

²²⁴ Ibid. 250

6 Conclusion

The purpose of this thesis has been an attempted revival of the stockholder theory, to show that it is a viable position and that it is an ethical position, not just an economic argument for efficiency. The point has been to show that the stockholder theory too often and too quickly is dismissed and usually for all the wrong reasons. Quite often this is due to not having an adequate understanding of the position, the nature of the deontological argument or the side-constraints and the role they play. I have attempted to give a thorough and systematic presentation of the stockholder theory and its ethical base to show accurately what Friedman's arguments are and the systematic nature of the stockholder position.

I have argued that opponents who attack the stockholder position do so from a set of radically different assumptions and that their arguments do not dislodge the internal consistency of the stockholder theory nor do they effectively challenge its ethical base. Opponents often disregard the operant side-constraints and end up attacking a straw man. I have also argued that the deontological argument for fiduciary duties are the strongest argument of Friedman and that the assumptions used by opponents for the dismissal of these fiduciary duties rest on non-grounded assumptions that are not validated and that would have to have a firm validation if they were to work. The arguments in favor of taking on a wider set of "social responsibilities" in their present form thus fail. Finally, I have argued that the weaknesses of the stockholder position lay in its side-constraints; that they are ambiguous and lacking in justification. The side-constraints end up undermining the stockholder position. The problems are that the stockholder position could be diluted to a stakeholder position if "interest," "harm," "culpability," "chain of causal links" "rights" and "property rights" are not clear, and well-defined within a legal system and within a rights-based philosophy of law. That "ethical custom" as a side constraint can undermine the stockholder position, if it becomes a social moral norm for corporations to engage in CSR and allow CSR in thru the backdoor. There is also the difficulty of dealing with "ethical customs" within a globalized setting which could end up in cultural and ethical relativism if taken far enough. A serious problem for the stockholder position is also that it only defines the goal which is profit-maximization, but without any rationally grounded foundation in regard to "how" the executive is to maintain the interest of the stockholder. The side-constraints are in dire need of replacement. I have argued that there is a need for side-constraints that are firmly grounded and justified and also be able to cope with diversity, complexity and non-commensurability.

The side-constraints could be justified on many grounds including utilitarian grounds, but the point is they do need a justification. Simply stopping and saying that justification is possible without indicating in some small fashion how this could be done would be unacceptable. I have attempted to show how a set of neo-Aristotelian ideas could be used to bolster and complement the stockholder theory. I have only briefly indicated how, this could be done; a lot of work would be required to work it out in detail. This needs to be done if the stockholder theory is to be a full-fledged normative theory of business ethics.

I have indicated that a theory of practical deliberation (phronesis) could be set in place to answer the question of how the best interest of the stockholder is to be maintained by the executive. I have argued that the side-constraints of abiding by the laws and ethical customs ought to be replaced with individual rights and non-relativist virtues, and that this would provide a rational grounding that would allow for diversity, complexity, and situational uniqueness without being subjectivist or relativist.

As I have indicated there is plenty of work yet to be done on the stockholder theory. I have only briefly shown problem areas and possible solutions without going into the details. I have also put forth the possibility of creating a full-fledged business ethics theory built on a parallel between flourishing in neo-Aristotelian ethics with profit-maximization/wealth-generation as an equivalent. That would be quite an ambitious undertaking that I would regard as fairly worthwhile, especially since business ethics usually isn't written from the ground up, but pretty often is indiscernible from a grab bag of eclecticism and a disarray of disparate contestation with foregone conclusions searching for arguments. The time is ripe for an overarching systematic normative business ethics theory with wide applicability and moral guidance beyond ad hoc borrowing. Less ambitiously, it would also be rewarding to continue in the vein of this thesis to work out some more of the nooks and crannies through thorough scrutiny and in greater detail.

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