Shareholder Ownership and the Company as a Social Contract –
Bridging the Gap

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Abstract

This thesis will try to combine shareholder ownership of a company with the notion of viewing the company as a social contract.

Even if viewing the company as a social contract is usually considered to be part of the stakeholder theory this view is not incompatible with the shareholder centred approaches.

Through motivating the social contract view of businesses and discussion the advantages of adopting a shareholder centred approach to company ownership this thesis will form the basis of a social contract that would be agreed by the shareholders of the company. A part of this paper will also be dedicated to discussing how the shareholders could change the current companies to reflect more closely on the contract they would initially have agreed on.

Key words: shareholder theory, stakeholder theory, social contract theory, shareholder activism, company ownership, shareholder ownership
Table of Contents

Outline..................................................................................................................................................4
Introduction.............................................................................................................................................5
Company as a Social Contract..............................................................................................................7
The Ideal Contract..................................................................................................................................11
Shareholder Ownership..........................................................................................................................19
Shareholder Activism............................................................................................................................23
Concluding Remarks.............................................................................................................................26
Bibliography...........................................................................................................................................29
Outline

This thesis work will motivate the view that companies should be seen as social contracts and examine what an ideal company contract could look like. This thesis will also argue that shareholders should be seen as the absolute owners of companies and propose ways how shareholders could use this power to change the current contracts to reflect more on the ideal. The benefit of this approach is that it bridges the divide between the idea of viewing the company as a social contract and the shareholder centred theories of business ethics.

The social contract view of companies in business ethics is supported by the stakeholder theory. However, those who view companies as being privately owned, such as Donna Charron (2007), view the stakeholder theory as a threat to the traditional model of a shareholder owned corporation. This thesis will try to combine these two views.

The contract that has been used to establish a company will be treated as a type of social contract in which the shareholders are the main parties of said contract. With relation to the stakeholder theory, this strategy will allow for a more effective change in how the company operates, as not all stakeholders have to be consulted in the creation of the contract. However, utilizing the social contract idea as a basis does also allow for further development within the stakeholder theory if needed later.

This thesis will constitute of four major parts, which will discuss separate topics within the framework of this paper.

First, it will be established that the company can be seen as a social contract between the shareholders. The chapter will discuss a wide range of business ethicists and different applications of social contract theories in business ethics to give a general outline and motivate the view that a company should be understood as a social contract. This chapter will rely mostly the on works of Luetge (2013), Ober and Manville (2013), Sison (2013), and Toenjes (2002).

The second part will deal with the content of the ideal contract. In this part I will include some of the key issues within business ethics and use a Rawlsian approach to discussing the general terms on how the shareholders of a company ought to discuss these issues when deciding on the contents of the original company contract.
Third, this thesis will discuss if the shareholders are indeed the owners of a company, and as such the main parties of the social contract that has established the company. This is in order to posit the shareholders as the ultimate authority within the company and supply them with legitimacy to demand changes in already established social contracts.

Finally, after establishing shareholders as the owners of the company, this thesis will propose ways in which the shareholders can change the ways a company operates in. This will mainly draw form Joakim Sandberg's (2011) ideas about shareholder activism.

Parts one and two could be read separately from parts three and four. However, the first two parts help in establishing a more thorough framework by providing the necessary ethical background and moral requirements to the more pragmatic chapters three and four. In the later chapters, the owner-shareholders will then have to abide by some already established ethical conventions, instead of being able to pursue their self-interests irrationally through the companies in ways that the current legislation would allow them to.

Introduction

The general idea for treating businesses as social contracts rises from the stakeholder theory which was developed as a result of “the rejection of the idea that the corporation should single-mindedly strive to maximize the benefits of a single stakeholder, the shareholders.” (Wijnberg, 2000:329) What is more, outside of the field of ethics there is also a shift in interests within the fields of business theorists and lawyers, “with some advocating the adoption of a legal model of the company based around so-called stakeholding principles akin to those said to be found in Germany and Japan, while others seek to reinvigorate the traditional, shareholder-oriented, Anglo-American model.” (Ireland, 1999:32) However, within the field of corporate governance there is still a “widespread agreement that shareholders have an important role to play in ensuring good governance.” (ibid.:32) That this notion still exists is paramount for trying to bridge the divide of shareholder ownership and the company as a social contract.

However, different philosophical theories, more on these later, tend to mostly focus on providing tools for the managers of the companies to make informed ethical decisions instead of discussing in
detail what an ethical company actually ought to be like.

Within the corporate governance structure, shareholders are those who hold a share in the company. Regardless of the actual theory of corporate governance used, the shareholders are seen to be the owners of the company. This can be understood in a more actual sense of owning the company or, within theories that claim a company cannot be owned as such, the shareholders can be seen as those who own the capital of the company. (Ireland, 1999) This notion of ownership has led to the construction of the idea that in the way any given company operates its actions should always aim at the benefit of the shareholders. This is best described by Milton Friedman in his widely quoted article *The Social Responsibility of Business is to Increase its Profits* (1970), where he states that the primary responsibility of a corporate executive is to the persons who own the company, that is to say, the shareholders.

Separate from shareholders, companies also have multiple stakeholders. Even if a company was not publicly traded and as such would not have shareholders, the company would still necessarily have stakeholders. Stakeholders are those who are affected by the actions of the company, but also those whose actions can have an effect on the company. A list of stakeholders would include, but by no means be limited to, the workers, the suppliers of raw materials, the community the company operates in, the customers, the different parties of the company's distribution network, and also the shareholders. All of the parties that have something to potentially gain or lose through the activities of the company can be said to have a stake in the company's operations and as such they are collectively referred to as the stakeholders. Indeed, depending on the industry a company operates in, one could even argue that the local animals are stakeholders if the company's actions affect their habitat.

The stakeholder theory lends itself easily to be discussed in the context of political philosophy. Similar to how states consist of different stakeholders, ie. the citizens, the company also has multiple stakeholders. However, the issue with stakeholder theories is that it dismisses the importance of shareholders and demotes the shareholders to the level of stakeholders. For those who see the company as a privately owned property, such as Charron and Friedman, this is unacceptable. The problem that rises from neglecting the importance of shareholders and private ownership is that the company becomes public property of sorts. (Charron, 2007) What follows, is that the company, as a more tangible object, is dissolved to a nexus of contracts between the different stakeholders. Some of these contracts could be actual contracts, such as contracts between
the company and its employees, or contracts between a factory and its raw material providers. However, some of these contracts could be more abstract contracts, such as contracts between a company and its customers, or the contracts between a company and the local community in which the company is expected to provide jobs, but there exists no actual contract that would oblige the company to do so.

**Company as a Social Contract**

With the rise of the stakeholder theory and the idea of the company as a nexus of contracts (Charron, 2007; Ireland, 1999) political philosophy and social contract theories have become an increasingly fruitful and important direction of study within business ethics. However, what actual motivation is there in trying to visualize a company as a social contract, rather than as something else? At the simplest one could appeal to the similarities of states and companies: “[A]t their root, both are social institutions with defined objectives. Both […] are composed by a large number of people divided into multiple classes that are hierarchically ordered. Both […] admit a variety of regimes, with particular structures of authority and power. […] [I]n both […] groups of people are organized to pursue a common purpose or end” were it political or economic. (Sison, 2013:48)

Sison (2013), brings corporations to the realm of political philosophy through the Aristotelian tradition. He sees that companies can exist within the Aristotelian tradition as imperfect and artificial societies, as opposed to the more natural structure of family – village – state. In this structure the state is the only one capable of true self-sufficiency and as such is the only place where a person can fully exist and try to fulfill their wishes. Companies exist as artificial societies, created through a collection of voluntary bonds, somewhat similar to friendship. (ibid.)

However, economy is governed by the rules of ethics due to the status of economy being the facilitator of good life as “the science concerning ‘external’ or ‘material goods’”. (Sison, 2013:63) For Sison this is evident from the way in which Aristotle has laid down clear foundations about how households should be managed, and how wealth can be accumulated. What is more, ethics is a part of politics, due to politics being the “ruling science by virtue of its object, happiness”. (Sison, 2013:63) Whereas compared to politics ethics is merely the “science of virtue”. (ibid.) What follows from this structure, is that economy also ultimately falls under the governance of politics. This makes the idea of discussing corporations within the realm of political philosophy more relevant.
What is more, the collective purpose and effort of the group operating under the umbrella of a company makes it a social effort, much like a social contract is an effort to secure the well-being of the individual members through the relative effort of the members of the contract. However, because the liberties and common rights of all members within a society are already secured by states, the ultimate end of a corporate social contract is to ensure the economic well-being of its members. (Sison, 2013)

Friedman has discussed the idea of corporate citizenship, in his article The Social Responsibility of Business is to Increase its Profits (1970), and businesses tend to speak legally about corporate citizenship. However, the idea of the corporation as a citizen is insufficient due to the internal conflicts of the corporate citizen. This is because the members of the corporate social contract are not part of the contract in order to contribute to the well-being of the company itself. Rather they are part of the contract because they want to achieve their own private ends by using the corporation as a means. (Wood et al., 2006 in Sison, 2013)

If one was to take a strict stance on the idea of the company as an abstract citizen within the existing social contracts, in other words, states, then by asserting Kant's authority on moral maxims it could be inferred that most\(^1\) investors, board members, shareholders and, indeed, stakeholders are directly violating the categorical imperative, which commands every moral agent to act in such a way that those agents never use an other agent as a mere means. (Johnson, 2014) Whilst it would be possible to claim that all of these different groups are acting morally wrong, it is more beneficial to try and find a different perspective on how companies ought to be seen. What follows is that companies should be seen as being more analogous to an actual state, rather than being mere members of a social contract.

A further motivation for viewing the company as a social contract in itself comes from the idea of workplace democratization. Ober and Manville (2003) condense the ultimate problem for business owners and managers, within the setting of emerging need for democracy and expectations of high performance, of being able to build a corporate community aimed at profit maximization, whilst still fostering for individuality within the company.

Kory Schaff (2012) characterises this issue as a contradiction between the inability for most

\(^1\) Some agents might indeed work for the betterment of the company without trying to seek benefits for themselves, though that is unlikely.
members of the contract to take part in the decision making process of the reciprocal system they are part of. Within the context of what I will propose in this thesis, Schaff's arguments are not necessarily applicable, but they do build a foundation to understanding how and, more importantly, why companies should be seen as social contracts. Mainly, that there are many similarities in companies and politics. For example, both are based on a somewhat voluntary participation, with the exception that people are not able to choose which country they are born in, but later in life they can try to obtain a citizenship in an other country. But also, employers and citizens are required to bear a part of possible burdens with regards to their nation or company. This could be either by having to pay higher taxes, or accepting a lower wage during financially difficult times. Schaff summarizes, that the similarities stem from the idea that both politics and companies are a result of cooperation between multiple agents. (Schaff, 2012)

A problem with the social contracts approach to business ethics, as with any other approach, is the multitude of different social contract theories that exist, and how academics have tried to combine the ideas from these different traditions with business ethics. Christoph Luetge (2013), for example, discusses the strengths and weaknesses of two contracts-based approaches to seeing the company as a social contract. First, there is the Integrative Social Contracts Theory as proposed by Donaldson and Dunfee (1995, 1999 in Luetge, 2013), and the second is, the more contractarian as opposed to contractualist position of Donaldson and Dunfee, Order Ethics.

The contractualist position starts with the assumption that there exists “some internal morality of contracting”. (Luetge 2013:647) In other words, the parties that agree to create a contract already possess some capability to process questions that concern ethics. To put it bluntly, in the contractualist position the contractors are assumed to be moral agents, and as such they may have previous moral commitments. One of such commitments could for example be that all the contractors hold all human life as valuable and worth protecting. This would have a huge impact on the content of the contract as it would force the company to act in certain ways in different situations.

However, my arguments in this thesis will be based on the contractarian position. This position assumes very little as opposed to the contractualist position. In fact, the position only assumes that all the contracting parties consent to establishing a contract which would regulate their actions and rights within the realm of the contract.2 This is where the strength of the contractarian position

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2 The 'realm of the contract' as a term does not in itself hold anything valuable as such, but rather notes here that not all contracts must be all encompassing. Rather, the realm of the contract could in some cases only be a housing

stems from. In a situation where it is possible to bring about a social contract that is agreed upon by individuals, who are only motivated by self-interest, the contents of the contract should be such that any agent should, at least on a basic level, be able to agree on the terms. Or to turn it around, not reasonably object to the terms. Self-interest is to be understood here as a rational will of the agents to secure their economic well-being. Economic stability then allows the agents to operate and pursue their other interests with relative safety in the current market driven world.

A defence for the use of contracts-based approaches in business ethics is given by Richard Toenjes (2002). He bases his defence on the need and will for businesses to justify their actions. His approach is grounded on the application of different ethical theories in business decisions. This approach seems that the ultimate goals of ethical theories, such as utility or justice, are also pursued by different businesses. However, in many cases the goals and needs of businesses do not coincide with those of ethics, and whereas ethical theories are very applicable in general business Toenjes states that:

“[T]he truly hard cases in business ethics are dilemmas [...] in which business interests and ethical interests do not coincide.” (Toenjes, 2002:58)

The problem is not that businesses could not operate in an ethical way, but rather that businesses have no actual motivation to operate in ways which could damage their immediate profits. The idea of a business that knowingly acts in such a way that it does not create profit goes against the intuitive idea of business as a largely profit maximizing entity. Naturally, I do not want to deny that there exist businesses whose ultimate goal is to produce a long term positive effect for the communities they operate in, but in general the goals of businesses do not tend to coincide with those of the communities.

What follows is that companies cannot actively subscribe to any one ethical theory as such, because those theories would force the companies to make decisions that would be bad for them. Therefore, when companies want to justify their actions, the contracts-based approaches provide the best solution. This is because the contracts-based position does not necessarily have to be perceived as being fair or equal, but it is based on what is reasonable. Consequently, rational agents with varying end goals are forced to agree about not what is right or wrong, but what is a reasonable solution for

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3 However, unlike Luetge, he does not differentiate between contractarianism and contractualism.
However, whilst these different theories give good arguments for viewing the company as a social contract and thus bringing corporate governance within the realm of political philosophy, most of the theories that have been constructed seem to be more concerned with solving existing managerial problems and providing models for corporate governance. What these theories lack is the more theoretical side of an ideal company, and the ideal social contract. Ober and Manville (2003) attempt to do this by appealing to the usability of the model of democracy established in Ancient Greece, but even then it is to find answers to existing problems without any clear end goal. By clear I mean something that could be aspired towards, not in the abstract sense of Aristotelian eudaimonia, but something more concrete. There exists no yard-stick by which to measure the behaviour of companies, only theories about what companies should do, not how they should be.

**The Ideal Contract**

The ideal contract would serve as a point of reference when discussing how companies should operate, and what they should pay attention to. The current legislation in place has largely shaped the way how companies exist today, however the ideal contract would be conceived in a political and economical vacuum. This approach allows the shareholders to produce a contract, that would be the most beneficial for them, without any constraints from other parties.

There are multiple ways of tackling the possible content of the ideal contract but there are three things to bear in mind. Firstly, the shareholders are able to discuss the content of the contract from a position of authority. In other words, unlike in Rawls' veil of ignorance (Rawls, 1971), the shareholders will know what part they will play when the veil is lifted. The second point to remember, is that there could be an addition of new shareholders at any given time. Naturally, if no one is selling their shares of the company, there could be no new shareholders, but for the sake of this argument I will assume that there are always shares available to be bought and to enable the fluctuation of the shareholder base. This means that, even if the shareholders are initially within a position of authority, after the veil is lifted there could be an influx of new shareholders, and those shareholders could, for example, be workers from the company. However, every new shareholder would mean a smaller cut of the profits for the original contractors and therefore they would want to
initially avoid any new shareholders. The idea behind this claim is that by having the threat of new shareholders and smaller personal profits the original shareholders should take the needs of all stakeholders in to account. However, provided that the original company contract was indeed reasonable the new shareholders, who might also have bought shares in the company due to the company being a good investment option, would not need to change the original contract. Thirdly, and this links directly back to Rawls, the shareholders do not know the economic situation, location, and industry their company will operate in.

The idea of using Rawls in business ethics is by no means new. However, the Rawlsian approach has mostly been utilized in stakeholder theory. For example in *The Narrow Application of Rawls in Business Ethics: A Political Conception of Both Stakeholder Theory and the Morality of Markets*, Mark Cohen (2010) argues that Rawls provides “a normative foundation for stakeholder theory” (Cohen, 2010:564). He also gives a general account of how Rawls has been applied by some stakeholder theorists in the past two decades.

However, the benefit of treating the shareholders as the original contractors is that it effectively limits the amount of different interest that need to be taken in to account when comparing to stakeholder theory. What is more, because the shareholders can be imagined as being mainly driven by profit and self-interest, it is possible to start from a position that does not include prior ethical duties. For example, the local government, as a stakeholder, would have to take in to account a much larger amount of interests when exercising power within the company. What is more, by exclusively using shareholders as the original contractors, the shareholders are made to become more active in the companies. I will discuss the importance of this later, but the shareholder centred approach should provide the initial push for more active shareholders.

The first two points the contractors should agree on, would be to obey the laws and customs of the communities their companies operate in. But to mitigate the risk of other companies gaining an advantage due to some countries having less strict employment laws, the shareholders should also agree to honour the original contract they have made. This would stop the original contractors changing the contract after they know what kind laws the society they operate in has in place and what kind of competitors their company has.

An important topic, which should be included in the contract, is the company's ecological footprint. However, the company should not minimize its ecological footprint due to any considerations
towards the environment as such, since exploiting natural resources is clearly beneficial as exploitative extraction methods are usually cost effective and efficient. However, the consideration towards the ecological impact of the company should stem from the idea of competition. Take two mining companies who compete in the same area as an example. The original contractors would want to restrict their possible competition whilst being able to maintain a competitive advantage. Because the veil inhibits the contractors from seeing the resources the companies have available they would have to assume that they are going to operate the disadvantaged business. Therefore, it would be beneficial for them to try limit the effectiveness of the other company by agreeing on limits about how much harmful chemicals companies could dump to the environment within a given time scale. Initially these amounts could be extremely high as to not lose the competitive advantage by stagnating the whole business, however the company contract could also operate within an area where the interests of different stakeholders might clash. Therefore, the contractors would have to take in further measures of ecological protection to ensure that there would not be an influx of new, hostile, shareholders from the local communities who might not want to see the area destroyed due to exploitative mining practices.

A similar thought process could be applied to waste management. Because the contractors do not know what kind of waste their company will produce, and therefore they do not know how much the treatment of such waste would cost them if it was subcontracted to a third party. It would seem to be in the interests of the original contractors to ensure that there is some mechanism in place to treat the produced waste internally to minimize outside costs. Additionally, the waste should be treated to a sufficiently high standard due to the more strict laws other countries might have imposed on different types of waste.

The original company contract should also address issues about how the companies ought to conduct their various financial activities. Because the main goal of the company is to maximize the wealth of its shareholders\(^4\), the issues which affect or include the shareholders should be the focus of this inquiry. The most interesting of the different topics, which span from trading practices to the fiduciary duties of companies (Boatright, 1999), is insider trading.

Insider trading generally refers to the act of trading shares or similar items, such as options, “in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about the security.” (U.S Securities and Exchange Commission,

\(^4\) The reason this should be seen as the ultimate objective of the corporation is discussed in further detail in the chapter concerning Shareholder Ownership.
The term also includes persons sharing the information they have learned with a third party, and when the third party acts on the information. When those who work for a company, they own shares in, sell their shares, that is also considered insider trading. However, in this situation the persons have a duty to report their trade activity to their local finance authority. (ibid.) Only when there is a breach of confidentiality is insider trading considered illegal. This is the kind of insider trading I will discuss.

From the point of view, where wealth maximization is the ultimate goal of the shareholders there ought not to be any issue with insider trading because the shareholders, as company insiders, would be privy to private information. As such, they would have advance knowledge about issues that could either bring the value of the company's shares up or down, prompting them to either buy or sell. However, in such a case it would be in the interests of the shareholders to ensure that they have equal access to the information. This would ensure that all of the shareholders would have an equal chance to maximize their profits. Because then a shareholding manager, who would be privy to this information first, could not secure a better deal for himself at the expense of the other shareholders.

However, because it is possible for a person to own shares in multiple companies, the shareholders should be wary in allowing for all information to be available for all of the shareholders. This is because sensitive information with regards to the financial dealings of a company could also help their competitors in obtaining an advantage. What follows, is that the shareholders should include in their contract a clause, which prohibits insider trading, based on the following thought process:

1. All shareholders should have equal access to company sensitive information, which might affect the value of their shares.
2. However, some shareholders might be hostile to the company.
3. Therefore, the shareholders should not have access to sensitive information, but those who do should not be allowed to act on the basis of such information at the expense of other shareholders.

The shareholders should also agree on minimal deception in their sales and marketing practices. This follows both from the interests of the shareholders and from a consequentialist line of argument. Provided that deception was allowed, the goods and services the company purchases from outside parties could also have been misrepresented. This could lead to the company losing money based on false information from the suppliers. What is more, given that deception was used in marketing without restriction, this could lead to a vicious circle with competing companies trying...
to secure more sales by deceiving their customers. Ultimately, the customers could lose their trust in the services and products these companies would offer and find other means of obtaining the goods, forcing the companies to either change their strategies or become bankrupt.

An important aspect of the original company contract would also be the way the company treats its workers and the community it operates in. It would be in the shareholders' best interests to ensure that their company provides adequate working conditions for all and brings about some positive changes in the communities it operates in as the communities are the company's source of workforce. Much of the motivation for current legislation with regards of employee rights stems from the concern for human dignity. (Duska, 1999) However, this motivation is inadequate, when taking the contractarian position. The first question should then be if employees ought to have rights or not.

The first possibility would be that the workers of a company would have no rights. In this case the workers would have essentially enslaved themselves. Whilst this is arguably a possible scenario, it does not seem to be a reasonable approach and would most likely not attract enough workers to join a company operating under such policy. What is more, adopting a policy of no workers' rights a company would attract much unwanted negative attention. This would most likely happen even if the working conditions were otherwise adequate, as the idea of voluntary slavery is very controversial.

Therefore, to mitigate the negative effects of an otherwise effective solution, the shareholders would have to choose the alternative and allow workers to have rights in the workplace. However, because the shareholders are motivated by self-interest, the rights do not have to be necessarily fair (in a very broad sense), rather they must be reasonable enough to secure a constant availability of workers, but to avoid an influx of new shareholders who could be hostile to the original contract. However, the rights would still remain fair in the sense that no other company could gain a competitive advantage through some kind of exploitation of these rights.

Ronald Duska (1999) identifies several different employee rights, of which the first is the right to work. However, he claims that the right to work does not specify who should provide the opportunities to work. What is more, Duska (1999) sees a problem with the circumstances of this right. He uses a family owned business as an example, where the owner can hire any of their children with little regard for their qualifications, choosing their family members over possibly
more qualified outside candidates. (ibid.) For him, the right to work only functions within the context where the state sees it as its duty to provide employment for its citizens. But a privately owned company is under no obligation to provide jobs, if it does not want to. Therefore, the shareholders when creating the original contract should not see it as their duty to provide jobs, but the right to work should perhaps be worded more on the lines: All persons with relevant qualifications are allowed to apply for work at the company of their choosing. Also, the persons working for a company should be allowed to resign, if they so choose. The shareholders could find motivation for this right through consequentialist arguments, where a dissatisfied worker is allowed to leave the company, instead of forcing them to stay and perform at a lesser level.

However, because the employees, as free agents, have the right to leave their work they should not necessarily need to have the right to a meaningful work. Duska explains this as a right to refrain from tedious, repetitive, or boring work, or in other words, from any work which could be seen as dehumanizing. (ibid.) However, the shareholders should be wary of the negative effects such tasks might bring forth when they discuss the tasks their employees should do and how these tasks should be distributed among the workers.

What is more, Duska identifies a list of more concrete employee rights, such as the right to a safe working environment, job security, privacy, compensation for injury, a right to participate in decisions which affect workers, and non-discrimination. (Duska, 1999:264) All of these sound very reasonable, and there seems to be very little to lose from granting the workers such rights. However, not all of them are necessary. For example, the right to a safe working environment could be linked to the right for a meaningful work and as such, the company would only need to be wary of what kinds of working conditions they offer their employees. Ultimately the unnecessariness of this right stems, however, from the idea that the relationship between the employer and the employee can be seen as a contract, to which both parties agree to. (ibid.) What follows, is that the workers do not have to accept the contract if they are not satisfied with the conditions of the contract. However, it would be in the shareholders best interests to ensure that the working conditions are adequate, as otherwise the company could face a shortage of workers. A similar, somewhat consequentialist, reasoning could be used to justify other rights on the list too.

However, three of the rights which Duska identifies: the right to privacy, the right for workers to participate in discussion of topics which affect them, and the right for compensation in the case of an injury (Duska, 1999) are not necessary for the shareholders to include in the original contract.
The right to privacy is unnecessary because, from the point of view of the company and the shareholders, when the employees are at work they are responsible for fulfilling their work related tasks. And in order to maximize the effectiveness of any given employee, the company should be able to monitor their actions during working hours. However, once the workers have fulfilled their duties towards the employer and are not working any more, the company should respect the rights of their employees to do whatever they want during their free time. On the other hand, there is nothing stopping the companies from, for example, conducting drug tests provided that there exists a link between drug use and work efficiency. This would be the case even if the employees used drugs outside of their working hours as most substances take time to fully clear from the system.

What is more, because the company's ultimate goal is to generate a profit for its shareholders, allowing the workers to participate in matters which concern them could potentially lead to a decrease in profits. This does not mean that the employees could not be consulted on important decisions, but ultimately all of the company's actions should be based on shareholder wealth maximization.

Duska argues that the employees should have a right to compensation on work related injuries on the basis of fairness: “If I suffer harm in your service, fairness would seem to dictate that you reimburse me for that harm.” (Duska 1999:266) However, the notion of fairness goes against the contractarian position of self-interest, and therefore the shareholders could agree to not compensate employees for injuries at work. Though, there is one exception to this. In cases where the company was clearly at fault, it would be reasonable and in the best interests of the shareholders to compensate for injuries as these cases could become expensive if taken to court. However, given that the company took workplace safety seriously enough, cases where the company would have to compensate would be at a minimum.

However, a right the employees should have, or perhaps a duty the corporation should have towards its employees, would be the payment of a living wage. The payment of a living wage would ensure that the employees of a company can focus all of their efforts to maximize their input in the company as they do not have to split their time between multiple jobs. Also, this would lead to a greater worker satisfaction and possibly prompt the workers to exceed themselves at work as they

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5 Living wage, as opposed to the minimum wage, is the absolute minimum a person needs to earn in order to be able to support themselves within the community they live in. The minimum wage, can be set to be lower than the living wage, which forces people to either rely for social services for income support or take on a second job.
would not have to worry about making their financial ends meet. What is more, paying a living wage would mean that no other company, provided they operate in the same community, is able to acquire greater profits by paying their employees considerably less than their competitors.

Furthermore, the original contractors should decide against using bribes as means to secure better contracts than their competitors. It should be noted that there is nothing wrong with bribery, per se, when the agents operate based on self-interest. However, if after the unveiling the contractors would find themselves owning shares from a small start-up company trying to break into the market which is operated by multiple larger companies, then having some security against the other corporations on being able to simply buy themselves the largest market share through bribery is important. Similarly, the bigger companies could find that a smaller company is using bribes to advance their position in a sector the larger companies have traditionally had a large share in.

The shareholders ought also to decide on the relative power of the shares. Currently companies operate mostly on a system where one share equals one vote (Sandberg, 2011). This is an effective way to distribute voting power so that those with most to lose have also the ability to influence the outcomes of voting more effectively. This system is, however, worse for the shareholders than a system where each shareholder is given one vote regardless of the amount of shares they hold. Allowing multiple votes per shareholder could lead to hostile shareholders effectively taking over a company by buying the majority of the shares. What is more, unless the initial shares were divided equally between the original shareholders, there could be a risk that one of the majority shareholders could turn hostile later on. Therefore, agreeing on a position where each shareholder is entitled to one vote only, would mitigate both the risk of hostile shareholders, such as a competing company, and possible conflicts of interests between shareholders in the future. By only allowing for one vote per shareholder, the shareholders could also protect their long term interests in the company in situations where the shareholders have owned shares for a long time but are forced to sell some of their shares due to financial reasons. A further justification for only allowing one vote per shareholder could also be found by changing the original position where the shareholders would have an equal amount of shares, to a situation where the shareholders would not know how many shares they might own in the company. It seems to be generally accepted that those with more shares also have a greater stake in the company, and stand to potentially lose more. However, it would seem to be in the best interests of the individual shareholders that regardless of the amount of shares they own, their interests and opinions would also carry an equal weight in the decision making process.
Shareholder Ownership

I will treat shareholder ownership somewhat separately from the idea about the company as a social contract which I have entertained throughout this thesis. This is mostly because I see the necessity of shareholder ownership as being fundamentally more important than being able to establish that companies are merely social contracts. Because if shareholders are the true owners of companies, what follows is that they have as owners a justification to demand the management to run the company in a certain way. Moreover, regardless of the criticism as put forward by Ireland (1999), the companies do still hold the shareholders as being somewhat important to the operation of the company by allowing them to vote in the companies' Annual General Elections.

Paddy Ireland (1999) characterises the shareholder ownership as being a myth within the context of modern companies which has carried over from times when shareholders actually had a claim to the assets of the company. According to him, a shareholder is nowadays nothing more than a “rentier investor with an interest very similar to that of a debenture holder.” (Ireland, 1999:48) For him, this is a result of the companies having become more de-personified yet insistent on treating shareholders as somehow inherently important to the company. (ibid.) This is not to say that shareholders could be dismissed completely, but rather Ireland's point concerns multinational corporations with multiple subsidiaries. The sheer size of the company leads to the shareholders becoming distanced from the actual company and its assets, and as such they should not be seen as the owners of a company.

Charron (2007) sees the issue of shareholder ownership differently. For her, the corporate structure is under attack from both outside and inside forces. She sees the main goal of stakeholder theorists, or any other corporate revisionists, to “disestablish the corporation as a privately owned, publicly traded entity. In its place, they seek to ensconce an institution publicly owned and controlled by political decision rather than by the market.” (Charron, 2007:2) What follows, is that by asserting the management as the ultimate head of the company, the organisational structure of the firm is effectively weakened. Because the managers have no concrete third party who they would be responsible for, but rather they are responsible to all of the stakeholders, this encourages the managers to increase their own profits and pursue their own interests within the corporation. This is because the weakened structure allows the managers to reward those groups of stakeholders who behave in a manner which benefits the managers' interests the most. (Charron, 2007)
Furthermore, stakeholder theory has also more practical concerns than merely allowing for the managers to pursue their own interests relatively freely. If the shareholders are distanced as the main party who benefits from a given company's actions, then the issue rises about who the company's actions ought to be beneficial for. There is no feasible way of determining which stakeholders' needs the managers ought to prioritize in fulfilling. The managers would be required to have in-depth knowledge about all of the company's actions and stakeholders. This is something that could potentially be possible in small, local companies, but no one could reasonably demand the head of a multinational corporation to be involved in micro management.

Charron also identifies a further issue with the stakeholder theory. According to her, the stakeholder theorists claim that all stakeholders are, so to say, equal within the corporate governance structure. However, this is not the case. However distanced Ireland claims that shareholders have become, and that they do not hold real power anymore. (Ireland, 1999) The case remains that a corporation buys its stakeholders, par one. The different stakeholders compete to be made part of the company, in terms of being able to deliver goods or services to the company, and as such their input becomes a part of the company's assets. Yet, the shareholders do not follow this rule. The shareholders receive a part of the company's assets by virtue of owning shares, or as Charron puts it: “The stockholder [shareholder] receives a certificate of private ownership, establishing a right to returns in perpetuity.” (Charron, 2007:15)

What follows, is that within the corporate governance structure the shareholders are superior to the other stakeholders. The company merely becomes a 'consumer' of the 'services' the other stakeholders provide, and the company is able to refuse these services at any time without further consultation. However, this is not the case with the shareholders. In the process of shareholding the company is acknowledged as being a trustee of the individual shareholders' private property, and the company is not able to terminate this relationship. (Charron, 2007:15) The termination of the relationship between the company and the shareholder can only be initiated by the shareholder through selling or trading their shares in the company.

Furthermore, where Ireland sees the shareholders of having become essentially rentier investors due to the de-personification of the company (Ireland, 1999). Charron (2007), on the other hand, sees this as a further issue with calling for stakeholder equality and a reason to assert more power to the

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6 The notions of 'consumership' and 'services' are here to be taken very broadly. They might entail the use of more physical goods, or the legal existence of the company within a community. That is to say, the community provides the company the legal means to be recognized as a company and the company is the 'consumer of this 'service'.

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20
shareholders. This has to do with the difference in the relationship of shareholders and investors with the firm. The only way a shareholder can terminate their relationship with the company is by selling their shares. Otherwise the relationship is indefinite and lasts for the entire duration the company exists, and even if the company is sold, the relationship can continue through the shareholders being able to change their shares for shares in the new company. However, the relationship between the investors and the company is finite. The investors are only a “part of the firm only until their investing instrument matures” (Charron, 2007:15) and after this the relationship automatically terminates. In general terms this would be the due date for the payback of a loan, after that the investor would not have any stake in the company whatsoever.

Re-asserting the shareholders to the centre of the corporate structure could also lead to the most beneficial situation for all of the stakeholders. This is because if the company is seen more as the private property of the shareholders, rather than as an entity with multiple stakeholder interests, the shareholders would be more motivated to engage with the corporation. (Charron, 2007) This would lead to the company becoming more efficient by having a clear direction and leadership/ownership structure. The alternative, where the interests of the company are those of the different stakeholders with no proper ownership, would lead to the company becoming a public good of sorts. This would lead to no party taking actual responsibility of the corporation as the different stakeholders would be interested in pursuing their own goals through the corporation. Ultimately this could lead to a situation similar in the Tragedy of the Commons\(^7\) (ibid.) as all of the different stakeholders, the managers included, would try to benefit from the company with little regard for the company itself. There is no real safeguard against this happening with a shareholder-led company either in situations where the shareholders are hostile, but the notion of private ownership should lead to the majority of the shareholders also being interested in the company itself as they stand to lose the most if the company does not survive.

What is also noteworthy, is that much of Ireland's critique about the redundancy of shareholders is not uncalled for. Charron's account of the situation complements Ireland's. Because of the good ideas offered by stakeholder theorists to business ethics many corporations have changed the ways they operate in. One of the greatest influences for this could be argued to be the better marketability of more ethically operating businesses. Stakeholder theory has slowly but surely become the best

\(^7\) In the Tragedy of the Commons, each agent has free access to a commonly owned good, such as a pasture, or other natural resources. The agents are assumed to be rational beings, and therefore they will try and maximize their own gain from that resource. What follows, is that due to each agent acting on the basis of what is rational for them, the natural resource becomes over exploited, leading to the loss of that resource. This, depending on the resource that was over-used, could have devastating effects on the local, or global, community. (Hardin, 1986)
practice within business, and this has led to the decline of the importance of the shareholders. However, it seems that shareholders are fundamentally important to businesses on the very ethical level that stakeholder theory attacks them. Therefore, businesses need to recognize the importance of their shareholders and start treating them accordingly. Furthermore, the shareholders need to take action on becoming the actual owners of companies, rather than remaining merely passive and accepting the change in corporate governance.

In addition, a further issue would rise about how the managers ought to act. Given that the managers were only really responsible for themselves, the problem would be that the managers would have too many possibilities to choose from. This, however, is why the company ought to be seen as a social contract as I argued earlier on in this thesis. What must be noted is that it would also be possible to argue for the stakeholder theory on the basis of seeing the company as a social contract. However, the criticism to further distancing the shareholders from the company as given by Charron (2007) is important in trying to prohibit this.

What must be addressed is that Charron's criticism against the redundancy of shareholder ownership also touches the very arguments I have tried to make in this thesis. However, whereas Charron sees that “contract theories' [...] removed from stockholders [shareholders] the ownership of control rights entailed by private property” (Charron 2007:10), my position does not follow this line of thought. What I propose instead is that shareholders do indeed own the company, or if not 'own' as such, they have the ultimate right to govern the company and the company's directors should work for the shareholders. In chapter one, I defended the idea that a company can, and should, be seen as a social contract because it allows for the tools of political philosophy to be used in evaluating the ways different companies function. And in chapter two I discussed a set of different points the shareholders ought to consider when they are discussing how the company they own should operate. Shareholder ownership complements this view as a natural outcome of the two previous chapters.

What is more, if the shareholders are seen as the original contractors within the company structure, then the company will become more personal and the the remarks made by Ireland (1999) about shareholder ownership being a myth could be dismissed. By placing the shareholders back in to the centre of the company's nexus of contracts the company will not only have a clear goal, the maximization of shareholder wealth, but it will also have a clear set of rules about how to achieve this.
Shareholder Activism

I have already discussed why the shareholders should be seen as the real owners of the companies, and what the original company should consist of, but the final and perhaps most crucial part remains: How can the shareholders of current companies change the way these companies function to reflect more on how they should function?

The first step is for the shareholders to become more active in the annual general meetings (AGM) which companies are required to hold at least once a year. This is because currently the AGMs are the only direct way for the shareholders to influence company policies. (Sandberg, 2011) Even if shareholders do own the company and the managers are ultimately working for them, the shareholders are, as Ireland (1999) states, distanced from the daily business of the companies. This means that in most cases the managers of a company make the decisions which affect the company. This is not necessarily problematic, as the coordination of a large shareholder-base to decide on day to day activities would be nearly impossible. Therefore, it is more efficient to delegate this task to the management team. However, the issue rises from the fact that the activities of the managers are not supervised by the shareholders, but by the board of directors. The members of the board represent and maintain the shareholders' interests in managerial decisions, but the shareholders do not have any direct influence on the activities of the board of directors either.

This leaves the AGM currently as the only tool for the shareholders to voice their opinions on the way the company operates and to ensure that the company operates with their interests in mind. In the AGM the shareholders have two possibilities to voice their opinions: Either through the proposals of different shareholder resolutions, or through voting on the resolutions which have been presented by other shareholders or the management. (Sandberg, 2011)

The exact content of shareholder proposed resolutions could be anything, but their effect can be significant. The strength of the resolutions comes from their specificity with regards to what the company should do, or if the governance of the company should be changed one way or another. (Sandberg, 2011) Possible topics could include “the set-up of the board of directors, general operational matters [or] changes in the capital structure” (Sandberg, 2011:55) Shareholder proposed resolutions are also the way in which different stakeholders of the company could change the way
the company operates in, provided that the contract the original shareholder-owners agreed on is not reasonable enough. By buying shares in the company stakeholders would also be entitled to propose different resolutions by virtue of them having become shareholders.

However, Sandberg (2011) raises a concern about the effectiveness of shareholders actually being able to propose meaningful resolutions. This follows from the facts that there is actually very little evidence about the successful implementations of shareholder resolutions within companies, and that in many companies the managers can overrule and disregard shareholder resolutions provided that they “deal with the «ordinary business» of the corporation, or there are formal rules which prohibit shareholder resolutions on such matters”. (Blair, 1995; Logsdon and Van Buren, 2009, in Sandberg, 2011:57) This is mainly due to governmental legislation, where the government acts as the ultimate supervisor of all corporate activity (ibid.), and therefore the shareholders are not able to directly influence this.

Still, it must be noted that how I propose shareholder activism to be used by the shareholder-owners is different from the conception discussed by Sandberg. Whereas Sandberg sees shareholder activism as a tool for social change in the context of this thesis shareholder activism is used as a tool for shareholders to regain their status within the corporate structure. Therefore, the resolutions proposed by the shareholder-owners, as presented in this thesis, could potentially be viewed more favourably by the managers of current companies as they would most likely be related to increasing profits.

The shareholders are also entitled to vote on resolutions proposed by other shareholders or the management. This, however, is not as straightforward as it initially seems. The main issue is that many people only hold shares in a company indirectly through different trusts and funds. (Sandberg, 2011) This could potentially create temporary conflicts of interest between the company, the manager of the funds, and those who invest in said funds when the issue of voting is brought up. However, in terms of the ultimate goals of the company this indirect ownership is not as problematic. This is because regardless of who actually owns the shares, the company ought to function in such a way that it maximizes the wealth of its shareholders, regardless of whether the shareholder is an individual or a group of individuals.

The bigger problem is the way many companies have set up their 'system of shares'. In many cases
there exists a “system of so-called ‘A’ and ‘B’ shares and […] these shares carry different voting rights.” (Sandberg, 2011:60) It could be the case that some shares could carry no voting rights at all, or the company only allocating fractions of votes per share for a certain type of share. As I discussed earlier, the original contractors should opt-in for a system, where each shareholder is entitled to one vote regardless of the amount of shares they own. The current shareholders then should either actively seek to buy the higher ranking shares in the companies they own shares in, or try to seek to re-design the system of shares the company has in place. This is to ensure that the shareholders are actually able to become the owners of the company as they are perceived to be.

The assertion of shareholder power is also extremely important because as it currently stands “the voting procedure is rigged in some sense to go the managers’ way” (Sandberg, 2011:61) This is because either the way how shareholders can propose resolutions is made in such a way that less active shareholders do not want to engage in the process. Or, shareholders who are entitled to vote simply do not vote. In many cases this gives the managerial team the right to decide on how the shareholder should have voted. (Maug and Rydqvist, 2001, in Sandberg 2011)

Even if the chance of passing a shareholder proposed resolution is somewhat minimal, it does not mean that the effort was completely lost. Often the proposal of different resolutions can also be used as a tool to start a conversation about a certain topic within the company. (Kinder et al, 1993, in Sandberg, 2011) This is because, depending on the content resolution, some managers could be seen as being hypersensitive to the potential exposure if the topic was widely discussed in the media. (Lowry, 1993; Brill et al., 1999, in Sandberg, 2011) Within the context of how Sandberg treats shareholder activism, this is because most of the resolutions would deal with social issues and the wider public would be supportive of such resolutions. However, within the context of this thesis one could also see a certain sensitivity towards the status of the managers within the company. Because even if managers do run the company, the shareholders still technically own the company. What follows is that even if the stakeholder theory has changed the balance of power in corporate governance, the managers could still be sensitive to issues which might upset the majority of the shareholders.

In addition to the more direct means of engagement, the shareholders have also a set of indirect engagement methods they could apply to raise their concerns about various issues with regards to the company. The shareholders could for example hold a demonstration at the AGM, which would both bring the issues to the attention of the other shareholders, and potentially force the management to re-think their position. (Sandberg, 2011) The shareholders could even take legal
action against the company. Whilst it initially seems rather counter-intuitive to take one's own company to court, the current situation where the shareholders are quite distanced from the company makes this possibility somewhat more justifiable. A situation where the shareholders take legal action against their company to ensure that their rights as the company's owners could also potentially generate a lot of unwanted media attention for the managers, which is something they might want to avoid. This is because in the wake of the stakeholder theory the managers have been able to become the perceived owners of the companies the managers would want to be very careful in publicly disrupting the status quo as they would have the most to lose. Rather, they might want to hinder the attempts of shareholders to strengthen their position in a more private manner.

However, an issue which Sandberg (2011) states multiple times is that there exists no substantial evidence to show that shareholder activism can actually achieve what the activists have set out to do. Granted, this mostly involves situations which concern shareholders campaigning for issues regarding social change. Yet, if shareholders are not currently able to push forward their resolutions in these topics, there is no guarantee that shareholders could be able to push through resolutions which would help assert them as more concrete, active, owners of the companies either.

Concluding Remarks

In this thesis I have tried to argue, first, that the company should be seen as a social contract and I gave a general overview about some of the different theories on the subject. By viewing the company as a social contract the issues in business ethics can be brought to the realm of political philosophy. This facilitates solving ethical problems in business more effectively. What is more, there exist numerous similarities between companies and social contracts and therefore discussing these issues in the realm of political philosophy is a very intuitive approach.

Then, by using a contractarian position and Rawls' (1971) ideas about the veil of ignorance, I discussed several points that the original company contract between shareholders could include. This list, is by no means exhaustive, but the points discussed were some of the more important and interesting issues in business ethics. Due to the very contrasting position, contractarianism, that I chose to use as my starting point, not all of the points are intuitive. On the most part this is because the workers of any given company would be used as mere means to create wealth for the shareholders. This starting position does seem to degrade humanity on some level. However, even if
the employees are only mere means, in a privately owned company, it does not mean that the shareholders could neglect the welfare of their employees. On the contrary, because the workers are the tools for wealth, the shareholders should be extremely wary on how they treat their employees to guarantee that the company operates at a maximum efficiency.

One of Charron's (2007) main concerns with stakeholder theory was the decline of the importance of shareholders. This worry is echoed by Ireland (1999) in his overview about the current situation about shareholder ownership and that it is merely a myth. The main strength of my approach to corporate governance is that it allows for the shareholders to remain the owners of the company, and the company does not become a publicly owned entity. This effectively renders Charron's and Ireland's concerns as irrelevant.

In the third part, I discussed the topic of shareholder ownership. As it is stands now, shareholder ownership can be seen as a sort of a myth as Ireland (1999) discusses. However, the shareholders do still have more power on corporate matters than other stakeholders because they are allowed to vote at the company AGMs. Furthermore, strengthening the status of shareholders in a company could also lead to a more positive change in the way companies operate. There would exist a clear ownership structure prompting the shareholders to become more interested in taking part in the company's operations. The current situation where many shareholders are passive and distanced from the company only harms the shareholders in the long term and allows them to be more easily dismissed as important in corporate governance.

In the final part, I discussed different methods on how shareholders could try to regain their position inside the corporate structure. This discussion was almost exclusively based on Joakim Sandberg's (2011) outline on the subject. A noteworthy point is, that whereas Sandberg takes shareholder activism to be a tool for social change, I use the tools of shareholder activism to change the status and position of shareholders in the companies. Most of the tools the shareholders have at heir disposal are based on their ability to directly influence the company's behaviour through voting and proposing resolutions at the AGM. The problem with these two ways of engagement is that the current legislation favours the managers in most cases. This could be either because the managers are allowed to overrule certain resolutions provided that they can be shown to interfere with daily business (Blair, 1995; Logsdon and Van Buren, 2009, in Sandberg, 2011:57), or that the managers can allocate any shareholder votes that have not been cast how they wish. (Maug and Rydqvist, 2001, in Sandberg 2011)
The shareholders have also a variety of different ways to indirectly influence the companies through legal action, demonstrations, or the media. These methods rely on the possibility that the managers are hypersensitive to issues that might reflect badly both on them, and the companies they run. (Lowry, 1993; Brill et al., 1999, in Sandberg, 2011) This is based on the idea, that with the inactive shareholders, the managers have been able to become the perceived owners of different companies, and as such they would stand to have the most to lose if the shareholders were re-instated as the true owners of the companies.

However, there is no guarantee that shareholder activism does work. Sandberg (2011) notes on multiple occasions that there is not enough statistical data, that would support the efficiency of shareholder activism. However, the type of shareholder activism I propose does not aim at social change, but rather to re-establish the status of the shareholders. Therefore, there is a better chance that the shareholders will become more involved in this activism as the issues concern them directly.

The strength of the approach to business ethics in this thesis is that it demands very little from the companies and shareholders. The contractarian starting position only requires that the shareholders act out of self-interest. Furthermore, even if one was not to accept that the shareholders were the owners of corporations, the original contract could be formulated in a similar manner but with stakeholders. However, to ensure that the companies are operating in the most efficient way possible I believe that the shareholders should be seen as the ultimate owners of the company.
Bibliography


29